



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 30 2011

REPLY TO THE ATTENTION OF:

LU-9J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeffrey Kehne
Hill & Kehne, LLC
2300 Wisconsin Avenue, NW, Suite 300
Washington, DC 20007

Re: Executed Performance-based Voluntary Agreement
RACER Trust--Dort Highway- 10800 South Saginaw Street, Grand Blanc, MI
MID 005 356 944

Dear Mr. Kehne:

I am enclosing a fully executed copy of the Performance-based Voluntary Agreement (PVA) covering the corrective action for past releases of hazardous contaminants from the subject facility. This Performance-based Agreement will provide the flexibility that you need to complete the work expeditiously. In addition, we expect that it will lead to better communication between our two organizations and the public. We look forward to working cooperatively with you and your staff on this project.

In accordance with Section IV of the agreement, I am hereby designating Michelle Kaysen as the U.S. EPA project manager for this project. If you have any questions, please contact her at (312) 886-4253 or kaysen.michelle@epa.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jose G. Cisneros".

Jose G. Cisneros, Chief
Remediation and Reuse Branch
Land and Chemicals Division

Enclosure

Performance Based Corrective Action Agreement Between The United States Environmental Protection Agency and Revitalizing Auto Communities Environmental Response Trust

I. Purpose

The United States Environmental Protection Agency ("U.S. EPA") and Revitalizing Auto Communities Environmental Response Trust ("RACER"), each separately a Party and collectively referred to as the Parties, establish this Agreement to enable RACER to work to investigate, and as necessary, stabilize and remediate releases of hazardous wastes or hazardous constituents at or from the Dort Highway Site (the "Site") that may present an unacceptable risk to human health or the environment. RACER's actions with respect to the Site are subject to the terms, provisions and limitations set forth in the Environmental Response Trust Consent Decree and Settlement Agreement Among Debtors, the Environmental Response Trust Administrative Trustee, the United States, [fourteen States] and the Saint Regis Mohawk Tribe, Case No. 09-50026 (REG) in the United States Bankruptcy Court for the Southern District of New York ("Consent Decree"). The Parties believe that RACER will appropriately, efficiently and effectively investigate and, as necessary, remediate the Site on an accelerated basis by following the procedures and guidelines in this Agreement. This Agreement will have fulfilled its purpose and will terminate upon written acknowledgment by U.S. EPA that RACER has completed its corrective action obligations under RCRA at the Site.

II. Background

The Site is located at 10800 South Saginaw Street in Grand Blanc, Michigan, and covers approximately 20 acres. The Site was formerly part of the adjacent 200-acre General Motors Manufacturing Plant ("GM MFD Plant"), in an area known at the time as Area 2. It has been separated from the GM MFD Plant, and is no longer used in association with that plant. It is currently referred to as the Dort Highway Site. The Site is undeveloped with exposed soil covering most of the Site with limited areas of vegetation and gravel cover. A transformer substation and a single building associated with the substation are located adjacent to the southeast corner of the Site, both reportedly owned by Consumers Energy Company. Also adjacent to the southern portion of the Site, are a storm water detention pond, water well, and an aboveground storage tank, all located within the GM MFD Plant.

The Site is bordered by the GM MFD Plant to the east, the GM MFD Plant and commercial property to the north, the GM MFD Plant and an industrial storage warehouse to the south, and Dort Highway to the west. Residential properties are located further west of the Site with the surrounding areas being predominantly residential and commercial in use (within an approximate ½ mile radius).

U.S. EPA and RACER expect that RACER will investigate, and as necessary remediate, all releases of hazardous wastes or constituents at or from the Site under the guidelines established in this Agreement and subject to the terms, provisions and limitations set forth in the Consent Decree.

RACER understands that the following documents have been submitted to U.S. EPA. These documents included:

- Phase I Environmental Site Assessment, October 2005
- Phase II Environmental Site Assessment, May 2007
- Delineation Investigation, December 2007
- Phase I Environmental Site Assessment, May 2010

III. Definitions

Unless otherwise specified herein, terms used in this Agreement which are defined in RCRA, 42 U.S.C. §§ 6901-6922k, or in regulations promulgated under RCRA will have the definitions given to them in RCRA or in such regulations.

IV. Project Manager

U.S. EPA and RACER will each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Agreement. Each Project Manager will be responsible for overseeing the implementation of this Agreement. Whenever a Party changes Project Managers it will provide prompt written notice to the other Party.

V. Work to be Performed

RACER agrees to perform the actions specified in this section, in the manner and by the dates specified herein subject to the terms, provisions and limitation set forth in the Consent Decree. In the case of a conflict between this Agreement and the Consent Decree, the Consent Decree controls.

As contemplated by the Consent Decree, RACER may request and U.S. EPA may approve, in its sole discretion, changes to the RCRA facility boundary to allow portions of the Site to be redeveloped. U.S. EPA may approve such an adjustment based on factors including but not limited to: (i) information on historical uses and environmental data demonstrating that the portion of the Site proposed for sale or redevelopment was never used for any regulated activity or that no contamination is present on the portion of the Site to be released for sale or redevelopment; (ii) successful completion of the required remedy for contamination found on the portion of the Site to be released for sale or redevelopment; and (iii) approval of closure with restrictions or closure without restrictions for the portion of the Site to be released for sale or redevelopment.

RACER will perform the work undertaken pursuant to this Agreement in compliance with RCRA and other applicable Federal and State laws and their implementing regulations, and consistent with all relevant U.S. EPA guidance documents as appropriate to the Site. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance and relevant portions of the Model Scopes of Work for RCRA Corrective Action and of U.S. EPA's Risk Assessment Guidance for Superfund.

1. RACER will complete activities necessary to identify and define the nature and extent of releases of hazardous waste and/or hazardous constituents at or from the Site. These activities include without limitation:

- a. To the extent not already completed or otherwise determined by U.S. EPA to be unnecessary, provide to U.S. EPA, within 60 days of the effective date of this Agreement a brief Site History and Current Conditions Report ("Report") covering all areas of the Site. The Report will include any recent sampling data from the Site, and a summary of the historic operations and physical setting of the area of the Site. The Report will describe conditions at any past or present locations at the Site for which RACER knows there was past treatment, storage, or disposal of hazardous waste or hazardous constituents. As an appendix to the Report, a draft Sampling and Analysis Plan ("SAP") will be provided to address data gaps identified at the Site. Provided there has already been investigative and remedial work conducted at the Site, the SAP will identify the data needed to verify current conditions at the Site. The SAP will identify and support the number and locations of the soil samples to be collected as well as the groundwater monitoring well needs.
 - b. To the extent not already completed or otherwise determined by U.S. EPA to be unnecessary, perform the investigation, per the above mentioned SAP, to identify the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the Site which may pose an unacceptable risk to human health or the environment, and provide a Remedial Action Plan ("RAP") to U.S. EPA. The RAP will identify and support any required soil excavation and the number and locations of the post-excavation soil samples to be collected. The RAP will also describe the nature and extent of any releases of hazardous waste and/or hazardous constituents at or from the Site which do not pose an unacceptable risk to human health or the environment, and provide the basis for those conclusions, including an evaluation of the risks, which upon concurrence of U.S. EPA may be a comparison to available Michigan Part 201 Non-residential Cleanup Criteria. The report may be prepared in phases to provide timely support for the demonstrations described in Section V.2, below, and for the determinations and proposal described in Section V.3, below.
 - c. RACER may choose to proceed with remedial actions to limit site investigation or risk assessment activities in order to complete the work as defined in Section V.2 and V.3 below.
2. To the extent not already completed or otherwise determined by U.S. EPA to be unnecessary, RACER will demonstrate by the dates indicated, through submitting an Environmental Indicators Report and by performing other necessary activities to ensure that:
 - a. By April 30, 2012, all current human exposures to contamination at or from the Site are under control and such controls will be maintained. That is, for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors, significant or unacceptable exposures do not exist.
 - b. By June 30, 2012, migration of contaminated groundwater at or from the Site is stabilized and such controls will be maintained. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In

addition, any discharge of groundwater to surface water is either insignificant or shown to be currently acceptable according to an appropriate interim assessment. Monitoring and measurement data must be collected in the future as necessary to verify that migration of any contaminated groundwater is stabilized.

- c. In order to prepare for and provide the demonstrations required by Sections V.2.a and V.2.b above, RACER will:
 - i. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria, which upon concurrence from U.S. EPA may be the Michigan Part 201 Non-residential Cleanup Criteria.
 - ii. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.
 - iii. Control any unacceptable current human exposures that are identified. This may include performing any corrective actions or other response measures (“Corrective Measures”) necessary to control current human exposures to contamination to within acceptable risk levels.
 - iv. Stabilize the migration of contaminated groundwater. This may include implementing any Corrective Measures necessary to stabilize the migration of contaminated groundwater.
 - v. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
 - vi. Prepare a report, either prior to or as part of the Environmental Indicators Report, that provides a description and justification for any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

3. Final Corrective Measures:

- a. RACER will propose to U.S. EPA by October 31, 2012 Corrective Measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Site within the RAP per Section V.1.b, above. The RAP will describe all Corrective Measures implemented at the Site since the effective date of this Agreement. It will also include a description of all other final Corrective Measures evaluated by RACER, a detailed explanation of why the proposed final Corrective Measures were preferred by RACER, and cost estimates for the final Corrective Measures evaluated. The proposal will weigh potential alternative remedies to those currently identified in the Remediation Cost Estimate Scope of Work (Attachment 1, tasks 2-5) prepared in accordance with the Consent Decree. The proposal will also include a detailed schedule to construct and implement the proposed final Corrective Measures, and to submit a Final Remedy Construction Completion Report. This schedule will provide that as much of the initial construction work as practicable will be completed within one year after U.S. EPA

selects the final Corrective Measures and that all final Corrective Measures will be completed within a reasonable period of time to protect human health and the environment.

- b. As part of developing its proposals, RACER must propose appropriate risk screening criteria, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios and provide the basis and justification for these decisions.
- c. U.S. EPA and RACER recognize that there may not be enough information available at this time to estimate a date for selection of Corrective Measures or implementation of Corrective Measures. Therefore, upon completion of RACER's RAP, a timeline for the selection of Corrective Measures and implementation of the selected Corrective Measures will be mutually agreed upon.
- d. U.S. EPA may request supplemental information from RACER if it determines that the proposals and supporting information do not provide an adequate basis to select final Corrective Measures that will protect human health and the environment from the release of hazardous waste or hazardous constituents at or from the Site.
- e. U.S. EPA will provide the public with an opportunity to review and comment on its proposed final Corrective Measures, including a detailed description and justification for the proposals (the "Statement of Basis"). Following the public comment period, U.S. EPA will select the final Corrective Measures and provide notification of its decision and rationale in a Final Decision and Response to Comments ("Final Decision").
- f. Subject to the terms, provisions and limitations of the Consent Decree, RACER will implement the final Corrective Measures selected in the U.S. EPA's Final Decision according to the schedule therein and subject to the terms, provisions and limitations set forth in the Consent Decree.

4. Reporting and other requirements:

- a. RACER will maintain a publicly accessible repository for information regarding Site activities and conduct public outreach and involvement activities, consistent with the RCRA Public Participation Manual, as appropriate for the Site and as directed and in consultation with U.S. EPA.
- b. RACER will provide annual progress reports to U.S. EPA by the 15th day of the month following the effective date of this Agreement. The report will list work performed to date, data collected, problems encountered, project schedule, and percent project completed.
- c. The Parties will communicate frequently and in good faith to assure successful completion of the requirements of this Agreement, and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Agreement.

- d. RACER will provide a Final Remedy Construction Completion Report documenting all work that it has performed pursuant to the schedule in U.S. EPA's Final Decision.
- e. If ongoing monitoring or operation and maintenance are required after construction of the selected final Corrective Measures, RACER will include an operations and maintenance plan in the Final Remedy Construction Completion Report. RACER will revise and resubmit the Report in response to U.S. EPA's written comments, if any, by the dates U.S. EPA specifies. Upon U.S. EPA's written approval, RACER will implement the approved operation and maintenance plan according to the schedule and provisions contained therein.
- f. Any risk assessments conducted by RACER must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. Risk assessments will be conducted in accordance with the Risk Assessment Guidance for Superfund ("RAGS") or other appropriate U.S. EPA guidance. RACER will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values may include those derived from Federal Maximum Contaminant Levels, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, U.S. EPA vapor intrusion guidance, U.S. EPA Region 3 Risk Based Concentration Table, RAGS, or Michigan Part 201 Cleanup Criteria.
- g. All sampling and analysis conducted under this Agreement will be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the Site, and be sufficient to identify and characterize the nature and extent of all releases. U.S. EPA may audit laboratories selected by RACER or require RACER to purchase and have analyzed any Performance Evaluation ("PE") samples selected by U.S. EPA which are compounds of concern. RACER will notify U.S. EPA in writing at least 14 days before beginning each separate phase of field work performed under this Agreement. At the request of U.S. EPA, RACER will provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples collected by RACER under this Agreement.
- h. Upon reasonable notice, and at reasonable times, U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may enter the Site to review RACER's progress in carrying out the terms of this Agreement; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; and verify the reports and data RACER submits to U.S. EPA. RACER will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Agreement and that are within the possession or under the control of RACER or its contractors or consultants. RACER may request split samples taken by U.S. EPA. If RACER must go beyond the Site's boundary to perform work required by this Agreement, RACER will use reasonable efforts to obtain the necessary access agreements from the present owner(s) of such property within 30 days after RACER knows of the need for access. Any such access agreement must provide for access by U.S. EPA and its representatives. RACER will submit a copy of any access agreement to U.S. EPA's Project Manager. If it does not obtain agreements for access

within 60 days, RACER will notify U.S. EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist RACER in obtaining access.

VI. Record Preservation

RACER will retain, during the pendency of this Agreement all data and all final documents now in its possession or control or which come into its possession or control which relate to this Agreement. RACER will notify U.S. EPA in writing 90 days before destroying any such records, and provide U.S. EPA the opportunity to take possession of any such non-privileged documents. RACER's notice will refer to the effective date, caption, and docket number of this Agreement and will be addressed to:

Director
Land and Chemicals Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

RACER will also promptly provide U.S. EPA's Project Manager a copy of any such notice.

RACER further agrees that within 30 days of retaining or employing any agent, consultant, or contractor ("Agents") to carry out the terms of this Agreement, RACER will enter into an agreement with the Agents to provide RACER a copy of all data and final non-privileged documents produced under the Agreement.

RACER agrees that it will not assert any privilege claim concerning any data developed to prepare any reports or conduct any investigations or other actions taken under the Agreement.

VII. Modification, Termination and Satisfaction.

This Agreement may be modified by written, mutual agreement of the Parties. The Project Managers may agree in writing to extend any deadline in this Agreement. Any change to the Remediation Cost Estimate Scope of Work prepared for the Site in the annual cleanup budget process set out in the Consent Decree that has been approved by U.S. EPA, and/or the current budget for the Site that has been approved by U.S. EPA shall be considered a modification to this agreement that has been approved by the Parties and will be effective on the date of U.S. EPA's approval of the Remediation Cost Estimate Scope of Work and/or current budget.

Either party may unilaterally terminate this Agreement upon written notice to the other party.

RACER may request that U.S. EPA issue a determination that RACER has met the corrective action cleanup objectives for the Site or a portion of the Site. RACER will submit documentation that it has achieved the objectives and U.S. EPA will respond in writing indicating whether RACER has completed RCRA corrective action. If U.S. EPA agrees that an RCRA corrective action is complete, it will issue a "No Further Action" determination for all or a portion of the Site.

The provisions of the Agreement will be satisfied upon RACER's and U.S. EPA's execution of an Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights ("Acknowledgment"). RACER's execution of the Acknowledgment will affirm its continuing obligation to maintain any necessary institutional controls or other long terms measures, and to recognize the Parties' reservation of rights as required in Section VIII.

VIII. Reservation of Rights

The Parties reserve any and all rights, remedies, authorities or defenses that they respectively have under law. Nothing in this Agreement limits or affects the authority or ability of either Party to take any action authorized by law. Nothing in this Agreement creates any legal rights, claims or defenses in either Party or by or for any third party. Nothing in this Agreement relieves RACER from complying with applicable federal, state and local laws.


This Agreement does not limit or affect the rights of the Parties against any Third Party, nor does it limit the rights of Third Parties. The Parties agree that this Agreement does not constitute any decision on preauthorization of funds under §111(a)(2) of CERCLA.

IX. Effective Date

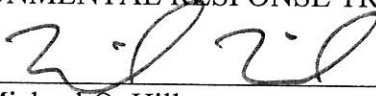
This Agreement is effective on the date the last Party signs.

IT IS SO AGREED:

DATE: 9/29/11

BY: 
Margaret Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

DATE: 9/21/11

REVITALIZING AUTO COMMUNITIES
ENVIRONMENTAL RESPONSE TRUST
BY: 
Michael O. Hill
Chief Operating Officer and General Counsel