

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

In the Matter of the  
Development and Implementation  
of a Remedial Program for an  
Inactive Hazardous Waste Disposal  
Site under Article 27, Title 13  
of the Environmental Conservation  
Law of the State of New York by:

**General Motors Corporation,**

Respondent

**ORDER ON CONSENT  
and  
ADMINISTRATIVE  
SETTLEMENT**

Index # D7-0002-00-05

Site #:7-34-074  
Old Ley Creek Channel

**WHEREAS,**

1. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.
2. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.
3. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).
4. General Motors Corporation ("Respondent") is a corporation organized and existing under the laws of the State of Delaware and is doing business in the State of New York.
5. The subject of this Administrative Order on Consent ("Order") is the land and waters referred to in Subparagraph 8.B herein below as the "**Old Ley Creek Channel Site**".
6. A. Respondent owns a facility, formerly operated by its Inland Fisher Guide Division, in the Town of Salina, County of Onondaga, State of New York, which was used for manufacturing automobile parts until December of 1993 (the "Facility"; formerly known as GM: Fisher Guide). The Facility is located just south of a portion of Ley Creek and near the intersection of Factory Avenue and Town Line Road. The general location of the Facility is indicated on the map which is attached and hereby incorporated into this Order as **Exhibit A**.

B. The Facility began operation in the 1950s and ceased manufacturing operations in December of 1993. During that time, the Facility discharged process waste water and storm water into Ley Creek, which testing showed to contain contamination by polychlorinated biphenyls ("PCBs" (Aroclors 1242 and 1248) and other hazardous wastes and hazardous substances. The testing of the process waste waters and storm waters on and around the Facility has historically shown, and storm water continues to show, contamination by polychlorinated biphenyls ("PCBs" (Aroclors 1242 and 1248) and other hazardous wastes and hazardous substances. Testing of soils in and around the Facility has revealed contamination by PCBs (Aroclors 1242, 1248, 1254 and 1260) and other hazardous wastes and hazardous substances.

C. Ley Creek is a tributary of Onondaga Lake and flows westward into Onondaga Lake. The United States Environmental Protection Agency ("EPA") added the Onondaga Lake Site to the National Priorities List ("NPL") on December 16, 1994. The Onondaga Lake NPL Site is composed of the Lake itself, its tributaries and the upland waste sites which have contributed or are contributing hazardous substances to the Lake system (subsites). Respondent's Facility is a subsite of the Onondaga Lake NPL Site. The Department and EPA have entered into a Cooperative Agreement pursuant to which EPA has designated the Department as the lead agency with respect to the Onondaga Lake Site and its subsites. Respondent's Facility is also an Inactive Hazardous Waste Disposal Site, as that term is defined at ECL Section 27-1301(2) and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 7-34-057. The Department has classified Respondent's Facility as a Classification "2" pursuant to ECL Section 27-1305(2)(b), which means the facility presents a "significant threat to the public health or environment - action required."

D. Respondent entered into an administrative consent order with the Department effective September 25, 1997 (Index No. D-7-0001-97-06) for the performance of a Remedial Investigation/Feasibility Study ("RI/FS") at the Facility. The RI/FS is ongoing.

7. A. A section of Ley Creek north of the Facility runs parallel with Factory Avenue flowing in a southwesterly direction until it empties into Onondaga Lake. Based on information submitted to the Department, Onondaga County began performing certain channel improvements in 1970 by dredging the sediments of Ley Creek in an effort to control periodic flooding. The dredging operations continued for a period of years and were reportedly concluded in the mid-1980s. During the dredging operations, sediment was excavated and deposited in piles primarily along the south bank of Ley Creek. PCB contamination was identified in the dredge spoils and is believed to have resulted from discharges into Ley Creek of contaminated waste water generated by the operations of the Facility and storm water from the Facility.

B. An area of land along the banks of Ley Creek where significant quantities of the above-described dredge spoils had been placed, located north of the Facility and running in a westerly direction parallel to Factory Avenue, was determined to be a separate subsite of the Onondaga Lake NPL Site and an Inactive Hazardous Waste Disposal Site, Classification "2", as these terms are defined in Subparagraph 6.C above, and is referred to in Department records as the

**“Ley Creek PCB Dredgings Site” and herein as the “Dredgings Site”**. The Dredgings Site was bounded by Factory Avenue to the south and Ley Creek to the north. The eastern limit of the Site was Townline Road and the western limit was located approximately 4,300 feet downstream.

C. A remedy was selected for the Dredgings Site and was set forth in a Record of Decision (“ROD”) issued by the Department, dated March 28, 1997. Respondent’s wholly-owned subsidiary, Remediation and Liability Management Company, Inc., entered into a Remedial Design/ Remedial Action administrative consent order with the Department effective July 15, 1999 (Index # D-7-0008-97-06) for the implementation of the ROD at the Dredgings Site. Construction of the remedy selected in the ROD is complete.

D. As part of the RI performed at the Dredgings Site, Respondent investigated the PCB contamination in ground water underlying the dredgings, as well as contamination in sediments and surface water in Ley Creek. Pursuant to the Dredgings Site ROD, the Department deferred the evaluation of ground water underlying the dredgings, and the surface water and sediments in Ley Creek between the area extending west of Town Line Road to the Route 11 bridge (the “Deferred Media”) to be addressed under the Facility Consent Order referenced in Subparagraph 6.D above (Index No. D-7-0001-97-06). The area of concern that is the subject of the Facility Consent Order consists of the Facility as well as the Deferred Media and is herein after referred to as the “Facility Site” or the “GM/IFG Site” (#734057). The general locations of both the Facility Site and the Dredgings Site are indicated on **Exhibit B**.

8. A. As part of the channel improvements performed during the 1970s, Onondaga County excavated a new channel for a segment of Ley Creek that is located west of the New York State Route 11 (“Route 11”) bridge. As a result, a portion of the prior existing segment of Ley Creek was filled in and reduced to a small tributary, known thereafter as the Old Ley Creek Channel, which flows into Ley Creek. Analysis of sediment samples taken by the Department in the Old Ley Creek Channel indicated the presence of PCBs at levels which constitute hazardous waste as well as significantly elevated concentrations of metals. The Department also collected a sample of soil from the parcel of land to the east of the Old Ley Creek Channel. This sample also contained PCBs at a level which constitutes hazardous waste. The PCB Aroclors identified in the Department’s samples include 1016, 1248, and 1260. The sediments in the newer or main channel of Ley Creek west of Route 11 were sampled in 1998 and have been found to contain levels of PCBs at greater than 80 ppm, chromium at levels greater than 45,000 ppm and other heavy metals in exceedance of the Department’s Fish and Wildlife Severe Effect Level sediment criteria. It is believed that the source of the contaminants in these soil and sediment samples at the Site is historic discharges of contaminated wastewater and storm water into Ley Creek from the Facility upstream.

B. The **“Old Ley Creek Channel Site”** is listed in the New York State Registry of Inactive Hazardous Waste Disposal Sites as Site Number 734074, Classification “2,” where it has been defined by the Department as (i) the surface waters, sediments, groundwater and flood plain (except for any portion of the flood plain that is the subject of a remedial administrative order with a third party) of Old Ley Creek Channel; (ii) an area of land east of the Old Ley Creek Channel and

west of Route 11; as well as (iii) the surface waters, sediments, groundwater and flood plain of the main channel of Ley Creek running underneath and downstream of the Route 11 bridge (except for any portion of the flood plain that is the subject of a remedial administrative order with a third party). See map attached as Exhibit "C" and incorporated in to this Consent Order.

C. Notwithstanding anything in this Order to the contrary, the term "Site" as defined herein and used in this Order shall apply only to the area of land east of the Old Ley Creek Channel and west of Route 11 including property that is owned by Plaza East LLC (Tax Map #073.01-10.1). The remaining areas that the Department has described in paragraph 8.B as comprising the old Ley Creek Channel Site (the "Study Area") shall be included in the scope of the Remedial Investigation to be conducted under this Order. However, the Study Area shall not be encompassed within the scope of the Feasibility Study that is required to be performed under this Order unless and until Respondent agrees to the expansion of its obligations under this Order by execution of a written amendment to this Order.

9. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment - action required.

10. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

**NOW**, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Initial Submittal

Within thirty (30) Days after the effective date of this Order, Respondent shall submit a Records Search Report in accordance with **Exhibit D** attached hereto. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities at the Site and Study Area that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR 375-1.6(a). All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph II.A shall mandate that any particular Work Plan be submitted.

Each Work Plan submitted shall use one of the following captions on the cover page:

1. Site Characterization ("SC") Work Plan: a Work Plan whose objective is to identify the presence of any hazardous waste disposal at the Site and Study Area;
2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan whose objective is to perform a Remedial Investigation and Feasibility Study;
3. Interim Remedial Measure ("IRM") Work Plan: a Work Plan whose objective is to provide for an Interim Remedial Measure;
4. Remedial Design/Remedial Action ("RD/RA") Work Plan: a Work Plan whose objective is to provide for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD; or
5. Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

**B. Submission/Implementation of Work Plans**

1. Within sixty (60) Days after the effective date of this Order, Respondent shall submit an acceptable RI/FS Work Plan.
2. The RI/FS Work Plan shall include, but not be limited to, the following:
  - a. A chronological, site-specific description of the anticipated RI/FS activities, including the performance of a Human Health Risk Assessment and a Baseline Ecological Risk Assessment (incorporating the steps outlined in the Department's guidance document entitled Generic Ecological Risk Assessment Guidance for Onondaga Lake Sites, revised April 7, 1998), together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

i. A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience. The QAPP shall be prepared consistent with *EPA Requirements for Quality Assurance Project Plans* (EPA QA/R-5), Final, March, 2001 (see <http://www.epa.gov/QUALITY/qs-docs/r5-final.pdf>);

ii. A field sampling plan that defines sampling and data gathering methods in a manner consistent with the *Compendium of Superfund Field Operations Method* (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as amended, and supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site and Study Area during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan as necessary to ensure the health and safety of all persons at and in the vicinity of the Site and Study Area during the performance of any work pursuant to this Order.

d. A Citizen Participation Plan that is, at a minimum, consistent with the Department's publication, *New York State Inactive Hazardous Waste Site Citizen Participation Plan*, dated June, 1998, as amended and supplemented.

e. A report documenting Respondent's completion of the work that shall have been performed prior to the implementation of the RI/FS Work Plan, as set forth in the Department's guidance document entitled *Generic Ecological Risk Assessment Guidance for Onondaga Lake Sites*, revised April 7, 1998.

f. The RI/FS Work Plan shall incorporate all elements of an RI/FS as set forth in CERCLA, as amended, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") of March 8, 1990 (40 CFR Part 300), as amended, the EPA guidance document entitled *Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA*, dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate EPA and Department technical and administrative guidance documents, including guidance regarding the performance of risk assessments, including the Department's guidance document entitled, *Generic Ecological Risk Assessment Guidance for Onondaga Lake Sites*, revised April 7, 1998.

3. The Department may request that Respondent submit additional or supplemental Work Plans for the Site and Study Area. Within thirty (30) Days after the Department's written request, Respondent shall advise the Department in writing whether it will

submit and implement the requested additional or supplemental Work Plan or whether it elects to terminate this Order pursuant to Paragraph XIII. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) Days after such election. If Respondent elects to terminate this Order or fails to make a timely election, this Order shall terminate pursuant to Paragraph XIII.

4. Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

5. Any request made by the Department under Subparagraph II.B.3 shall be subject to dispute resolution pursuant to Paragraph XII.

6. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

7. During all field activities conducted under this Order, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision.

#### C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII, provide written notification as provided at 6 NYCRR 375-1.6(d)(3) as to whether it will modify the Work Plan or invoke dispute resolution.

#### D. Remedial Investigation Report

Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare and submit a Remedial Investigation Report ("RIR") that shall:

1. include all data generated and all other information obtained during the RI;
2. provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B;
3. identify any additional data that must be collected;

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the RI that all activities that comprised the RI were performed in full accordance with the Department-approved RI/FS Work Plan; and

5. include a reference to the geographic location of the sampling point for all sample data supplied. Such location information must be referenced to either the New York Transverse Mercator or New York State Plane Coordinate System. All vertical data shall be referenced to the NGVD, 1929 adjustment.

E. Human Health Risk Assessment Report

1. Respondent shall perform the Human Health Risk Assessment (“HHRA”) in accordance with the approved RI/FS Work Plan, all applicable EPA and Departmental guidance or policy documents in effect at the time of performance of the HHRA, including, but not limited to, the guidance document identified in Subparagraph II.B, and the *Risk Assessment Guidance for Superfund*, Vol. 1, Human Health Evaluation Manual, Part A (1989), B (1991), C (1991), and D (1998), and in a manner consistent with CERCLA and the NCP.

2. Within the time frame set forth in the approved RI/FS Work Plan, Respondent shall prepare and submit to the Department an HHRA Report that complies with the provisions of Subparagraph II.E.1 as applied to the HHRA component of the RI.

F. Ecological Risk Assessment Report

1. Respondent shall perform an Ecological Risk Assessment (“ERA”) in accordance with the approved RI/FS Work Plan, all applicable EPA and Departmental guidance or policy documents in effect at the time of performance of the ERA, including, but not limited to, the guidance documents identified in Subparagraph II.B, and in a manner consistent with CERCLA and the NCP.

2. Within the time frame set forth in the approved RI/FS Work Plan, Respondent shall prepare and submit to the Department the appropriate ERA deliverables, including an ERA Report, that comply with the provisions of Subparagraph II.F.1 as applied to the ERA component of the RI.

G. Feasibility Study

1. Within 60 days after receipt of the Department’s approval of the RIR, Respondent shall submit an FS report evaluating remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste and hazardous substance disposal at the Site.

2. Respondent shall perform and prepare the FS in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, as amended, the NCP, and the guidance documents identified in Subparagraph II.B.

#### H. The RD/RA Work Plan

The RD/RA Work Plan, if requested pursuant to Subparagraph II.B, shall be prepared in accordance with relevant EPA and Department guidance documentation, including *Guidance on Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties*, (EPA, April 1990), *Superfund Remedial Design and Remedial Action Guidance*, (EPA, June 1986), and the *Compendium of Superfund Field Operations Method* (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987), *Considerations for Preparation of Operation and Maintenance Manuals*, EPA 68-01-0341, each as amended and as supplemented by the Department.

#### I. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6(c) and in accordance with *Closeout Procedures for National Priority List Sites*, EPA 540-R-98-016, OSWER Directive 9320.2-09A-P, January 2000.

2. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit an annual report by the 1<sup>st</sup> Day of the month following the anniversary of the start of the Site management. Such annual report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

#### J. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in

part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII in the event the rejected submittal is a Work Plan submitted prior to the Department's approval of the RD/RA Work Plan, elect as provided at 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

3. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

K. Department's Issuance of a ROD

Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, in soliciting public comment on the proposed remedial action plan ("PRAP"). After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a ROD. Nothing in this Order shall be construed to abridge any rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

L. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

III. Progress Reports

Respondent shall submit written progress reports to the parties identified in Subparagraph XI.A by the 10<sup>th</sup> Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in an approved Work Plan. Such reports shall, at a minimum, include: all actions taken

pursuant to this Order during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with the Site during the reporting period, including quality assurance/quality control information; information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

#### IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the

Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site, or areas in the vicinity of the Site which may be under the control of Respondent, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a highspeed internet connection and a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Order, Respondent shall pay to the Department \$ \$23,037.41, which represents reimbursement for past State Costs pursuant to 6 NYCRR 375-1.5(b)(3) as provided in the cost summary attached hereto as **Exhibit F**. It is understood that the term "State Costs" as used in section VI of this Order does not include costs associated with activities relating to the Onondaga Lake NPL site that are unrelated to the implementation of this Consent Order which may overlap with the oversight being conducted by the Department's Division of Environmental Remediation under this Order.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subparagraph VI.A, for work performed at or in connection with the Site and Study Area through and including the Termination Date, as provided at 6 NYCRR 375-1.5(b)(3).

C. Personal service costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Respondent at the following address:

James F. Hartnett  
General Motors Corporation  
GM Remediation Project Office  
One General Motors Drive STE 2  
Syracuse, NY 13206-1127

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-7012

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Respondent may contest invoiced costs as provided at 6 NYCRR 375-1.5(b)(3)(v) and (vi).

## VII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

#### VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i).

#### IX. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

#### X. Environmental Easement

A. If a Department-approved final engineering report for the Site relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph X.A. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR 375-1.9 and 375-2.9.

## XI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Five copies are to be forwarded to:  
Susan Edwards, Project Manager  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway, 12<sup>th</sup> Floor  
Albany, New York 12233-7013

Of the five copies, one shall be an unbound hard copy with associated figures; and one shall be an electronic copy on compact disk(s). The electronic copy shall contain all text, tables, figures and appendices in Portable Document Format (PDF). Data is to be presented in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

2. Four copies are to be forwarded to:  
Patricia Pierre  
United States Environmental Protection Agency  
Region II  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007-1866
3. One copy is to be forwarded to each of the following:  
Gregg Townsend  
New York State Department of Environmental Conservation

615 Erie Boulevard West, Region 7  
Syracuse, NY 13204-2400

Mark Sergott  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180

Gary Litwin  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180

4. Upon approval of a submittal by the Department, Respondent shall submit one copy to each of the public repositories as may be identified in the Citizen Participation Plan to be developed pursuant to Subparagraph II.B.2.iv.

5. Copy of transmittal letters only to:

Margaret A. Sheen, Esq.  
New York State Department of Environmental Conservation  
Office of General Counsel  
615 Erie Boulevard West, 2<sup>nd</sup> Floor  
Syracuse, NY 13219

Argie Cirillo, Esq.  
United States Environmental Protection Agency  
Region II  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

B. Correspondence, including progress reports, which do not contain data, reports or deliverables need not be sent in electronic format and only one copy needs to be sent to each party listed in Subparagraph XI.A above.

C. Communication from the Department to the Respondent shall be sent to:

1. James F. Hartnett  
General Motors Corporation  
GM Remediation Project Office

One General Motors Drive STE 2  
Syracuse, NY 13206-1127

2. Bond, Schoeneck & King, LLP  
Attn.: Barry R. Kogut, Esq.  
One Lincoln Center  
Syracuse, NY 13202

D. The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

E. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph XI or in Paragraph VI.

## XII. Dispute Resolution

In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2). Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

## XIII. Termination of Order

A. This Order will terminate upon the earlier of the following events:

1. Respondent's election to terminate pursuant to Subparagraphs II.B.3, II.C or II.J.2 so long as such election is made prior to the Department's approval of the RD/RA Work Plan. In the event of termination in accordance with this Subparagraph XIII.A.1, this Order shall terminate effective the 5<sup>th</sup> Day after the Department's receipt of the written notification terminating this Order or the 5<sup>th</sup> Day after the time for Respondent to make its election has expired, whichever is earlier, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election to terminate this Order pursuant to Subparagraphs II.B.3 or II.J.2 or its failure to timely make such an election pursuant to Subparagraphs II.B.3 or II.J.2, Respondent shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5<sup>th</sup> Day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management), in which event the termination

shall be effective on the 5<sup>th</sup> Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and VIII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order is terminated pursuant to Subparagraph XIII.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and Study Area and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site or Study Area in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

#### XIV. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site and Study Area access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require

Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

D. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XI.A.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XIV.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a

Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the liability limitation referenced in Paragraph II.L.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

H. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

I. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

K. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

L. The effective date of this Order is the 10<sup>th</sup> Day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

ALEXANDER B. GRANNIS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: \_\_\_\_\_  
Dale A. Desnoyers, Director  
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF                    )

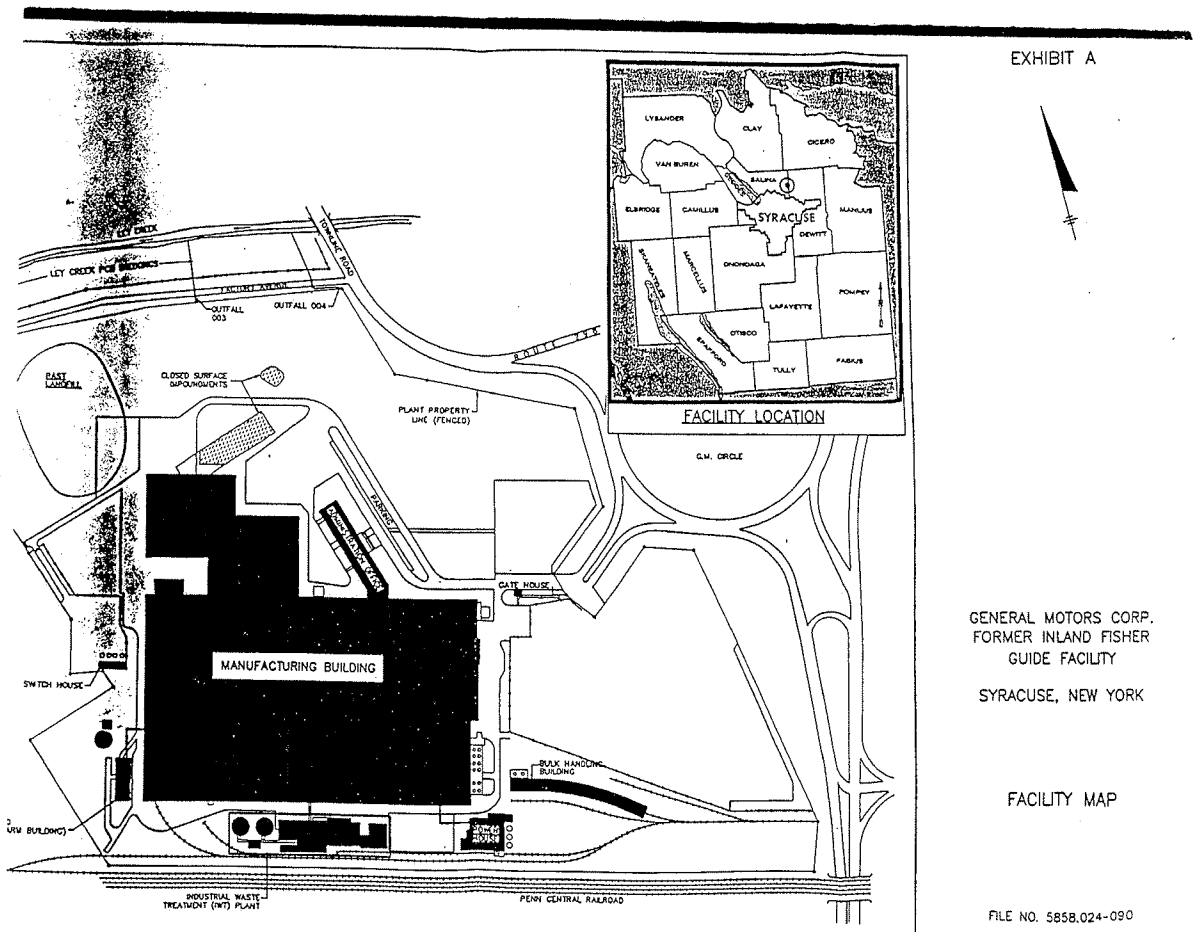
On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 200\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

# EXHIBIT "A"

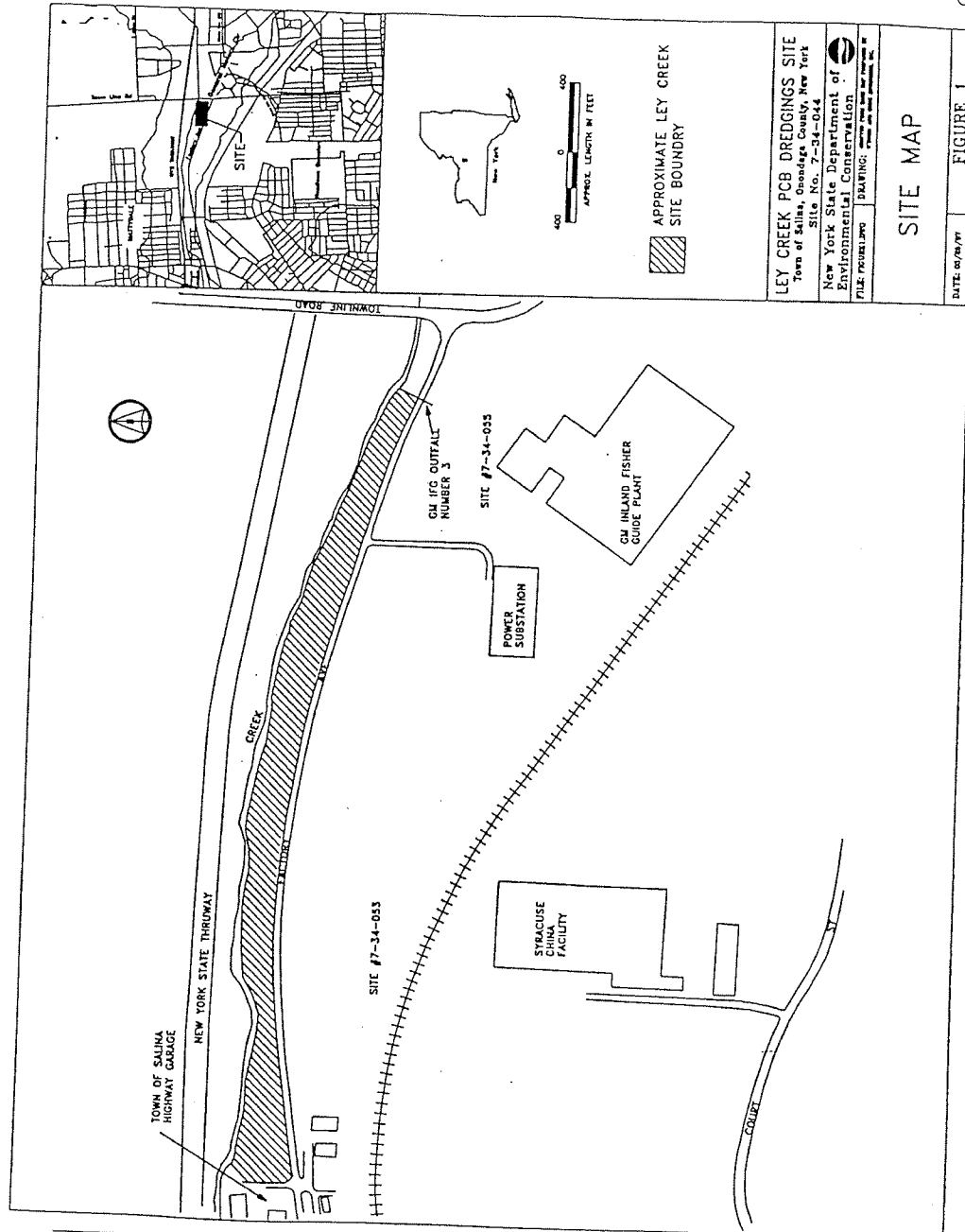
## Map of the Facility

Respondent owns a facility, formerly operated by its Inland Fisher Guide Division, in the Town of Salina, County of Onondaga, State of New York, which was used for manufacturing automobile parts until December of 1993 (the "Facility"; formerly known as GM: Fisher Guide).



# EXHIBIT "B"

The general locations of both the Facility Site and the Ley Creek Dredgings Site.



Ley Creek PCB Dredgings Inactive Hazardous Waste Site, Site No. 7-34-044  
RECORD OF DECISION

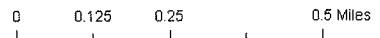
03/28/97  
PAGE 7

# EXHIBIT "C"

## The general location of the Old Ley Creek Channel Site



Approximate Location of the Old Ley Creek Channel Site  
Onondaga County, NY (Site #734074)  
New York State Department of Environmental Conservation



## EXHIBIT "D"

### RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site and Study Area.

2. A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and Study Area and of areas immediately surrounding the Site and Study Area which are or might be affected by contamination at the Site and Study Area, including all available topographic and property surveys, engineering studies, and aerial photographs.

3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:

(i) a history and description of the Site and Study Area, including the nature of operations;

(ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site and Study Area;

(iii) a description of current Site security (i.e. fencing, posting, etc.); and

(iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

**EXHIBIT "E"**  
**COST SUMMARY**

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL REMEDIATION  
BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: OLD LEY CREEK CHANNEL  
SITE NO.: 734074

<u>COST CATEGORY</u>	<u>AMOUNTS</u>	<u>EXHIBIT NO.</u>
DIRECT PERSONAL SERVICES	\$16,753.16	
FRINGE	\$6,542.22	
INDIRECT	<u>\$7,758.08</u>	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$31,053.46</i>	II-A & II-B
CONTRACTUAL	\$3,280.61	III-A & III-B
TRAVEL	\$0.00	
OTHER NPS	<u>\$0.00</u>	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$3,280.61</i>	
DEC TOTAL	\$34,334.07	
DOH PS AND NPS SUBTOTAL	N/A	
MINUS DOH CREDIT FROM PREVIOUS BILL (IF APPLICABLE)	N/A	
DOH TOTAL	\$0.00	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	<u>N/A</u>	
<i>DEC &amp; DOH TOTAL</i>	<i>\$34,334.07</i>	
COST CAP (IF APPLICABLE)	<u>N/A</u>	
<b>GRAND TOTAL</b>	<b>\$34,334.07</b>	