



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

STEPHEN R. PRITCHARD
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

IN THE MATTER OF:)
General Motors Corporation)
)
)
)
_____)

RE: Framingham,
63 Western Avenue
RTN 3-03939

ADMINISTRATIVE CONSENT ORDER
ACOP-NE-05-3A004

May 10, 2006

William J. McFarland
General Motors Corporation
Central MC 482-520-190
2000 Center Point Parkway
Pontiac Michigan 48341-3147

Dear Mr. McFarland:

Attached is the fully executed consent order for the referenced matter. The Consent Order is effective as of the date of the Department's signature. You are now expected to comply with the requirements and schedules stated in the Disposition and Order section of the document.

If you have any questions, please contact Paegan Deering at (978) 694-3382.

Yours truly,

Iris W. Davis
Enforcement Section Chief
Bureau of Waste Site Cleanup

cc: file
James F. Hartnett, Project Manager, Environmental Services Group, General Motors Corporation,
Worldwide Facilities Group, General Motors Drive, Suite 2, Syracuse, NY 13206-1127



**COMMONWEALTH OF MASSACHUSETTS
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IN THE MATTER OF:)	RE: Framingham,
General Motors Corporation)	63 Western Avenue
)	RTN 3-03939
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)	ADMINISTRATIVE CONSENT ORDER
)	ACO-NE-06-3A004

I. THE PARTIES

- A. The Department of Environmental Protection (the "Department" or "DEP") is a duly constituted agency of the Commonwealth of Massachusetts. Its principal office is located at One Winter Street in Boston, Massachusetts 02108.
- B. General Motors Corporation ("Respondent") is the owner of a portion of the property located at 63 Western Avenue, Framingham, MA 01702.
- C. Respondent's Federal Employee Identification Number is: 380572515.

II. STATEMENT OF PURPOSE

The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

III. DEFINITIONS

Unless otherwise indicated, the terms used herein shall have the meaning given to them by the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E ("M.G.L. c. 21E"), and the regulations promulgated thereunder as the Massachusetts Contingency Plan ("MCP"), 310 CMR 40.0000 et seq. In addition, the following term(s) shall have the meaning defined herein:

Site shall mean the Former Landfill, located as shown on Figure 1 attached hereto, which is a section of the property located at 63 Western Avenue, Framingham, MA 01702 ("Property") and any other place or area where the release(s) of oil or hazardous material(s) at and/or from the Site has come to be located.

IV. STATEMENT OF LAW

The parties agree to the following statement of applicable law and to the jurisdiction and authority of the Department to issue this Consent Order:

- A. The Department is charged with the implementation and enforcement of M.G.L. c. 21E and the MCP. The Department has the authority to issue this Consent Order pursuant to M.G.L. c. 21E, § 9.
- B. The Department is authorized to issue Notices of Noncompliance and to assess civil administrative penalties pursuant to M.G.L. c. 21A, § 16, and the regulations promulgated thereunder at 310 CMR 5.00, et seq.
- C. M.G.L. c. 21E, § 9 and 310 CMR 40.0170(9) authorize the Department to enter into a consent order with a responsible party ("RP"), potentially responsible party ("PRP"), or other person, which sets forth necessary response actions, time periods, deadlines for the performance thereof, and requirements for submittals to the Department.
- D. Pertinent provision(s) of the Massachusetts Contingency Plan are as follows:
 - 1. The Role of RPs, PRPs and Other Persons in Response Actions: 310 CMR 40.0170(5) states, in part, that RPs, PRPs and Other Persons ("OPs") shall perform each and every response action properly and promptly within deadlines prescribed by, or pursuant to, M.G.L. c. 21E and/or the MCP, including any Interim Deadlines.
 - 2. Reclassification by PRPs during Response Actions: 310 CMR 40.0530(6) states, in part, that reclassification of a disposal site by RPs, PRPs and OPs shall not change the original deadlines applicable to such disposal site.
 - 3. Tier II Disposal Site Submittal Deadlines: 310 CMR 40.0560(2) states that, except as provided by 310 CMR 40.0530(6), 310 CMR 40.0560(3), or otherwise ordered or agreed to in writing by the Department, an RP, PRP, or OP undertaking response actions at a Tier II disposal site shall submit the following documents to the Department by the following deadlines: (a) a scope of work for a Phase II - Comprehensive Site Assessment prior to the implementation of Phase II field work, unless the Phase II field work had been implemented prior to Tier Classification; (b) Phase II - Comprehensive Site Assessment ("Phase II Report"), and, if applicable, a Phase III Remedial Action Plan ("Phase III Report"), within two (2) years of the effective date of Tier Classification; (c) a Phase IV Remedy Implementation Plan ("Phase IV Report") within three (3) years of the effective date of Tier Classification; and (d) a Response Action Outcome ("RAO") Statement within five (5) years of the effective date of Tier Classification.
 - 4. Tier II Classification Extension: 310 CMR 40.0560(7) requires that any person undertaking response actions at a Tier II disposal site who does not achieve a RAO within five years of Tier Classification submit a Tier II Classification Extension submittal 45 days before the expiration of the Tier II Classification.
 - 5. Tier I Disposal Site Submittal Deadlines: 310 CMR 40.0550(2) states that, except as provided by 310 CMR 40.0530(6) or 310 CMR 40.0000, or otherwise ordered or agreed to in writing by the Department, an RP, PRP, or OP undertaking response actions at a Tier I disposal site shall submit the following documents to the Department by the following deadlines: (a) a scope of work for a Phase II - Comprehensive Site Assessment prior to the implementation of Phase II field work, unless the Phase II field

work had been implemented prior to Tier Classification; (b) Phase II - Comprehensive Site Assessment ("Phase II Report"), and, if applicable, a Phase III Remedial Action Plan ("Phase III Report"), within two (2) years of the effective date of Tier Classification; (c) a Phase IV Remedy Implementation Plan ("Phase IV Report") within three (3) years of the effective date of Tier Classification; and (d) a Response Action Outcome ("RAO") Statement within five (5) years of the effective date of Tier Classification.

V. STATEMENT OF FACTS

The following facts have led the Department to issue this Consent Order:

- A. Respondent is the owner of the Site located on a portion of the Property from or at which there is or has been a release of oil and/or hazardous material pursuant to M.G.L. c. 21E and the MCP.
- B. Release notification for the Site was provided to the DEP on April 15, 1992. The Department assigned release tracking number (RTN) 3-3939 to the reported Site.
- C. In January 1992, the Respondent submitted the Preliminary Site Investigation Report and the Analytical Data Report to the DEP.
- D. In April 1993, DEP issued a notice that the Site was a Location To Be Investigated (LTBI).
- E. On October 14, 1998, the Respondent submitted a Tier II Classification Submittal and a Phase II Scope of Work to DEP.
- F. On November 5, 1999, the Respondent submitted a Phase II Completion Statement to DEP.
- G. On October 14, 2003 the Tier II Classification for the Site expired.
- H. On July 14, 2004, DEP issued a Notice of Noncompliance (NON) to the Respondent failure to submit a Phase III Report within two years of Tier Classification as is required by 310 CMR 40.0560 (2)(b), failure to submit a Phase IV Report within three years of Tier Classification as required by 310 CMR 40.0560 (2)(c), and failure to submit a Response Action Outcome (RAO) Statement as is required by 310 CMR 40.0560 (2)(d).
- I. On August 9, 2004, the Respondent submitted a Tier II Classification Extension to DEP outlining a timeline for returning to compliance with the MCP.
- J. On August 23, 2004, DEP issued an Amended NON requiring Respondent to submit a RAO by August 9, 2005.
- K. On August 31, 2004, the Respondent submitted a Notice of Intent application for Phase II CSA activities to DEP and the Framingham Conservation Commission (FCC). The FCC issued an Order of Conditions on October 1, 2004.
- L. On September 29, 2004, the Respondent submitted a revised Phase II CSA Scope of Work to DEP.
- M. From 2004 to 2005 additional field investigation activities were conducted at the Site by the Respondent.

- N. On April 8, 2005, Respondent submitted an Interim Phase II CSA Report (Phase II Status Report) including a Wetland Delineation Report, and a Phase II CSA Work Plan Addendum to the DEP.
- O. On July 29, 2005, Respondent submitted the Interim Phase II CSA Report No. 2, Phase II CSA Work Plan Addendum No. 2, a Tier IC Permit Application, and an RAO extension request to the DEP.
- P. On August 23, 2005, DEP issued another Amended NON to the Respondent requiring Respondent to submit an RAO by January 1, 2006.
- Q. On August 30, 2005, the Respondent submitted a Phase II Completion Report Tier Reclassification, including the BWSC/MCP Comprehensive Action Transmittal and Phase II Completion Statement to the DEP.
- R. On September 23, 2005, DEP issued an approval of the Tier 1C Permit Application with a Permit expiration date of September 23, 2007.
- S. On October 3, 2005, Respondent submitted a Phase III Remedial Action Plan (RAP) Report to DEP.
- T. On October 5, 2005, Respondent submitted a Phase IV Remedial Implementation Plan (RIP) Report to DEP.
- U. As of March 12, 2006, Respondent has not submitted an RAO Statement in accordance with the Amended Notice of Noncompliance.

VI. STATEMENT OF DETERMINATIONS

Based upon the Statement of Facts set forth above in Section V, the Department has determined the following:

- A. The Site is a disposal site as defined by M.G.L. c. 21E and the MCP.
- B. Respondent is an RP or PRP for the Site at which there is or has been a release of oil pursuant to M.G.L. c. 21E and the MCP.
- C. Conditions at the Site constitute a release to the environment pursuant to M.G.L. c. 21E and the MCP.
- D. Respondent failed to submit an RAO Statement as required by the Notice of Noncompliance issued pursuant to M.G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00 et seq.
- E. Respondent violated 310 CMR 40.0560(2)(b) for failure to submit a final Phase II Report and a Phase III Report to the Department within two years of Tier Classification.
- F. Respondent violated 310 CMR 40.0560(2)(c) for failure to submit a Phase IV Report to the Department within three years of Tier Classification.

- G. Respondent violated and continues to violate 310 CMR 40.0560(2)(d) for failure to submit an RAO Statement to the Department within five years of Tier Classification.

VII. DISPOSITION AND ORDER

For the reasons set forth above, the Department hereby issues, and Respondent hereby consents to, this Order:

- A. The Department's authority to issue this order is conferred by M.G.L. c. 21E and the regulations promulgated thereunder at 310 CMR 40.0000, and M.G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00. Respondent admits to the jurisdiction and authority of the Department to issue this Consent Order.
- B. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
- C. Unless otherwise indicated herein, the actions performed pursuant to this Consent Order shall be performed in accordance with M.G.L. c. 21E, the MCP and any other applicable federal, state or local laws, regulations and approvals.
- D. Respondent shall submit the following to DEP on or before the deadline established herein:
1. By January 31, 2007, Respondent shall submit to the Department an RAO Statement which meets the requirements of 310 CMR 40.0550(2)(d) and 310 CMR 40.1000.
- E. All submittals required pursuant to 310 CMR 40.0000 et seq. or this Consent Order shall be in compliance with the MCP, including without limitation any other applicable timelines and Performance Standards. Failure to provide a submittal in compliance with this Consent Order, the MCP, applicable timelines and/or Performance Standards, shall constitute a violation of this Consent Order and shall be subject to Stipulated Penalties as provided in Section IX below.

VIII. STIPULATED PENALTIES

- A. If Respondent fails to meet any of the terms or requirements of this Consent Order, Respondent shall pay the Commonwealth a stipulated penalty in the amount of Five Hundred Dollars (\$500.00) per violation for each day, or any portion thereof, each such violation continues. Stipulated penalties shall begin to accrue the day the performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the violation or completion of the activity.
- B. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Stipulated penalties shall accrue regardless of whether the Department has notified Respondent of the violation. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order.

- C. All stipulated penalties accruing under this Consent Order shall be paid within thirty (30) days of the date the Department sends a written demand therefore. Payment of such penalties shall be made by certified check, cashiers check or money order, payable to the "Commonwealth of Massachusetts." Respondent's federal employer identification number and the words, "In the Matter of the General Motors Corporation, ACO-NE-05-3A004" must be clearly written on the face of the check or money order. The Commonwealth will not accept any other form of payment. The payment must be directed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, MA 02241-3982

In addition, photocopies of the check or money order shall be sent to the Department at the Notice address herein, ATTN: Stephen M. Johnson.

IX. FORCE MAJEURE

- A. The Department agrees to extend the time for performance of any requirement of this Consent Order if the Department determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.
- B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.
- C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify the Department in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.
- D. If the Department determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, the Department agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to

perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.

- E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

X. NOTICES AND SUBMITTALS

All notices, payments, certifications, submissions or other communications required to be made hereunder shall, unless otherwise indicated in this Consent Order, be made in writing and shall, unless otherwise indicated in this Consent Order, be sent by certified mail, return receipt requested, by hand delivery or by recognized overnight courier, as follows:

If to the Department, to:

Stephen M. Johnson, Acting Deputy Regional Director
Department of Environmental Protection
205B Lowell Street
Wilmington, MA 01887

If to Respondent, to:

James F. Hartnett, Project Manager
Environmental Services Group
General Motors Corporation
Worldwide Facilities Group
1 General Motors Drive, Suite 2
Syracuse, NY 13206-1127

Submittals will be considered delivered upon receipt by the Department.

XI. WAIVER OF HEARING

Respondent understands and hereby waives its right to an adjudicatory hearing before the Department on, and judicial review by the courts of, the issuance or terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the Department.

XII. RESERVATION OF RIGHTS

- A. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of the Department to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by the Department in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.

- B. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting the Department's authority to: (a) perform response actions at the Site or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.
- C. Respondent reserves any rights it may have to appeal or defend any such order, claim, action, suit, cause of action, or demand, except that Respondent shall not challenge the validity, terms and binding nature of this Consent Order.
- D. Notwithstanding the foregoing, the Department agrees that it will not seek to assess Respondent civil administrative penalties for the violations identified in Part VI above, provided that Respondent satisfies the terms and conditions of this Consent Order and any permit or approval issued hereunder.

XIII. ACCESS

To the best of Respondent's ability, Respondent agrees to provide the Department and the Department's employees, representatives and contractors access to the Site at all reasonable times for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, the Department retains all its access authorities and rights under applicable state and federal law.

XIV. CONSEQUENCES OF VIOLATION OF THE CONSENT ORDER

For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. The Department hereby determines, and Respondent hereby agrees, that the deadlines set forth above constitute reasonable periods of time for Respondent to take the actions described.

XV. MODIFICATION

This Consent Order may be modified only upon the written agreement of the Department and Respondent.

XVI. SEVERABILITY

If any term or provision of this Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Consent Order, or the application thereof, shall be valid and enforceable to the fullest extent permitted by law. In the event of such invalidity or unenforceability, the Department may in its sole discretion elect to void the entire Consent Order.

XVII. EFFECTIVE DATE

- A. This Consent Order shall become effective and shall be deemed to be consented to as of the date of the Department's signature set forth below.

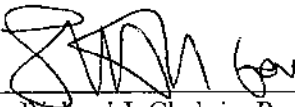
- B. Each undersigned hereby certifies that s/he is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind himself/herself and/or the party on whose behalf such representative is signing.

VIII. TERMINATION

Respondent's obligations under this Consent Order shall cease upon Respondent's completion of all actions and payments required pursuant to this Consent Order.

SO ORDERED:

For the DEPARTMENT OF ENVIRONMENTAL PROTECTION,

By:  Date: 5/4/06
Richard J. Chalpin, Regional Director
Department of Environmental Protection
Northeast Regional Office
205 B Lowell Street, Wilmington, MA 01887

CONSENTED TO: For the General Motors Corporation

By: William J. McFarland Date: 4-20-06
Printed Name: WILLIAM J. MCFARLAND Title: DIRECTOR
Address: 2000 CENTERPOINT PARKWAY
Address: PONTIAC, MI 48341
FEIN: 380572515