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BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

2006 APR 27 AM 8:41  
ENVIR. APPEALS BOARD

IN THE MATTER OF: )  
)  
General Motors Automotive-North America ) DOCKET NO. RCRA-05-2004-0001  
300 Renaissance Center )  
Detroit, Michigan 48265-3000 )  
U.S. EPA ID MID 005 356 902 )  
MID 000 718 544 )  
OHD 041 063 074 )  
Respondent )  
)

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**GENERAL MOTORS CORPORATION'S MOTION TO EXTEND THE TIME FOR  
FILING ITS SUPPORTING APPELLATE BRIEF**

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General Motors Corporation ("GM"), through its counsel, submits this Motion to Extend the Time for Filing its Supporting Appellate Brief to accompany its appeal of the March 30, 2006 initial decision in Docket No. RCRA-05-2004-0001. The Environmental Appeals Board ("EAB") "may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties . . . ." 40 C.F.R. § 22.7(b).

In the matter of General Motors Automotive-North America, Docket No. RCRA-05-2004-0001, Mr. John M. Kyle, III ("Mr. Kyle") and Mr. Michael T. Scanlon ("Mr. Scanlon") of Barnes & Thornburg, LLP served as counsel for GM. *See* Exhibit 1 at ¶ 1 & 2. On Thursday, April 20, 2006, Mr. Kyle's father passed away after several months of declining health. *See* Exhibit 1 at ¶ 4. On or about April 6, 2006, GM determined it would appeal the March 30, 2006 initial decision in Docket No. RCRA-05-2004-0001. *See* Exhibit 1 at ¶ 5. Although Mr. Kyle served as lead trial counsel in the matter before the Administrative Law Judge, he is unable, due

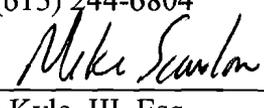
to the illness and subsequent death of his father, to advise and represent GM in the appeal of this matter. See Exhibit 1 at ¶ 6. Therefore, on or about April 21, 2006, in-house counsel for GM sought to affiliate additional counsel to serve as co-counsel for GM in its appeal of the March 30, 2006 Initial Decision in Docket No. RCRA-05-2004-0001. See Exhibit 1 at ¶ 7. On April 25, 2006, EPA counsel in this matter, Mr. James Cha, stated EPA had no objection to GM's request for a ten (10) day extension of time to file the Supporting Appellate Brief in this matter. See Exhibit 1 at ¶ 8. Immediately thereafter, counsel for GM filed the required Notice of Appeal, Notice of Appearance, and this Motion with the Environmental Appeals Board.

For good cause shown with no objection by counsel for EPA, GM respectfully requests that the EAB grant its Motion to Extend the Time for Filing its Supporting Appellate Brief and allow counsel for GM ten (10) additional days to file the Supporting Appellate Brief. Specifically, GM requests the EAB set a deadline of May 15, 2006 for the filing of GM's Supporting Appellate Brief.<sup>1</sup>

Respectfully Submitted,

By: 

Robert J. Martineau, Jr., Esq.  
Edward M. Callaway, Esq.  
Michelle B. Walker, Esq.  
**Waller Lansden Dortch & Davis, LLP**  
Nashville City Center  
511 Union Street, Suite 2700  
Nashville, TN 37219-8966  
Phone (615) 244-6380  
Fax (615) 244-6804

By:  

John Kyle, III, Esq.  
Michael T. Scanlon, Esq.

<sup>1</sup> Ten (10) days from May 4, 2006, the current deadline for filing the Supporting Appellate Brief, is May 14, 2006, which is a Sunday. GM respectfully requests the EAB set the filing deadline on the following day, May 15, 2006.

**Barnes & Thornburg, LLP**

11 South Meridian Street

Indianapolis, IN 46204

Phone (317) 236-1313

Fax (317) 231-7433

By: Michelle T. Fisher / by permission  
Michelle T. Fisher, Esq. *MSM*

**General Motors Corporation**

300 Renaissance Center

P.O. Box 300

Detroit, MI 48265-3000

Phone (586) 575-4053

Fax (586) 575-2207

***Counsel for the General Motors Corporation***

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion to Extend the Time for Filing the Supporting Appellate Brief has been sent via first-class United States mail, postage prepaid, on this 26<sup>th</sup> day of April, 2006, to:

Sonja Brooks-Woodard  
Regional Hearing Clerk  
U.S. EPA-Region V  
77 West Jackson Boulevard, 13<sup>th</sup> Floor  
Mail Code E-13J  
Chicago, IL 60604-3590

Karen L. Peaceman, Esq.  
James J. Cha, Esq.  
Richard Clarizio, Esq.  
Associate Regional Counsel, Ofc. of Regional Counsel  
U.S. EPA-Region V  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590



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Robert J. Martineau, Jr.

STATE OF INDIANA

COUNTY OF MARION

AFFIDAVIT OF MICHAEL T. SCANLON

I, Michael T. Scanlon, do hereby state the following:

1. I am an associate in the law firm of Barnes & Thornburg, LLP, in Indianapolis, Indiana and practice in the Environmental Law practice group within that firm.

2. I was associate counsel in the hearing before Administrative Law Judge Barbara Gunning in this matter working with and under the supervision of lead trial counsel, John M. Kyle, III ("Mr. Kyle").

3. Mr. Kyle <sup>was</sup> also the chair of the firm's environmental practice group.

4. On Thursday, April 20, 2006, Mr. Kyle's father, John M. Kyle, Jr., passed away after several months of declining health. As a result of the declining health and subsequent death of his father, Mr. Kyle has been away from the office since on or about April 14, 2006 and is not expected to return until at least April 26, 2006.

5. On or about April 6, 2006, I was advised by General Motors that it wished to appeal the Administrative Law Judge's initial decision.

6. Although Mr. Kyle served as lead trial counsel in this matter before the Administrative Law Judge, he has been unavailable, due to the illness and subsequent death of his father, to advise and represent General Motors in this appeal matter.

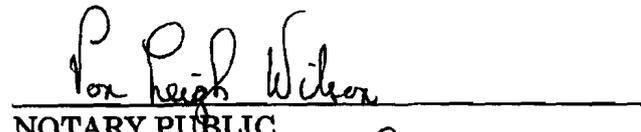
7. On or about April 25, 2006, in-house counsel for General Motors, Michelle Fisher, informed me that because of Mr. Kyle's unavailability General Motors was seeking to affiliate additional counsel to serve as co-counsel to represent General Motors in its appeal of the March 30, 2006 Initial Decision in Docket No. RCRA 05-2004-0001.

8. On April 25, 2006, I spoke with James Cha, EPA counsel in this matter, and Mr. Cha stated EPA had no objection to General Motors' request for a 10 day extension of time to file the appellate brief in this matter with the Environmental Appeals Board.

FURTHER AFFLIANT SAYETH NAUGHT.

  
MICHAEL T. SCANLON

SWORN TO BEFORE ME, a Notary Public, and subscribed in my presence,  
this 26<sup>th</sup> day of April, 2006.

  
NOTARY PUBLIC  
My commission expires: August 13, 2006



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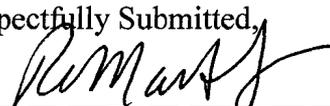
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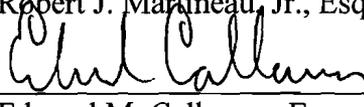
NOTICE OF APPEARANCE

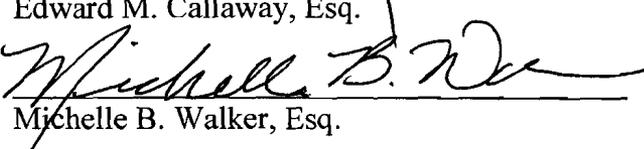
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Mr. Robert J. Martineau, Jr., Esq., Mr. Edward M. Callaway, Esq., and Ms. Michelle B. Walker, Esq. hereby enter their appearance as counsel for General Motors Corporation in the appeal of the above captioned matter.

Respectfully Submitted,

  
\_\_\_\_\_  
Robert J. Martineau, Jr., Esq.

  
\_\_\_\_\_  
Edward M. Callaway, Esq.

  
\_\_\_\_\_  
Michelle B. Walker, Esq.

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*Counsel for the General Motors Corporation*

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Regional Hearing Clerk  
U.S. EPA-Region V  
77 West Jackson Boulevard, 13<sup>th</sup> Floor  
Mail Code E-13J  
Chicago, IL 60604-3590

Honorable Barbara A. Gunning  
Administrative Law Judge  
US EPA Office of Administrative Law Judge  
Franklin Court, Suite 350  
1099 14th Street NW  
Washington, DC 20005

Karen L. Peaceman, Esq.  
James J. Cha, Esq.  
Richard Clarizio, Esq.  
Associate Regional Counsel, Ofc. of Regional Counsel  
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77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590



\_\_\_\_\_  
Robert J. Martineau, Jr.