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

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)
)

**GENERAL MOTORS CORPORATION'S NOTICE OF APPEAL
OF THE MARCH 30, 2006 INITIAL DECISION ISSUED IN
DOCKET NO. RCRA-05-2004-0001**

General Motors Corporation ("GM"), through its counsel, submits this Notice of Appeal of the March 30, 2006 Initial Decision issued by Honorable Barbara A. Gunning in Docket No. RCRA-05-2004-0001. This notice of appeal is being filed pursuant to 40 C.F.R. § 22.30, which provides, in relevant part ". . . [w]ithin 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing . . . a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board." The Initial Decision issued by Judge Gunning in Docket No. RCRA-05-2004-001 is dated March 30, 2006 and was served upon GM, pursuant to 40 C.F.R. § 22.7(c), on April 4, 2006; therefore, this notice of appeal is being filed in a timely manner.

This appeal is from an Initial Decision by Judge Gunning in a civil administrative penalty proceeding arising under Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6928(a). The case involves a complaint and proposed compliance order filed by U.S. Environmental Protection Agency ("EPA") Region 5 against three of GM's

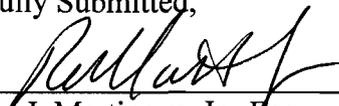
facilities located in Pontiac, Michigan, Lake Orion, Michigan, and Moraine, Ohio. The case involves the applicability of the RCRA hazardous waste regulatory regime to solvent material used by GM in its automobile assembly plant vehicle painting operations. In its complaint and proposed compliance order, EPA Region V contends that the solvent material – often referred to as purge solvent – is a “waste” or “discarded” by GM and, therefore, subject to regulation while that material is still in the paint booth. Furthermore, EPA contends the purge solvent is a “waste” downstream of the paint booth, even though it continues to clean and suspend solids just as the solvent was designed to do. GM, on the other hand, contends that the purge solvent material is an integral part of its painting process, is in continuous use as a solvent at several points in the process, and is neither a “waste” nor “discarded” by GM at the point in time alleged by EPA. Alternatively, GM contends that even if the purge solvent is considered a “waste” at the point EPA alleges, it is exempt from the RCRA regulatory regime under the “manufacturing process unit” exemption or the “totally enclosed treatment facility” exclusion provided for under the RCRA rules.

The Honorable Barbara A. Gunning held an evidentiary hearing from June 20, 2005 through June 30, 2005 and rendered her Initial Decision on March 30, 2006. In her decision, from which GM files this Notice of Appeal, Judge Gunning found many of the core elements of GM’s factual contentions to be correct and undisputed. Nevertheless, Judge Gunning concluded that the purge solvent material is “spent” material when it exits the paint applicators (or the mini purge pots in one case), that the material is discarded and is subsequently recycled and reclaimed; therefore, it constitutes a solid waste (and therefore a hazardous waste) under the RCRA regime.

She further concluded that the purge solvent material is not exempt from RCRA under the manufacturing process unit exemption or the totally enclosed treatment facility exemption in the RCRA regulations. Accordingly, Judge Gunning concluded that a penalty assessment of \$568,116 was an appropriate and reasonable penalty.

GM, through its counsel, files this Notice of Appeal because the conclusions of law reached by Judge Gunning in this matter are in contradiction of the undisputed facts presented in the record and not supported by established case law or prior EPA regulatory interpretation.

Respectfully Submitted,

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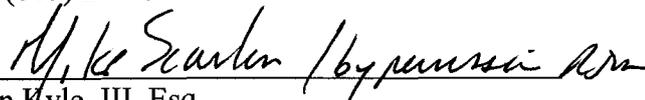
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appeal has been sent via first-class United States mail, postage prepaid, on this 26th day of April, 2006, to:

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