



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2011

REPLY TO THE ATTENTION OF:
LU-9J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: Executed RCRA Section 3008(h) Performance-based Administrative Order on Consent
RACER Trust- 3600 Dryden Road, 2601 West Stroop Road, Moraine, OH
OHD 000 817 577, OHD 980 569 388, OHD 041 063 074
Docket Number **RCRA-05-2011-0016**

Dear Mr. Kehn:

I am enclosing a fully executed copy of the 3008(h) Administrative Order on Consent (AOC), docket number **RCRA-05-2011-0016** covering corrective action for past releases of hazardous contaminants at or from the subject facility. This performance-based AOC will provide the flexibility that you need to complete the work expeditiously. In addition, we expect that it will lead to better communication between our two organizations and the public. We look forward to working cooperatively with you and your staff on this project.

In accordance with Section V of the AOC, I am hereby designating Mirtha Capiro as the EPA project manager for this project. If you have any questions, please contact her at (312) 886-7567 or capiro.mirtha@epa.gov.

Sincerely yours,

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

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

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)

3600 Dryden Road; 4100 Springboro Pike;)
2601 West Stroop Road; and Affected Local)
Properties (Vapor Intrusion), Moraine, Ohio)
(Montgomery County))

U.S. EPA ID#: OHD000817577)
U.S. EPA ID#: OHD980569388)
U.S. EPA ID#: OHD041063074)

RESPONDENT)
Revitalizing Auto Communities)
Environmental Response Trust)

ADMINISTRATIVE ORDER ON
CONSENT

U.S. EPA Docket No: **RCRA-05-2011-0016**

Proceeding under Section 3008(h) of the
Resource Conservation and Recovery Act,
as amended, 42 U.S.C. Section 6928(h)

RECEIVED
SEP 30 2011

I. JURISDICTION

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. The Administrator of the United States Environmental Protection Agency ("U.S. EPA") and Respondent Revitalizing Auto Communities Environmental Response Trust ("RACER"), a trust formed under the laws of the State of New York, enter into this Administrative Order on Consent ("Order") under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Director, Land and Chemicals Division, U.S. EPA Region 5.

2. Since March 31, 2011, through operation of the Consent Decree more fully described in paragraph 21, RACER has managed the former Delphi Harrison Thermal Systems Moraine Plant ("former Delphi Thermal Moraine") (U.S. EPA ID#: OHD000817577) located at 3600 Dryden Road, Moraine, Montgomery County, Ohio; the former General Motors ("GM") Powertrain Group, Moraine Engine Plant ("former Moraine Engine") (U.S. EPA ID#: OHD980569388) located at 4100 Springboro Pike, Moraine, Montgomery County, Ohio, with a limited portion being located in the City of Kettering, Ohio; and the former General Motors Truck Group, Moraine Assembly Plant ("former Moraine Assembly") (U.S. EPA ID#: OHD041063074) located at 2601 West Stroop Road, Moraine, Montgomery County, Ohio (each a "Facility," and collectively, the "Facilities"). See map at Exhibit A. The Facilities are owned by RACER's direct, wholly owned subsidiary RACER Properties LLC. The former Delphi Thermal Moraine Facility ceased operations in 2003, and GM stopped all manufacturing at the former Moraine Engine Facility in 2000 and at the former Moraine Assembly Facility in late 2008. The Moraine Assembly building currently remains standing. In 2001, the DMAX Engine Plant ("DMAX")

was built at 3100 Dryden Road in what was formerly the West Haulaway in the northern area of the former Delphi Thermal Moraine Facility. On June 30, 2011, RACER sold IRG Moraine LLC of California a large portion of the Facilities (“IRG Property”). This sale included the entire former Moraine Assembly Facility and the entire former Moraine Engine Facility. It also included the majority of the former Delphi Thermal Moraine Facility with the exception of the former closed South Lagoon located on the west side of Dryden Road. The sale also did not include the DMAX property which was transferred to GM LLC prior to the formation of the Trust. However, RACER will remain the party responsible for all RCRA corrective action involving the IRG Property.

3. The DMAX Facility is not a Respondent to this Order based on information from a March 4, 2010, Former West Haulaway/Current DMAX Facility Documentation.
4. RACER agrees not to contest U.S. EPA's jurisdiction to issue this Order, or to enforce its terms.
5. RACER waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

II. DEFINITIONS

6. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901-6922k, and the regulations promulgated under RCRA unless otherwise specified.

III. PARTIES BOUND

7. This Order applies to and is binding upon U.S. EPA and upon RACER (each separately a “Party,” and collectively the “Parties”) and RACER’s successors and assigns. Any change in ownership or corporate status of RACER, including, but not limited to, any transfer of assets or real or personal property, shall not alter RACER’s responsibilities under this Order. RACER shall ensure that its contractors, subcontractors, and representatives performing the work receive a copy of this Order and comply with this Order. RACER shall be responsible for any noncompliance with this Order.

8. No change in ownership or corporate or partnership status relating to the Facilities will alter RACER's obligations under this Order, unless otherwise agreed to by all Parties and set forth in a modification(s) to this Order. This Section will not apply if U.S. EPA and RACER agree that this Order has terminated as to the Facilities or any relevant portion of the Facilities. RACER will provide to U.S. EPA advance notice of a proposed Facility transfer pursuant to the terms and requirements of the Consent Decree identified in paragraph 21 of this Order.

IV. DETERMINATIONS

9. After consideration of the Administrative Record, the Director of the Land and Chemicals Division in U.S. EPA Region 5 has made the following conclusions of law and determinations:

- a. RACER is a "person" within the meaning of Section 1004(15) of RCRA.
- b. RACER, through its wholly owned direct subsidiary RACER Properties LLC, is the owner of a facility that has operated under interim status subject to Section 3005(e) of RCRA, and has accepted responsibility for all RCRA corrective actions identified in Paragraph 2.
- c. Certain wastes and constituents found at the facility are hazardous wastes and/or hazardous constituents pursuant to Sections 1004(5) and 3001 of RCRA and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the facility.
- e. The actions required by this Order are necessary to protect human health and/or the environment.

V. PROJECT MANAGER

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

VI. WORK COMPLETED

11. In 1990, U.S. EPA issued a unilateral RCRA Section 3008(h) (Docket No. V-W-91R-2), 42 U.S.C. Section 6928(h) Administrative Order ("1990 Order") covering the former Delphi Thermal Moraine Facility, at the time known as former General Motors Harrison Radiator Division. The 1990 Order required GM to implement a RCRA Facility Investigation, Interim Measures, and a Corrective Measures Study. In response to the findings of the 1991 Preliminary Assessment/Visual Site Inspection ("PA/VSI") reports for the former Moraine Engine and Moraine Assembly Facilities and based on the preliminary groundwater evaluation from the RCRA Facility Investigation ("RFI") activities at the adjacent former Delphi Thermal Moraine Facility, U.S. EPA issued an Amendment to the Administrative Order (Docket No. VW-R-002-91) in 1997 ("1997 Amended Order") covering the entire group of Facilities. The 1997 Amended Order incorporated the former Moraine Engine and Moraine Assembly Facilities into the Corrective Action program for the former Delphi Thermal Moraine Facility. The 1997 Amended Order required GM to expand on the Corrective Action program for the former Delphi Thermal Moraine Facility by conducting a supplemental RFI at the two additional Facilities and collectively performing a Corrective Measures Study to identify and evaluate alternatives for Corrective Action necessary to prevent or mitigate any releases of hazardous constituents at or from the Facilities.

12. Pursuant to the 1990 Order, the former Delphi Thermal Moraine Facility submitted a Current Conditions Report to U.S. EPA in January 1991. Subsequently, the former Delphi Thermal Moraine Facility completed a two-phase investigation, including a baseline risk assessment, and as a result implemented interim measures consisting of the creation of a groundwater capture zone addressing

contamination of volatile organic compounds (“VOCs”) in the upper and lower aquifer. A 1996 RFI Report concluded that there were no unacceptable exposures under current and reasonably expected future land use scenarios for soil or waste related to the solid waste management units investigated from the former Delphi Thermal Moraine Facility. Similar findings were also made concerning on-site sediment and surface water. Pursuant to the 1997 Amended Order, a multi-phase investigation was completed for the former Moraine Engine and Moraine Assembly Facilities. The multi-phase investigation focused on the Former Oil House Area. A 2000 Supplemental RFI Report for the former Moraine Engine and Moraine Assembly Facilities, including a supplemental baseline risk assessment, determined that constituents of concern in soil do not pose an unacceptable risk under current and reasonably expected future land use scenarios. The Supplemental RFI Report also recommended the implementation of additional interim measures to address VOCs in groundwater associated with the Former Oil House Area affecting the entire group of Facilities. The RFI Report and the Supplemental RFI Report were approved by the U.S. EPA in April 2000. In 1999, GM initiated the implementation of the additional Interim Measures in the form of in-situ treatment technologies to address VOCs in groundwater. Further, to facilitate the evaluation of the performance of the Interim Measures in support of Corrective Measures, GM proposed a comprehensive site-wide groundwater monitoring system. In 2000, U.S. EPA and the Ohio Environmental Protection Agency (“OEPA”) agreed to the implementation of a Site-Wide Monitoring Plan to cover the North and South Lagoons subject to closure and post-closure and monitoring as part of corrective action for the Facilities. Annual groundwater sampling and elevation monitoring has been conducted from 2001 to 2010 based on the Site-Wide Monitoring Plan, including subsequent modifications. In March 2001, the previous Facility owner submitted the Interim Measures/Corrective Measures Report to the U.S. EPA.

13. Between 2000 and 2008 and subsequent to the Supplemental RFI, the previous Facilities owner has undertaken several additional activities including: investigation of the Box Sewer and completion of the Box Sewer Investigation Summary Report (2001-2002), investigation of the Waste Pile Staging Area (2001 – 2003), completion of the Waste Pile Staging Area Investigation Report and implementation of the Interim Measures Workplan for the Waste Pile Staging Area (2004 - 2006), completion of the former Delphi Thermal Moraine Building 14 Investigation Summary (2005), completion of the Waste Pile Staging Area Interim Measures Report (2006), and implementation of a supplemental groundwater investigation to install additional monitoring wells in the upper and lower aquifer to support Corrective Measures (2006 – 2008). The interim measures for the Waste Pile Staging Area consisted of removal of soil contamination for protection of groundwater and control of unacceptable exposures under the industrial worker scenario for land reuse under redevelopment. The soil contamination in the Waste Pile Staging Area consisted of VOCs, semi-volatile organic compounds, polychlorinated biphenyls, and metals.

14. In December 2000, U.S. EPA determined that current human exposures were under control (Environmental Indicator Report CA 725, Current Human Exposures under Control) for the former Moraine Engine and Moraine Assembly Facilities. U.S. EPA made a similar determination for the former Delphi Thermal Moraine Facility in September 2002. However, U.S. EPA has since learned about a human health risk from soil vapors intruding into residences that was unknown in 2002. In March 2001, U.S. EPA also determined that the migration of groundwater contamination from the

Facilities was under control (Environmental Indicator Report CA 750, Migration of Contaminated Groundwater under Control).

15. An August 25, 2008 Draft Corrective Measures Proposal and a November 7, 2008 Draft Corrective Measures Proposal Addendum prepared by the previous Facilities owner summarized available information on the nature and extent of contamination at the Facilities, described the actual or potential exposure pathways that should be addressed by Corrective Measures, and provided the objectives for the Corrective Measures. The 2008 Draft Corrective Measures Proposal also included a description of the final Corrective Measures that the previous Facilities owner evaluated, an explanation of why the previous Facilities owner preferred the proposed final Corrective Measures, and cost estimates for the final Corrective Measures evaluated. The proposal included a schedule to construct and implement the final Corrective Measures.

16. A March 22, 2010 Draft Corrective Measures Proposal Addendum prepared by the previous Facilities owner supersedes the cost and schedule information from the 2008 Draft Corrective Measures Proposal Addendum. It recommends additional Corrective Measures beyond those proposed in the 2008 Draft Corrective Measures Proposal.

17. The results from previous investigations show that VOC contamination in groundwater, mainly Tetrachloroethylene ("PCE") and Trichloroethylene ("TCE"), extends off-site from the Facilities. The VOC contamination is currently a source of vapor intrusion affecting residential and commercial properties in the Riverview Plat neighborhood located southwest of the Facilities. The 2008 Draft Corrective Measures Proposal had concluded that vapors from groundwater contamination were not likely to intrude into nearby residential and commercial structures. Based on a September 16, 2010 Vapor Intrusion Verification Workplan, the previous Facilities owner conducted soil-gas sampling in the right-of-way of the neighborhood area suspected to be affected. The purpose of the sampling was to obtain additional lines of evidence for further assessing the potential for vapor intrusion. The sampling results indicated the presence of PCE and TCE concentrations above screening levels in soil-gas associated with the groundwater contamination in the right-of-way near the residential and commercial properties.

18. RACER is currently implementing a March 4, 2011 Sub-Slab and Indoor Air Sampling Work Plan and has initiated sub-slab and indoor air sampling in the properties southwest of the Facilities.

19. RACER is currently implementing a June 3, 2011, Vapor Intrusion Mitigation Work Plan, modified on September 13, 2011, to evaluate the vapor intrusion potential for off-site from the Facilities and recommend additional evaluation, sampling or mitigation as appropriate.

20. The previous Facilities owner submitted to U.S. EPA a November 5, 2010 Draft Pre-Design Investigation Workplan. In response to U.S. EPA comments and further discussions between U.S. EPA and RACER regarding the vapor intrusion pathway, RACER has subsequently submitted a June 6, 2011 Draft Pre-Design Investigation Workplan Addendum for Landfill L1. The scope of the Pre-Design Investigation includes additional soil and groundwater sampling and analysis and collection of

additional hydrogeologic data at the Facilities. The purpose of the Pre-Design Investigation is to gain a more refined understanding of the VOC plume in the upper and lower aquifer, including the distribution of contamination in primary and secondary source areas, and the distribution of VOC concentrations at the upgradient boundary of the Facilities. In addition, the Pre-Design Investigation includes an intrusive investigation into Landfill L1. The Pre-Design Investigation will support the design plans for the implementation of corrective measures from the Draft Corrective Measures Proposal.

VII. WORK TO BE PERFORMED

21. Pursuant to Section 3008(h) of RCRA, RACER agrees to perform the actions specified in this Section of this Order, in the manner and by the dates specified herein. RACER represents that it has the technical and financial ability to carry out corrective action at the Facilities, subject to the terms, provisions and limitations set forth in the Environmental Response Trust Consent Decree and Settlement Agreement Among Debtors, the Environmental Response Trust Administrative Trustee, the United States, [fourteen States] and the Saint Regis Mohawk Tribe, Case No. 09-50026 (REG) in the United States Bankruptcy Court for the Southern District of New York (“Consent Decree”).
22. As contemplated by the Consent Decree, RACER may request and U.S. EPA may approve at its sole discretion, changes to the RCRA facility boundary to allow portions of the Facilities to be redeveloped. U.S. EPA may approve such an adjustment based on factors including but not limited to:
- a. Information on historical uses and environmental data demonstrating that the portion of the Facilities proposed for sale or redevelopment was never used for any regulated activity or that no contamination is present on the portion of the Facilities to be released for sale or redevelopment.
 - b. Successful completion of the required remedy for contamination found on the portion of the Facilities to be released for sale or redevelopment.
 - c. Approval of closure with restrictions or closure without restrictions for the portion of the Facilities to be released for sale or redevelopment.
23. In the case of a conflict between this Order and the Consent Decree, the Consent Decree controls.
24. RACER will continue to evaluate the vapor intrusion potential off-site from the Facilities and recommend additional evaluation, sampling or mitigation as appropriate based on the June 3, 2011, Vapor Intrusion Mitigation Workplan as modified on September 13, 2011, including, as applicable, verification sampling and development and implementation of Property-Specific Mitigation Workplans for residential and commercial properties. RACER will incorporate into the Vapor Intrusion Mitigation Workplan and implement any revisions that may be deemed necessary by U.S. EPA.

25. RACER will revise and implement in accordance with U.S. EPA comments the November 5, 2010 Draft Pre-Design Investigation Workplan and June 6, 2011 Draft Pre-Design Investigation Workplan Addendum for Landfill L1.

26. RACER will perform the work specified under this Order in compliance with RCRA, other applicable federal and state laws, and their implementing regulations, and consistent with all relevant U.S. EPA guidance documents as appropriate to the Facilities, and the terms, provisions and limitations set forth in the Consent Decree.

27. Guidance documents that may be appropriate include, but are not limited to 61 FR 19432 (May 1, 1996, Advance Notice of Proposed Rulemaking), Documentation of Environmental Indicator Determination Guidance, and relevant portions of the Model Scopes of Work for RCRA Corrective Action and of U.S. EPA's risk assessment guidance.

28. RACER will demonstrate by October 30, 2012, through submitting an update to the 2000-2002 Environmental Indicators Reports and by performing any other necessary activities, consistent with this Section, that:

- a. All current human exposures to contamination at or from the Facilities are under control and such control(s) will be maintained. That is, significant or unacceptable exposures do not exist for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above risk-based levels, for which there are complete pathways between contamination and human receptors.
- b. Migration of contaminated groundwater, if any, at or from the Facilities is stabilized and such control(s) will be maintained. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents above acceptable levels is stabilized to remain within any existing areas of contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or currently acceptable according to an appropriate interim assessment. Under the site-wide groundwater monitoring program, RACER will collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater remains stabilized.

29. To prepare for and provide the demonstrations required by paragraph 28, above, RACER will:

- a. Determine appropriate risk screening criteria under current use scenarios and provide the basis and justification for the use of these criteria.
- b. Determine any current unacceptable risks to human health and the environment and describe why other identified risks are acceptable.

- c. Control any unacceptable current human exposures that RACER identifies. This includes performing any corrective actions or other response measures (“Corrective Measures”) necessary to control current human exposures to contamination to within acceptable risk levels.
- d. Stabilize the migration of contaminated groundwater. This includes implementing any Corrective Measures necessary to stabilize the migration of contaminated groundwater.
- e. Conduct groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.
- f. Prepare a report, either prior to or as part of the Environmental Indicators Report that describes and justifies any interim actions performed to meet the requirements of this Section, including sampling documentation, construction completion documentation and/or confirmatory sampling results.

30. To the extent not already completed or otherwise determined by U.S. EPA to be unnecessary, RACER will propose to U.S. EPA by June 1, 2012, final Corrective Measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste or hazardous constituents at or from the Facilities (the “Final Corrective Measures Proposal”). RACER will incorporate any revisions that may be deemed necessary by U.S. EPA into the August 25, 2008 Draft Corrective Measures Proposal and the March 22, 2010 Draft Corrective Measures Proposal Addendum, including but not limited to: a) the abandonment of off-site private wells and connection to public water supply; b) supplemental hydraulic control of the VOC groundwater plume as necessary to support clean up objectives; c) on-site vapor mitigation systems that may be required depending on future use of the existing building; and d) supplemental Corrective Measures for implementation under an accelerated schedule to meet cleanup objectives for source and media relevant to vapor intrusion off-site from the Facilities based on results of the Landfill L1 investigations. The proposal will describe all Corrective Measures implemented at the Facilities since the effective date of this Order. It will also include a description of all other final Corrective Measures that RACER evaluated, an explanation of why RACER preferred the proposed final Corrective Measures and cost estimates for the final Corrective Measures evaluated. The proposal will also include a schedule to construct and implement the final Corrective Measures, and to submit a Final Remedy Construction Completion Report.

31. To the extent not already completed or otherwise determined by U.S. EPA to be unnecessary, as part of developing its proposal, RACER will propose appropriate risk screening criteria, cleanup objectives, points of compliance under current and reasonably expected future land use scenarios, and provide the basis and justification for these decisions. RACER will provide information documenting the status of closure for underground storage tanks in the former Delphi Thermal Moraine Facility.

32. U.S. EPA may request supplemental information from RACER if U.S. EPA determines that the proposal and supporting information do not provide an adequate basis to select the final Corrective

Measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facilities.

33. U.S. EPA will provide the public with an opportunity to review and comment on its proposed final Corrective Measures, including a detailed description and justification for the proposal (the "Statement of Basis"). Following the public comment period, U.S. EPA will select the final Corrective Measures, and will notify the public of the decision and rationale in a Final Decision and Response to Comments ("Final Decision").

34. Upon notice by U.S. EPA, RACER will implement the final Corrective Measures selected in U.S. EPA's Final Decision according to the schedule in the Final Decision, to the extent the Final Decision does not conflict with the terms, conditions and limitations of the Consent Decree referenced in paragraphs 8 and 21.

35. Reporting and other requirements:

- a. RACER will maintain a publicly accessible repository for information regarding site activities and continue to conduct public outreach and involvement activities consistent with the RCRA Public Participation Manual, as appropriate for the Facilities and as directed and in consultation with U.S. EPA.
- b. RACER will provide quarterly progress reports to U.S. EPA by the fifteenth day of the month after the end of each calendar quarter. The report will list work performed to date, data collected, problems encountered, project schedule and percent project completed, unless otherwise agreed.
- c. The Parties will communicate as needed and in good faith to assure successful completion of the requirements of this Order, and will communicate/meet on at least a semi-annual basis, or as needed, to discuss the work proposed and performed under this Order.
- d. RACER will provide a Final Remedy Construction Completion Report to U.S. EPA documenting all work that it has performed pursuant to the schedule in U.S. EPA's Final Decision.
- e. If ongoing monitoring or operation and maintenance is required after construction of the final Corrective Measures, RACER will include an operations and maintenance plan in the Final Remedy Construction Completion Report. RACER will revise and resubmit the report in response to U.S. EPA's written comments, if any, by the dates U.S. EPA specifies. Upon U.S. EPA's written approval, RACER will implement the approved operation and maintenance plan according to the schedule and terms of the plan.
- f. Any risk assessments RACER conducts will estimate human health and ecological risk

under reasonable maximum exposure for both current and reasonably expected or planned land use scenarios. In conducting the risk assessments, RACER will follow the Risk Assessment Guidance for Superfund (“RAGS”) or other appropriate U.S. EPA guidance. RACER will use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, U.S. EPA Regional Screening Levels, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels or RAGS.

- g. All sampling and analysis conducted under this Order will be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the Facilities, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. U.S. EPA may audit laboratories RACER selects. RACER will notify U.S. EPA in writing at least 14 days before beginning each separate phase of field work performed under this Order. At the request of U.S. EPA, RACER will provide or allow U.S. EPA or its authorized representative to take, split or duplicate samples of all samples RACER collects under this Order.

36. Project Managers can agree in writing to extend, for 90 days or less, any deadline in this Section. However, extensions of greater than 90 days require approval from the Chief, Remediation and Reuse Branch, Land and Chemicals Division.

VIII. ACCESS

37. Upon reasonable notice, and at reasonable times, U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may enter and freely move about the Facilities to, among other things: interview Facilities personnel and contractors; review progress in carrying out the terms of this Order; conduct tests, sampling or monitoring as U.S. EPA deems necessary; use a camera, sound recording or other documentary equipment; and verify the reports and data RACER submits to U.S. EPA. RACER will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of RACER or its contractors or consultants. RACER may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by U.S. EPA and releasable under the Freedom of Information Act.

38. If RACER goes beyond the Facilities’ boundaries to perform work required by this Order, RACER will use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within 60 days after RACER knows of the need for access. Any such access agreement will provide for access by U.S. EPA and its representatives. RACER will submit a copy of any access agreement to U.S. EPA’s Project Manager. If it does not obtain agreements for access within 60 days, RACER will notify U.S. EPA in writing within 14 additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist RACER in obtaining access.

39. Nothing in this Section limits or otherwise affects U.S. EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675.

IX. RECORD PRESERVATION

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

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

RACER will also promptly give U.S. EPA's Project Manager a copy of the notice.

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

42. RACER will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

X. DISPUTE RESOLUTION

43. The Parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

44. Any disputes regarding budget or funding for work at the Facility will be resolved pursuant to the terms of the Consent Decree. All other disputes will follow the procedures outlined in this section.

45. If either Party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other Party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

46. If the Project Managers cannot resolve the dispute informally, either Party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in

dispute, the basis for that Party's position and any matters which it considers necessary for determination.

47. U.S. EPA and RACER will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the Parties. During formal negotiations, either Party may request a conference with appropriate senior management to discuss the dispute.

48. If the Parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, RACER and U.S. EPA's Project Manager may submit additional written information to the Director of the Land and Chemicals Division, U.S. EPA Region 5. U.S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. U.S. EPA will allow timely submission of relevant supplemental statements of position by the Parties to the dispute. Based on the record, U.S. EPA will respond to RACER's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, U.S. EPA Region 5 ("U.S. EPA Dispute Decision").

XI. MODIFICATION

49. This Order may be modified only by mutual agreement of U.S. EPA and RACER, except as provided in Section VII - Work to be performed. Any agreed modifications will be in writing, will be signed by both Parties, will be effective on the date of signature by U.S. EPA and will be incorporated into this Order.

50. Any change to the Remediation Cost Estimate Scope of Work, prepared for the Facility(ies) in the annual cleanup budget process set out in the Consent Decree, that has been approved by U.S. EPA and/or any change to the current budget for the Facility(ies) that has been approved by U.S. EPA shall be considered a modification to this agreement that has been approved by the Parties and will be effective on the date of approval by U.S. EPA, and will be incorporated into this Order.

XII. RESERVATION OF RIGHTS

51. Nothing in this Order restricts U.S. EPA's authority to seek RACER's compliance with the Order and applicable laws and regulations. In any later proceeding, RACER will not assert or maintain any defense or claim of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting or other defenses based upon a contention that the claims raised by U.S. EPA or the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities of U.S. EPA.

52. U.S. EPA reserves all of its rights to perform any portion of the work required under this Order, or in any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

53. If U.S. EPA determines that RACER's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), a threat to human health or the environment or that RACER cannot perform any of the work required, U.S. EPA may order RACER to stop implementing this Order for the time U.S. EPA determines may be needed to abate the release or threat and to take any action that U.S. EPA determines is necessary to abate the release or threat.

54. RACER does not admit any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, RACER reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the Facilities, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. RACER has entered into this Order in good faith without trial or adjudication of any issue of fact or law.

XIII. OTHER CLAIMS

55. RACER waives any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

XIV. SEVERABILITY

56. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

XV. TERMINATION AND SATISFACTION

57. RACER may request that U.S. EPA issue a determination that RACER has met the requirements of the Order for all or a portion of the Facilities. RACER may also request that U.S. EPA issue a no further interest or no further action determination for all or a portion of the Facilities or that corrective action is complete at the Facilities.

58. The provisions of the Order will be satisfied upon RACER's and U.S. EPA's execution of an Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights ("Acknowledgement"), consistent with U.S. EPA's Model Scope of Work.

59. RACER's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section IX, to maintain any necessary institutional controls or other long term measures and to recognize U.S. EPA's reservation of rights as required in Section XII.

XVI. EFFECTIVE DATE


60. This Order is effective on the date that U.S. EPA signs the Order.

IT IS SO AGREED:

DATE: 9/26/11

REVITALIZING AUTO COMMUNITIES
ENVIRONMENTAL RESPONSE TRUST

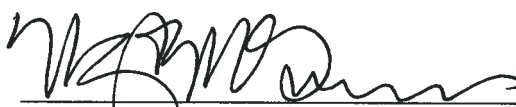
BY: _____


Michael O. Hill
Chief Operating Officer and General Counsel

IT IS SO ORDERED:

DATE: 9/29/11

BY: _____


Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

RCRA-05-2011-0016

RECEIVED
SEP 30 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Exhibit A