UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	ADMINISTRATIVE ORDER ON CONSENT
	)	
	)	U.S. EPA Docket No: **RCRA-05-2011-0017**
Former GM Delco Plant 5	)	
1723 North Washington Street	)	
Kokomo, Indiana 46901	)	
	)	Proceeding under Section 3008(h) of the Resource
	)	Conservation and Recovery Act,
EPA ID#: IND 000 806 844	)	as amended, 42 U.S.C. § 6928(h).
	)	
RESPONDENT	)	
Revitalizing Auto Communities	)	
Environmental Response Trust	)	
	)	

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SEP 30 2011
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

I. JURISDICTION

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. RACER owns a former General Motors Corporation ("GM") property at 1723 North Washington Street, Kokomo, Indiana, the Former GM Delco Plant 5 (the "Site"). The Site covers approximately 10.5 acres in central Indiana. Manufacturing at the Site began in 1915, and GM purchased the Site in 1953. At the time manufacturing was discontinued in 1991, GM was producing electronic circuit boards at the Site. Demolition of the buildings and removal of most of the concrete slab was completed in 1993 and the Site has been a vacant grass lot since that time.

3. RACER agrees not to contest U.S. EPA's jurisdiction to issue this Order, or to enforce its terms.

4. 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

5. 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

6. 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.

7. No change in ownership or corporate or partnership status relating to the RCRA facility located at the Site 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 facility or any relevant portion of the facility. 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 17 of this Order.

IV. DETERMINATIONS

8. 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 is the owner of a facility that has operated under interim status subject to Section 3005(e) of RCRA.

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 or the environment.

V. PROJECT MANAGER

9. 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

10. U.S. EPA and GM entered into a Performance Based Corrective Action Agreement ("Agreement") for the facility in March 2006.

11. Pursuant to the Agreement, GM performed certain activities to investigate releases of hazardous wastes or hazardous constituents at or from the facility.

12. As a result of GM's bankruptcy, the operating assets of GM were sold to a newly formed company, which is now known as General Motors Company. Existing, non-continuing assets remain the property of "old" GM, which changed its name to Motors Liquidation Company ("MLC"). Corrective Action activities conducted at the facility from approximately July 2009 to present were performed by MLC. Upon the effective date of this Order, RACER has responsibility for completing the Corrective Action activities at the facility in accordance with Section VII of this Order.

13. On August 30, 2005, GM submitted a Current Conditions Report ("CCR") to U.S. EPA for the facility. The CCR covered the solid waste management units ("SWMUs") and areas of concern ("AOCs") identified at the facility in the U.S. EPA Preliminary Assessment and Visual Site Inspection ("PA/VSI") report dated October 1992. The CCR also identified additional areas of interest ("AOIs") not previously identified.

14. Between 2005 and 2009, GM and/or MLC performed the necessary investigative work to identify the nature and extent of releases of hazardous waste and/or hazardous constituents at or from the facility, which may pose an unacceptable risk to human health or the environment. MLC reported the results of the investigation in the May 21, 2010 RCRA Facility Investigation Report ("RFI"). The RFI also described the nature and extent of releases of hazardous waste and/or hazardous constituents at or from the facility, which do not pose an unacceptable risk to human health or the environment and provided the basis of those conclusions.

15. The Environmental Indicators Reports submitted by GM and MLC demonstrate that:

a. All current human exposures to contamination at or from the facility are under control. 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 at or from the facility is stabilized. 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. RACER will

collect monitoring and measurement data in the future as necessary to verify that migration of any contaminated groundwater is stabilized in accordance with Part VII of this Order.

c. In order to prepare for and provide the demonstrations required by paragraphs 15.a and 15.b above, GM or MLC also:

i. Determined appropriate risk screening criteria under current use scenarios and provided the basis and justification for the use of these criteria.

ii. Determined any current unacceptable risks to human health and the environment and described why other identified risks are acceptable.

iii. Controlled any unacceptable current human exposures.

iv. Stabilized the migration of contaminated groundwater.

v. Conducted groundwater monitoring to confirm that any contaminated groundwater remains within the original area of contamination.

16. In the draft Corrective Measures Proposal ("CMP") dated August 30, 2010 and updated on April 30, 2011, MLC proposed to U.S. EPA 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 facility. The CMP describes all proposed corrective measures that MLC evaluated, an explanation of why MLC preferred the proposed final corrective measures, and cost estimates for the final corrective measures evaluated. The proposal also included a schedule to construct and implement the final corrective measures, a proposal to submit a Corrective Measures Implementation Work Plan, and a Final Remedy Construction Completion Report.

17. As part of its work developing the final CMP, RACER has proposed risk screening criteria for on-going monitoring, cleanup objectives, and points of compliance under current and reasonably expected future land use scenarios.

VII. WORK TO BE PERFORMED

18. 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 here. RACER represents that it has the technical and financial ability to carry out Corrective Action at the facility, subject to the terms, provisions and limitations set forth in 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").

19. 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 Site 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 Site proposed for sale or redevelopment was never used for any regulated activity or that no contamination is present on the portion of the Site to be released for sale or redevelopment.

b. Successful completion of the required remedy for contamination found on the portion of the Site to be released for sale or redevelopment.

c. Approval of closure with restrictions or closure without restrictions for the portion of the Site to be released for sale or redevelopment. .

20. In the case of a conflict between this Order and the Consent Decree, the Consent Decree controls.

21. 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 facility, and the terms, provisions and limitations set forth in the Consent Decree.

22. RACER must maintain adequate controls to prevent unacceptable human exposures to contaminants as described in Paragraph 15. RACER must contain contaminated groundwater within the boundaries illustrated on the Well Restriction Overlay District map within the final CMP. RACER must also continue to collect monitoring and measurement data as necessary to verify that contaminated groundwater above federal drinking water criteria remains within those boundaries.

23. U.S. EPA may request supplemental information from RACER if U.S. EPA determines that the proposed corrective measures do not provide an adequate basis for the selection of final corrective measures that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the facility.

24. 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").

25. 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.

26. 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 facility 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.

27. The 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

28. 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 facility to, among other things: interview facility 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 which 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.

29. If RACER will go beyond the facility's boundary 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 also 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.

30. 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

31. 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, IL 60604-3590

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

32. 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.

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

X. DISPUTE RESOLUTION

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

35. 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.

36. 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.

37. 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.

38. 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.

39. 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 Waste, 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 ("EPA Dispute Decision").

XI. MODIFICATION

40. 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.

41. Any change to the Remediation Cost Estimate Scope of Work, prepared for the Site 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 Site 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

42. 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.

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

human health or the environment.

44. 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), or 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.

45. 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 facility, 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

46. RACER waives any claims or demands for compensation or payment under Section 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

47. 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

48. 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 facility. 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 facility or that corrective action is complete at the facility.

49. 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.

50. 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 terms measures, and to recognize U.S. EPA's reservation of rights as required in Section XII.

XVI. EFFECTIVE DATE

51. 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

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