

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Settlement  
For the Reimbursement of State  
Costs for Inactive Hazardous Waste  
Disposal Site Under Article 27, Title  
13, and Article 71, Title 27 of the  
Environmental Conservation Law of  
the State of New York

by

**Revitalizing Auto Communities  
Environmental Response Trust  
("RACER Trust") by EPLET, LLC,  
solely in its capacity as  
Administrative Trustee of RACER  
Trust, and RACER Properties LLC**

Hereinafter referred to individually  
and collectively as  
**"SETTLING RESPONDENTS"**

Site Name: General Motors – Fisher  
Guide

Site Address: 1 General Motors Drive  
aka 1000 Townline Rd.  
Salina, New York  
Onondaga County

**ORDER ON CONSENT  
and ADMINISTRATIVE  
SETTLEMENT**

Index # R7-20250325-14

GM IFG OU 1  
(RD/RA) Site# 734057

## WHEREAS,

1. A. The New York State Department of Environmental Conservation (“Department” or “NYSDEC”) is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law (“ECL”) and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations (“6 NYCRR”) and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. The Department also asserts that it has the authority, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.

D. This Order on Consent and Administrative Settlement (“Order”) is issued pursuant to the Department’s authority under, inter alia, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL 3-0301 and Section 97-b of the State Finance Law (“STF”), and resolves Settling Respondents’ liability to the State under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”) 42 U.S.C. § 9601 et seq. and applicable State law to the extent set forth herein. Accordingly, to the extent set forth in Subparagraph XIII.D, pursuant to CERCLA § 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), Settling Respondents may seek contribution from persons who are not parties to this Order.

E. 6 NYCRR §375-2.11(c)(1)(ii) authorizes the Department to expend money of the hazardous waste remedial fund provided for at STF Section 97-b to pay for the cleanup or restoration to its original state of any area where contaminants were disposed of or possessed unlawfully contrary to ECL §27-0914. 6 NYCRR §375-2.11(c)(1)(iii) authorizes the Department to expend moneys of the hazardous waste remedial fund provided for as STF Section 97-b to pay for site identification, classification, and investigation activities including, but not limited to testing, analyses, and record searches and the Department’s related administrative activities.

2. Revitalizing Auto Communities Environmental Response Trust (“RACER Trust”) is an independent trust with a principal place of business at 660 Woodward Avenue, Suite 1521, Detroit, Michigan 48226. RACER Properties LLC, (“RPLLC”) is wholly owned by RACER Trust and has no assets other than certain real property which it owns in fee simple title. It is a Delaware limited liability company with a principal place of business at 660 Woodward Avenue, Suite 1521, Detroit, Michigan 48226. RACER Trust and RPLLC are each a “Settling Respondent” and collectively are “Settling Respondents.”

3. EPLET, LLC is a Delaware limited liability company with a principal place of business at 660 Woodward Avenue, Suite 1521, Detroit, Michigan 48226. EPLET, LLC is designated under the Trust Consent Decree (as defined below) as the Administrative Trustee of RACER

Trust.

4. RACER Trust became effective as an environmental response trust in March of 2011 by order of the U.S. Bankruptcy Court to clean up and position for redevelopment real properties owned by the former General Motors Corp. ("General Motors") prior to its 2009 bankruptcy. [See **Environmental Response Trust Consent Decree and Settlement Agreement** ("Trust Consent Decree"), granted and approved March 29, 2011 by U.S. Bankruptcy Court S.D.N.Y. Case No 09-50026 REG) at ECF Doc. 9943]. RACER Properties LLC was formed in 2011 to hold title to real property in States such as New York where trusts cannot legally hold such title.

5. Site. The former General Motors- Fisher Guide (also known as Inland Fisher Guide or "GM-IFG") Site is a subsite of the Onondaga Lake National Priorities List Site ("Onondaga Lake NPL Site"). The Site is located in the Towns of Salina and Dewitt in Onondaga County, New York and includes, but is not limited to, General Motor's former manufacturing plant, which is located off Factory Avenue and Townline Road. Exhibit "A" is a map of the manufacturing plant's general location. The real property comprising the former manufacturing plant is currently owned by SIP Syracuse LLC, which is authorized to operate in the State of New York.

6. The GM-IFG Site is currently listed in the Department's *Registry of Inactive Hazardous Waste Disposal Sites* as Site Number 734057 with a Classification "2" pursuant to ECL §27-1305. For the purposes of this Order on Consent and Settlement Agreement, the "Site" is defined to consist of two Operable Units:

A. Operable Unit 1 ("OU 1") includes the former plant, soils, existing Interim Remedial Measures ("IRMs"), and groundwater on and relating to the former plant. More specifically, OU 1 is comprised of the acreage and buildings formerly owned by General Motors and by RPLLC that encompass:

- i. the former GM-IFG manufacturing building and surrounding real property (collectively, "Facility");
- ii. the groundwater on and emanating from the Facility including that groundwater from the Facility which is under or otherwise emanating (if any) from the National Grid/Teall Avenue Substation access road and which is under an adjacent (but unrelated) Subsite of the Onondaga Lake NPL Site owned by RPLLC and known as the Ley Creek PCB Dredgings Subsite.

B. Operable Unit 2 ("OU 2"), also referred to by the Department and USEPA as the Ley Creek Deferred Media or LCDM Operable Unit, is comprised of real property that was never owned by General Motors, RACER Trust, or RPLLC, and, is delineated by the Department and USEPA, as:

- i. All areas to be addressed in the remedy selected in the March 2015 LCDM ROD as modified and clarified under EPA's two Explanations of Significant Differences regarding that remedy, dated September 2022 and April 2023;
- ii. Approximately 9,200 linear feet of Ley Creek between the eastern side of the Route 11 Bridge and the western side of the Townline Road Bridge, including the adjacent banks, floodplains, wetlands and forested areas;

- iii. a 10-acre wetland located on the northern portion of the National Grid property (sometimes referred to as the "National Grid Wetland") that is directly west of the former General Motors facility (OU 1);
- iv. The approximately 1.8-acre area located between the former General Motors facility's northern property boundary and Factory Avenue (sometimes referred to as the "Factory Avenue Area");
- v. the area located along the northern shoulder of Factory Avenue in the vicinity of LeMoyne Avenue (sometimes referred to as the "Factory Avenue/Lemoyne Avenue Intersection Area");
- vi. the National Grid/Teall Avenue Substation access road (sometimes referred to as the "NG Access Road"), but does not extend to any groundwater;
- vii. the area north of Ley Creek bounded by Ley Creek to the south, the New York State Thruway to the north, Townline Road to the east, and LeMoyne Avenue to the west;
- viii. the area south of Ley Creek from approximately the Town of Salina Highway Department Garage at 601 Factory Avenue to State Route 11 (a.k.a. Brewerton Road) between Ley Creek and Cambridge Avenue, Brown Avenue, and Factory Avenue;
- ix. the residential areas, including the backyards of 19 residential properties on Brookline Road located north of Ley Creek between LeMoyne Avenue and State Street Route 11 (a.k.a. Brewerton Road); and
- x. to the extent that any Waste Material originating at or that was at any time located within the GM-IFG Subsite or areas i through ix, migrated or was otherwise moved (e.g., by dredging), all areas onto which such Waste Material migrated or was moved, but not including the Lower Ley Creek Operable Unit.

7. General Motors entered into an Order on Consent #D-7-0001-97-06 (effective September 25, 1997, and Addendum to Order effective July 11, 1999) in which General Motors had agreed to perform a Remedial Investigation/Feasibility Study ("RI/FS") for the entire Site (both OU 1 and OU 2).

8. A central purpose of the 1997 Order on Consent #D-7-0001-97-06 and its 1999 Addendum was to govern the remediation and redevelopment of the former manufacturing building and associated structures, including modification thereto, to provide for their current use as multi-tenant commercial and light industrial space.

9. Via the Trust Consent Decree, Settling Respondent RACER Trust assumed General Motor's obligations under the 1997 Consent Order and its Addendum.

10. Lead Agency Designation. Under the Trust Consent Decree, the Department was identified as the Site's "Lead Agency," as that term is defined in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, and used in the Trust Consent Decree. On December 12, 2019, in response to a request from the Department, the United States Environmental Protection Agency ("USEPA") took over from the Department the role of Lead Agency for OU 2, while the Department continued to be the Lead Agency for OU 1. It is anticipated that USEPA will continue as Lead Agency for OU 2, will have lead enforcement responsibility with respect to all future remedial work to be

performed at OU 2, and will implement the OU 2 Remedial Action per the OU 2 ROD as modified.

11. On October 29, 2015, Settling Respondent RACER Trust entered into Consent Order #R7-0853-15-06, which expanded on the 1997 Order and 1999 Addendum and required RACER Trust to, among other things: (i) develop and implement, in accordance with the OU 2 ROD (issued jointly by the Department and USEPA in March of 2015), the design, implementation, and operation, maintenance and monitoring (collectively a “Remedial Program”) for the OU 2 RA; (ii) complete the OU 1 RI/FS; (iii) upon the Department’s issuance of the OU 1 ROD, develop and implement, in accordance with the ROD, a Remedial Program for OU 1 that was to include the design, implementation, operation, maintenance and monitoring of the selected remedial alternative for OU 1; and (iv) reimburse the State’s administrative costs, to the extent provided in the Order and in accordance with the Trust Consent Decree. Settling Respondent RACER Trust completed the OU 1 RI on March 3, 2017, and OU 1 FS on June 6, 2022. The Department issued the Proposed Plan on July 28, 2023, and the Record of Decision (“ROD”) on September 30, 2023.

12. Pursuant to Consent Order #R7-0853-15-06, Settling Respondent RACER Trust is legally responsible for performing the remedial activities at OU 1 and at OU 2.

13. Through the Trust Consent Decree, approximately \$31 million was funded for the performance of the combined OU 1 and OU 2 environmental actions, defined in the Trust Consent Decree and herein to include sampling and remediation, among other response activities at OU 1 and OU 2. This amount was subdivided into three accounts: the Minimum Estimated Property Funding (“MEPF”), Reserve Property Funding (“RPF”), and Long-Term Operation, Maintenance, and Monitoring (“LTOMM”) Property Funding accounts (“LTOMMPF”).

14. Of the approximately \$31 million funded via the Trust Consent Decree, the Department and USEPA together allocated approximately \$8.5 million for OU 2 across the MEPF, RPF, and LTOMMPF Accounts, and allocated the balance for OU 1 across these same three Accounts.

15. In its letter of August 29, 2022, to the Department and USEPA, Settling Respondent RACER Trust stated it would not have sufficient funding to implement the Remedial Action (“RA”) activities at the Site. Settling Respondent RACER Trust stated in such letter that it only had sufficient funds (i.e., approximately \$5 million at that time in combined MEPF and RPF Account funding) to pay for or complete the OU 1 Pre-Remedial Design Investigation (“PDI”) and Remedial Design (“RD”), as well as the OU 2 PDI and RD. In that letter, Settling Respondent RACER Trust requested that the Department and/or USEPA take over performance of both OU 1 RA and OU 2 RA.

16. The estimated present worth cost of implementing the proposed OU 1 RA, as such is contemplated by the Department and USEPA in the final Preliminary Remedial Action Plan (“PRAP”), is now projected to be approximately \$22.2 million. The estimated capital cost of implementing the OU 2 RA (minus LTOMM), as such is contemplated by the Department and

USEPA based on the 100% RD submitted by RACER Trust in February of 2024 and approved by USEPA on May 21, 2024, is now approximately \$136 million.

17. Settling Respondent RACER Trust estimates its unencumbered MEPF Account and RPF Account balances as of November 30, 2024, together total \$3,585,000. The Department and Settling Respondents agree that RACER Trust will pay to the Department (on behalf of all the Settling Respondents) in consideration of the releases and covenant not to sue in this Order and to help fund the Department's performance of the OU 1 PDI RD/RA, a total of \$3,585,000 (as per Paragraph III.A., below) plus any Remaining Funds (as such term is defined in Paragraph 21.A.2., below). The Department hereby acknowledges that it and USEPA Region 2 have agreed the amount of \$3,585,000 of the combined OU 1/OU 2 MEPF Account and RPF Account balances may be used by the Department for performance of the OU 1 PDI, RD, and RA, as reflected in this Order.

18. By letter dated January 3, 2023, USEPA and NYSDEC agreed that the OU 1 PDI and RD would be performed by a State-procured contractor pursuant to a NYSDEC Settlement Order on Consent partially funded by proceeds received by the State from Settling Respondent RACER Trust pursuant to that Order. By that letter, the Department and USEPA also agreed that Settling Respondent RACER Trust would continue to perform the OU 2 RD under USEPA oversight pursuant to Administrative Settlement Agreement and Order on Consent for Remedial Design (Index No. CERCLA-02-2021-2050) ("USEPA RD AOC"). On May 17, 2024, Settling Respondent RACER Trust submitted to USEPA and on May 21, 2024, USEPA approved a complete OU 2 RD, which was funded from Settling Respondent RACER Trust's Site MEPF and RPF Accounts. Therefore, Settling Respondent RACER Trust's OU 2 RD obligations are now fully satisfied under both Consent Order #R7-0853-15-06 and the USEPA RD AOC.

19. Pursuant to the legal authorities stated herein, the Department has spent monies, and anticipates the need to spend additional monies of the Hazardous Waste Remedial Fund for the implementation of Remedial Programs for OU 1, including the investigation and remediation of hazardous wastes and/or substances identified on or in proximity to OU 1 of the Site, as indicated in the OU 1 RI Report and subsequent groundwater monitoring reports, OU 1 FS Report, and the ROD for OU 1. These expenditures are authorized by and in conformance with relevant and applicable State and Federal law.

20. The Department alleges for purposes of this Order only that Settling Respondents are liable for the reimbursement of the Department's administrative response costs (including any and all past, present, and future costs and any legally accrued interest) for the investigation and remediation of hazardous wastes and/or substances existing on and emanating from OU 1 of the Site in accordance with applicable State and Federal law ("State Costs").

21. Scope and Goals of this Order: Settling Respondents and the Department agree that the goals of this Order are for:

A. **Payment:**

1. Settling Respondents to pay to the Department, via formal Reimbursement Requests (as defined in Paragraph III.B., below) submitted by the Department, the amount of \$3,585,000.

2. In the event: i. there are funds in the MEPF Account and the RPF Account after the amount of \$3,585,000 has been reimbursed by Settling Respondents to the Department; or ii. additional funding becomes available under the Trust Consent Decree and specifically available for expenditures regarding the Site for the Department's performance of the OU1 PDI, RD, and/or RA ("Additional Funds"); and iii. Settling Respondent RACER Trust (with USEPA's and the Department's approval) has reserved (through the Trust Consent Decree Annual Cleanup Budget process) sufficient funds required for OU 1 and OU 2 non-LTOMM activities for which Settling Respondent RACER Trust is obligated to perform (collectively, "Remaining Funds"), Settling Respondent RACER Trust to pay to the Department, via Reimbursement Requests submitted by the Department, such Remaining or Additional Funds as reimbursement for the Department's performance of the OU 1 PDI, RD, and/or RA.

3. If the Trust's LTOMM Funding Account for the Site requires additional funding for either Settling Respondent RACER Trust or the Department to perform the LTOMM of OU 1, the Department and Settling Respondent RACER Trust shall use best efforts, in consultation with USEPA about the OU 2 LTOMM funding needs, to make additional funding available from the Trust's Cushion Funding Account (to the extent that Cushion Funding has not otherwise been exhausted) or by use of Additional Funds to cover such unfunded OU 1 LTOMM activities, in accordance with the Trust Consent Decree.

B. **Performance Obligations:** Settling Respondent RACER Trust to continue to perform the LTOMM associated with the OU 1 IRMs and the LTOMM required for OU 1 as is or will be identified in the Interim Site Management Plan or as will be identified in the Final Site Management Plan for OU 1. Settling Respondent RACER Trust is responsible for LTOMM requirements for the entire Site (OU 1 and OU 2). So long as Settling Respondent RACER Trust has used best efforts to secure funding to perform and complete the OU 1 and OU 2 LTOMM, including the OU 1 IRMs, pursuant to the annual budget approval procedures set forth in Paragraphs 49 and 50 of the Trust Consent Decree, including developing proposed Annual Cleanup Budgets and revising such Budgets, as necessary, to complete those LTOMM activities set forth in the LTOMM Plan(s) and Site Management Plan(s), but Settling Respondent RACER Trust is unable to obtain the necessary funding to complete the required OU 1 LTOMM activities, Settling Respondents will not, as a result thereof, be in violation of this Order.

C. **Release and Covenant Not to Sue; Contribution Protection:** Provided the Settling Respondents are in compliance with the requirements of Paragraph 21.A and B, above, the Department to provide Settling Respondents with: (a) a release from liability and a covenant not to sue as further described in Paragraph VIII; and (b) contribution protection provided as further described in Paragraph XIII.D.

22. Settling Respondents consent to the issuance of this Order without: (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; and (ii) an acknowledgment that a release or threatened release of hazardous waste at or from OU 1 of the Site constitutes a significant threat to the public health or environment.

23. Solely with regard to the matters set forth below, Settling Respondents hereby waive any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Settling Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Settling Respondents pursuant to this Order.

**NOW**, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Site Specific Definitions

Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations, or amendments thereto. The following terms shall have the following meaning:

A. The Site: “Site” shall mean the real property designated by the Department as New York State Inactive Hazardous Waste Site Number 734057 constituting the GM-IFG Site including OU 1 and OU 2 as defined in Paragraph 6 of the Whereas clauses above. Exhibit “A” is a map of the Site showing its general location.

B. Covered Contamination: “Covered Contamination” shall mean any release, as that term is defined in 6 NYCRR § 375-1.2(am), on or under OU 1 of the Site or that has emanated or is emanating from OU 1 of the Site, of hazardous waste, as that term is defined in 6 NYCRR § 375-1.2(w) which occurred prior to the effective date of this Order.

C. Response Costs: “Response Costs” as used in this Order, is defined to include any and all past, present, and future “costs of removal or remedial action” within the meaning of CERCLA, 42 U.S.C. § 9607(a)(4)(A), in responding to the disposal, release, and/or threatened release of hazardous substances at or emanating from OU 1 of the Site.

II. Monitoring and Maintenance

Settling Respondent RACER Trust will undertake at its cost and expense, using the funds set aside in the Site LTOMMPF Account, to produce and implement the Department-approved LTOMM Plan(s) and the Department-approved Site Management Plan(s), as appropriate, in accordance with the OU 1 and OU 2 RODs and subject to the Annual Cleanup Budget process set forth in the Trust Consent Decree.



III. Payment in Resolution of Liability for Remedial Design/Remedial Action/LTOMM (exclusive of Settling Respondents' LTOMM/Site Management obligations per Paragraph II.)

- A. Settling Respondents shall reimburse the Department from the Site MEPF Account and/or Site RPF Account for the costs it incurs in conducting the OU 1 PDI, RD, and RA in the amount set forth in each Reimbursement Request:
- i. A total of \$3,585,000; plus
  - ii. Any Remaining Funds (as defined in Paragraph 21.A.2).

In the event the Department incurs costs to conduct LTOMM regarding OU 1 when available LTOMM funding is depleted by Settling Respondents' LTOMM obligations, Settling Respondents shall reimburse the Department from the Site LTOMM Funding Account (to the extent such funding account can be supplemented with funding from the Trust's Cushion Funding Account or any other Additional Funds) for the costs the Department incurs in conducting the OU 1 LTOMM in the amount set forth in each Reimbursement Request.

- B. Settling Respondents shall be billed for costs the Department so incurs from and inclusive of the date of the execution of this Order in accordance with 6 NYCRR 375-1.5(b)(3) (each a "Reimbursement Request"). Payments shall be made by Settling Respondents in the amount set forth in each Reimbursement Request from the Department within thirty (30) days of Settling Respondent RACER Trust's receipt of such request/bill.

- C. The Department is solely responsible for reviewing and approving all invoices and associated documentation submitted to the Department by the Department's contractors relating to the OU 1 PDI, RD, and RA, and for submitting any Reimbursement Request to Settling Respondent RACER Trust. Settling Respondents shall have no responsibility, obligation, or authority for, or role in, reviewing or approving invoices submitted by the Department's contractors to the Department, or any other documentation of the Department's costs incurred by the Department in performance of the OU 1 PDI, RD, and RA.

- D. Invoices shall be sent to Settling Respondent RACER Trust at the following address:

Revitalizing Auto Communities Environmental Response Trust  
660 Woodward Avenue, Suite 1521  
Detroit, Michigan 48226  
Attn: M. Brendan Mullen, P.E., Cleanup Manager  
Email: [bmullen@racertrust.org](mailto:bmullen@racertrust.org)

- E. Payment(s) shall be made by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the order of the "New York State Department of Environmental Conservation." If payment is by check, such payment shall be accompanied by the invoice for which the payment is being made and the Case Number of this Order shall be written in the memo section of the check. The check

and invoice shall be sent to the Department of Environmental Conservation, Division of Fiscal Management, 625 Broadway, 10<sup>th</sup> Floor, Albany, NY 12233-4900.

F. This Order, upon execution by Settling Respondents, along with any applicable submissions shall be sent to the Department of Environmental Conservation, Office of General Counsel, 5786 Widewaters Parkway, Syracuse, New York 13214-1867, Attention: Margaret A. Sheen, Esq.

G. Failure to make a payment required in Paragraph III.A and III.B of this Order in the manner prescribed shall constitute a default hereunder. If Settling Respondents so default under this Order, the Department shall be entitled to a penalty of \$5,000 per day for each day until payment required under Paragraphs III.A and III.B of this Order has been made, and Settling Respondents shall pay attorneys' fees and costs incurred by the Department (if any) to enforce these provisions, in addition to the payment and any interest.

H. In the event of Settling Respondents' failure to make the required payment(s), the Department also reserves its remedies under the Trust Consent Decree Paragraph 50 against Settling Respondents.

#### IV. Due Care/Cooperation

A. Settling Respondents shall exercise due care (as defined in 42 U.S.C. § 9601(40)) and shall comply with all applicable local, State and Federal laws and regulations with respect to the existing contamination at the Site. Settling Respondents recognize that the implementation of certain response actions at the Site may interfere with the current owner's use of the Site and may require closure of the owner's or the owner's tenant's/tenants' operations or a part thereof. Settling Respondents agree to cooperate fully with the Department in facilitating notification of the owner regarding the implementation of Department response actions at the Site and further agree, in Settling Respondent RACER Trust's performance of the LTOMM activities at OU 1 of the Site, not to interfere with such Department response actions. The Department agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Respondent's implementation of its LTOMM obligations. In the event Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous waste, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or the environment, Settling Respondents shall immediately take appropriate action to prevent, abate or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements, or any other law, immediately notify the Department of such release or threatened release.

#### V. Certification

By entering into this Order, Settling Respondents certify that they have not caused or contributed to the release or threatened release of a hazardous waste from or onto OU 1 of the Site, nor generated, transported, or disposed of, arranged for, or caused the

generation, transportation, or disposal of hazardous waste from or onto OU 1 of the Site, other than through Department- and USEPA-approved discharge permits and its Department- and USEPA-approved response activities at OU 1 of the Site as of Settling Respondent RACER Trust's effective date of March 31, 2011.

VI. Environmental Easement

A. Settling Respondent RACER Properties recorded the Article 71 Environmental Easement ("EE") for OU 1 on September 8, 2020, on the following tax parcels that make up the OU 1 real property: 023.-08-01.0, 023.-08-02.0, 023.-08-03.0, and 067.-01-20.0. The EE runs with the land in favor of the State and complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR § 375-1.8(h)(2).

B. The EE limits the use and development of the OU 1 real property to industrial use as defined in 6 NYCRR § 375-1.8(g)(2)(iii) or to industrial use as defined in 6 NYCRR § 375-1.8(g)(2)(iv); requires compliance with the Department-approved Site Management Plan; restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by New York State Department of Health or Onondaga County Department of Health and without the Department's written approval; and requires the property owner to complete and submit to the Department a periodic certification of the institutional and engineering controls.

VII. Access

A. Settling Respondents hereby consent, upon reasonable notice under the circumstances presented and to the extent they have legal control over OU 1 of the Site, to grant entry upon OU 1 of the Site by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the hazardous wastes/substances on OU 1 of the Site and by any agent, consultant, contractor, or other person so authorized by the Commissioner for assuring compliance with the Site Management Plan.

B. Settling Respondents, to the extent they have legal control over OU 1 of the Site, shall ensure that lessees and sublessees of OU 1 of the Site provide the same access.

VIII. Release and Covenant Not to Sue

A. So long as the Department timely receives payments, as outlined in Paragraph III of this Order, and the Settling Respondent RACER Trust implements the required LTOMM and Site Management activities set forth in Paragraph II to the extent that Settling Respondent RACER Trust has funding available to perform such activities, then Settling Respondents: (1) shall not be liable to the Department for any statutory or common law cause of action that has been or may be asserted by the State against Settling Respondents arising out of or in connection with Covered Contamination or the disposal, release, and threat of release of hazardous waste (as that term is defined in 6 NYCRR Section 375-1.2(w))

or hazardous substances (as that term is defined in 42 U.S.C. § 9601(14)), in, on, under, or emanating from OU 1, including but not limited to those causes of action for Natural Resource Damages (as such term is defined herein), and the Department covenants not to sue Settling Respondents for such matters; provided, however, that contamination currently existing in, on, under, or emanating from OU 2 is not considered "Covered Contamination", addressed by this Order; and (2) are released from any and all other obligations, responsibilities, and requirements of Consent Order R7-0853-15-06 that pertain specifically to OU 1 of the Site.

B. The terms of this release and covenant not to sue are consistent with those governing the issuance of a Certificate of Completion, including limitations, reopener provisions and extension to successors and assigns, found in 6 NYCRR 375-2.9, excluding the limitation for natural resource damages.

C. Settling Respondents must continue to exercise due care and cooperation as required in Paragraph IV; and Settling Respondents must continue to allow access as required by Paragraph VII, to the extent Settling Respondents exert any legal control over OU 1 of the Site.

D. The Department hereby reserves all of its respective rights concerning, and such release and covenant not to sue shall not extend to, any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum (as defined in Navigation Law §172);
- due to environmental conditions or information related to OU 1 of the Site which were unknown at the time this Order was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- due to Settling Respondents' failure to implement the Order to the Department's satisfaction; or
- due to fraud committed by Settling Respondents in entering into or implementing the Order.

E. Additionally, the Department hereby reserves all of its respective rights concerning, and any such release and covenant not to sue shall not extend to any Settling Respondent: (i) who causes or allows a release or a threat of release at OU 1 of the Site of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2(w)) or petroleum (as that term is defined in Navigation Law § 172(15)), other than Covered Contamination; or (ii) who is otherwise responsible under law for the remediation of the Covered Contamination independent of any obligation that party may have respecting same resulting solely from the execution of this Order on Consent and Administrative Settlement.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to the Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance:

- If with respect to OU 1 of the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party other than a Settling Respondent, nothing in this Order shall be construed or deemed to preclude the State from recovering such claim;
- Except as provided in this Order and in the Trust Consent Decree, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the rights of the Department or of the Trustee of the State's natural resources with respect to any party, including any Settling Respondent;
- Nothing contained in this Order shall prejudice any rights of the Department or the Trustee of the State's natural resources to take any investigatory or remedial action it deems necessary if Settling Respondents fail to comply with the Order or if contamination other than Covered Contamination is encountered at OU 1 of the Site, following notice of such failure and a reasonable opportunity to correct any noncompliance;
- Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers; and
- Nothing contained in this Order shall be construed to affect the Department's right to terminate the Order and this "Release and Covenant Not to Sue" under the terms of the Order at any time during its implementation if Settling Respondents fail to comply substantially with the Order's terms and conditions, following notice of such failure and a reasonable opportunity to correct any noncompliance.

This Release and Covenant Not to Sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event of the Settling Respondents' failure to materially comply with any provision of this Order, following notice of such failure and a reasonable opportunity to correct any noncompliance.

Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or

demands whatsoever that: (i) any Settling Respondent may have against anyone other than the Department, including but not limited to rights of contribution under § 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (ii) the Department may have against anyone other than any of the Settling Respondents and any of their directors, officers, employees, agents, servants, and affiliates that were not responsible under law for the development and implementation of a Remedial Program at OU 1 of the Site prior to the effective date of this Order, and their respective secured creditors.

#### IX. Indemnification

Settling Respondents shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR § 375-2.5(a)(3)(i).

In recognition of the funding limitations under the Trust Consent Decree, the Department acknowledges and agrees that Settling Respondents' indemnity and hold harmless obligations under this Order, if any, are limited to the claims made against and paid pursuant to Settling Respondent RACER Trust's \$25,000,000 Pollution Legal Liability insurance policy.

#### X. Reservation of Rights

A. The Release and Covenant Not to Sue set forth in Paragraph VIII does not pertain to any matters other than those expressly specified in Paragraph VIII. The Department reserves and this Order is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to: (a) claims based on a failure by Settling Respondents to meet a requirement of this Order, including but not limited to Paragraph II (Monitoring and Maintenance), Paragraph VII (Access), Paragraph VIII (Due Care/Cooperation), and Paragraph VI (Environmental Easement).

B. Except as provided in the Release and Covenant Not to Sue in Paragraph VIII, after its issuance and except as otherwise provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Settling Respondents.

C. Except as otherwise provided in this Order, Settling Respondents specifically reserve all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Settling Respondents, and further reserve all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Settling Respondents' compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or breach of standard

of care by Settling Respondents, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action that would inure to the benefit of any third party. Further, Settling Respondents reserve such rights as they may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at OU 1 of the Site as may be provided by law, including but not limited to rights of contribution under Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

## XI. Communications

All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communications from the Settling Respondent shall be sent to:

Jacky Luo  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway, 12<sup>th</sup> Floor  
Albany, New York 12233-7017  
[jacky.luo@dec.ny.gov](mailto:jacky.luo@dec.ny.gov)

Margaret A. Sheen, Esq.  
New York State Department of Environmental Conservation  
100 Hillside Avenue, Suite IW  
5786 Widewaters Parkway  
Syracuse, New York 13214-1867  
[Margaret.sheen@dec.ny.gov](mailto:Margaret.sheen@dec.ny.gov)  
(Correspondence only.)

2. Communications from the Department to Settling Respondents shall be sent to:

Revitalizing Auto Communities Environmental Response Trust  
660 Woodward Avenue, Suite 1521  
Detroit, Michigan 48226  
Attn: M. Brendan Mullen, P.E., Cleanup Manager  
[bmullen@racertrust.org](mailto:bmullen@racertrust.org)

Revitalizing Auto Communities Environmental Response Trust  
P.O. Box 43859  
Detroit, Michigan 48243  
Attn: Carl P. Garvey, General Counsel  
[cgarvey@racertrust.org](mailto:cgarvey@racertrust.org)  
(Correspondence only.)

## XII. Termination

A. Should the release and covenant not to sue set forth in Paragraph VIII herein become null and void: i. *ab initio*, in the event of fraud in the execution or implementation of this Order; or ii. in the event of Settling Respondents' failure to materially comply with any provision of this Order, following notice of such failure and a reasonable opportunity to correct any noncompliance, then neither this Order nor its termination shall affect any liability of Settling Respondents for payment of State Costs, including for implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined in CERCLA, nor shall such alleged fraud or failure to materially comply with the provisions of this Order affect any defenses Settling Respondents may have to such alleged liability.

## XIII. Miscellaneous

A. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

B. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Settling Respondents concerning the actions required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Settling Respondents of their obligation to obtain such formal approvals as required by this Order.

2. i. Except as set forth herein, if Settling Respondents desire that any provision of this Order be changed, they shall make timely written application to the Commissioner with copies to the parties listed in Paragraph XI herein. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a time frame set forth in this Order shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing.

C. 1. If there are multiple parties signing this Order, the terms "Settling Respondent" and "Respondent" shall be read in the plural where required to give meaning to this Order. Further, the obligations of Settling Respondents under this Order are joint and several and the insolvency of or failure by any Settling Respondent to implement any obligations, as required under this Order, shall not affect the obligations of the remaining Settling Respondent(s) to carry out the obligations under this Order.

2. If any Settling Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and



perform obligations under this Order and pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency of or the failure of any of the general partners to implement the requirements of this Order, the remaining general partners shall complete all such requirements.

3. If EPLET, LLC duly executes the "Consent of Additional Signatory" page of this Order, EPLET, LLC will be considered a "Settling Respondent" and "Respondent" solely for purposes of (i) administering the obligations of Settling Respondents RACER Trust and RPLLC under this Order and shall have no separate obligations under this Order; and (ii) Paragraphs VIII and XIII.D. of this Order.

#### D. Contribution Protection.

To the extent authorized under Section 113 of CERCLA (42 U.S.C. § 9613), New York General Obligations Law § 15-108, and any other applicable law (whether by statute or common law or in equity), Settling Respondent and Successors shall be deemed to have resolved their liability, if any, to the State for purposes of contribution protection that extinguishes potential liability of Settling Respondents for persons not party to this Order arising out of "matters addressed" pursuant to and in accordance with this Order.

"Matters Addressed" pursuant to and in accordance with this Order shall mean: (i) all response actions taken to date and Response Costs previously incurred by Settling Respondents or the Department at or with regard to OU 1 of the Site; (ii) all future response actions to be taken and future Response Costs to be incurred by Settling Respondents (including reimbursement or any other payment of State Costs pursuant to this Order) or the Department at or with regard to OU 1 of the site including but not limited to payments required by this Order but excluding future actions and costs related to LTOMM for OU1; (iii) all Response Costs incurred or to be incurred by any person or party in connection with the work performed under this Order; and (iv) Natural Resource Damages at or with regard to OU 1 of the Site.

"Matters Addressed" does not include any claim by the State against Settling Respondents for failure to implement the obligations of this Order.

"Natural Resource Damages" pursuant to and in accordance with this Order shall mean any damages recoverable by the trustee of the State's natural resources pursuant to CERCLA Sections 107(a)(4)(C) and 107(f), 42 U.S.C. SS 9607(a)(4)(C) and 9607(f), and/or any other Federal, State, local or common law or regulation for injury to, destruction of, loss of use of, or impairment of natural resources (including any services such natural resources provide) resulting from the release of Covered Contamination in, on, under, or migrating from OU 1 of the Site.

Furthermore, to the extent authorized under CERCLA Section 113(f)(3)(B), 6 NYCRR § 375-1.5(b)(5), or other applicable law, by entering into this administrative settlement of liability, if any, for some or all of the removal and/or response action and/or for some or all of the costs of such action, Settling Respondents are entitled to seek contribution from any person and nothing in this Order shall prevent Settling Respondents

from pursuing their rights to seek contribution under Section 113(f)(3)(B) of CERCLA, 42 U.S.C. 9613(f)(3)(B), NYCRR § 375-1.5(b)(5), or other applicable law.

Settling Respondents shall include the named trust and limited liability company, their trustees, administrators, managers, members, principals, officers, directors, agents, employees, successors, parents and assigns, all of whom are entitled to the full extent of protection from contribution claims or actions as provided or preserved in this Order.

E. All activities undertaken by Settling Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable State and Federal laws, regulations, and guidance documents.

F. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statute shall have the meaning assigned to them under such statutes or regulations.

G. Settling Respondents' monetary obligations under this Order represent payment for or reimbursement of removal or response costs, and shall not be deemed to constitute any type of fine or penalty. This Order shall be filed in the Office of the Onondaga County Clerk at the expense of Settling Respondents within five (5) days of receipt of an original signed document. Proof of recording shall be provided to the Department within thirty (30) days of the actual filing.

H. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

I. The effective date of this Order is the date on which the Commissioner or the Commissioner's designee signs this Order.

Dated: 3/31/2025

Amanda Lefton, Acting Commissioner  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: Andrew Guglielmi  
Andrew O. Guglielmi, Director  
Division of Environmental Remediation

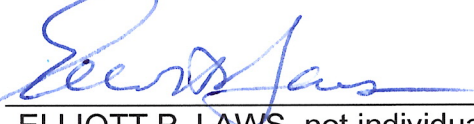
CONSENT BY SETTLING RESPONDENT

Settling Respondent RACER Trust hereby consents to the issuing and entering of this Order on Consent and Administrative Settlement, waives Settling Respondent RACER Trust's right to a hearing herein as provided by law, and agrees to be bound by this Order on Consent and Administrative Settlement.

Settling Respondent:

REVITALIZING AUTO COMMUNITIES  
ENVIRONMENTAL RESPONSE TRUST, a trust formed  
under the laws of the State of New York

By: EPLET, LLC, acting solely in its capacity as  
Administrative Trustee of Revitalizing Auto Communities  
Environmental Response Trust

By:   
ELLIOTT P. LAWS, not individually,  
but acting solely in his capacity  
as Managing Member

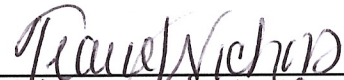
Date Signed: March 24, 2025

District/State of Michigan ) SS:  
City/County of Wayne

On the 24 day of March, 2025, before me a Notary Public for the District/State and City/County aforesaid, personally appeared ELLIOTT P. LAWS, not individually, but solely in his capacity as Managing Member of EPLET, LLC, Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust, a trust organized and existing under the laws of the State of New York, and acknowledged the execution of the foregoing Consent Order for and on behalf of said company and trust, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and seal the day and year aforesaid.

TRACIE L NICHOLS  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires 03-19-2029  
Acting in the County of Wayne

Notary's Signature:   
Notary's Name: Tracie L. Nichols  
Notary Public, District/State of Michigan  
City/County of Wayne  
My Commission Expires: 3/19/2029  
Acting in the County of: Wayne

CONSENT BY SETTLING RESPONDENT

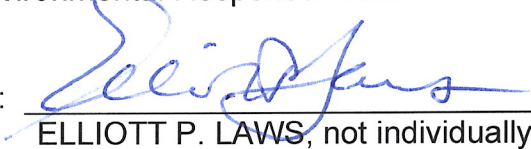
Settling Respondent RACER Properties hereby consents to the issuing and entering of this Order on Consent and Administrative Settlement, waives Settling Respondent RACER Properties' right to a hearing herein as provided by law, and agrees to be bound by this Order on Consent and Administrative Settlement.

Settling Respondent:

RACER PROPERTIES LLC, a Delaware limited liability company

By: Revitalizing Auto Communities Environmental Response Trust, Sole Member of RACER Properties LLC

By: EPLET, LLC, acting solely in its capacity as Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust

By:   
ELLIOTT P. LAWS, not individually,  
but acting solely in his capacity  
as Managing Member


Date Signed: March 24, 2025

District/State of Michigan )  
City/County of Wayne ) SS:

On the 24 day of March, 2025, before me a Notary Public for the District/State and City/County aforesaid, personally appeared ELLIOTT P. LAWS, not individually, but solely in his capacity as Managing Member of EPLET, LLC, Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust, a trust organized and existing under the laws of the State of New York and Sole Member of RACER Properties LLC, and acknowledged the execution of the foregoing Consent Order for and on behalf of said limited liability companies and trust, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and seal the day and year aforesaid.

TRACIE L NICHOLS  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires 03-19-2029  
Acting in the County of Wayne

Notary's Signature:   
Notary's Name: Tracie L. Nichols  
Notary Public, District/State of Michigan  
City/County of Wayne  
My Commission Expires 3/19/2029  
Acting in the County of: Wayne

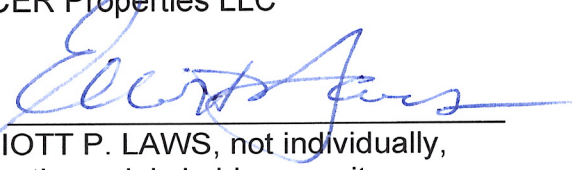


CONSENT OF ADDITIONAL SIGNATORY

In accordance with Paragraph XIII.C.3 of this Order on Consent and Administrative Settlement, EPLET, LLC, hereby consents as an Additional Signatory to the issuing and entering of this Order on Consent and Administrative Settlement.

Additional Signatory:

EPLET, LLC, acting solely in its capacity as Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust, which trust is also Sole Member of RACER Properties LLC

By:   
ELLIOTT P. LAWS, not individually,  
but acting solely in his capacity  
as Managing Member

Date Signed: March 24, 2025

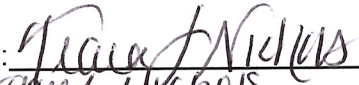
District/State of Michigan ) SS:

City/County of Wayne )

On the 24 day of March, 2025, before me a Notary Public for the District/State and City/County aforesaid, personally appeared ELLIOTT P. LAWS, not individually, but solely in his capacity as Managing Member of EPLET, LLC, Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust, a trust organized and existing under the laws of the State of New York and Sole Member of RACER Properties LLC, and acknowledged the execution of this Consent of Additional Signatory page on behalf of said limited liability companies and trust, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and seal the day and year aforesaid.

TRACIE L. NICHOLS  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires 03-19-2029  
Acting in the County of Wayne

Notary's Signature:   
Notary's Name: Tracie L. Nichols  
Notary Public, District/State of Michigan  
City/County of Wayne  
My Commission Expires: 3/19/2029  
Acting in the County of: Wayne

**EXHIBIT A**  
**Site Map**



Towns of Salina & DeWitt  
County of Onondaga  
State of New York

Prepared On:  
March 13, 2025

Imagery Date:  
April 15, 2022

**EXHIBIT A**  
**Depiction of GM-IFG Subsite of**  
**Onondaga Lake Superfund Site**  
**Showing OU1 & OU2 (LCDM) Areas**

11

Factory Ave

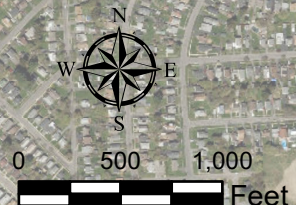
Town Line Rd

90

Former  
GM-IFG  
Building

298

 **Extent of OU1**  
 **Extent of OU2**



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community