

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site under Article 27, Titles 9 and 13
of the Environmental Conservation Law
by

GM Components Holdings, LLC

Respondent.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # B8-0531-98-06

Site #828064

WHEREAS,

1. A. i. The New York State Department of Environmental Conservation (“Department”) is responsible for the administration of inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law (“ECL”) and Part 375 of the Official Compilation of Codes, Rules and Regulations (“6 NYCRR”) (referred to collectively herein as “Inactive Hazardous Waste Disposal Site Remedial Program”) and may issue orders consistent with the authority granted to the Commissioner by such statute.

ii. The Department is responsible for the administration of the Resource Conservation and Recovery Act Program (a/k/a the “Industrial Hazardous Waste Management Program”) (“RCRA”) in New York State, including the RCRA Corrective Action Program, pursuant to Article 27, Title 9 of the ECL and Parts 370–373 of 6 NYCRR. EPA has authorized the Department’s RCRA program as being at least as equivalent to the federal RCRA program.

B. The Department may issue orders pursuant to, *inter alia*, ECL Article 27, Title 9 and ECL § 71-2727.3. Pursuant to ECL 71-2727.3.b, whenever on the basis of any information the commissioner determines that there is or has been a release of hazardous waste or constituents into the environment from a facility which has or has had interim status according to regulations adopted pursuant to Title 7 or 9 or Article 27 of this Chapter but which did not receive a final status permit, the commissioner may issue an order requiring corrective action or such other response measures as he deems necessary to protect human health or the environment.

C. 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.

D. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 9 and Title 13, ECL 3-0301 and ECL Article 71 Title 27, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. GM Components Holdings, LLC ("Respondent") is the owner and operator of an active automotive component manufacturing plant located at 1000 Lexington Avenue, Rochester, New York (the "facility"). The facility was owned and operated by General Motors Corporation (subsequently known as Motors Liquidation Company) before it was conveyed to Delphi Automotive Systems LLC (now known as DPH-DAS LLC) ("Delphi") by deed dated December 10, 1998 and recorded in the Monroe County Clerk's Office on January 28, 1999. Delphi conveyed the facility to Respondent by deed dated October 6, 2009 and recorded in the Monroe County Clerk's Office on October 15, 2009.

3. Included in the facility is a site that is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites* in New York State as *Delphi Automotive Systems*, Site Number 828064 with a Classification "2" pursuant to ECL 27-1305 (the "Site"). The Site is an approximately 86.5 acre triangular shaped property bounded on the west by Mt. Read Boulevard, on the north by Driving Park Avenue, and on the south by Lexington Avenue. Attached as Exhibit "A" is a map of the Site (tax map parcel # 090.79-1-1.002), showing its general location and a map showing a more detailed site plan.

4. The facility filed an "interim status" application with the United States Environmental Protection Agency ("EPA") in 1980 under the federal Resource Conservation and Recovery Act ("RCRA") (EPA ID # NYD002215234) and submitted in 1982 a RCRA Part B permit application to operate a hazardous waste management facility. The EPA issued to the facility a RCRA Part B Permit that was effective as of February 29, 1984. The facility obtained interim status, pursuant to Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") section 373-1.3(c) and operated a hazardous waste management facility under interim status.

5. On December 28, 1987, the Department requested that the facility apply for a state permit, pursuant to 6 NYCRR Part 373 ("Part 373 Permit"). Rather than apply for a Part 373 Permit, the facility closed its hazardous waste management operation pursuant to the requirements of a Department approved closure plan. By letter dated January 25, 1990 to EPA Region 2 (copy to Department representatives), the facility advised that it had completed closure.

6. By letter dated July 24, 1990, the Department confirmed receipt of the owner/operator and independent professional engineer's certification dated January 18, 1990 of RCRA closure for the facility and advised in pertinent part as follows:

This letter is to confirm the receipt of owner/operator and independent professional engineer's certification dated January 18, 1990, of RCRA closure for this facility. We now consider this facility officially closed. Your authority to operate as a Treatment, Storage, and Disposal Facility (TSDF) is terminated.

Please be advised that the United States Environmental Protection Agency has determined that the corrective action provisions of the Hazardous and Solid Waste

Amendments (HSWA), Section 3008(h), apply to all TSDF's which have acquired interim status.

The New York State Department of Environmental Conservation has established a program to evaluate the corrective action measures necessary at closed and closing facilities within the State. Once the corrective action provisions of HSWA have been met by the facility or determined not to be necessary at the facility, the facility can have their interim status terminated.

7. The Site still has interim status under RCRA and, therefore, is subject to corrective action under that program (RCRA ID #NYD002215234).

8. By letter dated April 6, 2007, EPA advised the facility that it had been placed on the Government Performance and Results Act (GPRA) RCRA corrective action baseline for the year 2020 and that EPA and the Department expect that a final site wide remedy will be in place at the facility on or before 2020.

9. Delphi entered into a consent order with the Department that was signed by the Department on February 4, 2002, pursuant to which a Remedial Investigation/Feasibility Study (the "RI/FS" Work) was conducted. The RI/FS Work satisfies the Facility Assessment, Facility Investigation, and the Corrective Measures Study requirements of a RCRA Corrective Action Program. The area that was investigated as part of the RI/FS Work included an area on the south side of Lexington Avenue that included a parking lot (the "South Parcel"). Attached as Exhibit "A-1" is a map from the RI/FS Order of the area that was the subject of the RI/FS Work and it shows the South Parcel (tax map parcel # 105.23-1-1).

10. The Department issued a Record of Decision ("ROD") for the Site on March 31, 2011 in which it selected the remedy for the Site. A copy of the Declaration Statement to the ROD is attached to this Order as Exhibit "B," and based upon the RI/FS Work, the South Parcel was not included in the defined Site.

11. The Department and Respondent agree that the goals of this Order are for Respondent to (i) implement a remedial program in accordance with the ROD-selected remedy, (ii) implement a RCRA Corrective Action Program, and (iii) reimburse the State's administrative costs to the extent set forth in this Order. The remedial program implemented in accordance with the ROD-selected remedy and the RCRA Corrective Action Program shall be referred to herein collectively as the "Remedial Program."

12. Respondent consents 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; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

13. Solely with regard to the matters set forth below, Respondent hereby waives 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. Respondent consents to and agrees 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 Respondent pursuant to this Order.

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

I. Initial Submittal

Respondent was not in existence until June 2009 and it took title to the Site by deed dated October 6, 2009 and recorded in the Monroe County Clerk's Office on October 15, 2009. However, Respondent understands that prior owners of the Site have provided the Department with information that falls within the categories of information described in Exhibit "C" (Records Search Report). Based on the foregoing, the Department agrees that prior submissions satisfy the requirements of Exhibit "C" and an additional report will not be required.

II. Citizen Participation Plan

The Citizen Participation Plan referenced in the Department's October 13, 2017 letter captioned "Delphi Automotive Systems Site No. 828064 Draft Citizen Participation Plan dated February 2015" is approved. The Citizen Participation Plan is deemed to be incorporated into and made a part of this Order.

III. Development, Performance, and Reporting of Work Plans

The Site must satisfy the requirements of the law and regulations cited in Paragraph 1 of this Order. The Department has determined that the Respondent's satisfaction of its obligations under this Order shall satisfy the Respondent's obligations under both the Inactive Hazardous Waste Disposal Site Remedial Program and the RCRA Corrective Action Program.

A. Work Plans

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. §§ 9601 *et seq.* The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a) and 375-6. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

Each Work Plan submitted shall use one of the following captions on the cover page:

1. Site Characterization (“SC”) Work Plan: a Work Plan whose objective is to identify the presence of any hazardous waste disposal at the Site;
2. Remedial Investigation/Feasibility Study (“RI/FS”) Work Plan: a Work Plan whose objective is to perform a Remedial Investigation and a Feasibility Study;
3. Interim Remedial Measure (“IRM”) Work Plan: a Work Plan whose objective is to provide for an Interim Remedial Measure;
4. Remedial Work Plan: a Work Plan whose objective is to provide for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD; or
5. Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

B. Submission/Implementation of Work Plans

1. (a) The Department may request that Respondent submit additional or supplemental Work Plans for the Site. Within thirty (30) days after the Department’s written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) Days after such election.

(b) Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

(c) Any request made by the Department under Subparagraph III.B shall be subject to dispute resolution pursuant to Paragraph XV.

2. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

3. During all field activities conducted under this Order, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision.

C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph III.A or to ensure that the Remedial

Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall provide written notification as provided at 6 NYCRR 375-1.6(d)(3) as to whether it will modify the Work Plan or invoke dispute resolution.

D. Remedial Work Plan

1. The Remedial Work Plan (“RWP”) referenced in the Department’s July 30, 2020 letter captioned “Revised Remedial Work Plan (RWP) dated July 6, 2020, Delphi Automotive Systems Site, 1000 Lexington Ave. Rochester, Site Number 828064” is approved with the clarifications set forth in the same letter. The Respondent shall implement the RWP in accordance with the progress schedule set forth therein. A copy of the RWP Table of Contents is attached as Exhibit “D” to this Order.

2. Prior to the effective date of this Order, Respondent assumed operation of the following IRMs at the Site: Blasted Bedrock Trench Groundwater Migration Control System, Tank Farm Area LNAPL Recovery System, Building 22 Area LNAPL Recovery System, the East Side Groundwater Recovery and Treatment System, the Automated LNAPL Recovery Systems, and the Building 1 Sub-slab Depressurization System (referred to herein as the “Ongoing IRMs”). The Ongoing IRMs are described in the RWP. The Department hereby approves and authorizes the continued performance of the Ongoing IRMs as part of the Respondent’s implementation of the Remedial Program under the RWP. Any modifications to the Ongoing IRMs shall not be undertaken without written Department approval.

E. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) (if a final report is required under the RWP) and a Final Engineering Report (“FER”) as provided at 6 NYCRR 375-1.6(c). Approval of the FER will also constitute acknowledgement of “RCRA Corrective Action Complete With Controls” as that term is defined in EPA’s Final Guidance on Completion of Corrective Action Activities at RCRA Facilities, 68 Fed. Reg. 8757 (Feb. 25, 2003).

2. Any final report or final engineering report that includes construction activities shall include “as built” drawings showing any changes made to the remedial design or the IRM.

3. In accordance with the ROD-selected remedy, the final engineering report for the Site will require Site Management. Respondent shall submit an annual report by the 1st Day of the month following the anniversary of the start of the Site Management unless otherwise approved by the Department. Such annual report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

F. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall elect as provided at 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

3. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

G. Department's Issuance of a ROD

The Department issued the ROD for the Site on March 31, 2011 in which it selected the remedy for the Site. A copy of the Declaration Statement from the ROD is attached to this Order as Exhibit "B."

H. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

IV. Progress Reports

Respondent shall submit written progress reports to the parties identified in Subparagraph XIV.A.1 by the 10th Day of each month commencing with the month subsequent to the effective date of this Order and ending with the "Termination Date", as that term is defined in paragraph XVI.A of this Order, unless a different frequency is set forth in an approved Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with the Site during the reporting period, including quality assurance/quality control information; information regarding percentage of completion,

unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

V. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph V.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 375-1.5(b)(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph V.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and Respondent's position prevails.

VI. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VII. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Order, Respondent shall pay to the Department a sum of money which shall represent reimbursement for past State Costs as provided at 6 NYCRR 375-1.5(b)(3) as set forth in Exhibit "E" to this Order.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subparagraph VII.A, for work performed at or in connection with the Site through and including the Termination Date as provided at 6 NYCRR 375-1.5(b)(3).

C. Personal service costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Respondent at the following address:

Geraldine Barnuevo
Senior Manager, Environmental Strategies and Sustainability
General Motors LLC
30400 Van Dyke Ave.
Warren MI 48093-3268
(248) 255-2790

geraldine.barnuevo@gm.com

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Respondent may contest invoiced costs as provided at 6 NYCRR 375-1.5(b)(3)(v) and (vi).

VIII. Financial Assurance

A. Attached as Exhibit “F” to this Order is an estimate of the cost to implement the Remedial Program that has been prepared by H & A of New York, LLP (referred to herein as the “Cost Estimate”). The Department accepts the Cost Estimate for purposes of identifying the required amount of financial assurance for this Site.

B. Within ninety (90) days following the effective date of this Order, Respondent shall provide financial assurance for implementation of the Remedial Program in the amount of the Cost Estimate by submitting to the Department a surety bond in the form attached as Exhibit “G” to the Order or a letter of credit in the form attached as Exhibit “H” to this Order. The selected form of financial assurance shall provide for payment of the amount of the Cost Estimate into a standby trust fund, which shall be in the form of the trust agreement set forth as Exhibit “I” to the Order.

C. While this Order is in effect, the Cost Estimate shall be subject to adjustment for inflation as provided in 6 NYCRR 373-3.8(e). However, instead of adjusting the Cost Estimate within 60 days prior to the anniversary date of the establishment of the financial instruments required by this Order, the Respondent must adjust the Cost Estimate within 60 days prior to April 1st of each year. This modification does not apply to the Respondent if it uses the financial test or guarantee provided in ECL section 27-0917, or 6 NYCRR 373-2.8 or 373-3.8.

D. During the implementation of the Remedial Program, the Respondent may switch its existing financial assurance method to another financial assurance method that is identified in Paragraph VIII, ECL section 27-0917, or 6 NYCRR 373-2.8 or 373-3.8 in accordance with the foregoing provisions, as applicable, and its existing financial assurance instrument(s).

E. Respondent may combine more than one financial assurance method to provide the financial assurance required under the Order provided that each financial assurance method is identified in Paragraph VIII, ECL section 27-0917, or 6 NYCRR 373-2.8 or 373-3.8 and complies with 6 NYCRR 373-3.8(f)(6).

IX. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, 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 require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves 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 Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it 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 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).

X. Indemnification

Respondent 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).

XI. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

XII. Environmental Easement

In accordance with the ROD and Remedial Work Plan, Respondent shall submit to the Department for approval a draft Environmental Easement to run with the land in favor of the State that complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Following approval of the draft Environmental Easement by the Department, the Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2) and record the Environmental Easement in the Monroe County Clerk's office.

XIII. Change of Use

Respondent shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Site in accordance with the provisions of 6 NYCRR 375-1.11(d) unless that activity is specifically authorized in a Department-approved Site Management Plan. In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Respondent of such determination within forty-five (45) days of receipt of such notice.

XIV. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail, and shall comply with Subparagraph XIV.D.

1. Communication from Respondent shall be sent to:

David Pratt, Regional Hazardous Waste Remediation Engineer
Division of Environmental Remediation
New York State Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414
david.pratt@dec.ny.gov

Note: two hard copies and one electronic copy of approved work plan documents are required, and one hard copy and one electronic copy of draft documents are required.

With copies to:

Julia Kenney
New York State Department of Health
N.Y.S. Department of Health
Empire State Plaza
Corning Tower, Room 1787
Albany, NY 12237
(518) 402-7860
julia.kenney@health.ny.gov

Note: two copies of work plans are required.

Dudley Loew, Acting Regional Attorney
New York State Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414
(585) 226-5368
dudley.loew@dec.ny.gov
Correspondence only

2. Communication to be made from the Department shall be sent to:

James Hartnett
General Motors LLC
(315) 856-0211
jim.f.hartnett@gm.com

Geraldine Barnuevo
Manager, Environmental Strategies and Sustainability
General Motors LLC
30400 Van Dyke Ave.
Warren MI 48093-3268
(248) 255-2790
geraldine.barnuevo@gm.com

Kenneth C. Gold
General Motors Legal Staff
General Motors LLC
General Motors Global Headquarters
300 Renaissance Center
MC 482-C23-A68
Detroit, Michigan 48265
(313) 667-9980
kenneth.gold@gm.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph XIV or in Paragraph VII.

D. The Department has implemented an Environmental Information Management System (“EIMS”). The EIMS requires that electronic data be provided in specific formats. In an effort to better manage environmental data, the Department is requiring that all data submissions be in a Department-approved Electronic Data Deliverable (“EDD”) format. All work plans and reports (including all attachments and appendices) shall be submitted in print as well as in an electronic format that is acceptable to the Department.

XV. Dispute Resolution

A. In the event disputes arise under this Order, Respondent may, within fifteen (15) days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XVI. Termination of Order

A. This Order will terminate upon the Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program (the "Termination Date").

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VII and X shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph V so long as such obligations accrued on or prior to the Termination Date.

XVII. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2, and Part 373, the provisions of which that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

D. 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.

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities 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 Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control. Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XIV.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XIV.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XVII.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable

under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph III.H.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by 6 NYCRR 375-1.5(b)(5).

H. 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.

I. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

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

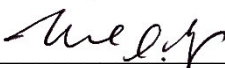
L. The effective date of this Order is the 10th Day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

September 18, 2020

BASIL B. SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

EXHIBIT "A"

Map of Site

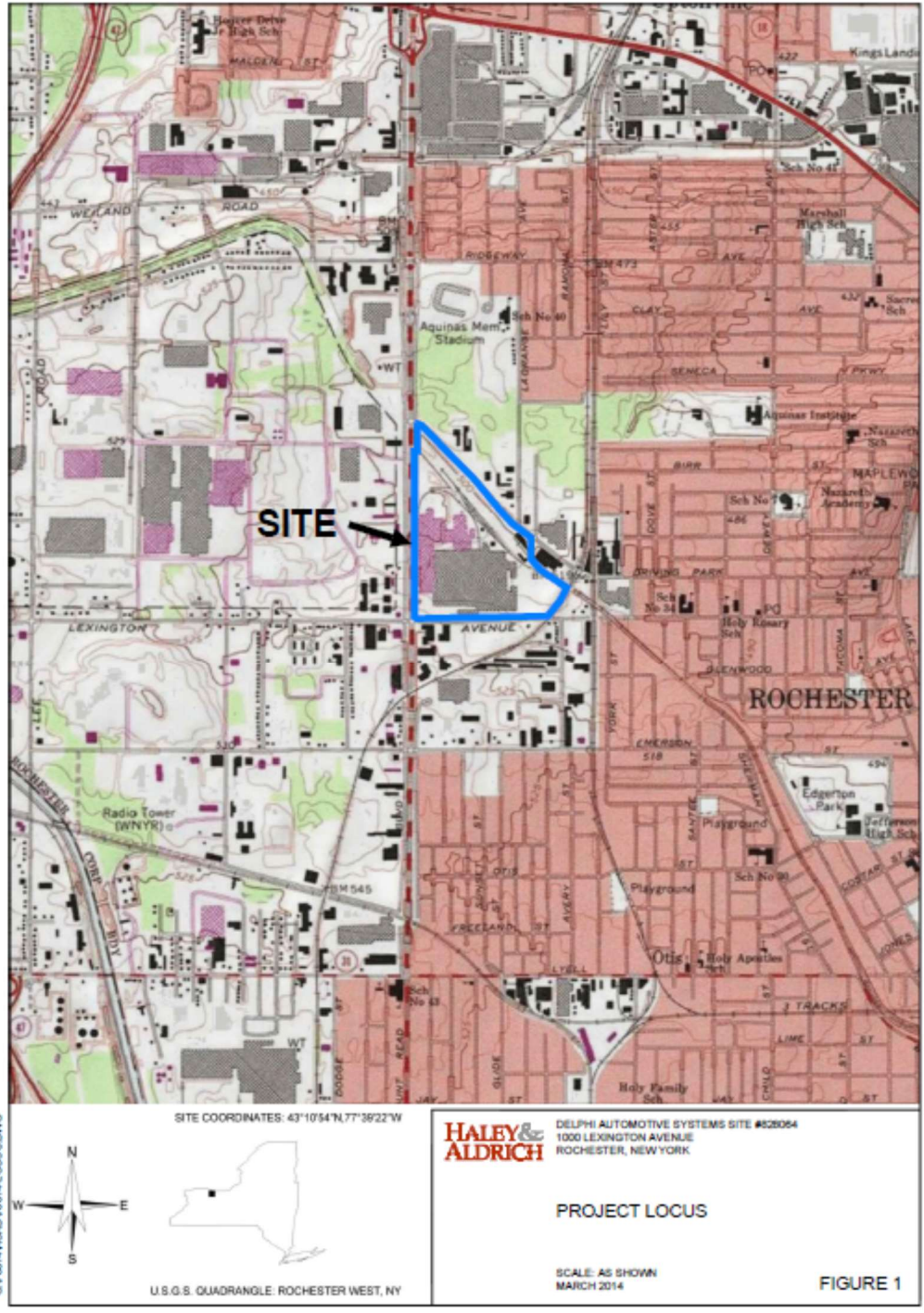
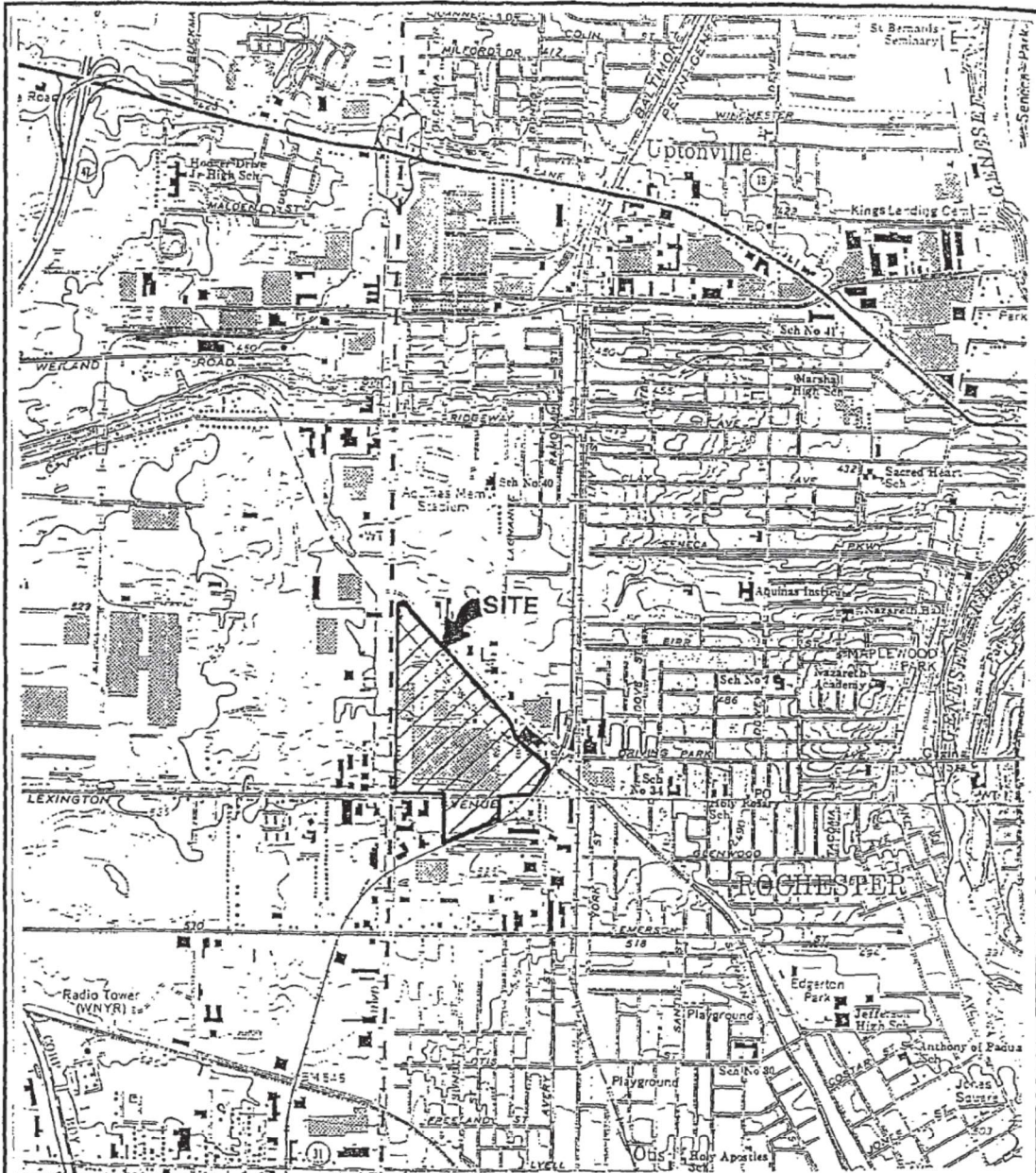




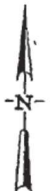
EXHIBIT "A-1"

Map of Site under RI/FS Order

FILE NO. - 70014-052



LATITUDE: 43° 10' 52" N LONGITUDE: 77° 39' 23" W



QUADRANGLE LOCATION

U.S.G.S. QUADRANGLE: ROCHESTER, WEST, N.Y.

H & A OF NEW YORK
 Geotechnical Engineers & Environmental Consultants

DELPHI AUTOMOTIVE SYSTEMS
 LEXINGTON AVENUE FACILITY
 ROCHESTER, NEW YORK

PROJECT LOCUS

SCALE: 1"=2000'

EXHIBIT “B”

DECLARATION STATEMENT – RECORD OF DECISION

DECLARATION STATEMENT - RECORD OF DECISION

Delphi Automotive Systems
State Superfund Project
Rochester, Monroe County
Site No. 828064
March 2011

Statement of Purpose and Basis

This document presents the remedy for the Delphi Automotive Systems site, a Class 2 inactive hazardous waste disposal site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 375, and is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan of March 8, 1990 (40CFR300), as amended.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the Delphi Automotive Systems site and the public's input to the proposed remedy presented by the Department. A listing of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

Description of Selected Remedy

The elements of the selected remedy are as follows:

1. Continued operation of the remedial systems installed as part of the RCRA corrective actions undertaken at the site, with the following evaluation and enhancements:
 - LNAPL recovery will continue in the Building 22 and the Tank Farm areas. Additional LNAPL recovery methods will be implemented expand the area and volume of NAPL recovery, in a manner allowing for continued facility manufacturing operations in the areas affected by LNAPL.
 - An effectiveness study will evaluate NAPL in areas adjacent to the existing NAPL collection points to determine if more aggressive collection techniques are required. Methods will be considered include, but are not limited to: surfactant enhanced recovery, vacuum enhanced recovery and/or additional recovery wells, etc.
 - The continued operation of the Groundwater Migration Control systems with the addition of additional recovery wells. The operation of the current migration control systems in concert with the recovery of LNAPL interior to the Site will reduce the mass flux of dissolved phase contaminants. At a minimum, expansion of the groundwater migration control system will require the installation of at least two (2) bedrock groundwater

recovery wells north of the Eastern Parking Lot.

- Continue to maintain a positive pressure in site buildings to address vapor intrusion in areas of contamination in the subsurface and evaluation of the effectiveness and extent of the mitigation provided by this approach.
2. The existing buildings, pavement and lawns at the site will form a site cover, there is currently no exposed surface soil to be addressed. A site cover will be maintained as a component of any future site development, which will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper one foot of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required it will be a minimum of one foot of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for industrial use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d).
 3. Imposition of an institutional control in the form of an environmental easement for the controlled property that:
 - a. requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8 (h)(3).
 - b. allows the use and development of the controlled property for industrial uses as defined by Part 375-1.8(g), although land use is subject to local zoning laws;
 - c. restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH;
 - d. prohibits agriculture or vegetable gardens on the controlled property; and
 - e. requires compliance with the Department approved Site Management Plan.
 4. A Site Management Plan is required, which includes the following:
 - a. an Institutional and Engineering Control Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and/or engineering controls remain in place and effective:

Institutional Controls: The Environmental Easement discussed in Paragraph 3 above.

Engineering Controls: The remedial systems in Paragraph 1 and site cover discussed in Paragraph 2.

This plan includes, but may not be limited to:

- i. an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
 - ii. descriptions of the provisions of the environmental easement including any land use and/or groundwater use restrictions;
 - iii. a provision for evaluation of the potential for soil vapor intrusion in the existing on-site buildings currently subject to positive pressure and for any buildings developed on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion;
 - iv. provisions for the management and inspection of the identified engineering controls;
 - v. maintaining site access controls and Department notification; and
 - vi. the steps necessary for the periodic reviews and certification of the institutional and/or engineering controls;
- b. a Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to: include all that apply and re-number as appropriate
- i. monitoring of groundwater to assess the performance and effectiveness of the remedy;
 - ii. a schedule of monitoring and frequency of submittals to the Department;
 - iii. monitoring for vapor intrusion for any buildings occupied or developed on the site, as may be required pursuant to item a.iii. above; and
- c. an Operation and Maintenance Plan to ensure continued operation, maintenance, monitoring, inspection and reporting of for any mechanical or physical components of the remedy. The plan includes, but is not limited to:
- i. compliance monitoring of treatment systems to ensure proper O&M as well as providing the data for any necessary permit or permit equivalent reporting;
 - ii. maintaining site access controls and Department notification; and
 - iii. providing the Department access to the site and O&M records.

New York State Department of Health Acceptance

The New York State Department of Health (NYSDOH) concurs that the remedy for this site is protective of human health.


Declaration

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective. This remedy utilizes permanent solutions and alternative treatment or resource recovery technologies, to the maximum extent practicable, and satisfies the preference for remedies that reduce toxicity, mobility, or volume as a principal

element.

MAR 31 2011

Date



Dale A. Desnoyers, Director
Division of Environmental Remediation

EXHIBIT "C"

RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.
2. A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.
3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:
 - (i) a history and description of the Site, including the nature of operations;
 - (ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;
 - (iii) a description of current Site security (i.e. fencing, posting, etc.); and
 - (iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

EXHIBIT "D"
REMEDIAL WORK PLAN
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Appendix B – Indoor Air Quality Monitoring Plan

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Appendix C – Environmental Easement Template

EXHIBIT "E"
COST SUMMARY

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Bureau of Program Management
625 Broadway, 12th Floor, Albany, NY 12243-7012
P: (518) 402-9734 (F: (518) 402-9722
www.dec.ny.gov

**Transmitted via E-Mail
MEMORANDUM**

TO: Dudley Loew, Asst. Reg. Attorney, Office of General Counsel, Region 8
FROM: Karen Diligent, Chief, RMRS, Bureau of Program Management, DER *KBD*
SUBJECT: Cost Summary – Delphi Automotive Systems, Site #828064
DATE: May 14, 2020

This cost recovery summary has been prepared in response to your May 1, 2020, request. The following summarizes costs incurred by the New York State Department of Environmental Conservation (DEC) and the New York State Department of Health (DOH) for the noted time periods. There may be additional future costs associated with this site that are not included in this summary. Please contact the project manager to determine if additional future costs are anticipated.

The total unreimbursed costs incurred by the State in association with the Delphi Automotive Systems Site are \$185,599.23. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. Please note that if the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the State Comptroller and are not included in this summary.

DEC costs for this site have been included from October 15, 2009 through April 1, 2020 (the latest available data). DOH costs for this site have been included from October 15, 2009 through September 25, 2013, since they were readily available. Please note that there are no open contracts for this site for which we have outstanding obligations.

Please contact Sue Bolesky at (518) 402-9732, if you have any questions on this summary.

Attachments

ec: K. Cloyd, Region 8
D. Pratt, Region 8



EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF ENVIRONMENTAL REMEDIATION
 BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: Delphi Automotive Systems
 SITE NO.: 828064
 TIME FRAME: DEC 10/15/09 - 04/01/20
 TIME FRAME: DOH 10/15/09 - 09/25/13

<u>COST CATEGORY</u>	<u>AMOUNTS</u>	<u>EXHIBIT NO.</u>
DIRECT PERSONAL SERVICES	\$91,987.04	
FRINGE	\$50,323.92	
INDIRECT	\$39,769.70	
<i>PERSONAL SERVICES SUBTOTAL</i>	<i>\$182,080.66</i>	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	\$0.00	
<i>NON-PERSONAL SERVICES SUBTOTAL</i>	<i>\$0.00</i>	
DEC TOTAL	\$182,080.66	
DOH TOTAL	\$3,518.57	III
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	N/A	
<i>DEC & DOH TOTAL</i>	<i>\$185,599.23</i>	
COST CAP (IF APPLICABLE)	N/A	
GRAND TOTAL	\$185,599.23	

EXHIBIT “F”

**REMEDIAL PROGRAM
IMPLEMENTATION COST ESTIMATE**

	INSTALLATION	OPERATION & MAINTENANCE	DECOMM.	TOTAL
Groundwater Treatment	\$0	\$2,527,290	\$100,000	\$2,627,290
Migration Control	\$0	\$1,602,330	\$6,250	\$1,608,580
Building 22 LNAPL/PCB Recovery	\$0	\$111,815	\$10,000	\$121,815
Soil Vapor Extraction	\$0	\$369,840	\$10,625	\$380,465
Sub-Slab Depressurization	\$0	\$1,681,680	\$37,500	\$1,719,180
Groundwater Sampling	\$0	\$1,535,760	\$118,125	\$1,653,885
LNAPL Recovery	\$0	\$775,560	\$9,720	\$785,280
TOTAL	\$0	\$8,604,275	\$292,220	\$8,896,495

Dated: August 11, 2020

EXHIBIT "G"

[Note: NYSDEC only accepts payment bonds. Such bonds must be worded as follows, except that instructions in brackets and yellow highlight are to be replaced with the relevant information and such bracketed text deleted, including this note.]

SURETY BOND

Bond Number: _____

Date bond executed: _____
[If more than one Surety, identify bond number with respective Surety]

Effective date: _____

Principal: _____
(Legal name and business address of owner or operator)

Type of organization: _____
(Insert "individual," "joint venture," "partnership," or "corporation")

State of Incorporation: _____

Surety: _____

(Name(s) and business address(es) of Surety(ies))

Obligee: New York State Department of Environmental Conservation

EPA identification numbers, name, address, and corrective action amount for each facility guaranteed by this bond.

EPA ID Number: _____

Facility Name: _____

Address: _____

Corrective Action: \$ _____

Total penal sum of bond: \$ _____
(payable in good and lawful money of the United States of America)

NOW, THEREFORE, Know All Persons By These Presents, that we, the Principal and Surety hereto are held and firmly bound to NYSDEC in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, pursuant to the Order on Consent and Administrative Settlement with the New York State Department of Environmental Conservation Index # B8-0531-98-06 (Registry Site #828064) (the "Order"), to provide financial assurance for the Remedial Program which includes RCRA Corrective Action;

WHEREAS said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order is issued by the Commissioner ("Commissioner" means the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's designee) or a United States district court or other court of competent jurisdiction due to the Principal's failure to implement the Remedial Program in accordance with the Order,

OR, if the Principal shall provide alternate financial assurance, as specified in Paragraph VIII of the Order, ECL section 27-0917, or 6 NYCRR 373-2.8 or 373-3.8, as applicable, and obtain the Commissioner's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Commissioner from the Surety, then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to implement the Remedial Program in accordance with the Order. Upon notification by the Commissioner that the Principal has failed to implement the Remedial Program in accordance with the Order, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the Commissioner.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of said penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail, return receipt requested, to the Principal and the Commissioner, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Commissioner.

IN WITNESS WHEREOF, the Principal and Surety have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and that the wording of this surety bond is substantially equivalent to the wording specified in 6 NYCRR 373-2.8(j)(2), as such regulations were constituted on the date this bond was executed, with the exception of modifications to language referencing 'closure and/or post-closure' to reflect the Principal's obligation to implement the Remedial Program under the Order.

PRINCIPAL

(Signature(s)) _____

(Name(s)) _____

(Title(s)) _____

(Corporate Seal)

CORPORATE SURETY(IES)

(Name and Address)

State of Incorporation: _____

Liability Limit: (For each facility, and in the aggregate)

\$ _____

(Signature(s)) _____

(Name(s) and Title(s)) _____

(Corporate Seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond Premium: \$ _____

[SELECT ONE OF THE FOLLOWING ACKNOWLEDGEMENTS for PRINCIPAL and DELETE THE ONE NOT NEEDED]

(ACKNOWLEDGEMENT BY PRINCIPAL, UNLESS IT BE A CORPORATION)

STATE OF _____ :
: SS.:

COUNTY OF _____ :

On this day of _____, 20 __, before me personally came _____ to me known and known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that (s)he executed the same.

_____ Notary Public

(ACKNOWLEDGEMENT BY PRINCIPAL, IF A CORPORATION)

STATE OF _____ :
: SS.:

COUNTY OF _____ :

On this day of _____, 20 __, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the corporation described in and which executed the within instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like _____ order.

_____ Notary Public

**(ACKNOWLEDGEMENT BY SURETY COMPANY;
PREPARE SEPARATE ACKNOWLEDGEMENT FOR EACH SURETY)**

STATE OF _____ :

: SS.:

COUNTY OF _____ :

On this day of _____, 20 ____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the of _____, (insert name of Surety), the corporation described in and which executed the within instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like _____ order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided by the laws of the State of New York.

_____ Notary Public

EXHIBIT “H”

[Note: Letter of Credit must be worded as follows, except that instructions in brackets and yellow highlight are to be replaced with the relevant information and such bracketed text deleted, including this note.]

Irrevocable Standby Letter of Credit

[Name and address of banking establishment]

[Name]

[Address]

Date of Issue: [MM/DD/YYYY]

Date of Expiry: [MM/DD/YYYY]

Applicant:

[Name]

[Address]

Beneficiary:

Commissioner

New York State Department of Environmental Conservation

625 Broadway

Albany, New York 12233-1011

Re: Letter of Credit No. [XXXXXXX]

Dear Sir or Madam:

We hereby establish and open our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [Applicant’s name and address] up to the aggregate amount of [insert amount of dollars in words] U.S. dollars (\$###,###.00), available upon presentation of:

- (1) your sight draft, bearing reference to this Letter of Credit No. [XXXXXXX], and
- (2) your signed statement reading as follows: “I certify that the amount of the draft is payable pursuant to a determination by the Commissioner that the Applicant has failed to perform the Remedial Program in accordance with the Order on Consent and Administrative Settlement with the New York State Department of Environmental Conservation Index # B8-0531-98-06 (Registry Site #828064) (the “Order”).”

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on

each successive expiration date thereafter, unless, at least 120 days before the current expiration date, we notify both you and [Applicant's name] by certified mail, return receipt requested, that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft and the above-referred to signed statement for 120 days after the date of receipt by both you and [Applicant's name], as shown on the signed return receipts.

The [insert name of bank issuing letter of credit] agrees that whenever this letter of credit is drawn on, under and in compliance with the terms of this letter of credit, that [insert name of bank issuing letter of credit] shall duly honor such draft upon presentation to [insert name of bank issuing letter of credit] and [insert name of bank issuing letter of credit] shall deposit the amount of the draft into the standby trust fund of [Applicant's name] in accordance with the Commissioner's instructions ("Commissioner" means the Commissioner of the New York State Department of Environmental Conservation or the commissioner's designee).

If the Applicant does not establish alternative financial assurance, as specified in Paragraph VIII of the Order, and obtained written approval of such alternate assurance from the Commissioner within 90 days after receipt by both the Applicant and the Commissioner of a notice from the [insert name of bank issuing letter of credit] that it has decided not to extend this letter of credit beyond the current expiration date, the Commissioner will draw on this letter of credit. The Commissioner may delay the drawing if [insert bank] grants an extension of the term of the credit. During the last 30 days of any such extension, the Commissioner will draw on the letter of credit if the Applicant has failed to provide alternative financial assurance as specified in Paragraph VIII of the Order and obtained written approval of such assurance from the Commissioner.

We certify that the wording of this letter of credit is substantially equivalent to the wording specified in 6 NYCRR 373-2.8(j)(3), as such regulations were constituted on the date shown immediately below, with exception of the modification to the certification statement and the paragraph above.

Very truly yours,

[insert name of bank issuing credit]

By: _____ [signature]

[insert name and title of authorized employee or officer of bank issuing letter of credit]

Date: [MM/DD/YYYY]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code of the State of New York."]

EXHIBIT I

[Note: Trust Agreement must be worded as follows, except that instructions in brackets and yellow highlight are to be replaced with the relevant information and such bracketed text deleted, including this note.]

TRUST AGREEMENT

TRUST AGREEMENT, the “Agreement,” entered into as of [date] by and between [name of owner/operator] a [name of State] [insert corporation, partnership, association, or proprietorship], the “Settlor,” and [name of corporate trustee], [insert “incorporated in the State of _____” or “a national bank”], the “Trustee.”

WHEREAS, the Settlor is required, pursuant to the Order on Consent and Administrative Settlement with the New York State Department of Environmental Conservation Index # B8-0531-98-06 (Registry Site #828064) (the “Order”), to provide financial assurance for the Remedial Program which includes RCRA Corrective Action;

WHEREAS, the Settlor has elected to provide a [surety bond or letter of credit], as set forth in Paragraph VIII of the Order, to satisfy its financial assurance obligation for the facility identified herein;

WHEREAS, the use of a [surety bond or letter of credit] requires the Settlor to establish a standby trust fund; and

WHEREAS, the Settlor acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee;

NOW, THEREFORE, the Settlor and the Trustee agree as follows:

Section 1 Definitions. As used in this Agreement:

(a) The term “Settlor” means the owner or operator who enters into this Agreement and any successors or assigns of the Settlor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term “Commissioner” means the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's duly appointed designee.

Section 2. Identification of Facility and Cost Estimates. This Agreement pertains to the facility and cost estimate identified on attached Schedule A [on Schedule A, for each facility, list the NYSDEC and EPA identification numbers, names, addresses, and the costs, as established or approved by the Commissioner, per facility for Corrective Action, or portions thereof, for which financial assurance is demonstrated by the Agreement].

Section 3. Establishment of Fund. The Settlor and the Trustee hereby establish a trust fund (hereinafter referred to as the "Fund") for the benefit of NYSDEC. The Settlor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B annexed hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Settlor, any payments necessary to discharge any liabilities of the Settlor established by NYSDEC.

Section 4. Payment for Corrective Action. The Trustee shall make payment from the Fund as the Commissioner shall direct, in writing, to provide for the payment of the costs of Corrective Action of the facility covered by this Agreement. The Trustee shall reimburse the Settlor or other persons as specified by the Commissioner from the Fund for the expenditures of such covered activities in such amounts as the Commissioner shall direct in writing. In addition, the Trustee shall refund to the Settlor such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Settlor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Settlor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, 15 USCA 80a-2(a) (see section 370.1(e)), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject

to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USCA 80a-1 et seq (see 6 NYCRR 370.1(e)), including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government;

(e) To accept additions to the Fund from sources other than the Settlor of the Trust; and

(f) To contest, compromise, or otherwise settle any claim in favor of the Fund or Trustee, or in favor of third persons and against the Fund or Trustee.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the trustee to the extent not paid directly by the Settlor, and all of the proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Settlor and to the Commissioner, a statement confirming the value of the Trust. Any securities in the fund shall be valued at market value as of no more than 60 days prior to the anniversary date of the establishment of the Fund. The failure of the Settlor to object in writing to the Trustee within 90 days after the statement has been furnished to the Settlor and to the Commissioner shall constitute a conclusively binding assent by the Settlor, barring the Settlor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Settlor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Settlor.

Section 13. Successor Trustee. The Trustee may resign or the Settlor may replace the Trustee, but such resignation or replacement shall not be effective until the Settlor has appointed a successor Trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Settlor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instruction. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Settlor, the Commissioner, and the present Trustee by certified mail, return receipt requested, 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Settlor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Settlor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Settlor's orders, requests, and instructions. All orders, requests, and instructions by the Commissioner to the Trustee shall be in writing, signed by the Commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Settlor or NYSDEC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Settlor and/or NYSDEC except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Settlor and the Commissioner, by certified mail, return receipt requested, within 10 days following the expiration of the 30 day period after the anniversary of the establishment of the Trust, if no payment is received from the Settlor

during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Settlor, the Trustee, and the Commissioner or by the Trustee and the Commissioner if the Settlor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Settlor, the Trustee, and the Commissioner, or by the Trustee and the Commissioner, if the Settlor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Settlor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in the carrying out of any directions by the Settlor or the Commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Settlor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Settlor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of New York.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 6 NYCRR 373-2.8(j)(1) as such regulations were constituted on the date first above written, with the exception of the modifications to the WHEREAS clauses.

[Name of Owner/Operator]; Settlor

BY: [signature]

NAME:

TITLE:

[Name of Corporate Trustee]; Trustee

BY: [signature]

NAME:

TITLE:

[SELECT ONE OF THE FOLLOWING ACKNOWLEDGEMENTS for TRUSTEE and DELETE THE ONE NOT NEEDED]

[ACKNOWLEDGEMENT BY TRUSTEE, IF A BANK]

STATE OF :
: SS.:
COUNTY OF :

On this ____ day of _____, 20____, before me personally came _____ to me known who, by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the banking institution described in and which executed the within Trust Fund Agreement; and that (s)he signed his/her name thereto by authority of such banking institution.

Notary Public

[ACKNOWLEDGEMENT BY TRUSTEE, IF A CORPORATION]

STATE OF :
: SS.:
COUNTY OF :

On this ____ day of _____, 20____, before me personally came _____ to me known who, by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the corporation described in and which executed the within Trust Agreement; and that (s)he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that (s)he signed his/her name thereto by like order.

Notary Public

[SELECT ONE OF THE FOLLOWING ACKNOWLEDGEMENTS for SETTLOR and DELETE THE ONE NOT NEEDED]

[ACKNOWLEDGEMENT BY SETTLOR/OWNER OPERATOR, UNLESS IT BE A CORPORATION]

STATE OF :
: SS.:
COUNTY OF :

On this ____ day of _____, 20___, before me personally came _____ to me known and known to me to be the person(s) described in and who executed the within Trust Fund Agreement; and acknowledged that (s)he executed the same.

Notary Public

[ACKNOWLEDGEMENT BY SETTLOR/OWNER OPERATOR, IF A CORPORATION]

STATE OF :
: SS.:
COUNTY OF :

On this ____ day of _____, 20___, before me personally came _____ to me known who, by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the corporation described in and which executed the within Trust Agreement; that (s)he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that (s)he signed his/her name thereto by like order.

Notary Public

SCHEDULE A

This Agreement demonstrates financial assurance for the following cost estimate at this facility in New York State:

HAZARDOUS WASTE FACILITY IDENTIFICATION NUMBER	NAME AND ADDRESS OF ASSURED	NAME AND ADDRESS OF ASSURED ACTIVITY	COST ESTIMATE FOR REGULATORY ASSURANCES *
EPA ID No.: NYD#####	Name Address	Name of Facility Address	6 NYCRR Part 373 Corrective Action: \$#,###,###

SCHEDULE B
List of Properties Comprising Trust Fund

None at the time of trust establishment. Funding of this Standby Trust Agreement [enter agreement number] is contingent upon drafts against that [insert either: Letter of Credit or Surety Bond] number [XXXXXXX] issued by [insert financial institution's name] on [date – Month Day, YYYY] in accordance with the terms of that [insert either: Letter of Credit or Surety Bond], filed with the Commissioner for the facility and cost estimates identified on attached Schedule A.

Account Information

Trust Agreement

Bank Name:

Address:

Phone:

Contact:

Title:

Phone:

Email:

Letter of Credit or Surety Bond [select one]

Bank Name:

Address:

Phone:

Contact:

Title:

Phone:

Email:

EXHIBIT A

In accordance with Section 14, Instructions to the Trustee, below is a list of designated persons.

[Note: This list can include as many names/addresses as appropriate.]

Signatory's Name

Title

Company Name

Address

City, State Zip

Phone Number

Signatory's Name

Title

Company Name

Address

City, State Zip

Phone Number

etc.

