

**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

**Maguire Family Properties, Inc.**

Respondent.

---

**Order on Consent  
and  
Administrative Settlement**

Index # B8-0543-98-08

Site #828099

**Whereas:**

1. 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.

2. The Department is also responsible for the administration of the Resource Conservation and Recovery Act Program (a/k/a the "Industrial Hazardous Waste Management Program") ("RCRA") pursuant to Article 27, Title 9 of the ECL and Parts 370-373 of 6 NYCRR.

3. The Department may issue orders pursuant to, *inter alia*, ECL Article 27, Title 9 and ECL § 71-2727(3), consistent with the authority granted to the Commissioner requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at any treatment, storage or disposal facility which is either permitted or seeking a permit under title 7 or 9 of Article 27 of the ECL, or which has or had interim status according to regulations adopted thereunder, regardless of the time at which the waste was placed in such unit.

4. 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 concerns real property located at the address of 1555 Lyell Avenue, Rochester, New York (the "Site").

5. The Site is listed on the New York State Inactive Hazardous Waste Disposal Site Program Registry (Site No. 828099) as a Class 2 site pursuant to ECL § 27-1305. The Site also

has interim status under RCRA and, as a result, is subject to corrective action under that program (RCRA ID No. 0022215226).

6. Motors Liquidation Company f/k/a General Motors Corporation (“Old GM”), until 1994, owned and operated the Site which included an interim status hazardous waste management facility as that term is defined in 6 NYCRR Subpart 370.2(b)(89) (the “TSDF”). Old GM closed the TSDF in 1995 but did not perform RCRA corrective action at the Site. Pursuant to a consent order executed in 2002, Old GM performed a remedial investigation/feasibility study of the Site. In 2009, Old GM filed for Chapter 11 bankruptcy. In 2012, as a part of its Chapter 11 reorganization, Old GM resolved its liability at the Site under the Inactive Hazardous Waste Disposal Site Remedial Program by conveying to the Department stock in its reorganized company: General Motors Corporation (“New GM”). The Department received \$1,006,433.75 for this Site from the sale of its New GM stock (the “Stock Sale”).

7. Valeo Electrical Systems, Inc. (“Valeo”) f/k/a ITT Automotive Electrical Systems Inc. purchased the Site from Old GM in 1994 and conducted substantially the same operations and processes. Valeo owned the Site until 2005 but operated it until 2008. The Department’s belief is that Valeo did not complete RCRA corrective action at the Site.

8. The current owner of the Site is Maguire Family Properties, Inc. (the “Respondent”). The Respondent purchased the Site from Valeo *via* bargain and sale deed dated December 20, 2005 and recorded in the Monroe County Clerk’s Office on December 21, 2005.

9. Under the Respondent’s ownership, Valeo operated the Site until it ended operations in 2008.

10. The Department issued a Record of Decision (“ROD”) for the Site on March 28, 2012. The Declaration Statement of the ROD is attached hereto as Exhibit “A”. The remedial program selected in the ROD has not been implemented. In addition, RCRA corrective action has not been completed at the Site. Hereinafter the term “Remedy” shall mean RCRA corrective action and the remedial program selected in the ROD or any amendment thereto.

11. The purpose of this Order is for: (i) the Department to conduct a pre-remedial design investigation; (ii) the Department to review the remedy determination based on the findings of the pre-design investigation and determine whether any revisions to the ROD are deemed necessary; (iii) the Department to determine if additional work can be completed with the funds recovered from GM in the bankruptcy; (iv) the Respondent to implement some portions, if not all, of the Remedy including RCRA corrective action at the Site in accordance with this Order; (v) the Respondent to reimburse the State’s administrative costs to the extent set forth in this Order and (vi) the Respondent to allow the Department access to the Site.

12. The Respondent consents to the issuance of this Order without an admission or finding of fact, liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever. Further, the existence of this Order 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.

13. The Respondent hereby waives any right to a hearing as may be provided by law, solely with regard to matters the Respondent agrees to undertake pursuant to this Order, consents to the issuance and entry of this Order, and agrees to be bound by its terms. The Respondent consents to, and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, agrees not to contest the validity of this Order or its terms.

14. Notwithstanding paragraph 13, the Respondent reserves all of its rights, remedies, and defenses to contest that it is subject to RCRA pursuant to Article 27, Title 9 of the ECL and Parts 370–373 of 6 NYCRR. Furthermore, this Order may not be utilized by any third party in any proceeding.

**Now, having considered this matter and being duly advised, it is ordered that:**

I. Department's Obligations.

- a. The Department shall conduct a pre-remedial design investigation of the Site, up to a cost of one hundred fifty thousand dollars (\$150,000), using funds received from the GM bankruptcy proceeding relating to this Site (the "Supplemental Investigation"). The Department is not obligated to spend any other funds at the Site, including funds from the Stock Sale or any other sale of New GM stock, for the Supplemental Investigation and/or any other purpose. The Supplemental Investigation is set forth in the attached Exhibit "B".
- b. Thereafter, the Department shall determine whether revisions to the Remedy are necessary, if any, and shall make such revisions.
- c. The Department will evaluate whether the Remedy, or a portion of it, can be completed with the remaining funds received in the GM bankruptcy proceeding for claims relating to this Site.
- d. The Department shall review, for the purpose of approval, the Respondent's Site Management Plan described in Paragraph II.b of this Order.

II. Respondent's Obligations.

- a. Within sixty (60) days of the effective date of this Order, the Respondent shall submit to the Department for approval an Environmental Easement (the "Easement") to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR Subpart 375-1.8(h)(2). Within thirty (30) days of approval by the Department, the Respondent shall comply with 6 NYCRR Subpart 375-1.8(h)(2) and file the Easement in the Monroe County Clerk's Office.
- b. Within ninety (90) days of the effective date of this Order, the Respondent shall submit to the Department for approval an Interim Site Management Plan ("ISMP") whose objective is to implement the institutional controls required for the Site, develop and

implement a soils and groundwater management plan for disturbance of same during Site activities, which shall include, but will not be limited to, Respondent's plans for on-Site handling and re-use of soil excavated at the Site (including previously excavated soils being stored temporarily on the Site), provide for continued operation and maintenance of the on-site sub-slab depressurization system and set forth inspection and reporting requirements. The Department is not required to approve an ISMP for the Site unless the Easement is filed in accordance with Section II.a of this Order. Following approval by the Department, the Respondent shall comply with the ISMP.

- c. The Respondent shall continue to operate and maintain the existing on-site sub-slab depressurization system.
- d. The Respondent shall grant the Department access to the Site in accordance with this Order.
- e. The Respondent shall be responsible for State costs, other than costs expended from funds received in the GM bankruptcy proceeding for claims relating to this Site, directly related to any work Respondent performs or is responsible to perform under this Order. Respondent acknowledges that this paragraph does not limit Department's ability to seek payment of State costs, including past State costs, or other costs not covered by this Order.

III. Development, Performance, and Reporting of Work Plans.

a. Work Plans.

- i. 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). 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 except for the Supplemental Investigation. 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 Design/Remedial Action (“RD/RA”) 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. Final Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the final remedy for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

b. Submission/Implementation of Work Plans.

- i. Within sixty (60) days of the Respondent’s receipt of the Supplemental Investigation report, the Department’s determination that work is still necessary for the remediation of the Site and any necessary revisions to the Remedy have been completed, and the Department’s determination whether to spend remaining funds, if any, received in the GM bankruptcy proceeding for claims relating to this Site, the Respondent shall: (i) either opt out of the requirements of this Order as set forth in Paragraph XIII below or (ii) submit a Remedial Design/Remedial Action (“RD/RA”) Work Plan.
- ii. 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 or whether it elects to terminate this Order pursuant to Paragraph XIII. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) days, or such longer time period as agreed to by the Department, after such election. If Respondent elects to terminate this Order or fails to make a timely election, this Order shall terminate pursuant to Paragraph XIII.
- iii. 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.

- iv. Any request made by the Department under Subparagraph III.b.ii shall be subject to dispute resolution pursuant to Paragraph XII.
  - v. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.
  - vi. During all field activities conducted by Respondent 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.
- i. 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 Remedy otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to Respondent's right to terminate pursuant to Paragraph XIII, 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. Submission of Final Reports and Annual Reports.
- i. 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) and a final engineering report as provided at 6 NYCRR 375-1.6(c).
  - ii. 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.
  - iii. In the event that the final engineering report for the Site requires site management, Respondent shall submit an annual report by the 1<sup>st</sup> Day of the month following the anniversary of the start of the Site management. 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.
- e. Review of Submittals other than Progress Reports and Health and Safety Plans.

- i. 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.
  - ii. 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, subject to Respondent's right to terminate pursuant to Paragraph XIII in the event the rejected submittal is a Work Plan submitted prior to the Department's approval of the RD/RA Work Plan, 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 XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.
  - iii. 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. The Department's acceptance of the format will not be unreasonably withheld. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.
- f. Release and Covenant Not to Sue.
- i. 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.

- a. Respondent shall submit written progress reports to the parties identified in Subparagraph XI.a.1 by the 10<sup>th</sup> day of each month commencing with the month subsequent to the approval of the first Respondent Work Plan and ending with the Termination Date, unless a different frequency is set forth in an approved Work Plan. Such reports shall, at a minimum, include: all actions taken by Respondent 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. 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.
- b. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.
- c. 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.
- d. 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.
- e. 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.d regarding timely notification.

- f. 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(4).
- g. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraphs IV.c and d, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph VI and Respondent's position prevails.

VI. Payment of State Costs.

- a. 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 as provided by 6 NYCRR Subpart 375-1.5(b)(3)(i). Under this Order, State costs shall be limited to the extent set forth in Paragraph II.e. Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.
- b. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). 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.
- c. Invoices shall be sent to Respondent at the following address:

Maguire Family Properties, Inc.  
770 Rock Beach Road  
Rochester, New York 14617  
Attn: Dennis Maguire

- d. Each payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

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

- e. The Department shall provide written notification to the Respondent of any change in the foregoing addresses.

- f. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5(b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under Subparagraph VI.e above.
- g. In the event of non-payment of any invoice within 45 days of its receipt, the Department may seek enforcement of the provision pursuant to Paragraph V or the Department may commence an enforcement action for non-compliance with ECL § 27-1423 and ECL 71-4003.

VII. Access.

- 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 (the "Department Parties"), all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying non-privileged records related to the contamination at the Site, testing, and any other activities necessary for the Department to effectuate and to ensure Respondent's compliance with this Order. Respondent further consents that the Department Parties shall have access to the Site to conduct the investigation set forth in Exhibit B and the Department's other obligations under this Order.
- b. 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.
- c. 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.
- d. For the supplemental investigation, the Department Parties shall use best their efforts to avoid any interference with the operations and/or uses of the Site by the Respondent, its tenants, and/or any third parties. The Department Parties shall also use their best efforts to restore the Site to the same condition that existed prior to the Supplemental Investigation. Furthermore, Department Parties shall remove and dispose of wastes produced or generated solely by the Supplemental Investigation, if any, and remove and dispose of such wastes in accordance with all laws and regulations.

VIII. Reservation of Rights.

- a. The Department reserves all of its rights with regards to on-going obligations, described in the Remedy or otherwise, under the Inactive Hazardous Waste Disposal Site Remedial Program, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, RCRA, the New York Navigation Law, and any other applicable or potentially applicable law, statute, regulation or guidance concerning or relating to the past disposal or release of hazardous waste at the Site.
- b. 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 the Respondent may have against anyone other than the Department, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. 9613(f)(3)(B), and other applicable federal and state common or statutory law.
- c. 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 to the extent allowed under law.

IX. Indemnification.

- a. Except as set forth in Paragraphs II.e and VI.a of the Order and except to the extent any claims, suits, actions, and costs of every name and description arise from the negligent acts, gross negligence, or willful or intentional misconduct by Department Parties in performance of the Supplemental Investigation conducted under this Order, 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).

X. 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.

XI. 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.

i. Communications from Respondent shall be sent to:

Todd Caffoe  
Division of Environmental Remediation  
New York State Department of Environmental Conservation, Region 8  
6274 East Avon-Lima Road  
Avon, New York 14414

*with electronic copies to:*

Dudley D. Loew, Esq.  
Office of General Counsel  
New York State Department of Environmental Conservation, Region 8  
6274 East Avon-Lima Road  
Avon, New York 14414  
[dudley.loew@dec.ny.gov](mailto:dudley.loew@dec.ny.gov)

ii. Communications made from the Department to the Respondent shall be sent to:

Dennis Maguire  
Maguire Family Properties, Inc.  
770 Rock Beach Road  
Rochester, New York 14617  
[dext@rochester.rr.com](mailto:dext@rochester.rr.com)

*with electronic copies to:*

Paul D. Sylvestri, Esq.  
Harter Secrest & Emery LLP  
1600 Bausch and Lomb Place  
Rochester, New York 14604  
[psylvestri@hselaw.com](mailto:psylvestri@hselaw.com)

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

XII. 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.

XIII. Termination of Order.

- a. This Order will terminate upon the earlier of the following events:
  - i. Respondent's election to terminate pursuant to Subparagraphs III.b.i, III.b.ii, III.c, or III.e.ii so long as such election is made prior to the Department's approval of a RD/RA Work Plan submitted by Respondent. In the event of termination in accordance with this Subparagraph XIII.a.i, this Order shall terminate effective the 5<sup>th</sup> Day after the Department's receipt of the written notification terminating this Order or the 5<sup>th</sup> Day after the time for Respondent to make its election has expired, whichever is earlier, provided, however, that if there are one or more Respondent Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election to terminate this Order pursuant to Subparagraphs III.b.ii or III.e.ii or its failure to timely make such an election pursuant to Subparagraphs III.b.ii or III.e.ii, Respondent shall promptly complete the activities required by such previously approved Respondent Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5<sup>th</sup> Day after the Department's approval of the final report for all previously approved Respondent Work Plans; or
  - ii. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management) it is required to complete under this Order, in which event the termination shall be effective on the 5<sup>th</sup> Day after the date of the Department's approval of the final report relating to the final phase of the Remedy to be completed by Respondent.

- b. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and IX 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.
- c. If the Order is terminated pursuant to Subparagraph XIII.a.i, neither this Order nor its termination shall affect any liability of Respondent, or any other party, for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability or liability under RCRA that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced unless such condition was caused by or result of the Supplemental Investigation. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of the Remedy for the Site.

#### XIV. Change of Use.

- a. Applicant 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). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

#### XV. Additional Provisions.

- a. 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.
- b. The terms of this Order constitute the entire agreement between the Department and the Respondent concerning 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.
- c. 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. The terms of this Order constitute the entire agreement between the Department and Respondent concerning implementation of the activities required by this Order.

- d. Except as set forth in Paragraphs II.e and VI.a of the Order, the Respondent agrees to comply with and be bound by the applicable provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts 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.
- e. 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).
- f. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13, ECL Article 71, Title 36, or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations.
- g. This Order may be executed for the convenience of the parties hereto, 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.
- h. The effective date of this Order is the date which the Commissioner or his or her designee executes this Order.

DATED: Albany, New York  
October 3, 2016

**Basil B. Seggos**, Commissioner  
New York State Department of  
Environmental Conservation

By:



---

**Robert W. Schick**, Director  
Division of Environmental Remediation

**Consent by Respondent**

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

**Maguire Family Properties, Inc.**

By: Dennis P. Maguire

Title: PRESIDENT

Date: 9/8/16

STATE OF NEW YORK    )  
                                          ) s.s.:  
COUNTY OF Monroe )

On the 8 day of Sept, in the year 2016, before me, the undersigned, personally appeared Dennis Maguire, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Signature and Office of individual taking acknowledgment

PHONEPASEUTH J. CAMPBELL  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01CA6147853  
QUALIFIED IN MONROE COUNTY  
COMMISSION EXPIRES JUNE 19, 2018



**Exhibit A  
Record of Decision  
Declaration Statement**

## **DECLARATION STATEMENT - RECORD OF DECISION**

---

Valeo Former GM - Delco Chassis Facility  
State Superfund Project  
Rochester, Monroe County  
Site No. 828099  
March 2012

### **Statement of Purpose and Basis**

This document presents the remedy for the Valeo Former GM - Delco Chassis Facility 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 Valeo Former GM - Delco Chassis Facility 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. Remedial Design**

A remedial design program would be implemented to provide the details necessary for the construction, operation, maintenance, and monitoring of the remedial program. Green remediation principles and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows;

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gas and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which would otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;

- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals; and
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development.

## **2. LNAPL Recovery with In-situ Bioremediation**

Removal of light non-aqueous phase liquids (LNAPL) to the extent practical. LNAPL would be separated from the collected groundwater and disposed of off-site. Groundwater would be treated and discharged to the sanitary sewer. In-situ bioremediation would be implemented as a final step to treat residual soil and groundwater contamination. A groundwater/LNAPL monitoring program would be implemented in the vicinity of the LNAPL impacted areas;

## **3. Soil Excavation**

Excavation and off-site disposal of petroleum contaminated soils within the former fire training area; all on-site soils located within the former fire training area which exceed protection of groundwater use SCOs in 6 NYCRR Part 375-6.8(h) would be excavated and transported off-site for disposal. Approximately 550 cubic yards of soil would be removed. Clean fill would then be brought in to replace the excavated soil and establish the designed grades at the site.

## **4. Soil Vapor Mitigation**

Continued operation and monitoring of the existing on-site sub-slab depressurization system. Any future on-site buildings would be evaluated to determine if a sub-slab depressurization system, or a similar engineered system, to prevent the migration of vapors into the building from soil and/or groundwater is required.

## **5. Cover System**

A site cover currently exists and will be maintained to allow for restricted commercial or industrial use of the site. Any site redevelopment will maintain a site cover, which may 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 a 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 restricted commercial or 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).

## **6. Institutional Control**

Imposition of an institutional control in the form of an environmental easement for the controlled property that:

- 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);
- Allows the use and development of the controlled property for commercial or industrial use as defined by Part 375-1.8(g), although land use is subject to local zoning laws;

- 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; and
- Requires compliance with the Department approved Site Management Plan.

**7. Site Management**

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:** Impose an environmental easement as described above.

**Engineering Controls:** Continued operation of the sub-slab depressurization system, continued operation of the LNAPL collection system, and maintain the site cover. This plan includes, but may not be limited to:

- An Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
  - Descriptions of the provisions of the deed restriction including any land use and groundwater use restrictions;
  - A provision for evaluation of the potential for soil vapor intrusion for any buildings developed on the site, including provision for implementing actions recommended to address exposures related to soil vapor intrusion;
  - Provisions for the management and inspection of the identified engineering controls;
  - Maintaining site access controls and Department notification; and
  - 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:
- Monitoring of groundwater to assess the performance and effectiveness of the remedy;
  - A schedule of monitoring and frequency of submittals to the Department;
  - Monitoring for vapor intrusion for any buildings occupied or developed on the site, as may be required by the Institutional and Engineering Control Plan discussed in item 1 above; and
  - Monitoring of the sub-slab depressurization system to assess the performance and effectiveness in addressing exposures.
- c) An Operation and Maintenance (O&M) Plan to ensure continued operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy. The plan includes, but is not limited to:

- Compliance monitoring of treatment systems to ensure proper O&M as well as providing the data for any necessary permit or permit equivalent reporting;
- Maintaining site access controls and Department notification; and
- 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.

March 28, 2012

Date



Robert W. Schick, P.E., Acting Director  
Division of Environmental Remediation

**Exhibit B**  
**Supplemental Investigation**

Scope of Work  
Pre-Design Investigation  
Former Valeo Site 828099  
Revised June 2016

**Purpose**

The on-site groundwater monitoring well network has not been sampled since 2006. Since that time, Valeo vacated the property and the facility has been sub-divided into multiple commercial and light industrial businesses. Groundwater needs to be sampled and assessed for the presence of non-aqueous phase liquids (NAPL) prior to implementation of the selected remedy in the Record of Decision (ROD). Based upon the results, the groundwater remedy may need to be modified.

Additionally, soil contamination in the vicinity of test pit TP-15-1 within the former fire training area was identified and targeted for removal. Petroleum-based contamination has impacted shallow groundwater in well MW-307-1. Additional soil assessment is required in the vicinity of TP-15-1 to determine the extent of soil contamination, and estimate quantities for excavation and removal if necessary. Sample results shall be compared to the protection of groundwater SCOs in 6NYCRR Part 375-6.8(b).

**All on-site activities shall be coordinated with the site owner or their representative.**

**Site Background**

The Valeo Site is an approximately one-hundred-fifteen (115) acre parcel located at 1555 Lyell Avenue on the western edge of the city of Rochester. There is a large building (approximately 1.5 million sq ft.) occupying the central portion of the site. The remaining portions of the site are largely paved parking areas. A small wooded area is located along the south western property line. A railroad line borders the eastern property line and the NYS Barge canal is located just beyond the western edge of the site. The Abandoned Chemical Sales Site (#828105) is located on the opposite side of the railroad line on along the eastern boundary of the site.

The property is currently zoned for manufacturing. The on-site building is subdivided into multiple commercial and industrial businesses. The surrounding land use is commercial and industrial; however the area immediately to the east is a densely populated residential area. The area is served by public water and sewers.

Historically, the facility manufactured automotive parts from 1951 until 2008. The facility predominantly manufactured electric motors, wiper systems, and window regulator parts. The facility was owned by General Motors Corporation from 1951 to 1994, ITT Automotive Electrical Systems from 1994 to 1998, and Valeo Electrical Systems, Inc. from 1998 to 2005. The Site is currently owned by McGuire Properties and it is subdivided into several businesses. Historical manufacturing operation included metal finishing, stamping operations, heat treating, degreasing, and metal plating operations. In 1994, GM conducted an environmental site

assessment of the facility and identified several areas of soil and groundwater contamination. General Motors signed a consent order to complete a remedial investigation/feasibility study in 2002. Valeo ceased operations at the site in June 2008. The facility is currently leased by several industrial and commercial businesses.

The site is underlain by 2 to 21 feet of unconsolidated overburden deposits overlying dolomite and dolomitic-mudstone bedrock units of the Upper Silurian Lockport and Clinton Groups. Shallow groundwater is encountered within a few feet of the overburden/bedrock interface. There is an intermediate bedrock flow zone located between 10 and 30 feet below the top of bedrock. Utilities located along the eastern portion of the site influence groundwater flow direction.

A ROD was signed in March 2012 by the Department. The selected remedy is NAPL recovery and in-situ biological treatment of groundwater, excavation of contaminated soils within the form fire training area, maintain a site cover, develop a site management plan which includes an IC/EC plan, OM&M Plan, and periodic certification, and execution of an environmental easement. For further details please refer to the ROD.

#### **Pre-Design Investigation**

##### **1. Groundwater Sampling**

Locate all existing monitoring wells listed below. Assess each well for the presence of NAPL, and obtain a sample of NAPL if possible. Make minor repairs (missing locks, j-plugs, protective caps) as deemed necessary by DEC personnel and redevelop wells as necessary. Prepare a summary table that identifies well condition and potential for sampling. Sample as many of the 18 monitoring wells listed below as possible. Obtain water level measurements at each well. Assess each well for the presence of NAPL and collect a sample of the NAPL if not already completed during the previous step. Sample groundwater at each well.

Groundwater samples shall be analyzed for VOCs and TAL metals with Category B deliverables.

NAPL shall be analyzed for VOCs, PCBs, and TPH.

A data usability study (DUSR) shall be prepared according to Department guidelines. Data summary tables shall be prepared along with an electronic copy of the laboratory data. Monitoring wells proposed for sampling are listed below. Please refer to attached figure for their general location.

AOR#1  
MW-213, MW-513, MW-502, MW-503, MW-504, MW-514, PZ401-1

AOR#2  
MW-515, PZ402-4, PZ402-5



AOR #3  
PZ-403-1, PZ-403-4, PZ403-5, PZ403-6

AOR#4  
MW-524, PZ404-4

AOR#7  
MW-307-1, MW 511

## **2. Sub-surface soil sampling**

Soil samples shall be obtained using either direct push or rotary drilling methods. Establish a 5x5 sample grid 25 feet on center around the approximate location of TP-15-1. Clear and grub the sampling area as necessary to establish sample grid and to perform soil borings. A map shall be prepared and GPS coordinates for all soil boring locations shall be provided using NAD 83 UTM Zone 18 (meters) as the coordinate system.

Soil borings will be completed to the top of bedrock. Soil boring shall be sampled using continuous sampling methods. Each sample interval shall be screened with a PID and for visual and olfactory evidence of contamination. At least two samples per soil boring will be selected for laboratory analysis based upon screening results. All borings shall be logged by a field geologist.

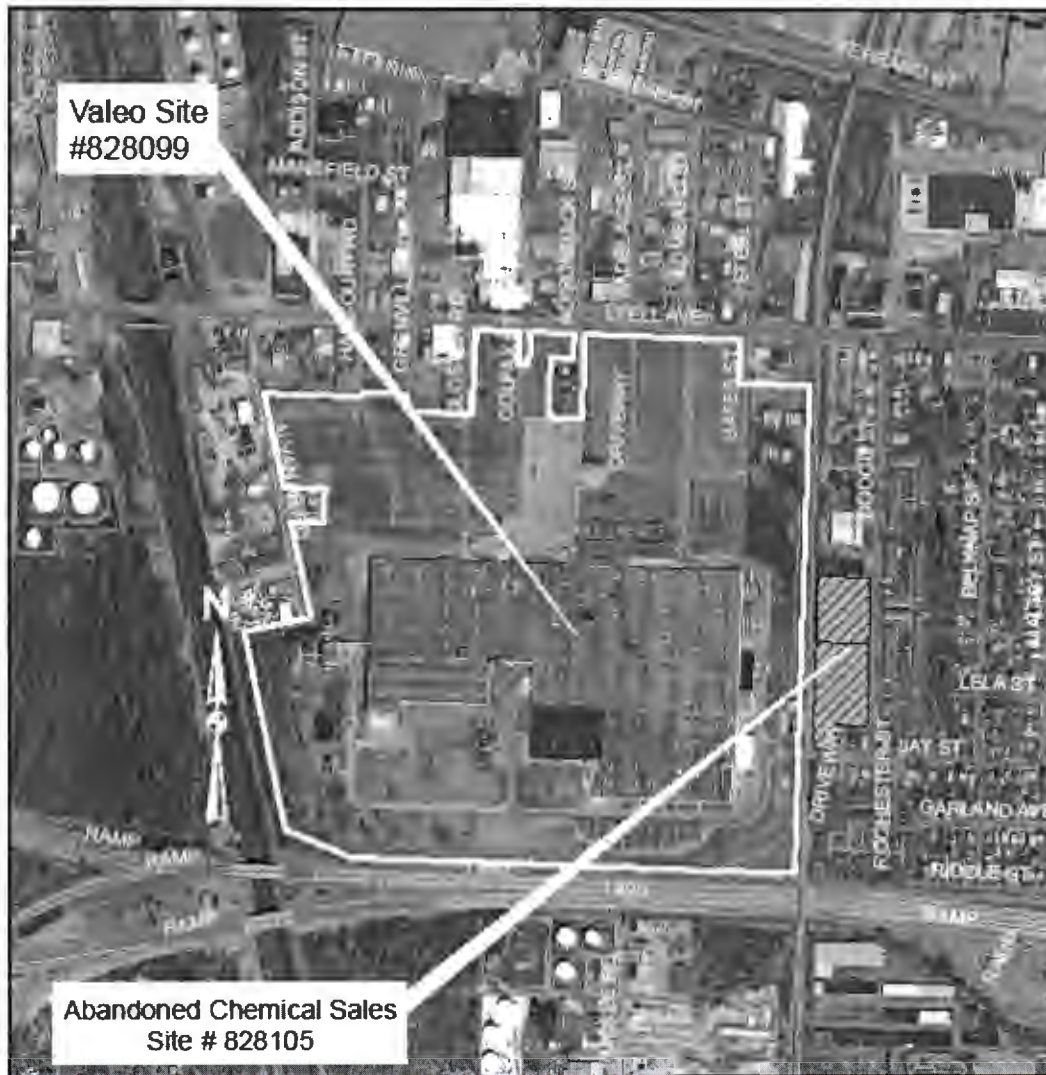
Soils shall be analyzed for VOCs with category B deliverables. A data usability study (DUSR) shall be prepared according to Department guidelines. Data summary tables shall be prepared along with an electronic copy of the laboratory data.

Upon completion, soil and vegetative cover shall be established over all disturbed areas.

### **Deliverable**

A report shall be prepared summarizing all field activities and data generated during the investigation. All field logs shall be included as appendices and all laboratory data reports shall be provided in electronic form.

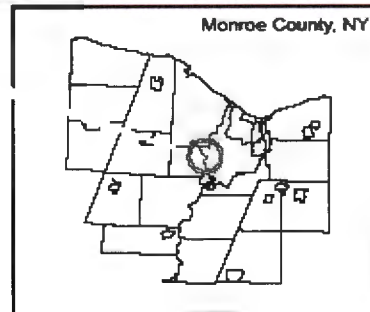
Figure 1  
Valeo Site Location Map  
Site #828099

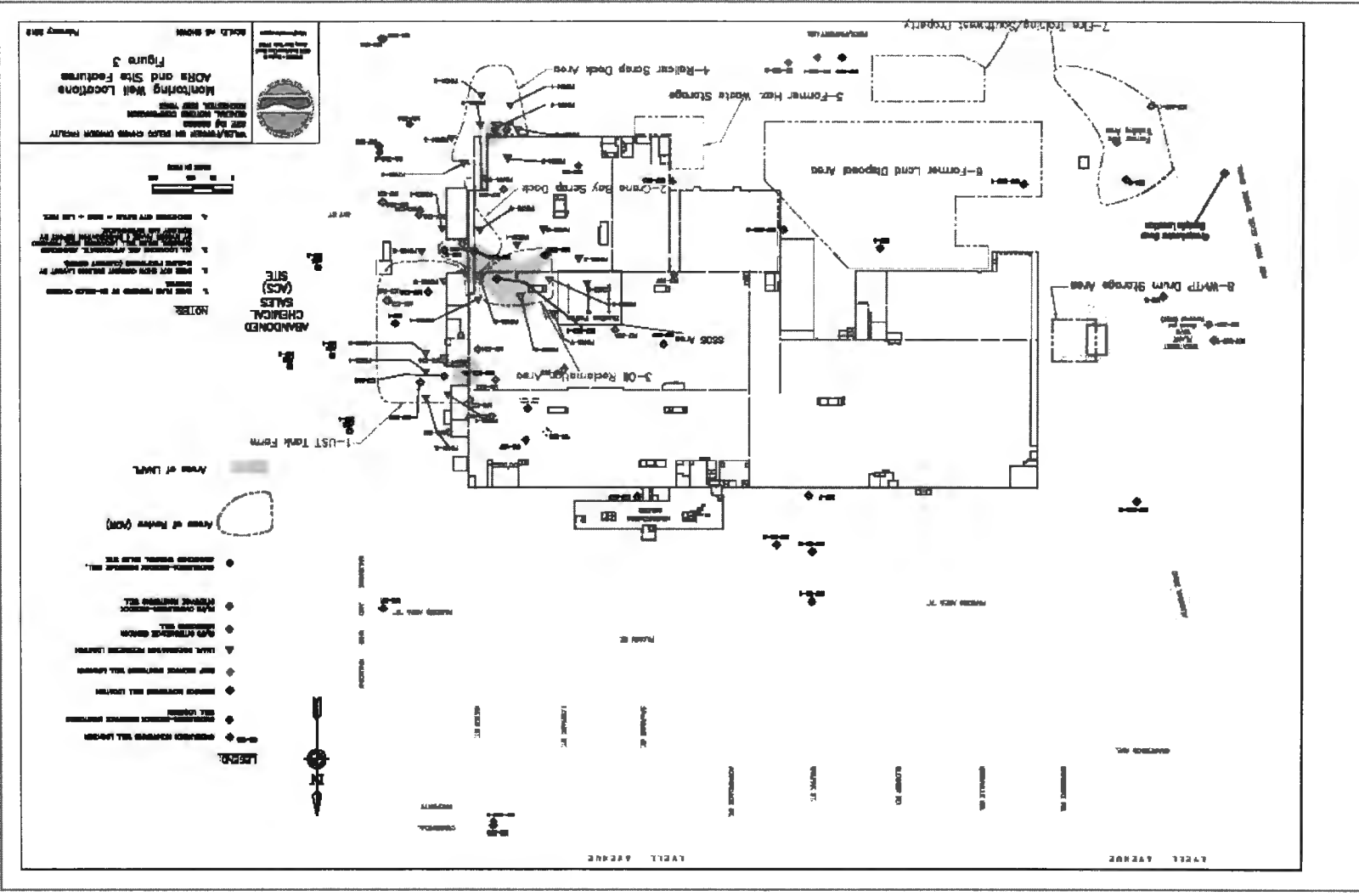


2005 Monroe County Orthoimagery

0 250 500 1,000 1,500 Feet

Valeo Site





Former Valeo Site 828099  
Well Locations and Proposed Soil Borings

