



Negotiating Cleanup and Supporting Reuse in the 2010 General Motors Bankruptcy Settlement Agreement

Introduction

In 2008 and 2009, the U.S. economy fell sharply as part of the global Great Recession. On June 1st, 2009, General Motors Corporation (GM) – then the second-largest automotive manufacturer in the world – filed for bankruptcy.

The complexity and urgency of the situation was unparalleled. The U.S. Environmental Protection Agency (EPA) and its partners, including the U.S. Department of Justice (DOJ), the U.S. Department of the Treasury (U.S. Treasury), more than a dozen state attorneys general and the St. Regis Mohawk Tribe (SRMT), worked with Motors Liquidation Company (MLC), GM’s successor, to negotiate a bankruptcy plan and settlement agreement to make sure funds were set aside to clean up contamination at 89 former GM-owned properties across 14 states.

To achieve this goal, the team focused the settlement agreement on creating one of the largest environmental response trusts in U.S. history. In addition to providing funds for cleanup and future operation and management of the properties, the settlement also envisions the redevelopment of the appropriate sites in the trust, with sustainable reuse, long-term stewardship and community benefits as top priorities. The \$773 million trust included an innovative \$68 million cushion fund crafted to help address unforeseen cleanup costs at any property, as needed.

Enforcement Elements

EPA’s Office of Site Remediation Enforcement (OSRE) makes real differences in communities impacted by hazardous waste contamination. OSRE ensures that liable parties perform necessary work and pay for prompt and protective cleanups through national consistency. OSRE also facilitates revitalization through negotiations and the creation of guidance documents and site-specific tools that address potential liability concerns.

Settlement Background

GM was based in Detroit, Michigan. It made automobiles from 1908 to 2009. When the company voluntarily filed for debt relief under Chapter 11 of the U.S. Bankruptcy Code in June 2009, it set off a chain of events and negotiations. GM was renamed MLC, which was the holding company created to settle past debt liabilities, while a “New GM” emerged from the bankruptcy as “General Motors Company.” The MLC (GM) bankruptcy settlement resolved certain claims of the United States, the states and the SRMT in the bankruptcy case relating to the company’s liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund), the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA).

A Unique Settlement

In 2008, Congress authorized the Troubled Asset Relief Program (TARP) to help stabilize the U.S. financial system during the Great Recession. Around \$80 billion of TARP funds were used to bolster U.S.-based auto industry giants, including Chrysler and GM. When GM filed for bankruptcy, the negotiations involved the use of TARP resources. As a result, the U.S. Treasury was involved throughout the proceedings.

EPA sought to secure funding through the settlement negotiations for cleanups at all 89 formerly owned GM properties. In addition to state and federal partner agencies, EPA enforcement staff at EPA Headquarters and in EPA Region 2 and EPA Region 5 led the negotiations, hosting daily conference calls that brought together stakeholders from across the country. The negotiations were complex and challenging. At many sites, cleanup needs had not been fully identified, including many RCRA Corrective Action sites that were early in the characterization process. Cleanup estimates needed to account for the actual cleanup and future operation and maintenance costs. For properties where cleanup needs and technical staff were identified, such as the GM Massena Superfund site, EPA made sure to include those staff as part of the negotiation team.

In addition to securing funding for future cleanups and oversight costs, reimbursement for past cleanup costs, and community revitalization, EPA worked with the U.S. Treasury to emphasize the importance of future redevelopment. This settlement is unprecedented in that it has specific provisions that address and smooth potential roadblocks to redevelopment at these properties. The settlement specifically references the use of site-specific agreements (commonly referred to as Prospective Purchaser Agreements (PPAs) and Bona Fide Prospective Purchaser (BFPP) agreements) and comfort/status letters to help address the liability concerns of purchasers or to clarify a site's status. The settlement further provides that the site-specific agreement may provide a covenant not to sue to a purchaser that would protect the purchaser for "existing contamination" on the property at the time of acquisition. These trailblazing provisions have led to several site PPAs and have been key to returning the properties to productive and sustainable reuse rather than letting these former industrial properties remain idle.

The sustained federal, state and Tribal government collaboration paid off. In October 2010, the United States, 14 states and the SRMT entered into a settlement with MLC that transferred the 89 properties to the management of an environmental response trust, initially funded with \$773 million. The trust included funding for administrative

Things to Know

EPA's National Bankruptcy Practice

EPA works diligently to ensure that all appropriate claims are brought before bankruptcy courts with respect to debtors that are liable for contamination at sites of federal interest. EPA's bankruptcy practice reflects the Agency's commitment to pursue all sources of funds to ensure that responsible parties, and not taxpayers, pay for cleanups

Prospective Purchaser Agreement (PPA)

This site-specific enforcement tool addresses the liability concerns of prospective purchasers or lessees who want to reuse remediated properties.

costs and anticipated environmental cleanup costs, including a \$68 million cushion fund for contingencies.

From the outset, the negotiation team recognized the importance of protecting the communities affected by current and future cleanups over many years. The team knew that more investigations (beyond what was feasible during the short span of negotiations) could identify more cleanup needs and costs. The cushion fund would end up being a cornerstone of the settlement, helping to address sites that were uncharacterized at the time of the negotiations as well as sites with cleanup complications.

By March 2011, an additional seven settlements exceeding \$51 million associated with the MLC bankruptcy were approved to resolve other site claims by the United States. These settlements addressed environmental claims at various sites contaminated with hazardous waste and resolved civil penalties at other facilities.

By May 2012, EPA would receive additional funds in the bankruptcy to settle environmental claims at Superfund sites in New York as well as cleanup work performed by third parties.



Slab demolition at the GM Massena site.

“We’re happy to have a path forward that addresses the needs of former auto communities. This trust – the largest environmental trust in our history – provides support for aggressive environmental cleanups at these sites, which will create jobs today and benefit the environment and human health over the long term.”

– Lisa P. Jackson, former EPA Administrator, after the signing of the MLC bankruptcy settlement in 2010

Racing Ahead: The RACER Trust

As cleanups moved forward, the U.S. Bankruptcy Court confirmed the bankruptcy plan in 2011. One of them – the Revitalizing Auto Communities Environmental Response Trust, or RACER Trust – was set up to handle the environmental cleanup of GM-owned properties and position these properties for redevelopment. When the RACER Trust formed, it took ownership of more than 44 million square feet of industrial space in 66 buildings across 7,000 acres in 14 states, principally in the Midwest and Northeast. To this day, the trust is one of the largest holders of industrial property in the United States. At that time, it was also the largest environmental response and remediation trust in the country’s history.

The RACER Trust has been highly successful. As the RACER Trust cleans up properties, returning them to sustainable uses, the trust works with EPA and

appropriate state authorities. Through April 2022, ongoing operations at current and former RACER Trust sites directly contributed 16,879 jobs to local economies annually. Trust properties in reuse include Superfund sites and RCRA Corrective Action sites.

Community Input

When considering reuse, the RACER Trust collaborates with local officials and groups to understand community goals for the locations and markets the properties for sale. The trust considers the potential jobs and economic opportunities that reuse will provide in communities affected by MLCs bankruptcy.

General Motors Superfund Site (GM Massena site)

The GM Massena site in Massena, New York, initially received \$120.8 million of the nearly \$500 million earmarked in the settlement for environmental cleanups at former GM-owned properties. The 217-acre property has a striking location along the St. Lawrence Seaway, adjacent to Tribal land and the International Bridge, and across from the Canadian border. To address contamination caused by facility operations, EPA added the site to the Superfund program’s National Priorities List in 1983. For the SRMT, the site’s cleanup is of particular importance. Akwesasne, the Mohawk territory of the federally recognized SRMT, is next to the site, and the SRMT has been burdened by the environmental and health impacts of pollution caused by this site, and nearby industrial facilities.

Early enforcement activities, which identified GM as the only potentially responsible party, focused on supporting three goals: (1) characterizing site conditions and contamination; (2) addressing immediate threats to public health and the environment; and (3) making sure plans for the site’s long-term remedy were in place. After the bankruptcy settlement in 2011, the pace of cleanup accelerated. The RACER Trust demolished former manufacturing buildings, removed contaminated sediment and soil from in and around the industrial wastewater treatment lagoons and other contaminated areas at the site, and moved the landfill back from the SRMT property and capped the landfill. The Racer Trust also addressed additional areas requiring cleanup. Portions of the site have been sold, and the main parcel that once hosted the GM facility is under contract.



Demolition of the former GM manufacturing building, July 2011.



Aerial view of the GM Massena site, September 2015.

M1 Concourse: Racing Toward Reuse

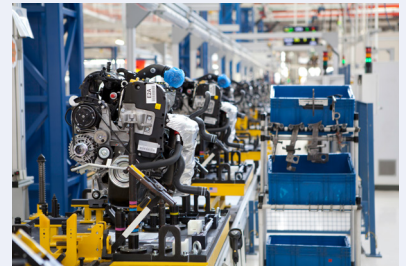
The 87-acre M1 Concourse property in Pontiac, Michigan, was once home to four GM plants. After the GM bankruptcy settlement, the RACER Trust took ownership of the plants. The Trust worked with EPA's RCRA Corrective Action program to investigate contaminated soil and groundwater and clean them up. Through the Trust's persistent outreach and marketing, the property caught the attention of a car enthusiast and entrepreneur who acquired the property. The new owner entered into a PPA which provided liability protection and confidence in pursuing the vision of the property as M1 Concourse, a garage for vintage car collectors, drivers and hobbyists, as well as a tourist entertainment venue. Construction efforts alone created 200 temporary jobs and long-term projections call for the facility to fill more than 70 permanent service and sales positions.



M1 Concourse is set to host several upcoming events. (Source: Image used with permission of M1 Concourse)

Progress Park: RACER Moraine Repurposed

Decades of industrial activity at this area in Moraine, Ohio, resulted in contaminated groundwater and soil. Four GM truck and sport utility vehicle manufacturing plants were on-site from 1979 to 2008. Before that, Frigidaire made appliances there, beginning in the 1920s. The RACER Trust began cleanup of the facility in 2011; cleanup efforts are ongoing under Ohio Environmental Protection Agency and EPA provided oversight. The RACER Trust sold the site property to a developer. The purchaser renamed it Progress Park. Today, it is a large, thriving industrial park.



A former GM assembly plant now hosts automotive glass manufacturing.

Park tenants include Fuyao Glass America, which transformed the former GM assembly plant into an automotive glass manufacturing center. Facility expansion efforts are ongoing. Another tenant is DMAX, Ltd., which redesigned the Duramax diesel engine for GMC Sierra and Chevrolet Silverado pickup trucks. Progress Park provides 2,834 jobs and generates over \$980 million in revenue each year.

Featured Sustainability Principles



Sustainable Reuse

The MLC (GM) bankruptcy settlement supported redevelopment and reuse efforts on contaminated lands in environmentally sound, economically competitive and socially responsible ways.



Long-term Stewardship

Cleanup and redevelopment efforts at Racer Trust sites ensure the protection of human health and the environment over time by engaging responsible site users and owners.

make real, on-the-ground differences in the communities where they are located. Thanks to EPA, its Tribal, federal, state and community partners, and the proactive RACER Trust, properties are being cleaned up, sold, reused and revitalized, bringing jobs back to communities.

Cleanup Enforcement Benefits the Community

Environmental and public health factors affect people most significantly where they live. EPA has a number of enforcement tools used to not only protect human health and the environment, but to assist communities in environmentally overburdened, under served, and economically disadvantaged areas where the needs are greatest.

The Value of Environmental Enforcement

Through major, sustained collaborative efforts and by advocating throughout the MLC bankruptcy settlement for the cleanup of all sites affected by GM's operations, EPA's enforcement program has helped communities at 89 sites across 14 states. These contaminated and formerly contaminated sites are receiving resources that

For More Information, Please Contact:

Morgan Kelly
Office of Site Remediation Enforcement
U.S. Environmental Protection Agency



202-564-0204



kelly.morgan@epa.gov