

From: Tracie Nichols <tnichols@racertrust.org>

Sent: Wednesday, November 12, 2025 1:46 PM

To: 'Roberts, Robert' <Roberts.Robert@epa.gov>; 'Wieder.Marla@epa.gov'; 'negeleb@michigan.gov'; 'Richard.Engel@law.njoag.gov'; 'SynkP@michigan.gov'; Lashbrook, April <alashbro@idem.IN.gov>; 'Rickrich, Mark' <mark.rickrich@epa.ohio.gov>; jennifer.davis@state.ma.us; lisa.shook@epa.ohio.gov; Michelle.Dickerman@treasury.gov; Privitera, John J. <PRIVITERA@mltw.com>; ofschiefcounselnotices@do.treas.gov; rockafellowd@michigan.gov; khalloran@pa.gov; chinwe.ndubuka@dnr.mo.gov; Jamie.woods@ag.ny.gov; ermischb@michigan.gov; STILZ, DON <DSTILZ@idem.IN.gov>; margaret.sheen@dec.ny.gov; john.cook@ks.gov; bgreenert@pa.gov; stanhope.jennifer@epa.gov; koller.mark@epa.gov; tysonk@michigan.gov; doyle.james@epa.gov; sacks.victoria@epa.gov; ludmer.margo@epa.gov; Elliott.usher@dnr.mo.gov; granger.mark@epa.gov; gazi.salahuddin@delaware.gov; kkulbok@oag.state.va.us; Priya.agarwal2@treasury.gov; melissa.langton@epa.ohio.gov; sarah.beal@epa.ohio.gov; thomas.coogan@wisconsin.gov; steve.davidson@treasury.gov; Rubino.Victoria@epa.gov; dailyd@michigan.gov; deidra.johnson@la.gov; paegan.deering@state.ma.us; kevin.garstka@ilag.gov; brenda.haire@delaware.gov; teresa.pisula@illinois.gov; Helen.Sullivan@treasury.gov; issac.ross@wisconsin.gov; Travis.Groski@delaware.gov; carr.stephanie@epa.gov; jeanne.cohn@usdoj.gov; olson.erik@epa.gov; patel.shilpa@epa.gov; Alexandria.smith@treasury.gov; vogel.anne@epa.gov; timothy.kern@ohioago.gov; eric.sainey@epa.ohio.gov; robert.yalen@usdoj.gov <robert.yalen@usdoj.gov>

Cc: Elliott Laws <elaws@racertrust.org>; Carl Garvey <cgarvey@racertrust.org>; Scott Hamilton

<shamilton@racertrust.org>; Pam Barnett <pbarnett@racertrust.org>; Brendan Mullen <bmullen@racertrust.org>

Subject: Notice under SA Para. 59 re Cushion Funding Account ("CFA") funding regarding RACER Trust's Delphi C - Livonia Groundwater Property (Michigan)

EXTERNAL EMAIL: This email was sent from outside your organization. Exercise caution when clicking links, opening attachments or taking further action, before validating its authenticity.

Sending on behalf of Carl P. Garvey:

Dear SA Signatory Party Representatives:

Please see the attached SA Paragraph 59 Notice from RACER's Administrative Trustee regarding the anticipated use of Cushion Funding Account funds at the Trust's Delphi C – Livonia Groundwater property in Livonia, Michigan. I've also included the internal RACER memo that's referenced in the Notice.

Please feel free to contact me if you have any questions regarding the attached documents.

Carl P. Garvey
General Counsel
Revitalizing Auto Communities Environmental Response (RACER) Trust
Mobile: 734-890-8591
Email: cgarvey@racertrust.org



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MEMORANDUM

DATE: September 29, 2021

TO: Elliott P. Laws, Sole Member of EPLET, LLC, Administrative Trustee of Revitalizing Auto Communities Environmental Response Trust (“RACER Trust”)

FROM: Grant Trigger, Michigan Cleanup Manager, RACER Trust
David Favero, Michigan Deputy Cleanup Manager, RACER Trust

SUBJECT: Former Delco Chassis Plant, Livonia Groundwater Site - Request for Cushion Funding Account disbursement for the 2021 Environmental Action Budget pursuant to Paragraph 57 of the Settlement Agreement

DISTRIBUTION: Carl Garvey and Scott Hamilton

This memo serves as our request for possible disbursement of Cushion Funding Account (“CFA”) funds for the 2021 Annual Environmental Action (“EA”) Budget for the RACER Former Delco Chassis, Livonia Groundwater Site (aka Livonia Industrial Land II or Eckles Road) (“Site” - see Attachment 1 hereto). This request is based on expenditures to date and projected possible response activities and costs to address per- and polyfluoroalkyl substances (“PFAS”) groundwater contamination and the failed vapor intrusion remedy in a residential area. More specifically, per- and polyfluoroalkyl substances (“PFAS”) have been identified in Area of Interest (“AOI”) 1 – Former Plating Area (aka “Area 1”) and require action, and the approved remedy for AOI 31 – Former Fire Training Area was groundwater monitoring, which has proven to be inadequate to address the vapor intrusion to indoor air pathway (VIAP) in an off-site residential area.

The Minimum Estimated Property Funding (“MEPF”) and the Reserve Property Funding (“RPF”) Accounts were exhausted in 2016 and 2017, respectively. Based on your determination and previous U.S. Environmental Protection Agency (“USEPA”) approvals of the 2017, 2018, 2019, 2020, and 2021 Annual EA Budget Requests, Long-Term Operation, Maintenance, and Monitoring Property Funding (“OMMPF”) account funds were used to pay for EA for those years. Based on the USEPA approved 2021 Annual EA Budget Request of \$1,937,268 and the requested 2021 EA Budget Amendment Request No. 1 of \$284,809 (summarized in Attachment 2 hereto), the Site’s OMMPF account may be exhausted (the OMMPF account balance as of August 31, 2021 was \$1,257,301) and CFA funds may be needed to complete EA in 2021 and will definitely be needed to complete EA after 2021. EA for 2021 and after are necessary to further characterize, remediate, integrate remediation with redevelopment, and complete required operation, maintenance, and monitoring at the Site.

Based on exhaustion of the Site’s MEPPF and the RPF, and near exhaustion of the OMMPF we request your approval for disbursement of the combined amount of the estimated PFAS and VIAP costs in the amended 2021 EA Budget, \$2,157,021 from the CFA for 2021 and future EA. The amount of additional EA funds that will be needed in the Site’s 2022 EA budget and in subsequent years to address PFAS and VIAP is not known at this time. At a minimum, additional CFA funds will be needed in 2022 and future years to complete necessary OMM related to Area 1 and AOI 31. Past costs through the end of 2020 to address Site-related PFAS are estimated to be \$424,110 and to address the VIAP at AOI 31 are estimated to be \$901,720.

In accordance with SA Paragraph 57, CFA funds may be included in the Site’s 2021 Annual EA Budget, or an amendment, based on three criteria. The criteria and an explanation of how these criteria are satisfied follows.

1. *The first criterion is whether the Minimum Estimated Property Funding and Reserve Property Funding has been exhausted or will be exhausted during the year covered by the proposed Annual Cleanup Budget.*

The Minimum Estimated Property Funding and Reserve Property Funding accounts were exhausted during 2016 and 2017, respectively. The USEPA-approved 2021 Annual EA Budget Request and the requested 2021 EA Budget Amendment Request No. 1 indicates that the OMMPF account could be exhausted by activities completed in 2021.

2. *The second criterion is whether “the basis for additional funds is directly related to material information, a material event or a material condition at the Property that was not reasonably foreseeable at the time the Lead Agency and/or Support Agency participated in the development of the Minimum Estimated Property Funding and Reserve Property Funding with the respect to the Property.” Further, for purposes of “deciding whether information, an event, or condition was reasonably foreseeable” at the relevant time, “the following shall not be considered to have been reasonably foreseeable: (i) remedy failure; (ii) the discovery of significant unknown contamination requiring a material change in the scope of an Environmental Action” (See Settlement Agreement Para. 56).*

The unforeseen conditions that result in the need for CFA funds in 2021 are driven by the detection, evaluation, and remediation of PFAS impacts in groundwater at and related to Area 1. PFAS were first identified at the Site in 2017.

Historically, PFAS has not been analyzed during Site investigations or groundwater extraction, treatment, and discharge remedies, and is considered an emerging contaminant of concern. Regulatory agencies placed more focus on analyzing for PFAS after six PFAS compounds were included as a monitoring parameter in USEPA’s Third Unregulated Contaminant Monitoring Rule (“UCMR 3”), which was published on May 2, 2012, and required Public Water Systems to monitor 30 contaminants (including six PFAS compounds) between 2013 and 2015 to look for these contaminants in drinking water. Further evidence that the need to address PFAS was not foreseeable when the MEPPF, RPF, and OMMPF accounts were being developed is reflected by the fact that the Remediation

Cost Estimate Summary contained no reference to the presence of or need to address PFAS at the Site.

The Site PFAS-related conditions that result in the need for CFA funds are described in more detail below.

- a) PFAS were detected at the Site as a result of initial sampling conducted in 2017. Further characterization and delineation of PFAS contamination has occurred after 2017 and assessment continues to characterize PFAS impacts.

PFAS and in particular perfluorooctane sulfonic acid (“PFOS”) is present within the area surrounded by the groundwater flow barrier wall in Area 1 and to a lesser degree outside and downgradient from the southern boundary of the barrier wall.

- b) Interim measures are in progress to extract, treat, and discharge PFAS-impacted groundwater from within the barrier wall and to integrate an infiltration barrier (i.e., cap that includes a high density polyethylene [“HDPE”] geomembrane liner) with the barrier wall and redevelopment (i.e., building floor and roof) of the Site in order to minimize or eliminate the need for future groundwater extraction (and possibly treatment) and discharge to the sanitary sewer system.

Additional contingency interim and/or final measures to address PFAS-impacted groundwater may be necessary.

Remedy failure occurred and was verified in relation to AOI 31 in 2012 and has added to the need for Cushion Funding Account funds in 2021. As documented in the Remediation Cost Estimate Summary Former Delco Chassis Plant, Revised May 2010 (“RCES”), the final remedy for the Site had been selected by USPEA and implemented, and a Corrective Action Complete with Controls determination had been requested by Motors Liquidation Company (“MLC”) in 2010. The final remedy for AOI 31 included already completed in-situ treatment in the contaminant source area and groundwater monitoring. Subsequently, groundwater monitoring identified concentrations of trichloroethene (“TCE”) that warranted additional assessment of the potential for unacceptable exposures from soil vapor intrusion to indoor air in an adjacent residential area so further assessment of off-site groundwater and soil vapor impacts related to AOI 31 was completed. The assessment led to the determination that two residences required mitigation to address potential unacceptable risk through VIAP and TCE groundwater impacts were continuing to migrate downgradient with the potential to create unacceptable risks through VIAP at other residences.

3. *The third criterion for Cushion Funding is that “the funds in the Cushion Funding Account are sufficient to address the Lead Agency’s request and any other budget requests for other Properties made that calendar year.”*

The requested CFA funding for the Site is \$2,157,021. The RACER August 31, 2021 Property Funding Account Balance financial report shows that the CFA has adequate funds to provide the requested amount and the amounts of CFA Funds needed for the Lansing, MI, Coldwater Road, MI and Massena, NY sites (the other sites eligible for and expected to receive CFA funding in 2021).

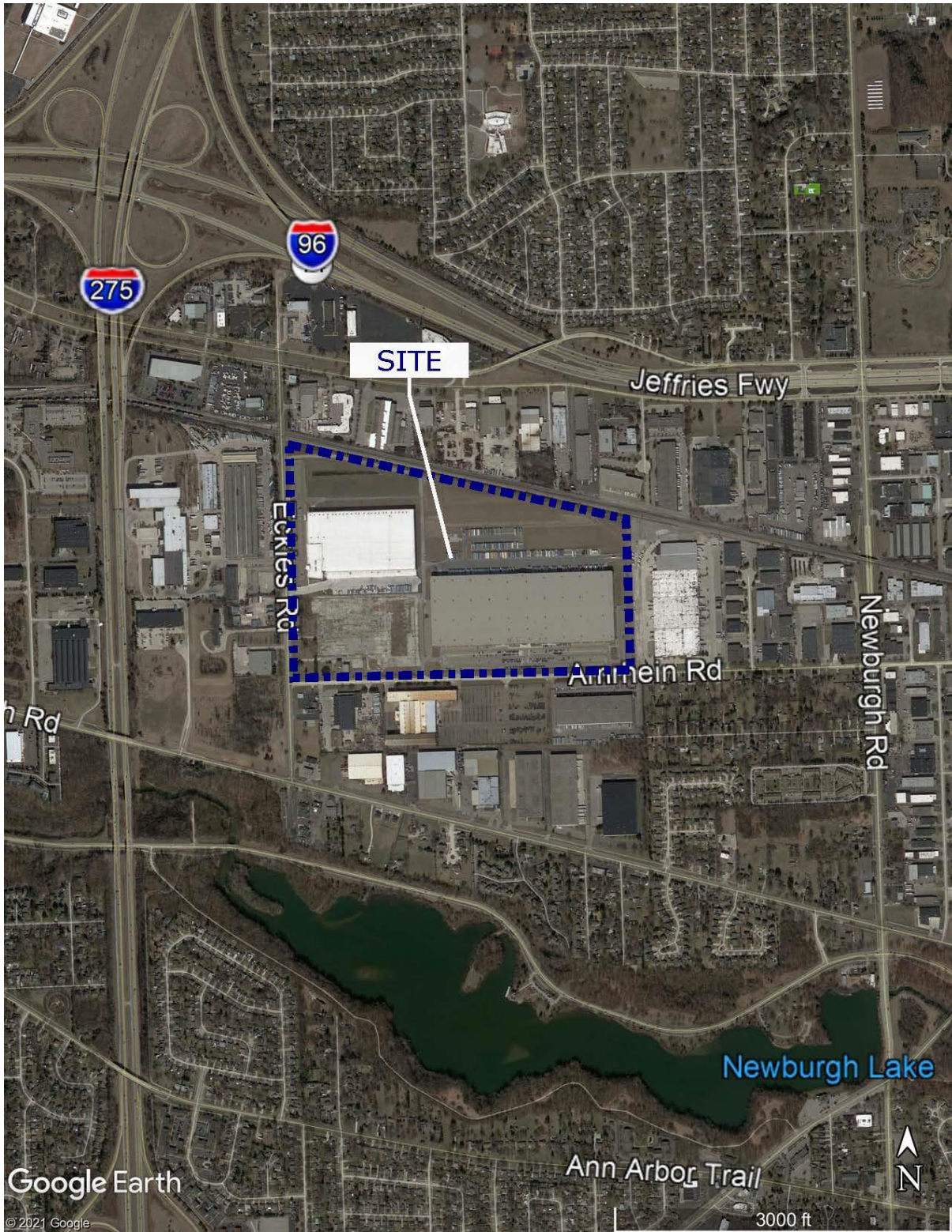
Based on the above information, we request you approve disbursement of CFA funding of \$2,157,021 for 2021 and future EA.

Please let us know if you would like to discuss this matter further.

Attachments

1. Site Location
2. Summary of RACER's 2021 Annual EA Budget and Amendment Request No. 1

Attachment 1
Site Location



Attachment 2

Summary of RACER’s 2021 Annual EA Budget and Amendment Request No. 1

Summary by Task				
Task Descriptions	2021 Annual Budget	2021 Annual Budget Amendment No. 1	Total 2021 Annual Budget	
Task 1 <i>OM&M - GWTP and Long-Term Monitoring</i>				
<i>Subtask 01 - GMP Monitoring Events</i>	\$6,964	\$4,215	\$11,179	
<i>Subtask 02 - Annual/Semi-annual Reporting</i>	\$4,056	\$0	\$4,056	
<i>Subtask 03 - PM & Tech Action Items</i>	\$17,651	\$0	\$17,651	
Subtotal	<u>\$28,671</u>	<u>\$4,215</u>	<u>\$32,886</u>	
Task 2 <i>Field Pilot Study & Full-Scale Area 1 In-Situ Precipitation</i>	\$0	\$0	\$0	
Task 3 <i>GW Treatment System Decom & Removal</i>	\$0	\$0	\$0	
Task 4 <i>Completion Report & Well Abandonment</i>	\$0	\$0	\$0	
Task 5 <i>AOI 31</i>				
<i>Subtask 01 - Annual GMP Monitoring Events/ISCO Support</i>	\$27,334	\$19,150	\$46,484	
<i>Subtask 02 - Hamp Mathews Sampling & Reporting</i>	\$65,535	\$0	\$65,535	
<i>Subtask 03 - AOI 31 Remediation Pilot/Remediation Testing</i>	\$175,000	(\$175,000)	\$0	
Subtotal	<u>\$267,869</u>	<u>(\$155,850)</u>	<u>\$112,019</u>	
Task 6 <i>Area 1 Remedial Implementation - Monitoring Events</i>	\$20,070	\$12,099	\$32,169	
Task 30 <i>PFAS - Initial Site Screening</i>	\$0	\$0	\$0	
Task 31 <i>PFAS - Site Characterization</i>	\$62,425	\$0	\$62,425	
Task 32 <i>PFAS - Risk/Exposure Pathway Analysis</i>	\$0	\$0	\$0	
Task 33 <i>PFAS -Remedy/Interim Measure Evaluation</i>	\$34,975	\$18,747	\$53,722	
Task 34 <i>PFAS -Pilot Tests</i>	\$0	\$0	\$0	
Task 35 <i>PFAS - Remedy/Interim Measure Design</i>	\$36,447	\$25,596	\$62,044	
Task 36 <i>PFAS Remedy/IM Implementation</i>				
<i>Subtask 01 - Area 1 Liner/Cap Material/Installation/Oversight</i>	\$1,274,760	\$224,967	\$1,499,727	
<i>Subtask 02 - GWTP FEA</i>	\$0	\$16,381	\$16,381	
<i>Subtask 03 - Storage Building/Clarifier FEA - To be Reimbursed</i>	\$0	\$7,501	\$7,501	
<i>Subtask 04 - Area 1 GWTP Relocation</i>	\$0	\$124,999	\$124,999	
Subtotal	<u>\$1,274,760</u>	<u>\$373,847</u>	<u>\$1,648,608</u>	
Task 37 <i>PFAS - Operation, Maintenance and Monitoring</i>				
<i>Subtask 01 - GWTP OM&M</i>	\$191,557	\$0	\$191,557	
<i>Subtask 02 - Annual Groundwater Monitoring Events</i>	\$20,493	\$6,153	\$26,646	
Subtotal	<u>\$212,050</u>	<u>\$6,153</u>	<u>\$218,203</u>	
Totals	<u>\$1,937,268</u>	<u>\$284,809</u>	<u>\$2,222,076</u>	

MEMORANDUM

To: Settlement Agreement (“SA”) Signatory Parties

From: Elliott P. Laws, Managing Member – EPLET, LLC, Administrative Trustee for
Revitalizing Auto Communities Environmental Response Trust (“RACER” or “Trust”)

Re: Notice under SA Paragraph 59 regarding decision by RACER’s Administrative Trustee to expend Cushion Funding Account funds at RACER’s Delphi C– Livonia Groundwater (MI) Property (“Paragraph 59 Notice”)

Date: November 12, 2025

Introduction

This Notice is being sent under SA Paragraph 59 to notify the SA Signatory Parties of RACER’s intent to transfer Cushion Funding Account (“CFA”) funding in the amount of \$842,581 to the Reserve Property Funding (“RPF”) Account for the Delphi C – Livonia Groundwater Property in Livonia, Michigan (“Site”). This CFA funding will enable the Trust to continue its Environmental Action (“EA”) work there. The U.S. Environmental Protection Agency (“USEPA”) is the Lead Agency for the Site.

RACER exhausted the Site’s Minimum Estimated Property Funding (“MEPF”) Account in 2016 and then initially exhausted the RPF Account in 2017. Beginning in 2017, USEPA has through the Annual Cleanup Budget process approved use of funds from the Site’s Long Term Operation, Monitoring, and Maintenance (“LTOMM”) Property Funding (“LTOMMPF”) Account to fund RACER Trust’s EA (i.e., non-LTOMM) actions there. To preserve the remaining LTOMMPF Account monies for this Site, the Administrative Trustee in 2021 made a determination to end the use of such funds for non-LTOMM actions.

Portions of the Site’s MEPF, RPF, and LTOMMPF Accounts had been used by RACER to pay the costs of responding to site-related per- and polyfluoroalkyl substances (“PFAS”) groundwater impacts. In addition, portions of the Site’s MEPF, RPF, and LTOMMPF Accounts have been used on the failed groundwater monitoring remedy for AOI 31 – Former Fire Training Area (“AOI 31”), which proved to be inadequate to address the volatilization to indoor air pathway (or VIAP) in an off-site residential area.

Administrative Trustee’s Determination to use CFA Monies at Site

RACER has deemed the costs of responding to PFAS at the Site and to the AOI 31 remedy failure to be eligible for reimbursement from the CFA. RACER has and will hereafter need to draw on CFA funds when appropriate – in accordance with the Site’s Annual Cleanup Budgets once approved by Lead Agency USEPA and subject to future Paragraph 59 Notices -- to continue its EA work at the Site. By the end of November of 2025, RACER in its performance of the Site’s EA work anticipates exhausting the Site’s RPF and therefore needing to draw again on CFA funds to continue its work there.

In September 2021, RACER's Michigan Cleanup Manager and Deputy Cleanup Manager (collectively "Cleanup Manager") prepared and submitted to the Administrative Trustee a memorandum that described why RACER's response to PFAS and the failed remedy for AOI 31 met the SA Paragraph 57 criteria for CFA-eligibility. RACER provided a copy of this memo to the Signatory Parties along with a previous Notice of the Administrative Trustee's decision to expend CFA funds at the Site provided under the SA Paragraph 59 Notice provisions. This September 2021 memorandum is attached here for reference.

Then, as provided under SA Paragraph 57 and based on: a. the above-referenced memorandum; b. progress made in responding to PFAS and the failed AOI 31 remedy at the Site; and c. ongoing input from the Cleanup Manager, the Administrative Trustee determined that ***"it is appropriate for funds from the Cushion Funding Account to be included in the proposed Annual Cleanup Budget."*** RACER therefore submitted to USEPA -- and USEPA has subsequently approved -- the Annual Cleanup Budget Requests for the Site in 2022, 2023, 2024, and 2025, each of which included CFA funds to pay for RACER's response to PFAS and the failed AOI 31 remedy at this Site.

Screening of Proposed CFA Transfer & Use through Settlement Agreement Criteria

The Administrative Trustee's determination under SA Paragraph 57 is based on the following criteria:

"(i) The Minimum Estimated Property Funding ["MEPF"] and Reserve Property Funding ["RPF"] has been exhausted or will be exhausted during the year covered by the proposed Annual Cleanup Budget" (i.e., the MEPF Account has been exhausted since 2016 and the RPF Account for the Site, which has previously received funds transferred from the CFA, is again expected to be exhausted in November of 2025;

"(ii) the basis for additional funds is directly related to material information, a material event or a material condition at the Property that was not reasonably foreseeable at the time the Lead Agency and/or Support Agency participated in the development of the Minimum Estimated Property Funding and Reserve Property Funding with respect to the Property" (i.e., the basis for the additional funds is directly related to material information and a material condition regarding PFAS contamination in the soil and groundwater, and failure of the approved AOI 31 remedy that was not reasonably foreseeable at the time of the development of the Site MEPF and RPF Accounts; and

"(iii) the funds in the Cushion Funding Account are sufficient to address the Lead Agency's request and any other budget requests for other Properties made for that calendar year" (i.e., CFA funds are sufficient to address this request and any other requests made for properties for 2025).

Under Paragraph 59 of the SA, "[a]ny decision by the Administrative Trustee to expend Cushion Funding Account funds pursuant to an Annual Cleanup Budget shall be

provided to all of the Lead and Support Agencies thirty days in advance of the date on which the Administrative Trustee intends to use such funds, unless such funds are intended to be used on an emergency basis to respond to an imminent and substantial endangerment to human health or the environment, in which case written notice shall be provided as soon as practical.” As noted above, RACER anticipates transferring \$842,581 of CFA funds, previously approved in the Site’s 2025 Annual Cleanup Budget for transfer, to the Site RPF Account in December of 2025, at least thirty (30) days from today’s date. RACER will commence expenditure of those funds thereafter. (In its approval of the 2025 Annual Cleanup Budget for the Site, USEPA agreed to RACER’s use of these CFA funds at the Site. That approval is subject to this Paragraph 59 Notice.)

Under Paragraph 59 of the SA, “[a] **Lead or Support Agency has standing to challenge the Administrative Trustee’s decision to use Cushion Funding Account funds and may petition the Bankruptcy Court to resolve the dispute. The Bankruptcy Court shall decide the petition on the totality of the evidence submitted and the Lead or Support Agency challenging the decision shall bear the burden of proving by clear and convincing evidence that the Administrative Trustee’s decision was arbitrary and capricious.**” The SA does not provide specific procedures by which a Lead or Support Agency may challenge the Administrative Trustee’s decision to use CFA funds. Given the anticipated need to transfer and expend CFA funds for the Site in November of 2025, RACER requests that, in the event an agency elects to file a petition with the Bankruptcy Court to challenge the Administrative Trustee’s decision, that such petition be filed by no later than December 12, 2025.

In light of the on-going shutdown of the Federal Government, however, RACER will not object to the filing by the United States, within two weeks after the date on which the shutdown ends, of any such petition regarding this Paragraph 59 Notice.

Review of Key Amounts Referenced in this Notice

This is the third Paragraph 59 Notices from the Administrative Trustee regarding RACER’s intent to transfer and use CFA funding at this Site; the first two Notices were dated November 12, 2021 (CFA funding - \$2,157,921), and July 9, 2024 (CFA funding - \$590,370). Please note that the Trust may need to issue additional Paragraph 59 Notices for this Site in the future.

By 2024, RACER had fully transferred and expended all of the \$2,157,021 of CFA funding that was the subject of the Paragraph 59 Notice of November 12, 2021. From 2021 to 2024, RACER was able to use those funds over the course of several years as: 1. the Trustee determined (with USEPA approval, where required) that certain EA activities did not need to be implemented; 2. delays beyond the Trust’s control occurred in implementing certain EA activities; and 3. RACER was able to achieve cost savings in the EA work. Later in 2024, RACER then fully transferred the CFA funding that was the subject of the Paragraph 59 Notice of July 9, 2024 (\$590,370), and had fully expended those funds by early in 2025.

At the time the Site RPF Account became exhausted in February of this year, RACER made an “intrastate transfer” of EA funding in the amount of \$1,138,652 to that Account. This transfer was made, in accordance with SA Paragraph 62 and with the approval of USEPA and the Michigan

Department of Environment, Great Lakes, and Energy, from the Livonia Powertrain Site (RACER Site #1195) MEPF Account following the Administrative Trustee's determination that these were "excess funds" no longer needed for EA work at Site #1195.

Conclusion

In continuing to perform the Site EA work to address PFAS impacts and the failed AOI 31 remedy, the Trust has again drawn down the RPF Account. Therefore, RACER hereby issues this Paragraph 59 Notice to inform the SA Parties of the Trust's intent to transfer to the Site RPF Account and to subsequently expend \$842,581 of CFA funding in the latter part of December of this year.

Attachment: Memorandum – Former Delco Chassis Plant - Livonia Groundwater Site- Request for Cushion Funding Account Disbursement for the 2021 Environmental Action Budget pursuant to Paragraph 57 of the Settlement Agreement, September 29, 2021