

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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March 29, 2017

Gregory Photiadis
Duke, Holzman, Photiadis
& Gresens, LLP
701 Seneca Street, Suite 750
Buffalo, NY 14210

RE: American Axle Plant Site No. 915196

Mr. Photiadis,

The Department has reviewed the Preliminary Work Plan (PWP) submitted by East Delevan Properties (EDP) on February 17, 2017 to reclassify the American Axle Plant 5-acre Class 2 superfund site (Site). The Department appreciates the efforts made by EDP to provide data sufficient to continue along its preferred path toward site reclassification. However, the Department's review of data submitted with the PWP clearly shows that the Site remains a significant threat to public health and the environment that must be addressed.

The PWP has confirmed that EDP has not performed sufficient monitoring during the course of its many years of ownership to ensure stabilization of known hazardous wastes/substances at the Site. Following the Department's latest visit to the Site on February 8, 2017 and the review of data submitted with the PWP, it is clear that active sources at the Site have not been eliminated and the Site has not been adequately managed.

Therefore, the Department has determined that further efforts to provide documentation for reclassification of the Site are not prudent at this time and a Department approved or led program to complete a rigorous remedial investigation and feasibility study (RI/FS) is necessary. The Department welcomes EDP's continued efforts at the Site under a remedial consent order with the Department to undertake the RI/FS of the Site and off-site areas, as needed. Alternatively, the Department will refer this matter to the State Superfund and complete the work required for a Record of Decision at the Site. Under any scenario, the funds designated for the Site from prior General Motors bankruptcy proceedings can ultimately be applied to the cost of remedial work at the Site.

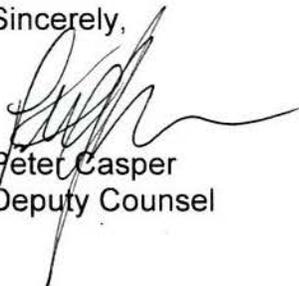
Following the issuance of a Record of Decision for the Site, the Department may engage American Axle Manufacturing (AAM) and EDP again to offer both parties an

opportunity to implement the chosen remedy. As explained previously, AAM and EDP, have both been identified as viable responsible parties at the Site. The Department reserves all rights to pursue AAM and EDP in cost recovery proceedings to the extent that EDP does not agree to work with the Department through an order on consent, recognizing that EDP retains the legal right to seek contribution for expenses incurred for investigating and remediating the Site.

The Department continues to welcome good faith engagement with EDP on the completion of a remedial program at the Site. The Department will continue to work with EDP to ensure that contamination at the Site is remediated such that public health and the environment are protected and the Site may continue to be put to productive use. Please note that this letter pertains to the five-acre Class 2 Site, within the 35-acre former American Axle plant property. Areas outside of the five-acre Site have not been determined to be ineligible for the Brownfield Cleanup Program (BCP). Any future application for entry to the BCP for areas outside the Site would not be barred by Class 2 status and the existence of viable responsible parties at the 5-acre Site.

Please contact the project attorney for this site, Patrick Foster, within 15 days of the date of this letter at 518-402-9502 or patrick.foster@dec.ny.gov with your proposed course of action. In light of the public interest to avoid delay in addressing the significant threat posed by the Site, the Department will refer this matter to State Superfund by May 1, 2017 in the event that EDP does not agree to execute an order on consent by that date. Thank you for your continued engagement with the Department on this matter.

Sincerely,



Peter Casper
Deputy Counsel

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