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THE NEW STANDARD IN CLIENT SERVICE

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June 8, 2021

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SUBJECT TO FRE 408

Via E-mail

Margo Ludmer
Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007

Re: Response to Notice of Potential Liability and Request to Perform Remedial Activities for the Lower Ley Creek Operable Unit of the Onondaga Lake Superfund Site, Onondaga County, New York

Dear Attorney Ludmer:

In response to Mr. Eric Wilson's Notice Letter dated April 28, 2021, I write to confirm that Onondaga County, New York is willing to negotiate the performance of the remedy selected for the Lower Ley Creek Operable Unit as such may be modified by the on-going Lower Ley Creek Operable Unit remedial design process.

The County's ultimate willingness to enter into an administrative order on consent is dependent on the following, as well as other facts and circumstances that may come to light during the negotiation process:

- Agreement on the terms of the proposed administrative order on consent;
- Agreement on the terms of the proposed statement of work;
- The availability of all appropriate funds in the Lower Ley Creek Operable Unit "Special Account" established to hold proceeds from the General Motors bankruptcy and the conditions and schedule for releasing same;
- To the maximum extent feasible, the availability of a local disposal option;
- Participation as a respondent to the proposed administrative order on consent by an appropriate and necessary number of potentially responsible parties to include parties not a respondent to the Lower Ley Creek Remedial Design Administrative Order;

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- Full disclosure and coordination of the Lower Ley Creek remedy with the timing of response actions addressing the entirety of the General Motors – Inland Fisher Guide Subsite of the Onondaga Lake Superfund Site, Town of Salina, Onondaga County, New York and any other known releases or potential releases to Ley Creek and/or its tributaries upstream of the GM-IFG facility;
- Full disclosure regarding and consistency between response actions addressing Lower Ley Creek and the entirety of the General Motors – Inland Fisher Guide Subsite of the Onondaga Lake Superfund Site and any other known releases or potential releases to Ley Creek and/or its tributaries upstream of the GM-IFG facility; and
- USEPA's presentment of a sight draft in the sum of $25,094 to the financial institution that issued an irrevocable standby letter of credit to Syracuse China in satisfaction of Syracuse China's financial assurance obligation under the terms of the Lower Ley Creek Remedial Design Administrative Order. The subject sum represents the unpaid balance of the assessment assigned to Syracuse China by the respondents to the subject Lower Ley Creek Remedial Design Administrative Order.

In this regard, we note that Onondaga County has been provided a copy of your May 24, 2021 e-mail to Mr. Pavia and Mr. Gregg suggesting that USEPA lacks the authority to submit the requested demand to the holder of the letter of credit. The e-mail failed to indicate whether the letter of credit was deemed an asset of the bankruptcy estate. If not, PDF page 27 of the April 5, 2015 memorandum from Cynthia L. Mackey, Director, Office of Site Remediation Enforcement to Regional Counsels, Regions 1-10 and Superfund National Program Managers, Regions 1-10 re: Issuance of CERCLA Financial Assurance Guidance, Updated and New Sample Mechanisms, and Model Language Provisions for Unilateral Administrative Orders instructs as follows: "If an FA mechanism is not property of the estate, then EPA should be able to obtain any resources guaranteed by such mechanism during the bankruptcy without court approval; if not, EPA would need bankruptcy court approval to do so. For example (as is the case here), if a PRP secured a letter of credit as FA pursuant to a settlement before filing for bankruptcy, EPA should be able to draw on the letter of credit because it and its proceeds are generally considered assets outside of bankruptcy estates." *See* Uniform Customs and Practice for Documentary Credits (referenced in the subject Irrevocable Letter of Credit) and *In re Powerine Oil Co.,* 59 F.3d 969 (9th Cir. 1995).

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In closing, I must reiterate that this letter response does not constitute and is without admission by the County of Onondaga, New York of any fact regarding or any liability for the Lower Ley Creek Subsite or the Site, any other subsite and/or any other site or location.

Please direct all future communications to the attention of myself and

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Thank you.

Very truly yours
THE WLADIS LAW FIRM, P.C.

Kevin C. Murphy

KCM/mms

Cc: *Via E-mail*

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