



**BOND, SCHOENECK & KING, PLLC**  
ATTORNEYS AT LAW ■ NEW YORK FLORIDA KANSAS

BARRY R. KOGUT  
Direct: 315-218-8181  
Fax: 315-218-8481  
bkogut@bsk.com

March 9, 2009

**BY FIRST CLASS MAIL AND E-MAIL**

Margaret A. Sheen, Esq.  
Assistant Regional Attorney  
New York State Department of Environmental Conservation  
Office of General Counsel, Region 7  
615 Erie Boulevard West  
Syracuse, NY 13204-2400

Re: *Old Ley Creek Channel – Index # D7-0002-00-05*

Dear Margaret:

We are in receipt of your letter of February 23, 2009 under cover of which you provided a copy of a updated version of an Order on Consent (the "Order") between General Motors Corporation (GM) and the New York State Department of Environmental Conservation (the "Department") that you asked be signed by GM in connection with the referenced matter. You advised that if the Department does not receive a copy of this Order signed by GM by March 9, it will seek authorization to use the Remedial Fund to undertake the remedial program at the referenced site.

This is to advise that GM will not be signing the Order because:

(1) the proposed scope of the investigation in the Study Area is too broad. In your February 23 letter, you indicated that the Department is not willing to limit the scope of the investigation of the "Study Area" downstream from the "Site" (as those terms are defined under the proposed Order) to the main channel of Ley Creek. The Department is insisting that the Study Area include the "flood plain of the main channel of Ley Creek running underneath and downstream of the Route 11 bridge," which you advised in your February 23 letter is interpreted by the Department as the "FEMA 100 year flood plain."

This defined flood plain area is very extensive with potentially many owners, and if GM were required to contact all of these owners, it would highlight GM's position as a potentially responsible party for not only any contamination detected throughout this industrial/commercial corridor area, but with historical discharges from Ley Creek into Onondaga Lake. The latter is of particular concern in view of the decision made late last year by the federal and state

One Lincoln Center, Syracuse, NY 13202-1355 ■ Phone: 315-218-8000 ■ Fax: 315-218-8100 ■ www.bsk.com

David Thompson

LFR

Jun 17, 2009 19:00

Margaret A. Sheen, Esq.  
March 9, 2009  
Page 2

governments to actively pursue a cost recovery action against GM and a number of other entities related to the Onondaga Lake NPL Site;

(2) the performance of the investigation and remedial work at the Site cannot be effectively done without assistance by the Department and it is clear from your February 23 letter that this assistance will not be forthcoming.

The Site at issue was understood to be the portion of the parcel owned by Plaza East LLC (a copy of the relevant deed was forwarded to you under cover of my e-mail to you of August 20, 2008). The northern portion of the Plaza East LLC parcel is proposed to be addressed as part of the remedial program for the Salina Town Landfill site, which is to be undertaken under an order on consent between the Department and the Town of Salina.

The Department will be involved with the details of the Town's design and implementation of the remedial program; GM will not. However, in your February 23 letter, the Department advises, "Any coordination of the remedial program with other parties must be coordinated by GM and can be part of the RI work plan." This simply will not work.

GM has no right to make the Town cooperate with GM in the Town's implementation of its obligations under its order on consent with the Department. Furthermore, the Department knows, and has recited in its Registry narrative for the Salina Town Landfill site that GM is alleged to have disposed of hazardous waste, including PCB-containing wastes, at the Salina Town Landfill site. Given this, GM will be considered by the Town as a potentially adverse party in the Town's future efforts to be reimbursed for its portion of costs associated with investigation and remediation of the Salina Town Landfill site. In view of this adversarial situation, it is not realistic to believe that GM can develop the close working relationship with the Town that would be required in this case.

GM needs to have access to the Site and had successfully reached consensus with the Department for two other sites on its request to have the site owner included on the Order for purposes of securing access. (See my letter to you of August 20, 2008.) However, in this case, you advised in your February 23 letter that the Department "will not be adding on the property owner" to the Order, and that the Department "considers this aspect closed from further negotiation" without further explanation.<sup>1</sup>

In sum, without the Department's assistance, GM cannot effectively do the required work at the Site. We also note that in your February 23 letter, you now are requiring that the Site be extended to "go down to the boundary of Route 11" and "the eastern edge must abut Brewerton

<sup>1</sup> Apparently, the Department has never sought information from Plaza East LLC to determine the scope of its activities on the property or that of any of its predecessors that could be of interest in the development of the required investigation. GM has no right to this information from Plaza East LLC outside of litigation

David Thompson

1539446.2 3/9/2009

LFR

Jun 17, 2009 19:00

Margaret A. Sheen, Esq.  
March 9, 2009  
Page 3

Road.” We do not believe that Plaza East LLC owns any portion of that property and so there is now another potential owner involved for which GM has no information; and

(3) Based on the positions taken by the Department in your February 23 letter, it is the Department, rather than GM, that is in the far better position to perform the work required under the Order. We note that it is the Department, and not GM, that:

- (a) Has the regulatory authority to access the various parcels within the FEMA 100 year flood plain of Ley Creek to take samples as part of an investigation and it can exercise that right in a timely manner. GM has no comparable right of access and the effort to secure the needed access would be time-consuming and require needless expenditure of monies (not even counting the costs that would need to be incurred if landowners demanded compensation for access);
- (b) Has access to information on downstream sites that are now, or might in the future be, the subject of administrative orders associated with environmental conditions. The Department is in the best position to know the extent of contamination from these sites, or how these sites might expand or contract over time based upon the results of ongoing investigation or remedial efforts;
- (c) Has access to the work being done by the Town of Salina in connection with the implementation of the remedial program at the Salina Town Landfill that will overlap on the Site as defined under the Order. The Town will be working with the Department on this project under a separate order on consent, and therefore, the site information generated by the Town will be readily available to the Department; and
- (d) Can demand that the Site owner, Plaza East LLC, provide information on its past historical activities, and to the extent it knows, that of its predecessors. That information is important in developing the scope of the required investigation.

Given its access to the information referenced under items (a)-(d), it is the Department who can then assess the strength of its argument that upstream contamination from the former GM-IFG manufacturing facility is the source, in whole or in part, to any environmental contamination observed within the Ley Creek corridor that may require a remedial response. The Department will also be able to obtain the required information much more quickly than GM due to its involvement with the other entities doing environmental work within the Ley Creek corridor either now or in the future.

Given GM's economic challenges that have only intensified over the past several months, GM cannot agree to take on expenditures of any significance unless it concludes that it can do the work in the most efficient and productive manner consistent with its position on responsibility for environmental conditions in the areas at issue. This review is an obligation that GM owes not

Margaret A. Sheen, Esq.  
March 9, 2009  
Page 4

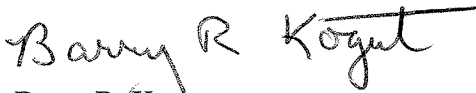
only to its immediate stakeholders (that is, its employees, shareholders, etc.), but to the federal government with whom it is engaged in ongoing discussions on needed financial assistance. As noted, for the reasons stated, GM has concluded after thoughtful analysis that it cannot go forward with the proposed Order.

We do not agree with a number of the other comments that you made in your February 23 letter, but given the outcome of the foregoing analysis, it would not be productive to set forth for the record our position on a number of other items that you discuss in your letter. The exchange may also detract from the basis for GM's decision not to go forward, which can be summarized as follows:

- the restrictions under which GM is being asked to perform the work under the Order will not yield a timely, thorough or cost-effective investigation and remedial result; and
- the Order represents a burden that is not appropriate for GM to assume under the facts as known and given the pending economic challenges facing GM.

Sincerely,

BOND, SCHOENECK & KING, PLLC

  
Barry R. Kogut

cc: Susan Edwards, NYSDEC (By e-mail)  
James Hartnett, GM (By e-mail)