

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**STATE OF NEW YORK, NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and BASIL SEGGOS, as
Commissioner of the New York State Department of
Environmental Conservation,**

**Consent Decree
Civil Action No.**

Plaintiffs,

-against-

**AMERICAN AXLE & MANUFACTURING,
INC.**

Defendant.

Plaintiffs, the State of New York, the New York State Department of Environmental Conservation (DEC), and Basil Seggos, as Commissioner of the New York State Department of Environmental Conservation, (collectively, the State), and American Axle & Manufacturing, Inc. (American Axle or Defendant), a corporation organized and existing under the laws of the State of Delaware, represent as follows:

RECITATIONS

WHEREAS, the State filed an action against American Axle, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.* (CERCLA), and New York law (the CERCLA Lawsuit), seeking (a) to recover past and future response costs and expenses relating to the release or threatened release of hazardous substances at the Tonawanda Forge Site (the Site) located in the Town of Tonawanda, Erie County; and (b) additional other relief.

WHEREAS, the Site comprises approximately 33 acres of land located at 2390 and 2392 Kenmore Avenue in the Town of Tonawanda, Erie County, New York.

WHEREAS, General Motors owned and operated the Site from approximately 1950 until 1994.

WHEREAS, during the period when General Motors owned and operated the Site, it manufactured component parts for automobiles.

WHEREAS, in 1994 General Motors sold the Site to American Axle.

WHEREAS, American Axle owned the Site from 1994 until 2008 and operated portions of the Site during that period, manufacturing component parts for automobiles.

WHEREAS, in 2008, American Axle sold the Site to Lewis Brothers, LLC (Lewis Brothers), which engaged in demolition activities at the Site.

WHEREAS, the State has alleged that the Lewis Brothers, Samuel Lewis, Timothy Lewis and American Axle are responsible, in whole or in part, for the discharge of petroleum contamination at the Site, which resulted in DEC issuing Spill No. 0911809 on August 1, 2009.

WHEREAS, during such demolition activities by Lewis Brothers and its subcontractor, a release of polychlorinated biphenyl (PCB) oil occurred, which, resulted in DEC issuing Spill Number 1112690 on December 19, 2011 and conducting a cleanup.

WHEREAS, in May 2013, DEC listed the Site as a Class 2 Inactive Hazardous Waste Site pursuant to 6 NYCRR Part 375.

WHEREAS, over the years, a number of soil, sediment, groundwater, and surface water sampling investigations at the Site occurred. Certain of these investigations revealed the presence of asbestos, that petroleum had been released into the soil, and hazardous substances had been released into the soil, storm sewer sediments, groundwater, and surface water at the

Site. These hazardous substances included PCBs, pesticides, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and metals.

WHEREAS, in November 2017, the State filed a lawsuit in New York State Supreme Court, Albany County against American Axle, Lewis Brothers, Samuel Lewis, and Timothy Lewis (Index No. L-00083-17) concerning Spill Number 0911809 and seeking recovery of \$425,717.48 in cleanup and removal costs related to petroleum discharges at the Site, plus interest, statutory penalties, and the costs and disbursements of filing the lawsuit (the Oil Spill Lawsuit).

WHEREAS, in January 2018, DEC issued a remedial investigation report detailing the nature of the contamination at and around the Site.

WHEREAS, the hazardous substances found at and around the Site in environmental media (including soil, storm sewer sediments, groundwater, and surface water), included, among other things, PCBs, pesticides, VOCs, SVOCs, and metals. Certain SVOCs and metals were found at concentrations exceeding State regulatory standards.

WHEREAS, by letter dated June 24, 2019, the State identified American Axle as a potentially responsible party with respect to the Site, alleging that American Axle arranged for disposal of hazardous substances at the Site and/or that it disposed of hazardous substances at the Site when it owned or operated the Site, pursuant to CERCLA, 42 U.S.C. §§ 9607(a)(2).

WHEREAS, in September 2019, DEC issued a feasibility study report. The feasibility study report outlined alternatives for remediation of the hazardous substances at and around the Site, and selected a proposed remedy referred to as "Cover System, Contaminated Sewer Cleaning and Grouting, Surface Water Control, and Surface and Subsurface Soil Excavation

with an Institutional Control and Site Management Plan.” The estimated cost for the proposed remedy is approximately \$7.2 million.

WHEREAS, the State has expended approximately \$2.2 million to date to remediate hazardous substances at the Site, in addition to the \$425,717.48 alleged in the Oil Spill Lawsuit referenced above.

WHEREAS, the State considered, but did not quantify, a compensable injury to natural resources at the Site. However, the State incurred administrative costs in conducting that review, and is receiving \$25,000 to settle claims for natural resource damage assessment and damages at this Site.

WHEREAS, the Parties agree that all of the costs incurred by the State to remediate the Site are response costs incurred consistent with all provisions of the National Contingency Plan.

WHEREAS, American Axle denies the allegations that it is a responsible party, and denies any wrongdoing or liability.

WHEREAS, American Axle hereby consents to the jurisdiction of the Court for the purpose of carrying out its obligations under this Consent Decree.

WHEREAS, the State and American Axle (collectively, Parties; individually, Party) desire to fully resolve all claims and causes of action, in law or in equity, based upon CERCLA or any other federal, state, local, or common law cause of action, arising out of, in connection with or in any way related to the Matters Addressed, as defined below, without further litigation and the State shall provide full and complete contribution protection to American Axle and the Additional Released Persons, as defined below, pursuant to CERCLA.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and the implementation

of the Consent Decree will avoid prolonged and uncertain litigation between the Parties, and that this Consent Decree is fair, reasonable, in the public interest, and in furtherance of the statutory goals of CERCLA.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

I. PURPOSES AND SCOPE OF THIS CONSENT DECREE

1. The purposes of this Consent Decree are to fully resolve all claims whether set forth in the CERCLA Lawsuit or any other claims or potential claims that were, could have been, could now or hereafter be made against American Axle or the Additional Released Persons with regard to Matters Addressed, defined in paragraph 2 below; to provide mutual Covenants Not to Sue; to provide for the payment by American Axle of an amount that represents a fair, reasonable, and equitable contribution for Matters Addressed, incurred or to be incurred relating to the Site; and to provide full and complete contribution protection pursuant to CERCLA, 42 U.S.C. § 9613(f)(2), to American Axle and its: (a) predecessors, successors, and assigns; (b) past and present parents, subsidiaries, and affiliates (if any); and (c) owners, shareholders, principals, directors, officers, managers, employees, attorneys, accountants, environmental consultants, and other representatives ((a), (b) and (c) are collectively, the Additional Released Persons) with regard to the Site and to the Matters Addressed defined in paragraph 2 below.

2. "Matters Addressed," as that term is used in this Consent Decree, is defined to include any and all past, present, or future claims for Response Costs, defined in paragraph 3, that could be asserted against American Axle or the Additional Released Persons arising out of, in connection with (a) the transportation, disposal, generation, transshipment, release, or threat of release of hazardous substances at or from the Site, including but not limited to any claims

regarding off-site contamination that may be emanating from the Site, may have emanated from the Site, or may emanate in the future from the Site; or (b) any liability arising from the transport to or disposal at the Site of hazardous substances.¹

3. “Response Costs,” as that term is used in this Consent Decree, is defined to include any and all past, present, and future: (a) “costs of removal or remedial action” within the meaning of CERCLA, 42 U.S.C. § 9607(a)(4)(A) in responding to the disposal, release and/or threatened release of hazardous substances at or emanating from the Site; (b) “other necessary costs of response incurred by any other person” within the meaning of CERCLA, 42 U.S.C. § 9607(a)(4)(B), relating to the Site or to hazardous substances emanating from the Site, including but not limited to any future operation or maintenance costs related to the Site; and (c) costs related to or in connection with any health assessment or health effects study within the meaning of CERCLA, 42 U.S.C. § 9607(a)(4)(D), relating to the Site or to hazardous substances at or emanating from the Site, that may have emanated from the Site, or may emanate in the future from the Site.

II. JURISDICTION

4. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1367. This Court has personal jurisdiction over American Axle, and American Axle consents to and shall not challenge the entry of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree. This Court will retain jurisdiction over both the subject matter of this Consent Decree and the Parties for the purpose of enabling any Party to apply to the Court at any time for such further order, direction, or

¹ Claims raised by the State in the Oil Spill Lawsuit are covered in a separate stipulation of discontinuance and release.

relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms or a Party's obligations, or to resolve disputes in accordance with the provisions of this Consent Decree.

III. PARTIES BOUND

5. This Consent Decree shall apply to and be binding upon the Parties and each of their respective successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets of real or personal property, shall in no way alter the status of responsibilities of the Parties under this Consent Decree. Each signatory represents that he or she is fully and legally authorized to enter into the terms and conditions of this Consent Decree and to bind the Party on whose behalf he or she signs.

IV. DISCLAIMER OF ADMISSIONS AND DENIALS

6. Nothing in this Consent Decree shall constitute, or be construed as, a finding, admission, or adjudication of liability on any issue of law or fact.

7. American Axle is entering into this Consent Decree as a compromise of disputed claims and in doing so, American Axle and its Additional Released Persons do not admit any liability, wrongdoing, or fault concerning any of the claims alleged in the CERCLA Lawsuit.

8. This Consent Decree shall not be admissible as evidence except in any action, proceeding, or lawsuit brought: (a) by the State, American Axle, or the Additional Released Persons to enforce this Consent Decree; (b) by American Axle or the Additional Released Persons to recover costs pursuant to CERCLA, or any other federal, state, local, or common law; or (c) by American Axle or the Additional Released Persons to establish that it is entitled to contribution protection pursuant to this Consent Decree.

V. EFFECT ON LIABILITY OF OTHER PARTIES

9. Nothing contained in this Consent Decree shall be construed as barring, adjudicating, or in any way resolving any claim, cause of action, right, or defense that any Party may have under federal, state, local, or common law as against any person, firm, corporation, governmental agency, or entity that is not a Party or an Additional Released Person (Third Party) with respect to the Consent Decree, including without limitation, actions by the State against any Third Party to recover the balance of the State's past or future Response Costs asserted in this action or for injunctive relief not recovered or obtained pursuant to this Consent Decree. The Parties expressly reserve as against any Third Party such claims, causes of action, rights, and defenses.

VI. PAYMENT

10. Within ninety (90) days after the Effective Date (defined below) of this Consent Decree, American Axle shall pay the State \$3,599,282.52 (Settlement Payment).

11. American Axle's Settlement Payment shall be made to the State as follows: (a) \$3,574,282.52 by wire to the State of New York, Attorney General's Office, New York State Department of Law, Environmental Protection Bureau, The Capitol, Albany, New York 12224 and (b) \$25,000.00 by check payable to the NYSDEC-Natural Resource Damages Fund. At the time such payments are remitted, American Axle shall provide written notice of the remittances to the State in accordance with paragraph 19.

VII. RELEASE, DISCHARGE, AND COVENANT NOT TO SUE BY THE STATE OF NEW YORK

12. In consideration of American Axle remitting the payment to the State as provided under paragraphs 10-11, the State, including all of its departments, branches, agencies, instrumentalities, components, successors, and assigns, including but not limited to DEC, hereby covenants not to sue American Axle or any of the Additional Released Persons and releases,

surrenders, and forever discharges any and all claims and causes of action, in law or in equity, against American Axle and Additional Released Persons based on CERCLA or any other federal, state, local, or common law arising out of, in connection with the Matters Addressed, subject to the reservation of rights in paragraphs 17-18. The State further agrees that, except for the payment required by paragraph 10 of this Consent Decree, the State shall not seek or accept further payment from American Axle or Additional Released Persons for Matters Addressed. Each party will bear its own attorneys' fees and costs.

VIII. RELEASE, DISCHARGE, AND COVENANT NOT TO SUE BY AMERICAN AXLE

13. American Axle, including its successors and assigns, hereby covenants not to sue the State and releases, surrenders, and forever discharges any and all claims and causes of action, in law or in equity, against the State based on CERCLA or any other federal, state, local, or common law arising out of, in connection with Matters Addressed, subject to the reservation of rights in paragraphs 17-18.

IX. CONTRIBUTION PROTECTION

14. The Parties acknowledge and agree, and the Court finds, that American Axle's Settlement Payment, to be made pursuant to paragraphs 10-11 of this Consent Decree, represents a good faith compromise of disputed claims and that the compromise represents a fair, reasonable, equitable, and complete resolution of the Matters Addressed.

15. With regard to any claim for costs, damages, losses, liability, relief (including prejudgment interest accrued thereon) or other claims against American Axle or Additional Released Persons arising out of or in connection with the Matters Addressed, the Parties acknowledge and agree, and by entering this Consent Decree, this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of CERCLA, 42 U.S.C. § 9613(f)(2), and that American

Axle and the Additional Released Persons, individually and collectively, are entitled, as of the Effective Date, defined in paragraph 21 below, to contribution protection for the Matters Addressed pursuant to CERCLA, 42 U.S.C. § 9613(f). This contribution protection is intended to be as broad as permissible under CERCLA, and any other applicable federal, state, local, or common law. This Consent Decree is a decree entered by a federal District Court finally resolving all claims under CERCLA. The Matters Addressed in this settlement encompass all of the past, present, and future Response Costs, and the contribution protection afforded in this Consent Decree shall bar any claim by any other party for past, present, or future Response Costs and incurred or to be incurred, including but not limited to any future operation and maintenance costs.

X. GOVERNING LAW

16. This Consent Decree shall be governed and interpreted in accordance with federal law, or to the extent applicable, in accordance with the laws of the State of New York.

XI. RESERVATION OF RIGHTS

17. Nothing in this Consent Decree is intended to be, nor shall be construed as, a waiver, release, or covenant not to sue for any claim or cause of action, administrative or judicial, in law or in equity, that the Parties may have against any Third Party. Each Party expressly reserves any and all rights (including but not limited to any right of contribution), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Matters Addressed and/or this Consent Decree against any Third Party. Nothing in this Consent Decree diminishes the right of American Axle, pursuant to CERCLA, 42 U.S.C. § 9613(f), or any other applicable federal, state, local, or common law, to pursue any party to obtain Response Costs or to enter into settlements that give rise to contribution protection under CERCLA, 42 U.S.C. § 9613(f)(2), or under any other applicable federal, state, local, or common law.

18. Notwithstanding any other provision of this Consent Decree, the State reserves the right to initiate proceedings against American Axle and its successors seeking recovery of future Response Costs based on: (1) conditions creating a significant threat to public health and the environment that, as of the Effective Date, DEC was unaware of and could not have discovered through the exercise of due diligence (Unknown Conditions); or (2) information received by DEC after the Effective Date indicating that there is a significant threat to public health and the environment of a type and extent unknown to DEC, which was undiscoverable with the exercise of due diligence as of the Effective Date (New Information). Unknown Conditions and New Information do not include natural resource damages, known hazardous substances found at and around the Site in environmental media, including but not limited to soil, storm sewer sediments, air, storm water, groundwater, and surface water, and including but not limited to PCBs, pesticides, asbestos, VOCs, SVOCs, and metals that the DEC was aware of through the various investigations that occurred prior to the Effective Date, or that DEC could have discovered through the exercise of due diligence. The Parties reserve the right to seek judicial enforcement of the terms of this Consent Decree.

XII. NOTIFICATIONS

19. Any notification to the Parties shall be in writing or by electronic mail and shall be deemed properly given if sent to the following individuals, unless those individuals or their successors give notice of a change to the other Party in writing:

As to the State:

James C. Woods, Esq.
Nicholas C. Buttino, Esq.
Assistant Attorneys General

New York State Department of Law
Environmental Protection Bureau
The Capitol
Albany, New York 12224
Jamie.Woods@ag.ny.gov
Nicholas.Buttino@ag.ny.gov

Andrew Guglielmi, Esq.
Associate Attorney
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500
Andrew.Guglielmi@dec.ny.gov

As to American Axle:

Jeffrey C. Stravino, Esq.
Hodgson Russ LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202
jstravino@hodgsonruss.com

Attention: General Counsel
American Axle & Manufacturing, Inc.
One Dauch Drive
Detroit, MI 48211
Legal.department@aam.com

XIII. COMPLETE AGREEMENT AND SIGNING

20. This Consent Decree contains the complete agreement among the Parties regarding the subject matter addressed herein and fully supersedes all prior contracts, agreements, understandings, negotiations, or discussions, oral or written, relating to the subject matter of this Consent Decree. There are no warranties, representations, agreements, or understandings, oral or written, relating to the subject matter hereof that are not fully expressed or provided for in this Consent Decree. This Consent Decree may not be amended, modified, supplemented, or otherwise changed without the

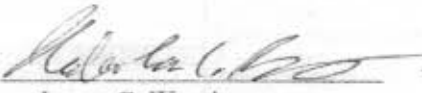
written consent of the Parties and approval of the federal District Court. This Consent Decree may be signed in counterparts.

XIV. EFFECTIVE DATE

21. This Decree shall be effective upon the date that the Court enters this Consent Decree (Effective Date). All times for performance of activities under this Consent Decree shall be calculated from that date.


Apr. 12
Dated: ~~March~~, 2021
Albany, New York

STATE OF NEW YORK
LETITIA JAMES
Attorney General of the State of New York

BY: 
James C. Woods
Nicholas C. Buttino
Assistant Attorneys General
Environmental Protection Bureau
The Capitol
Albany, New York 12224
(518) 776-2418

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL
CONSERVATION and BASIL SEGGOS
as COMMISSIONER OF THE NEW
YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Dated: April 1, 2021
Albany, New York

BY: 
Michael Ryan
New York State Department of
Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500

AMERICAN AXLE &
MANUFACTURING, INC.

Dated: March 26, 2021

BY: 

Name: David E. Barnes

Title: VP & General Counsel

Dated: March 26, 2021

BY: 

Jeffrey Stravino, Esq.

Hodgson Russ LLP

The Guaranty Building

140 Pearl Street, Suite 100

Buffalo, New York 14202

SO ORDERED, ADJUDGED AND DECREED this ____ day of ____, 2021.
