



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

OHIO EPA - DMWM

APR 17 2014

Re: IRG Warren I, LLC and Delphi
Automotive Systems, LLC
Permit – Intermediate
Public Reponse
RCRA C – Hazardous Waste
Trumbull County
OHD 000 817 346

Division of Materials and Waste Management

Response to Comments

**Project: IRG Warren I, LLC and Delphi Automotive Systems, LLC,
Ohio Hazardous Waste Facility Installation and Operation Permit,
Director Initiated Permit Modification
Ohio EPA ID #: OHD 000 817 346**

Agency Contacts for this Project

Division Contact: Shannon Ryan, DMWM, (330) 963-1141, shannon.ryan@epa.ohio.gov
and John Palmer, DERR, (330) 963-1232, john.palmer@epa.ohio.gov
Public Involvement Coordinator: Mike Settles, (614) 644-2160,
Mike.Settles@epa.ohio.gov

Ohio EPA held a public comment period from September 4, 2013 through October 21, 2013 for a Director initiated draft permit modification. This document summarizes the comments received during the comment period, which ended on October 21, 2013. The only comments received were those submitted by Delphi Properties Management, LLC and Delphi Automotive Systems, LLC collectively referred to as "Delphi".

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

Comments on the Public Notice and Fact Sheet

Comment No. 1. The U.S. EPA ID Number identified in the Notice has historically been used by Delphi. With the sale of a portion of the Facility in 2011 by Delphi to IRG, separate U.S. EPA ID Numbers should exist since each parcel is under different ownership and has separate and distinct business operations.

Response: The current permit includes both Delphi Automotive Systems, LLC (Delphi) and IRG Warren I, LLC (IRG) as Permittees. Once the Permittees enter into an Environmental Covenant to impose use and/or activity limitations on the property, Delphi may request to be removed from the Permit. IRG will retain the permit for post-closure of surface impoundments. Once they are no longer listed on the permit, Delphi must apply for a new ID Number, if they are conducting activities that require a new ID Number. Ohio EPA understands Delphi's concern that all the history associated with that number including waste shipments made by Delphi prior to the permit split could mistakenly be associated with IRG. In the database used to maintain the ID Numbers, a reference will be made between the current ID Number and the future ID Number to be obtained by Delphi. Additionally, a note will be made in the correspondence files for IRG and Delphi referencing the property split and maintenance of the ID Numbers.

Comment No. 2. The Facility Operator is identified as Ohio Realty Advisors. The operator of the DPM-owned property or portion of the Facility is DAS, not Ohio Realty Advisors.

Response: The comment refers to the Ohio EPA Fact Sheet. The clarification / correction is duly noted. It ought to be pointed out that the Agency issued a formal Public Notice that appeared in the Weekly Review, and the Tribune Chronicle. The Agency also prepared a Fact Sheet summarizing the draft permit modification. The Fact Sheet is an aid to the public but it is not a part of the formal Public Notice nor is it a condition of the draft permit. Commenter uses the term Notice to encompass both documents. Ohio EPA has determined not to alter or re-issue the Notice or the Statement of Basis, for which the substance of the comments do not result in a change in remedy decision.

Comment No. 3. The Notice indicated the use of the Facility will be restricted through the use of an Environmental Covenant, however, no Environmental Covenant was included with the Statement of Basis and the Draft Permit for Delphi's and the public's review and comment. Delphi should be afforded the opportunity to review and comment on the

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Environmental Covenant that is proposed to be required under the permit modification, upon issuance, as part of its right to review and comment on the Draft Permit.

Response: The formal Public Notice indicates that Ohio EPA is about to select a remedy/corrective measure to address contamination at the site; it does not mention use of an Environmental Covenant. The comment may refer to the Ohio EPA Fact Sheet which provides the general public background information on the modification process and a summary of the draft action. The details or specific duties of the parties are spelled out in the conditions of the Draft Permit. The comments raised about the Statement of Basis and Draft Permit will be addressed in subsequent sections of this Response to Comments. (See response to the Conclusion below)

Comment No. 4. The Notice indicates the Facility is limited to "industrial purposes only" and elsewhere indicates the property will be restricted to "certain industrial activities." The phrase "industrial purposes only" is broader than the phrase "certain industrial activities" and the former is the more appropriate characterization of the use of the property. The description of "industrial activities" in the Notice is inconsistent with the description of "industrial activities" in the Statement of Basis and the Draft Permit. The Notice describes "industrial activities" to include "facilities which supply goods or services to the public and facilities engaged in manufacturing, formulating, repackaging or refining operations and office and warehouse use...". In contrast, the Statement of Basis and Draft Permit omit any reference to "formulating, repackaging or refinery operations." That said, the description of "industrial activities" in the Notice, Statement of Basis and Draft Permit is too narrow and limiting. The permit modification, upon issuance, and the Environmental Covenant should prohibit residential activities on the property and restrict agricultural activities on the property. The commercial and industrial use of the property should not otherwise be restricted by the permit modification or the Environmental Covenant.

Response: The comment may refer to the Ohio EPA Fact Sheet which provides the general public background information on the modification process and a summary of the draft action. The details or specific duties of the parties are spelled out in the conditions of the Draft Permit. The comments raised about the Statement of Basis and Draft Permit will be addressed in subsequent sections of this Response to Comments. See response to the Conclusion below to read the specific language regarding restrictions to be included in the Environmental Covenant.

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Statement of Basis

Comment No. 5. This section (Section 1.0 Introduction) indicates the anticipated future use of the Facility is "commercial/industrial (including the warehousing of fireworks)". While Ohio EPA acknowledges the future use of the Facility is "commercial/industrial" in the Statement of Basis, it does not reference, describe, nor define "commercial" use in the Draft Permit, and it is proposing to require a use limitation or deed restriction that unnecessarily limits the Facility to only "certain industrial activities." To add to the confusion and inconsistency, some of the activities described in the Draft Permit as being industrial in nature are in fact commercial, i.e. office, warehouse, sale of durable goods. In addition, Ohio EPA indicates the anticipated future use of the Facility will include the warehousing of fireworks. Since there is no assurance the future use of the Facility will include the warehousing of fireworks the characterization of such future use should be omitted.

Recommendation: The permit modification, upon issuance, and Environmental Covenant should prohibit the residential use of the property, restrict the agricultural use of the property, and otherwise allow the unrestricted commercial and industrial use of the property, subject to any zoning restrictions.

Response: With respect to the commenter's request that Ohio EPA modify Paragraph Seven of the Statement of Basis, Ohio EPA disagrees as the parenthetical was only an example of an anticipated future use. Ohio EPA agrees that the Permit and the Environmental Covenant should solely identify restrictions on the property and not identify a definition of commercial and industrial uses. See response to the Conclusion below to read the specific language regarding restrictions to be included in the Environmental Covenant.

Comment No. 6. (Section 3.0 Facility Background) This section indicates "Delphi currently maintains a hazardous waste permit for post-closure and corrective action activities only." For the purpose of accuracy, Delphi and IRG are co-permittees and both entities currently maintain the Permit for post-closure and corrective action activities at the Facility.

Response: The clarification/correction is duly noted for the Statement of Basis, however the draft permit does name both Delphi and IRG as Permittees.

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Comment No. 7. (Section 5.0 Description and Evaluation of Proposed Remedies) The second sentence in the first paragraph contains unsubstantiated and speculative comments from Ohio EPA about the environmental condition of the Facility that are unwarranted and should be deleted from the Statement of Basis and the Draft Permit.

Recommendation: The above-referenced sentence should be deleted from the permit modification upon issuance.

Response: The above-referenced sentence has been modified in the permit modification to be consistent with the language in the Statement of Basis and states that:

"However, it has been determined, while contamination at the Facility is not believed to be above industrial standards, that it is possible that additional residual contamination above unrestricted levels exist at the Facility due to the industrial legacy of the property".

Comment No. 8. This section states the closed surface impoundments and the former bulk materials transfer station have residual contamination unacceptable for unlimited future use, and states that no further action is required for the surface impoundments aside from the use of the site-wide Environmental Covenant. This section fails to state that no further action is required for the bulk material transfer station. Delphi seeks confirmation from Ohio EPA that no further action is required for the bulk materials transfer station aside from the use of the site-wide Environmental Covenant.

Response: The surface impoundments are subject to a post-closure plan and the site-wide Environmental Covenant. The site-wide Environmental Covenant is the sole proposed final remedy applicable to the bulk material transfer station.

Comment No. 9. This section indicates the property should be used "only for industrial purposes." The permit modification, upon issuance, and the Environmental Covenant should prohibit residential activities on the property, restricted agricultural activities on the property, and not restrict the commercial and industrial use of the property.

Recommendation: Subject to local zoning requirements, use of the property should be allowed for any commercial or industrial purposes without limitation, and should not be limited to the industrial activities described in the Statement of Basis and the Draft Permit.

Response: Ohio EPA agrees that the Permit and the Environmental Covenant should solely identify restrictions on the property and not identify a

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definition of commercial and industrial uses. See response to the Conclusion below to read the specific language regarding restrictions to be included in the Environmental Covenant.

Comment No. 10. To ensure the property is used only for "industrial purposes," Ohio EPA proposes that an Environmental Covenant be entered between the property owners and Ohio EPA for the entire Facility. Despite repeated requests, Ohio EPA has not provided an Environmental Covenant for the Facility, with or without the Statement of Basis nor Draft Permit, for Delphi's review and comment. The Ohio EPA's omission in providing Delphi with the Environmental Covenant for review and comment adversely affects Delphi's interest and rights to adequate notice and opportunity to comment and, if necessary, to preserve its right to object to and appeal the terms of the permit modification, and the Environmental Covenant. There is no valid reason for Ohio EPA not providing the Environmental Covenant with the Draft Permit for Delphi's review and comment. The Environmental Covenant that is executed and recorded upon issuance of the permit modification should be part of the Draft Permit made available for review and comment to ensure consistency with the Statement of Basis, the Draft Permit, and to ensure that acceptable use restrictions are being imposed on the Facility. In the absence of the provision of an Environmental Covenant from Ohio EPA, Delphi proposes the attached Environmental Covenant be incorporated into the Draft Permit and be used to limit the future use of the Delphi portion of the Facility. **Recommendation:** During the Public Notice period on the Draft Permit, Ohio EPA should provide the Environmental Covenant to enable Delphi the opportunity to review and comment on the Environmental Covenant or, in the alternative, agree to accept the Environmental Covenant proposed by Delphi. (Attachment 4)

Response: The Draft Permit establishes an institutional control as a remedy for the site, specifies the activity and use limitations deemed protective and requires the parties to initiate entering into an Environmental Covenant within 60 days of permit issuance. The process of negotiating, executing and recording an Environmental Covenant as required by the permit occurs after the issuance of the permit modification. As a result, there is no need to have an Environmental Covenant drafted as a part of the remedy selection/permit modification process. (See response to the Conclusion below.)

Comment No. 11. (Environmental Covenant) This section provides "Ohio EPA proposes that the entire Facility use be restricted to **industrial purposes only** though enactment of an Environmental Covenant,

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an enforceable mechanism under Ohio law that can be used to restrict property use...The Environmental Covenant will...describe acceptable and unacceptable uses." The Environmental Covenant that Ohio EPA proposes to impose on the Facility has not yet been provided for Delphi's, nor the public's, review and comment so it is unknown whether the Environmental Covenant is consistent with the Notice, Statement of Basis, and the Draft Permit, and is otherwise acceptable to Delphi. This section further provides that "The types of limitations for this property include: Industrial land use limitations..." The term "include" is not exclusive and is ambiguous. This section further states: "The property shall not be used for residential **or agricultural activities**, but **may** be used for industrial activities." (emphasis added) Elsewhere, the Statement of Basis contains directive language on the use of the Facility being limited to "industrial purposes only" and in this instance contains permissive language that the Facility may be used for industrial activities. This section further states: "The term residential activities" shall include, but not be limited to, the following:

- a. Single and multi-family dwelling and rental units;
- b. Day care centers, elementary and high schools, and preschools;
- c. Outdoor Parks and Playgrounds;
- d. Correctional Facilities;
- e. Transient or other residential facilities; and
- f. Use of the site or soils from the site for the production of food chain products by agricultural means for animal or human consumption".

The prohibition on any "agricultural activities" on the property is unreasonable. "Agricultural activities" are not defined in the Statement of Basis nor the Draft Permit. Theoretically, the Facility could be safely used for commercial timber production, horticulture, equine production, and other agricultural uses where crops are not being raised for animal or human consumption. It is unclear if greenhouses, not dependent on the use of onsite soils, could be lawfully operated on the property. The restrictions imposed by Ohio EPA, which are perpetual in nature, reach too broadly and will operate to limit the potential value, marketability and use of the property and are not necessary to be protective of human health and the environment. This section further states "The term "industrial activities" shall include facilities which supply goods or services to the public, and facilities engaged in manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and parking/driveway use." This description is too limiting and ambiguous.

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Recommendation: The permit modification, upon issuance, and the Environmental Covenant should acknowledge that the property is to be used for commercial and industrial purposes.

Response: The intent of the Statement of Basis and the Draft Permit is to restrict the property from residential usage. Industrial Commercial use is not restricted. (See response to the Conclusion below.)

Comment No. 12. This section states that under the Ohio Revised Code an Environmental Covenant does not displace other restrictions such as land use laws, zoning codes, building codes, and subdivision requirements. While that statement may be legally accurate, the "certain industrial activities" restriction proposed to be placed on the Facility by Ohio EPA through an Environmental Covenant may be more restrictive and displace any other use land use, zoning, building and subdivision requirements that may exist or be imposed over time on the property.

Recommendation: The Environmental Covenant should either limit the property to industrial and commercial uses, or prohibit residential and certain types of agricultural uses.

Response: See Response to Comment #11 above, and the response to the Conclusion below.

Comment No. 13. (Environmental Covenant(s) - Ground Water Restrictions) This section indicates a groundwater use prohibition is to be imposed on the entire Facility and the groundwater shall not be extracted for any purpose other than monitoring or remedial purposes from the Berea/Cussewago Sandstone Formation and overlying geologic units, and that ground water use below the Berea/Cussewago Sandstone Formation will not be restricted.

Recommendation: The groundwater use limitation is acceptable to Delphi, but the provision stating that "ground water use below the Berea/Cussewago Sandstone Formation will not be restricted" needs to be re-stated in the permit modification upon issuance.

Response: To ensure clarity, the permit will include language that the Environmental Covenant will not restrict ground water use below the Berea/Cussewago Sandstone Formation. See response to the Conclusion below on language in the Permit regarding restrictions to be identified in the Environmental Covenant.

Comment No. 14. Ohio EPA proposes that an Environmental Covenant be entered between the property owners and Ohio EPA to ensure groundwater from the Berea/Cussewago Sandstone Formation and overlying units will not be used for any purpose other than for monitoring or

remedial purposes; however, Ohio EPA has not provided an Environmental Covenant for review and comment. The draft Environmental Covenant that should accompany the Draft Permit upon issuance is enclosed.

Recommendation: The Environmental Covenant intended to be required to be recorded against the title to the property under the permit modification should be provided for Delphi's review and comment during the Public Notice and comment period, or the Environmental Covenant proposed by Delphi should be incorporated into the modified permit. (Attachment 4)

Response: See Response to Comment #10 and 13 above.

Draft Hazardous Waste Permit Modification
Module E – Corrective Action Requirements

Comment No. 15. The following sentence in the Draft Permit (Condition E.9) is inappropriate: "However, it has been determined, although contamination at the Facility is not believed to be above industrial standards, that it is likely that additional residual contamination above unrestricted levels exist at the Facility due to the industrial legacy of the property." This unsubstantiated statement is inappropriate for inclusion in the Draft Permit. Delphi has otherwise voluntarily agreed to Facility-wide use restrictions to simplify the imposition of a corrective action remedy under the permit modification, but does not agree, admit, nor concede that additional residual contamination above unrestricted levels exists at the Facility.

Recommendation: The above-referenced sentence should be deleted from the permit modification, upon issuance.

Response: The above-referenced sentence has been modified in the permit modification to be consistent with the language in the Statement of Basis (see Response to Comment #7 above) and state that:

"However, it has been determined, while contamination at the Facility is not believed to be above industrial standards, that it is possible that additional residual contamination above unrestricted levels exists at the Facility due to the industrial legacy of the property".

Comment No. 16. The Draft Permit states the selected remedy is the use of the Environmental Covenant, and that the Environmental Covenant will "eliminate the potential for residential land use of the Facility, and

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restrict ground water use,” and requires the Permittee to “initiate entering into an Environmental Covenant” within 60 days of the issuance of the permit modification. Because the Draft Permit contains a definition of “residential activities” and will require the recording of an Environmental Covenant that prohibits any residential use of the property, there is no need for the permit modification nor the Environmental Covenant to include any reference to the commercial or industrial use or use restrictions. The meaning of “initiate entering into an Environmental Covenant” is unclear. The respective parties should have the opportunity to review and discuss the acceptability of the Environmental Covenant during the Draft Permit review period and prior to the finalization of the permit modification.

Recommendation: Separate Environmental Covenants will need to be filed for each party’s respective portion of the Facility and the permit modification should reflect this situation. The Environmental Covenant for the Delphi portion of the Facility should be reviewed and accepted by Delphi before the permit modification is issued. The permit modification, upon issuance, should obligate DPM and IRG, respectively, to record an Environmental Covenant on their respective portions of the Facility that prohibit residential use, restrict agricultural activities, prohibit any groundwater use from the Berea/Cussewago Sandstone Formation and any overlying units, and not restrict any ground water use below the Berea/Cussewago Sandstone Formation.

Response:

The meaning of “initiate entering into an Environmental Covenant” is intended as a commencing of dialogue and negotiation of the final language of the legally binding institutional control that will clearly state the use and activity restrictions on the Facility as specified in the permit. The process of negotiating, executing and recording an Environmental Covenant as required by the permit must be initiated within 60 days after the issuance of the permit modification.

Prior to the receipt of the written comments, the Ohio EPA proposed some specific language to address comments on the draft permit language regarding the Environmental Covenant. The language was discussed with the co-permittees in a meeting at Ohio EPA’s Northeast District Office. Subsequent to the receipt of the comments, additional communication occurred and additional revisions were made to the draft (See response to the Conclusion below.)

Activity and Use Limitations

Comment No. 17. The Draft Permit states: “[t]he property shall not be used for residential or agricultural activities, but may be used for industrial activities. The term “residential activities” shall include, but not be limited to, the following:

- a. Single and multi-family dwelling and rental units;
- b. Day care centers, elementary and high schools, and preschools;
- c. Outdoor Parks and Playgrounds;
- d. Correctional Facilities;
- e. Transient or other residential facilities; and
- f. Use of the site or soils from the site for the production of food chain products by agricultural means for animal or human consumption”

The prohibition of any agricultural activities on the property is unreasonable. Theoretically, the Facility could be safely used for different types of agricultural uses that do not involve the production of crops that are being raised for animal or human consumption. It is unclear if greenhouses, not dependent on the use of onsite soils, could be lawfully operated on the property under the language purposed in the Draft Permit. The restrictions imposed by EPA reach too broadly and operate to limit the potential value, marketability and use of the property and are not necessary to be protective of human health and the environment. **Recommendation:** The prohibition on agricultural activities on the property should be limited to the production of food chain products by outdoor soil-based agricultural means for animal and human consumption in the permit modification, upon issuance, and in the Environmental Covenant.

Response: Please see response to the Conclusion below.

Comment No. 18. The use of the term “industrial activities” in the Draft Permit provides that it “shall include facilities which supply goods or services to the public, and facilities engaged in manufacturing, processing operations and office and warehouse use, including but not limited to production, storage, sales of durable goods and other non-food chain products and parking/driveway use.” The term “industrial activities” in this Draft Permit is defined to include various commercial activities, notwithstanding that the Draft Permit otherwise fails to uniformly acknowledge the present and potential future commercial use of the property. These provisions are inconsistent, unreasonable and ambiguous, and impose unnecessary restrictions on the commercial and industrial use of

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the property that will unduly limit the property's potential future use, value, and redevelopment.

Recommendation: The permit modification, upon issuance, should: 1) prohibit residential activities on the Facility; and 2) restrict agricultural activities on of the property where onsite soils are proposed to be used for the production of food for animal or human consumption. The permit modification should allow the property to be used for any commercial and industrial uses that are not inconsistent with the prohibitions on residential activities and the production of food from onsite soils for the human and animal consumption.

Response: Please see response to the Conclusion below.

Site-wide Ground Water Restrictions

Comment No 19. This section limits groundwater use to the Berea/Cussewago Sandstone Formation and any overlying geologic unit.
Recommendation: The permit modification, upon issuance, should state that groundwater below the Berea/Cussewago Sandstone Formation is not restricted.

Response: To ensure clarity, the permit will include language that the Environmental Covenant will not restrict ground water use below the Berea/Cussewago Sandstone Formation. See response to the Conclusion below on language in the Permit regarding restrictions to be identified in the Environmental Covenant.

Conclusion:

Comment No 20. To avoid dispute or conflict as to the breadth of the use restrictions to be imposed on the Delphi-owned portion of the Facility under the Draft Permit and Environmental Covenant, Delphi has enclosed a proposed Environmental Covenant (Attachment 4) regarding the ongoing commercial and industrial use of the property, which prohibits residential activities, restricts agricultural activities that involve the production of food intended for animal or human consumption, and contains a ground water use restriction on the Berea/Cussewago Sandstone formation and overlying units at this Facility, which restrictions are protective of human health and the environment. Respectfully, Delphi requests that the language of the Environmental Covenant for the Facility be agreed upon between Ohio EPA and Delphi before the Draft Permit is finalized since Delphi's ability to contest the acceptability of the Environmental Covenant imposed by Ohio EPA after issuance of the permit

modification may be limited or nonexistent, which may be unreasonable and unlawful.

Response: The following language has been provided in the final permit (condition E.9) to address restrictions to be imposed on the facility.

"A. The Property shall not be used for Residential Activities or Restricted Agricultural Activities. The term "Residential Activities" shall include, but not be limited to, the following:

- (1) Single and multi-family dwelling and rental units;
- (2) Day care centers and preschools;
- (3) Child educational (except as a part of industrial or commercial activities within the Property) and religious facilities;
- (4) Outdoor parks and playgrounds;
- (5) Correctional facilities;
- (6) Hospitals and other extended care medical facilities;
- (7) Transient or other residential facilities.

The term "Restricted Agricultural Activities" shall mean the production of food-chain products by outdoor soil based agricultural means for animal and human consumption.

B. Unless approved in writing by Ohio EPA, the extraction of groundwater from the Berea/Cussewago Sandstone Formation and any overlying unit for any purpose, other than monitoring or pursuant to a groundwater remediation action, on the Property is prohibited. Ohio EPA will consider the potential exposure risks before extraction of groundwater from the Berea / Cussewago Sandstone Formation and any overlying geologic unit is allowed. Groundwater use below the Berea/Cussewago Sandstone Formation will not be restricted."

End of Response to Comments