UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

MAY 13 2016

CERTIFIED MAIL AND EMAIL
RETURN RECEIPT REQUESTED

TD Development, LLC
720 Eagle View Court
Mason, OH 45040
Attn: Todd Clifford

Re: Beech-Nut Nutrition Site, Canajoharie, Montgomery County, New York: Notice of Potential Liability and Request for Information Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675

Dear Mr. Clifford:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" also known as the "Superfund" Law), 42 U.S.C. § 9601-9675. For your information, a copy of the Superfund law may be found at www.epa.gov/superfund/action/law/index.htm.

EPA has documented the release and threatened release of hazardous substances into the environment at the Beech-Nut Nutrition Site ("Site") located at 68-102 Church Street in the Village of Canajoharie, Montgomery County, New York. EPA has spent and continues to spend public funds at the Site to investigate and conduct the removal of hazardous substances which were or are threatened to be released to the environment. This letter serves to notify you that, based on information presently available, EPA has determined that TD Development, LLC ("TD LLC") is a potentially responsible party ("PRP") at the Site and may be liable under CERCLA for the cleanup of the Site and for costs EPA has incurred in cleaning up the Site. This letter also seeks to determine whether TD LLC will enter into negotiations with EPA to perform necessary response activities at the Site.

In addition, enclosed with this letter is a Request for Information, sent pursuant to EPA's authority under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), which seeks information and documents relating to the Site and your ability to pay for or perform the cleanup at the Site. A complete and truthful response to the Request for Information is required within **30 days** of your receipt of this letter.

Site Background

The Site is the location of a former Beech-Nut plant. Records indicate that Beech-Nut sold the property to TD Development, LLC ("TD LLC") in December 2013, which in turn transferred the property to TD Development, Inc. ("TD Inc.") one year later, in December 2014. TD Inc. is currently the owner of record.

In the Spring of 2014, third party contractors initiated demolition activities on the eastern portion of the Site. Between 2014 and 2015, contractors removed contents of value, performed asbestos abatements, and demolished certain structures at the Site.

On December 15, 2015, after receiving a request from the New York State Department of Environmental Conservation, EPA visited the Site and performed an exterior survey from the surrounding streets. EPA observed broken windows in some of the remaining structures and numerous piles of debris separated by roofing material, metal, and masonry blocks. EPA conducted an interior survey of the Site on February 23-24, 2016 and observed that interior rooms were in various states of deterioration, including broken windows and broken water lines. It appeared that an asbestos abatement project had been started in certain areas, as red asbestos caution tape was located around the work area, and five roll-off containers with potentially asbestos containing material were still on-Site.

EPA collected 14 samples from the western and eastern portions of the Site, including materials located in the exterior piles, of which 4 tested positive for asbestos. On March 10, 2016, EPA revisited the Site and collected samples from the masonry block piles and exterior walls which also tested positive for asbestos.

Asbestos is a CERCLA hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and is a listed hazardous substance in the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and the presence of asbestos in friable form in exterior piles and walls at the Site constitute a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). Furthermore, EPA has identified conditions at the Site that meet the requirements of Section 300.415(b) (2) of the NCP (40 C.F.R. Part 300.415), which indicate that a removal action is warranted.

Notice of Potential Liability

Under CERCLA, PRPs may be required to perform cleanup actions and/or may be held liable for costs incurred by the federal government in taking response actions at and around sites where there has been a release or a threatened release of hazardous substances. This can include costs incurred performing investigative, planning, removal, and enforcement activities. Responsible parties may be held jointly, severally, and strictly liable for all of EPA's response costs. Responsible parties under CERCLA include current and past owners and operators of a facility from which there has been a release or threat of release of a hazardous substance.

EPA has evaluated information obtained in connection with the Site, including property records,

and has determined that TD LLC was the owner of the Site when the improper removal of friable ACM was performed. Based on the information presently available, EPA believes that TD LLC is a PRP with respect to the Site and thus is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for cleanup of the Site and for costs EPA has incurred or may incur in addressing the release or threatened release at the Site.

Request to Perform Response Action

EPA wishes to determine whether TD LLC is willing to commence negotiations related to the performance of necessary response activities at this Site. Accordingly, please advise EPA within **14** days of receipt of this letter whether TD LLC would be willing to enter into negotiations with EPA to perform work, under EPA oversight, or to provide funding for any such response activities. Any agreement by TD LLC to perform or fund response actions at this Site would need to be memorialized in an administrative consent order issued by EPA under CERCLA within **60** days of receipt of this letter. Your response may be by telephone, e-mail, or letter and should be directed to:

Lauren Charney
Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel
USEPA, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
charney.lauren@epa.gov
212-637-3181

and

Keith Glenn
On-Scene Coordinator
Emergency and Remedial Response Division
USEPA, Region 2
2890 Woodbridge Avenue
Building 205
Edison, NJ 08837
glenn.keith@epa.gov
732-321-4454

If TD LLC declines and EPA performs the work itself, TD LLC may be held to be liable under Section 107(a) of CERCLA for EPA's costs incurred in connection with performing response actions at this Site. Should TD LLC not volunteer to perform or fund the work, EPA also may unilaterally require TD LLC to perform the work pursuant to Section 106(a) of CERCLA.

Request for Information

Under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), EPA has broad information gathering authority which allows EPA to require persons to provide information and/or documents relating to materials generated, treated, stored, or disposed of at or transported to a facility, the nature and extent of a release of a hazardous substance, pollutant, or contaminant at or from a facility, as well as the ability of a person to pay for or perform a cleanup. As such, you are required to submit the information sought in the enclosed Request for Information. Please submit your response **within thirty (30) days of your receipt of this letter**.

While EPA seeks your cooperation in this investigation, compliance with the Request for Information is required by law. When you have prepared your response to the Request for Information, please sign and have notarized the enclosed "Certification of Answers to Request for Information" and return that Certification to EPA with your response. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. In addition, Section 104(e) authorizes EPA to pursue penalties for failure to comply with Requests for Information.

You may consider some of the information EPA is requesting to be confidential. Please be aware that you may not withhold the information upon that basis. If you wish EPA to treat such information confidentially, you must advise EPA of that fact by following the procedures outlined in the enclosed instructions, including the requirement for supporting your claim for confidentiality.

Please note that if, after submitting your response, you obtain additional or different information concerning the matters addressed by the Request for Information, it is necessary that you promptly notify EPA. See the enclosed Instructions for information on how to respond to each question. Your response should be sent by email or regular mail to Ms. Charney and Mr. Glenn at the addresses noted above.

This Request for Information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501.

If you have any questions regarding this Request for Information, or would like to discuss this matter with EPA, please contact Mr. Glenn at (732) 321-4454, or have your attorney contact Ms. Charney at (212) 637-3181. We appreciate and look forward to your prompt response to this Request for Information. Thank you.

Sincerely,

Nicoletta Di Forte

Nicoletta Di Forte
Deputy Director for Enforcement
Emergency and Remedial Response Division

INSTRUCTIONS FOR RESPONDING TO REQUEST FOR INFORMATION

1. A complete and separate response should be given for each question. If information or documents responsive to a specific request are not in your possession, custody, or control, please identify any person(s) from whom such information may be obtained. If you are unable to give a detailed and complete answer or to provide any of the information or documents requested, indicate the reason for your inability to do so.

2. Identify each answer with the number of the question and the subpart to which it responds. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.

3. Provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. With regard to your Company, consult with all present and past employees and agents whom you have reason to believe may be familiar with the matter to which the question pertains.

4. In answering each question, identify each individual and any other source of information (including documents) that were consulted in the preparation of the response to the question.

5. If you have reason to believe that an individual other than one you employed may be able to provide additional details or documentation in response to any question, provide that person's name, last known address, and phone number, and state the reasons for your belief.

6. If a document is requested but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, and number of pages and all recipients of the document with their addresses. If anything is omitted from a document produced in your response to the Request for Information, state the reason for and the subject matter of the omission.

7. If you cannot provide a precise answer to a question, please approximate. In any such instance, state the reason for your inability to be specific.

8. Confidential Information. The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim which covers part or all of the information requested, pursuant to Sections 104(c)(7)(E) and (F) of CERCLA, 42 U.S.C. §§ 9604(c)(7)(E) and (F), and 40 C.F.R. §2.203(b).

   If you make a claim of confidentially for any of the information you submit to EPA, you must prove that claim. For each document or response you claim is confidential, you must separately address the following points:

a. the portions of the information alleged to be entitled to confidential treatment;

b. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);

c. measures taken by you to guard against the undesired disclosure of the information to others;

d. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

e. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determination or a reference to them, if available; and

f. whether it is your assertion that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "Confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. Please submit your response so that all non-confidential information, including any redacted versions of documents, are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e) and 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to you.

DEFINITIONS

1. As used herein, the terms "Company" or "your Company" shall refer to the entity with which you are affiliated that owns or owned and/or operated at the Site, including TD Development, LLC ("TD LLC") as it is currently named and constituted, and all subsidiaries, divisions, and branches as well as any predecessors and successors of the entity.

2. The term "hazardous substance" shall have the meaning set forth in Section 101(14) of CERCLA, at 42 U.S.C. § 9601(14). The substances which have been designated as hazardous substances pursuant to Section 102(a) of CERCLA (which, in turn, comprise a portion of the substances that fall within the definition of "hazardous substance" under Section 101(14) of CERCLA) are set forth at 40 CFR Part 302.

3. The terms "disposal", "hazardous waste", and "storage" shall have the meaning set forth in Sections 1004(3), (5), and (33) of Resource Conservation and Recovery Act, 42 U.S.C. §§ 6903(3), (5), and (33), respectively.

4. The terms "document" and "documents" include any written, recorded, computer-generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control, or known by you to exist, including originals, all prior drafts, and all non-identical copies.

5. As used herein, the term "industrial waste" shall mean any solid, liquid, or sludge or any mixture thereof which were generated by industrial processes and possesses any of the following characteristics:

    a. it contains one or more "hazardous substances" (at concentration) as defined in 42 U.S.C. § 9601(14);

    b. it is a "hazardous waste" as defined in 42 U.S.C. § 6903(5);

    c. it has a Ph less than 2.0 or greater than 12.5;

    d. it reacts violently when mixed with water;

    e. it generates toxic gases when mixed with water;

    f. it easily ignites or explodes;

    g. it is an industrial waste product;

    h. it is an industrial treatment plant sludge or supernatant;

    i. it is an industrial byproduct having some market value;

j. it is coolant water or blow down waste from a coolant system;

k. it is a spent product which could be reused after rehabilitation; or

l. it is any material which you have reason to believe would be toxic if either ingested, inhaled or placed in contact with your skin.

6. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known employer, business address, and business telephone number, and present or last known home address and home telephone number. With respect to a corporation, partnership, business trust, or other association or business entity (including a sole proprietorship) the term "identify" means to provide its full name, address, legal form (e.g. corporation, partnership, etc.), and a brief description of its business and affiliation with the individual and/or company to whom this request is addressed.

7. The term "person" shall include any individual, firm, unincorporated association, partnership, corporation, trust, or other entity.

8. The term "release" as used herein shall have the meaning set forth in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

9. As used herein, the term "Site" shall refer to the Beech-Nut Nutrition Site located at 68-102 Church Street in the Village of Canajoharie, Montgomery County, New York and any adjacent areas that may have been affected by the contamination from the property.

10. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, in which case the statutory definitions shall apply.

REQUEST FOR INFORMATION

1. Identify the correct legal name, mailing address, state and date of incorporation or formation, and agent for service of process in the state of incorporation or formation and in New York for each Company that you are affiliated with which owns and/or operates or owned and/or operated at the Site, including TD Inc. and TD Development LLC. Identify all other names under which each Company may have operated. Provide:

    a. copies of the Articles of Incorporation or other such documents which established each Company;

    b. all documentation which demonstrates your ownership interest in or affiliation with each Company;

    c. names, titles, addresses, telephone numbers, and email addresses for all of each Company's current and past registered agents, members, partners, officers, board members, and operations management personnel, including yourself; and

    d. names, addresses, and telephone numbers of all subsidiaries, unincorporated divisions or operating units, affiliates, and parent corporations of each Company. If a Company is a subsidiary, division, branch, or affiliate of another corporation or other entity, identify those entities' Chief Executive Officers, Presidents, Chairmen of the Board, state of incorporation, and agents for service of process in the state of incorporation and in New York State.

2. Describe your and each of your Companies' current and past association with the Site, identifying the date this involvement began and the extent of this involvement. Describe in detail the nature of the businesses that each Company conducts or has conducted at the Site. Provide a copy of any deeds demonstrating your or any of your Companies ownership interest in the Site. If neither you nor any of your Companies are currently involved with the Site, state the date and circumstances of the disassociation with the Site, and provide all documentation regarding the disassociation.

3. For each individual identified in question 1c, please describe his or her role within the Company and what decision-making authority he or she has within the Company. Provide copies of documentation evidencing this authority. Describe in detail the extent to which each person identified in question 1c was involved with or exercised supervision over the Company's compliance with environmental laws. Identify who was responsible for determining how hazardous substances and/or industrial wastes were stored, treated, disposed of, or otherwise handled at the Site.

4. Describe the financial situation of each Company and provide signed copies of that Company's tax returns for the last five years, including all schedules thereto and all audited financial statements for the last three years. If audited financial statements are not available, include unaudited statements. If you are no longer in business, please provide the last five years of returns filed.

5. Provide copies of all Jeff Wendel's personal state and federal income tax returns filed for the last five years.

6. If you or any of your Companies in any way affiliated with the Site have filed for bankruptcy, provide all filings that document the claim and the resolution of the bankruptcy.

7. Provide copies of any permits or permit applications that your Companies submitted to comply with environmental laws at the Site.

8. Identify all individuals and/or companies involved with demolition, salvaging, and the purchase of scrap metal from the Site. Provide all records indicating the weight and value of the scrap metal salvaged.

9. Describe how and when you and your Company first became aware of the presence of hazardous substances at the Site.

    a. Identify all individuals and/or companies involved with asbestos-containing material ("ACM") removal and disturbance at the Site;

    b. Identify the disposal method and location for any ACM removed from the Site;

    c. Describe what actions, if any, you or your Company took to prevent the release of asbestos from the Site, and

    d. Identify and provide documentation associated with all assessments, investigations, and cleanups of hazardous substances and/or industrial waste that took place at the Site. Identify all environmental contractors and consultants who assisted in these actions, and describe the activities they performed or planned to perform at the Site and the dates such activities occurred.

10. To the extent not already provided, identify the names and contact information, along with the nature of the work performed, for all other individuals and/or companies who have performed work at the Site since your Company acquired its ownership interest. Describe the business and/or personal relationship between you, your Company, and each individual or company who performed work at the Site.

11. Identify and provide copies of all documents related to all insurance policies and indemnification agreements held or entered into by either you or any of your Companies for the Site or Site operations. Describe any claims that were submitted to insurance carriers concerning the Site and any recoveries received from these claims. Provide copies of all documents regarding any such claims and recoveries. In response to this request, provide insurance policies and agreements which currently are in effect as well as those that were in effect during any portion of the time when the Company conducted operations at or held a property interest in the Site.

12. Provide any information you have regarding any individual or company other than your Companies that owned and/or operated the Site.

    a. Describe the type of business and provide any details you have about each such entity's operations at the Site. State the dates that each entity began and terminated operations at the Site, and identify all known registered agents, members, partners, officers, board members, and operations management personnel. Identify all parent and affiliate corporations of each entity.

    b. Describe what materials and/or equipment were left at the Site by prior owners or operators when your Company acquired the Site.

    c. Provide copies of any documents regarding ownership transactions and previous business operations conducted that the Site.

13. Identify all other people or entities that may have knowledge of the subject of this inquiry, and state the basis for your belief of their knowledge. For past employees, include their job title and description of their responsibilities.

14. Identify each person consulted in responding to these questions, including his or her job title and a description of his or her responsibilities.

CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION

State of

County of

I certify under penalty of law that I have personally examined and am familiar with the information and all documents submitted in response to EPA's Request for Information, and based on my personal inquiry or my inquiry of those individuals immediately responsible for obtaining the information I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that I am under a continuing obligation to supplement my response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or the company response thereto should become known or available to the company.

_____

NAME (print or type)

_____

TITLE (print or type)

_____

SIGNATURE

Sworn to before me this day of _____, 2016

Notary Public