UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

GENERAL NOTICE LETTER
ELECTRONIC AND CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Frank C. Pavia, Esq.
Harris Beach PLLC
99 Gamsey Road
Pittsford, NY 14534
fpavia@HarrisBeach.com

Re: 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 Mr. Pavia:

The U.S. 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 ("CERCLA"), 42 U.S.C. §§ 9601-9675.

As you know, EPA has documented the release and threatened release of hazardous substances into the environment at the Lower Ley Creek Operable Unit ("OU") of the Onondaga Lake Site, located in Onondaga County, New York. EPA notified your client, the Town of Salina, that it is a potentially responsible party ("PRP") with respect to the Lower Ley Creek OU in a letter dated October 30, 2009. In that letter, EPA also requested that your client perform a remedial investigation and feasibility study ("RI/FS") for this OU. Because neither your client nor the other noticed PRPs agreed to perform the RI/FS, EPA performed the work itself. Based on the results of the RI/FS, EPA selected a remedy for this OU on September 30, 2014.

In a letter dated March 3, 2015, EPA notified your client that EPA continued to consider it to be a PRP for the Lower Ley Creek OU and provided your client with the opportunity to volunteer to perform the remedial design ("RD") for this OU. On July 21, 2016, EPA entered into an administrative order on consent ("AOC") with your client and six other PRPs to undertake RD activities at the Lower Ley Creek OU; this work is now ongoing.

By this letter, EPA is requesting that your client perform the remedial action ("RA") for the remedy selected for this OU.

SITE BACKGROUND

The Lower Ley Creek OU consists of the lower two miles of Ley Creek and the adjacent floodplains beginning at and including the Route 11 bridge (a.k.a. Brewerton Road) and ending downstream at Onondaga Lake. This OU also includes an estimated 3.7-acre wetland situated on the southern bank of the Creek and Old Ley Creek Channel, an original section of the Creek before it was widened and redirected during a flood control project in the 1970s. In addition, this OU includes several sections along the banks of the Creek where dredged contaminated sediments were placed during that flood control project.

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. By this letter, EPA is notifying your client that it is still considered to be a PRP with respect to the Lower Ley Creek OU pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is providing your client with the opportunity to volunteer to perform the RA.

This notice letter is not being provided pursuant to the special notice procedures outlined in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), because the performance of the RA at this OU must be coordinated with the implementation of the RA at the upstream Ley Creek Deferred Media ("LCDM") OU. The RD of the selected remedy for LCDM is currently underway, and the RA for LCDM is not anticipated to begin until 2022.

REQUEST TO PERFORM RESPONSE ACTION

EPA wishes to determine whether your client is willing to negotiate the performance of the remedy selected for the Lower Ley Creek OU. Accordingly, please advise EPA within thirty (30) days of receipt of this letter whether your client would be willing to negotiate in good faith with EPA concerning the performance of the Lower Ley Creek OU RA, with EPA oversight.

Any agreement by your client to perform or fund the RA at this OU would need to be memorialized in a judicial consent decree with EPA under CERCLA. Enclosed please find an initial draft of such a consent decree and scope of work for the RA.

Please telephone or email your client's response to:

Margo Ludmer
Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Ludmer.Margo@epa.gov
212-637-3187

with an emailed copy to:

Victoria Sacks
Remedial Project Manager
Eastern New York Remediation Section
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2
Sacks.Victoria@epa.gov
212-637-4297

As a respondent to the above-referenced AOC for the performance of the RD of this remedy, your client is no doubt aware that there are funds available in a Lower Ley Creek OU special account dedicated to funding the performance of the remedy at the Lower Ley Creek OU. Access to those funds will be limited to those parties that agree to perform the remedy on consent. Should your client choose not to volunteer to perform or fund the work as discussed above, your client would not be eligible to seek reimbursement from the Lower Ley Creek OU special account of costs incurred performing the RD for this OU. Further, if your client declines to participate in the RA and EPA performs the work itself, your client may be liable under Section 107(a) of CERCLA to reimburse those costs that EPA incurred performing the work that are in excess of those funds in the special account. EPA also may unilaterally require your client to perform the work pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), for which reimbursement from the special account would not currently be available.

Please give the matter addressed in this letter your immediate attention. If you have any legal questions or would like to discuss this matter with EPA, please contact Ms. Ludmer. Should you have any technical questions regarding the Lower Ley Creek OU, please direct them to Ms. Sacks.

Sincerely,

ERIC WILSON Digitally signed by ERIC WILSON
Date: 2021.04.28 17:49:22 -04'00'

Eric Wilson, Deputy Director for Enforcement and Homeland Security
Superfund and Emergency Management Division

Enclosures (by electronic mail only)

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