Message

From: Ludmer, Margo [ludmer.margo@epa.gov]
Sent: 4/3/2019 5:58:25 PM
To: Sachs, Joel H. [JSachs@kblaw.com]
CC: Ward-Willis, Nicholas M. [NWard-Willis@kblaw.com]; Victor J. Cannistra CPA [VictorC@CannistraCPA.com]; Doyle, James [Doyle.James@epa.gov]; Gaughan, Daniel [Gaughan.Daniel@epa.gov]
Subject: RE: Mt. Kisco Site

Joel,

Thank you for your message. I think it is evident from my prior emails that we do not agree with your characterization of the access issues and maintain that, in accordance with EPA policy, your clients' unacceptable pre-conditions to entry constitute a denial of consent.

In response to your question regarding the work schedule, for a Sunday start date, EPA would require access at least Sunday, Monday, and Tuesday from approximately 8am to 5pm/6pm, and Wednesday morning to collect the radon cannisters. On Sunday, the work would include clearing utilities, performing the gamma screening, and placing the radon cannisters in the building at the property. On Monday and Tuesday, EPA would perform the soil sampling, and the team would plan to sample in the parking lot first. Please be mindful that the sampling map accompanying the QAPP depicts *proposed* sampling locations, which are subject to change based on the results of the gamma surveying. On Wednesday, EPA would collect the radon cannisters. As has been previously stated, in the event of bad weather or other unforeseen circumstances, EPA may require additional time at the property.

EPA is available tomorrow afternoon at 3pm for the conference on the access order. Jerry Burke, Assistant Regional Counsel in the New Jersey Superfund Branch, will serve as the neutral officiant. Jim Doyle and I will be present for the conference. Dan Gaughan, the On-Scene Coordinator, will also participate on behalf of the site team/contractor, and he will be able to address any technical questions that might arise. We are in the process of booking a conference room, and I will let you know once the room number has been confirmed. Call-in details can be found below:

Conference number: 844-637-3111
Extension: 83187
Access Code: 123456

Thank you,

Margo

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

From: Sachs, Joel H. <JSachs@kblaw.com>
Sent: Wednesday, April 03, 2019 12:06 PM
To: Ludmer, Margo <ludmer.margo@epa.gov>
Cc: Ward-Willis, Nicholas M. <NWard-Willis@kblaw.com>; Victor J. Cannistra CPA <VictorC@CannistraCPA.com>
Subject: FW: Mt. Kisco Site
Importance: High

Margo,

As a follow-up to your recent communications with me, please advise as to the work schedule assuming the work started on a Sunday at 8:00 a.m. to 5:00 p.m./6:00 p.m. We assume the radiology survey with the "buggy" would be performed first and then the four samples collected in the parking lot would all occur on Sunday (along with the canister replacement). It would be helpful to have the proposed schedule of work.

Additionally, Nick's letter is clearly not a denial of access. From our conversations and your communications it was our assumption that EPA was finally beginning to show some flexibility and that the contractor and EPA would be amenable to working during the days. It appears the only accommodation provided has been that such work would occur on Saturdays and Sundays. Thus, the need for the request above to fully understand EPA's contractors proposed work schedule. It is well documented that our client has been in communication with EPA regarding this matter for several months (except for the three months lapse between EPA's December 4th response to our November 8th letter and the issuance of the Administrative Order on March 12th). Our clients continue to agree to provide EPA access and have not in any way imposed any restrictions that would impede the manner or extent of EPA's work. Our clients have not restricted where sampling can occur or the methods or means to be employed. The sole issue of dispute is as to the timing of the work to be performed taking into account the safety of the tenant's customers and workers and trying to minimize to the greatest extent possible the EPA's interference with the day to day activities of the tenant and to avoid our client losing its sole tenant on the property. We continue to believe these reasonable requests do not in any way restrict or impede the manner and extent of the EPA's response work. All our client is asking for is a series of reasonable accomodations by the EPA and its contractor, the cost of which accomodations would be paid for by our client.

That being said, kindly provide us with a schedule of the work to be performed assuming a commencement on Sunday at 8:00 a.m. Additionally, the client's wish to proceed with the opportunity to confer with a neutral officiant from EPA's Office of Regional Counsel. We are available Thursday afternoon, April 4, 2019 for such and due the peak of the Federal and State tax season our client will reluctantly participate via telephone conference call. We would request that a representative of the EPA contractor be present at the conference. Kindly provide the requested information regarding the proposed work schedule and a call-in number and confirm the meeting location. Thank you for your attention to this request for a conference and your answers to the above questions prior to the conference. Joel.

Joel H. Sachs
Senior Counsel

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