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

BY REGULAR MAIL AND E-MAIL

April 11, 2019

Nicholas M. Ward-Willis, Esq.
Keane & Beane, P.C.
445 Hamilton Avenue
White Plains, NY 10601
nward-willis@kblaw.com

Re: Cannistra Realty, LLC - Conference on Administrative Order for Access
Index No. CERCLA-02-2019-2009

Dear Mr. Ward-Willis:

At the request of Respondent, Cannistra Realty, LLC, to the above-referenced Administrative Order for Access ("Order") issued on March 12, 2019 in connection with the Canadian Radium and Uranium Superfund Site ("Site"), a conference was held on April 4, 2019 at the offices of the U.S. Environmental Protection Agency, Region 2, ("EPA") with representatives of EPA and Respondent to discuss the Order. See attached sign-in sheet.

The Order requires the Respondent to provide EPA with access to property located at 115 Kisco Avenue and 125 Kisco Avenue in Mount Kisco, New York ("Property") for the purpose of performing investigative activities, including radiological testing. The testing includes the placement of radon canisters within the building at the Property, a radiological survey of the Property using a "buggy" with a gamma probe attached (the approximate size of a baby stroller) to walk across the Property and the installation of at least ten soil borings utilizing a geoprobe (the approximate size of a lawn tractor), all to be conducted within a period of 4-6 days.

The Respondent requested the conference pursuant to Paragraph 27 of the Order. Consistent with Paragraph 27, the purpose of the conference was to discuss any matter pertinent to the Order, including its applicability, the factual findings, the conclusions of law or determinations on which it was based. or any other relevant and material issues or contentions that Respondent may have regarding the Order. I presided at the conference as an attorney in EPA's Office of Regional Counsel who has not been involved with the Site or in the preparation and issuance of the Order.

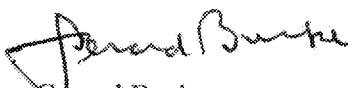
After the conference, I conferred with Angela Carpenter, the Acting Director of the Emergency and Remedial Response Division, on the issues raised by Respondent. Ms. Carpenter has determined that no modifications to the Order are necessary or appropriate at this time.

First, it should be noted that EPA and Respondent have been discussing the access issue for some time, going as far back as August 2018 and earlier, and that some accommodations have been made by both sides including Respondent expressing a willingness to pay EPA for the additional costs EPA incurs for work conducted during non-business hours, and EPA willing to perform some of the work during non-business hours.[1]

Respondent raised several concerns regarding the Order. Respondent claims that the Order is procedurally invalid because it was not issued in compliance with EPA guidance which calls for EPA regions to confer with EPA Headquarters prior to issuing an order for access, Concurrence by EPA Headquarters officials is not a legal prerequisite to issuance of the Order, and the lack of concurrence cannot be relied on by Respondent. In addition, Respondent claims that the Order is deficient because it does not take into account that the Property is a car dealership and, therefore, it is unreasonable for EPA to enter and perform testing of the Property during business hours. In particular, Respondent wants the soil borings installed after business hours. The proposed testing appears to be minimally intrusive and designed to cause the least disruption to the tenant's business, especially considering the anticipated limited duration of the testing.

If you have any questions concerning the conference, please contact me at (212) 637-3120 or burke.gerard@epa.gov. All other issues concerning the Site and the Order should be addressed to Assistant Regional Counsel Margo Ludmer at 212-637-3187 or ludmer.margo@epa.gov.

Sincerely,



Gerard Burke
Assistant Regional Counsel

cc: Margo Ludmer, Esq., EPA

Attachment

[1] Respondent's tenant operates a car dealership on the Property. The business hours of the dealership are 8:00 AM to 6:00 PM Monday through Saturday and 11:00 AM to 6:00 PM on Sunday.

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