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

JAN 26 2018

VIA Electronic Mail

Kevin Maldonado
Kevin Maldonado & Partners LLC
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Re: New Cassel/Hicksville Groundwater Contamination Site ("OU1")

Dear Mr. Maldonado:

Regional Administrator Peter Lopez has asked me to respond to you on his behalf regarding your December 20, 2017 letter to him.

We appreciate your client's stated willingness to perform work regarding Operable Unit 1 ("OU1") at the New Cassel/Hicksville Groundwater Contamination Site (the "Site"). However, as you know, EPA has made numerous, unsuccessful attempts, over several years, to enter into an administrative settlement with the potentially responsible parties ("PRPs"), including your client, for the performance of a comprehensive remedial design ("RD") of the remedy selected for OU1 at the Site.

In 2014, EPA sought the PRPs' agreement to perform the OU1 RD and a remedial investigation/feasibility study ("RI/FS") for Operable Unit 3 at the Site, and pay EPA's past response costs. When it became clear that such a settlement would not be reached, EPA, in 2016, narrowed its request to include only performance of the RD for OU1, including the necessary preliminary design investigation ("PDI") to be performed in accordance with a PDI work plan which EPA had drafted. When these settlement negotiations also failed, EPA offered a settlement in 2017 for the PDI only, to be performed in accordance with EPA's PDI work plan.

Again, a settlement could not be reached. Finally, in late 2017, EPA proposed a "cash-out" settlement, whereby the PRPs would fund EPA's performance of the PDI. This proposal was not accepted by the PRPs.

All of EPA's attempts to settle were unsuccessful despite the provision of a neutral facilitator to assist the PRPs in their own allocation negotiations and even though EPA acknowledged, for settlement purposes only, the divisibility issues associated with the three plumes. As further discussed below, EPA cannot justify further negotiations at this time about OU1. Instead, as Sharon Kivowitz of my office has indicated to you, EPA is reviewing other options for moving forward; once a decision is made, EPA will notify you.

In your letter, you provide two explanations for why you believe the settlement process was unsuccessful -- EPA's desire for what you refer to as a "global settlement" and EPA's request that your client address the deeper part of the eastern plume.

As EPA has explained on a number of occasions, its insistence that all of the PDI, and not merely a part of it, be performed simultaneously stems from the need to coordinate response activities for the three plumes identified as part of OU1. We explained that PDI tasks such as the sampling and water level measurements related to all three plumes must be performed together, so as to support critical determinations about the three plumes and their inter-relationship. EPA requires this information in order to develop a comprehensive picture of the entire OU1 and how all three plumes operate in relation to each other. It would be neither useful nor efficient if this sampling were not coordinated.

In addition, the OU1 remedy calls for a combination of possible approaches for each plume to address the respective contaminant levels, including in-well vapor stripping, pumping and treatment technology, and, for areas with higher contaminant concentrations, in-situ chemical treatment. The choice of the optimal approach, or combination thereof, to these potential treatment methodologies for each plume will not be known until a comprehensive PDI is finalized. Therefore, as our team has discussed with you on many occasions, if it is determined that groundwater contamination in more than one plume needs to be addressed utilizing pumping and treatment, EPA anticipates, given the limited options for siting a treatment facility in this densely-populated community, that only one treatment plant would be sited and built for the multiple plumes, and the respective plume groups would need to coordinate their efforts to design, construct, and operate that plant.

As an aside, your letter also implies that your offer to perform work is not necessarily an offer to perform design work for the specific remedy selected for OU1 by EPA. For example, in your introductory paragraph, you mention your client's willingness to "complete the remedial investigation," among other tasks. No remedial investigation needs to be completed as part of the OU1 remedy implementation – the remedy for OU1 was selected in 2013, and we have been endeavoring to obtain a commitment to design it since that time. The focus of the PDI is to address data gaps in all three plumes to support the design of the remedy. In addition, your letter mentions taking an interim response action. These statements do not necessarily equate to a willingness to perform the design of the remedy selected by EPA.

As to your statement that negotiations were complicated because of EPA's request that your client address a deeper plume below the eastern plume, EPA disagrees with both your assessment that this complicated the negotiations and that your client is not a PRP regarding this so-called deeper plume. With respect to your client's unwillingness to drill wells below a certain depth, it is my understanding that after some discussion and clarification, EPA and your client reached agreement on this point for purposes of settlement, so it would seem that this was not in fact an obstacle to settlement. With respect to your belief that your client is not a PRP for the deeper plume, EPA has repeatedly informed you that we believe your client is a PRP for the deeper plume but that, based on the data collected to date, there is likely an as yet unidentified additional upgradient source commingling at depth in the vicinity of the eastern plume. In any event, I understand that you have repeatedly stated that your client is ready and willing to perform the required work and would seek contribution at a later date from other sources that

you considered to be upgradient. Therefore, EPA disagrees with your assertion that issues related to the deeper portions of the eastern plume are a basis for our failure to achieve settlement.

In summary, while we appreciate your client's stated willingness to perform some of the OU1 work, it is important that there be a comprehensive PDI and RD for OU1, covering all the plumes. It would be counter-productive to allow your client to begin only part of the work, in a piecemeal manner.

As noted above, we will contact you once EPA has made a decision about our next course of action for OU1.

If you have any questions, please contact Sharon Kivowitz at 212-637-3183.

Sincerely yours,

Eric Schaaf
Regional Counsel