# SIVE, PAGET & RIESEL P.C.

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September 12, 2018

Michael J. van Itallie, Esq.
Office of Regional Counsel
US Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

Re: Response to Vo-Toys Notice Letter

Dear Mr. van Itallie,

It was not the intention of BRG Harrison Lofts Urban Renewal LLC ("BRG") to engage in a letter-writing campaign in response to Eric J. Wilson's July 25th notice letter regarding the Vo-Toys site at 400 & 420 South 5th Street and 530 Bergen Street in Harrison (the "Site"). However, the General Electric Company's ("GE's") misleading response to its respective notice letter obliges a brief reply.

GE's letter and attached memorandum ("Letter" and "Attachment," respectively) comprise a thinly-veiled attempt to influence and complicate your office's evaluation of a site that has a simple history and obvious responsible party: GE. GE and RCA[1] collectively owned and operated the Site for almost a century, during which they handled, stored and disposed of the mercury which has rendered the buildings useless and dangerous.

GE's History of Blaming Other Parties for its Mercury Contamination

No other source of mercury has been identified, and GE's effort to cast blame elsewhere, and specifically at BRG, comports with GE's typical practice of delay and distraction when faced with the prospect of being held accountable for its legacy contamination.

An example is the Grand Street site in Hoboken, New Jersey, where GE manufactured mercury vapor lamps and mercury-containing switches. These processes involve more intensive use of mercury than those associated with GE's and RCA's operations at the Vo-Toys Site.

[1] GE asserts that RCA was not affiliated with GE during RCA's period of operations at the Site, which BRG disputes given GE's long-term corporate relationships with various RCA entities. Regardless, GE is – and it does not dispute that it is – liable for RCA's liability associated with the site as a corporate successor to RCA through acquisition in 1986.

Nevertheless, GE attempted to lay blame on the subsequent *building residents* for moving into the building GE left laden with mercury. And it is the same "blame the victim" strategy that GE is attempting to use at the Vo-Toys Site to try to foist its liability onto BRG.[2]

Due Care Taken by BRG

GE's recital of BRG's knowledge of mercury at the Site is grossly inaccurate. BRG has been completely forthcoming with GE since the beginning of its pre-purchase diligence regarding its investigation results. BRG provided GE and its LSRP copies of BRG's environmental investigation reports and held a meeting between the environmental firms representing GE and BRG in June 2013 to share all information gathered by BRG and to avoid any misunderstandings or information gaps. The information conveyed by BRG to GE included that BRG's environmental consultants had identified two limited areas of mercury contamination on the third floor of Building C which aggregated approximately 500 square feet of the 200,000 square foot complex (~0.15%).

Upon discovering the more pervasive mercury contamination at the Site on October 13, 2015 (four months after closing), BRG notified Roy Blickwedel and GE's consultants via email within 2 hours of receiving the data.[3] BRG subsequently discussed the mercury readings with Roy Blickwedel (GE's Remedial Project Manager) on October 15, 2015. Mr. Blickwedel noted that: i) the recently determined mercury vapor levels were "frankly not that bad" based on his experience with the Grand Street, Hoboken remediation, ii) he had no issue with BRG proceeding with interior demolition and lead paint removal, and iii) BRG should establish an advance "stop-work" level for mercury vapor potentially disturbed by the work and with continued mercury vapor monitoring.[4] BRG relied on GE as well as its own consultants for guidance as to how to prevent the mercury contamination from entering the environment and potentially endangering worker health and safety.[5] BRG's work was undertaken carefully to prevent any threatened future release and prevent and limit any human, environmental or natural resource exposure to mercury at the Site.

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[2] *See* Statement by GE Manager and General Counsel for Environmental Remediation Jane Gardner, July 16, 1997 (available online at EPA's website: https://semspub.epa.gov/work/02/86142.pdf). GE is clearly in the best position to understand its legacy liability at lamp manufacturing sites across the country, and to suggest that others such as BRG or Grand Street residents should be equally savvy is disingenuous and unconscionable. *See* Comments by GE on Feasibility Study and Proposed Remedial Action for Grand Street, September 8, 1997 (available online at EPA's website: https://semspub.epa.gov/work/02/86142.pdf), where GE boasts about having successfully remediated the following three facilities: Jackson, MI Lamp and Glass Plant, Newark, NJ Lamp Plant and the Cuyahoga, OH Lamp Plant. Moreover, Roy Blickwedel, GE's Remedial Project Manager for the Site, was in charge of GE's (ultimate and reluctant) remediation of Grand Street.

[3] *See* Attachment A, 10/13/15 Email and attachments from Tom Berkenkamp to Roy Blickwedel, copying GE's consultants Paul Zaimes and Richard Chapin, as well as Albanese representatives and counsel (PLBRG000080835-80852).

[4] *See* Attachment B, notes from conversation with Roy Blickwedel 10/15/15. (PLBRG000073338).

[5] *See, e.g.,* Attachment C, 10/14/15 Email chain between Matthew Frankenberry and Anthony Kaufman of Langan (PLBRG000160345-160347).

*See also*, Attachment B, notes from conversation with Roy Blickwedel where he advises that BRG should continue its lead abatement and demolition work and simultaneously continue monitoring for mercury vapor and establish a "stop work" level. (PLBRG000073338). BRG and its consultants followed Mr. Blickwedel's advice and monitored for mercury during demolition work.

BRG subsequently met with GE and its consultants on October 28, 2015 after the mercury vapor readings had been taken in all three buildings; the mercury results and implications were discussed with Roy Blickwedel at this meeting. This meeting was one of many routine coordination meetings typically held weekly or bi-weekly between BRG, GE and their respective consultants at the BRG field office in Harrison, NJ following BRG's acquisition of the property.

GE intentionally omitted these (and other) key facts from its presentation because they undermine GE's claims that BRG proceeded unilaterally, failed to take due care and failed to proceed with caution upon detecting the mercury. All of BRG's actions subsequent to the receipt of that data were undertaken with the knowledge and blessing of GE, the party with the experience and knowledge of best practices when addressing mercury contamination and remediation.

In sum, GE would have EPA believe that BRG willfully concealed information in order to "aggressively" move forward with demolition activities in spite of the elevated mercury readings. Contemporaneous communications and documents demonstrate that GE's version of these events is inaccurate and self-serving.

GE's Remedial Activities in the Buildings Spread the Mercury

As outlined in Gradient's Letter-Report of March 6, 2018, GE's putative efforts to remediate its TCE contamination at the Site *exacerbated* its mercury contamination. GE's remedial work included: i) drilling at least 133 bore holes (to delineate and to perform remedial injections into its TCE plume), ii) sawing and removing sections of concrete and wood flooring in all three buildings (to install ISCO piping) – both of which opened pathways for mercury vapors to travel from the soil into the buildings, and released mercury from the building materials being disturbed during these activities. Subsequent to GE's remedial activities, the indoor air mercury concentration levels measured within the buildings increased up to three-fold.

GE's remedial activities to address TCE contamination also caused the mercury vapor that it released into the buildings to be further released into the environment. Following the discovery of the TCE contamination in 2013, GE required former owner Vo-Toys to install numerous large window fans in April 2013 to ventilate the buildings. Those fans faced directly toward the residential and commercial properties across the streets from the Site. In late 2015/early 2016 GE operated the same window fans while its contractors sawed and removed sections of concrete and wood flooring and released mercury vapor into the air. As a result, GE knowingly and/or recklessly discharged mercury out of the buildings and into the environment.

GE Has Taken Positive Steps at the Site only when Compelled To Do So

GE's repeated efforts in its Letter to characterize its actions at the Site as "proactive", "voluntary" and "affirmative" are equally disingenuous. For example, GE was unwilling to acknowledge any responsibility for the contamination at the Site at all - and to failed to address the undisputed TCE contamination at the Site for months - until a Notice of Potential Claim was

filed, which cc'd the New Jersey Attorney General's Office, the NJDEP and the Town of Harrison in March 2013. GE then proceeded, but only belatedly and reluctantly.[6]

Purportedly, GE is now (sporadically) remediating its TCE contamination through the New Jersey LSRP program.

Likewise, GE and its LSRP have vehemently maintained that GE is not responsible for its legacy mercury contamination in the buildings at the Site[7] – a position that is contrary to New Jersey law and federal Superfund Law.[8] GE has taken the position that "unless the contaminant present within a building has resulted from, or is causing, a discharge…to the environment, no investigation or remediation of such contamination is required for an LSRP to issue an RAO."[9] Instead of proactively addressing its mercury contamination in the buildings at the Site, GE refused to take any action – even when given the mercury vapor survey results in October 2015 and again in January-February 2016 that identified the mercury issue.

GE's contention has been and remains without factual basis. Indeed, as Mr. Wilson's July 25th letter makes clear, "EPA has documented the release and the threat of a release of hazardous substances into the environment" at the Site. GE can no longer avoid its obligations under New Jersey and federal laws, and is contractually obligated pursuant to the Indemnity and Settlement Agreement with BRG to undertake all actions necessary to obtain an RAO for the Site.

BRG Has Sought To Settle; GE has Rebuffed Such Efforts

BRG attempted to engage in settlement communications with GE in April and May of 2016, which GE abruptly ended after Roy Blickwedel informed BRG that GE would only act to address its mercury contamination if it was in GE's financial interest (e.g., if BRG sued GE, and GE were forced to weigh the implications of litigation vs. the cost of cleaning up its legacy mercury contamination).

Faced with continued GE recalcitrance, BRG commenced litigation in federal court after serving its RCRA notice letter in August of 2016 in the hope of bringing GE back to the negotiating table to begin characterization work and remediate the Site.[10]

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[6] In its letter of March 1, 2013 GE concluded, "*In short, neither RCA nor GE bear any legal responsibility…in connection with this property.*" (Appended hereto as Attachment D).

[7] See, Attachment E, April 25, 2016 Letter from Ira Gottlieb to Larry Smith.

[8] See, NJDEP Site Remediation & Waste Management Program, Guidance For the Issuance of Response Action Outcomes V.2 (April 2016), at 14-15 ("The Department of Environmental Protection does not regulate the remediation of building interiors unless there is a known or suspected discharge of a hazardous substance or hazardous waste that may result in a discharge to the environment, or if a discharge from outside of the building is determined to be entering the building…") (emphasis added). Likewise, under federal law, GE is a responsible party under CERCLA 107(a)(2) and there was a release or threatened release of a mercury resulting from GE's disposal of mercury at the Site.

[9] See, Attachment E, April 25, 2016 Letter from Ira Gottlieb to Larry Smith, at 2.

[10] Since commencing litigation, Chris Albanese of Albanese Harrison Lofts LLC, a member of BRG, has repeatedly put forth settlement frameworks/offers to Roger Martella of GE, all of which have been rejected. Without disclosing the substance of confidential settlement communications, GE's assertion that BRG has rebuffed GE's offers of settlement is yet another GE misstatement of fact.

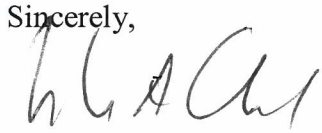
In the face of GE's continued inaction after filing the complaint, BRG engaged Louis Berger in late 2016 to delineate mercury contamination at the Site. GE responded by sending what was effectively a cease and desist letter, preventing Louis Berger and BRG from conducting characterization work.[11] As a result, the commencement of the characterization of the Site was delayed by GE for two years (from late 2016 until it finally commenced in summer 2018). The well-being of the residents of the Town of Harrison and the environmental harm that may have come from this two-year long delay caused by GE – as in the Grand Street matter – simply do not factor into GE's decision making.

GE has continued to delay, seeking (and failing) to dismiss the litigation, and making deceptive overtures regarding performing work, most notably at a meeting with BRG and EPA in April of 2017. Despite GE's feigned willingness to cooperate at that April meeting, almost an entire year passed before GE even proposed a characterization work plan, and work has only recently commenced. The fact that GE is currently conducting any work is not due to any "proactive", "affirmative" or "voluntary" conduct or good will on GE's part. GE has commenced work because it exhausted available delay tactics and was faced with no other choice but to respond to EPA's insistence on action.

BRG's goal from day one has been to work cooperatively with GE to clean up the Site and put it to beneficial use for the Town of Harrison and its residents. It is premature to debate the merits of BRG's claims against GE, and moreover, a response to a notice letter is certainly not the appropriate forum to seek to resolve these arguments.[12] BRG is prepared to demonstrate, at the appropriate time and in the appropriate forum, that it is a bona fide prospective purchaser, and is merely the current owner of the Site.[13] GE, on the other hand, has no credible defense to liability, is the only source of mercury at the Site, and is sitting on almost two billion dollars in reserves specifically earmarked for environmental remediation.

We appreciate EPA's continued attention to the Site, and look forward to cooperating with EPA to get the Site cleaned up and put to productive use for the Town of Harrison and its residents.

Sincerely,



Mark A. Chertok

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[11] See, Attachment F, October 19, 2016 Email from Paul Dritsas to Dennis Toft.

[12] However, even a cursory reading of the cases cited by GE in its Attachment shows that they are clearly distinguishable from and inapplicable to the present circumstances. In *Bonnieview Homeowners Ass'n v. Woodmont Builders, LLC*, and *Kaiser Aluminum & Chem. Corp. v. Catellus Dev. Corp.*, parties were held liable as owners/operators at the time of disposal because they had excavated, stockpiled and spread contaminated soils across the sites at issue in each case. BRG's limited demolition and lead paint abatement work, conducted following protocols suggest by GE and its consultants, by contrast does not give rise to operator liability.

[13] GE's claims regarding the potential personal liability of Albanese Organization executives are likewise baseless. There are no individual members of BRG, the only members are Albanese Harrison Lofts LLC and BRG Lampworks Ventures, LLC. (See, Attachment G, BRG operating agreement, Exhibit B, PLBRG000058566).

Cc (by email): Eric J. Wilson, Esq., U.S. EPA
Eric Merrifield, Esq., General Electric
Roger Martella, General Electric
Ira Gottlieb, Esq., McCarter & English, LLP
Dennis Toft, Esq., Chiesa, Shahinian & Giantomasi P.C.
Chris Albanese, BRG Harrison Lofts Urban Renewal LLC
Russell C. Albanese, BRG Harrison Lofts Urban Renewal LLC
Tom Berkenkamp, BRG Harrison Lofts Urban Renewal LLC
Mark Schaevitz, BRG Harrison Lofts Urban Renewal LLC

# Attachment A

Message

**From**: Tom Berkenkamp [tomberkenkamp@brgrealty.com]
**Sent**: 10/13/2015 5:57:21 PM
**To**: 'Roy Blickwedel (Roy.Blickwedel@ge.com)' [Roy.Blickwedel@ge.com]
**CC**: Zaimes, Paul [paul.zaimes@amecfw.com]; Chapin, Richard [richard.chapin@amecfw.com]; Jack Becker [jcb@albaneseorg.com]; Matthew Frankenberry [mcf@albaneseorg.com]; Crespi, Robert H. [rcrespi@csglaw.com]
**Subject**: FW: Mercury Data - Building C
**Attachments**: Mercury Vapor Field Screening Results - October 2015 101215.pdf; IA HG -Alpha Analytical L1525715.pdf

Roy –

I tried to reach you earlier this afternoon with some disturbing news.

In anticipation of remediating the mercury hot spots on the third floor in Building C, Langan performed background air samples in the space on Friday 10/9/15.

Per Anthony Kaufman's email below, the air sample results that came back from the lab came in significantly higher than those shown in the report we received from AET in August 2012 (and also from what we understood you obtained prior to setting up a field office in the space).

Tom

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**From:** Anthony Kaufman [mailto:akaufman@Langan.com]
**Sent:** Tuesday, October 13, 2015 4:51 PM
**To:** Tom Berkenkamp <tomberkenkamp@brgrealty.com>; Stingone, Michael G. <MSTINGONE@winnebanta.com>; Matthew Frankenberry <mcf@albaneseorg.com>; Robert H. Crespi Esq. (rcrespi@csglaw.com) <rcrespi@csglaw.com>
**Cc:** Steve Ciambruschini <sciambruschini@Langan.com>
**Subject:** Mercury Data - Building C

Group,
We received and have attached the laboratory report for the two indoor air samples collected 10/9/15 for total mercury analyses from Building C floors 2 and 3. These were >6-hour samples collected on sorbent tubes analyzed via method 6009. Mercury was reported 3.35 ug/m$^3$ and 1.38 ug/m$^3$ on floors 2 and 3, respectively. These sample results are consistent with field screening data obtained that day using a Jerome J505 mercury analyzer (MA) which identified mercury concentrations ranging from 1 to 3.5 ug/m$^3$ throughout floor 3 at height of five feet above the floor and mercury concentrations ranging from 1 to 88 ug/m$^3$ at floor level. The MA readings were obtained along a grid pattern on floor 3, and results are depicted on the attached figure. While not formally screened on a grid pattern, random MA readings on floor 1 and 2 at 5 feet above the floor level were similar to those observed on floor 3.

As discussed, these data are inconsistent with AET's past survey data and the past indoor air sample data obtained by GE. The current data and observations indicate more widespread mercury is present than previously reported. In light of these observations, further assessment is necessary to identify the extent of mercury. With respect to forthcoming lead abatement, limited demo, and GE work activities, mercury data should be provided to contractors so that they can incorporate the information into worker health and safety planning and can implement appropriate waste management and disposal related to their activities.

Feel free to call and discuss.
Regards,
Anthony K.

**Anthony Kaufman**
**Senior Project Manager**
Direct: 201.398.4576
Mobile: 914.649.6720
File Sharing Link

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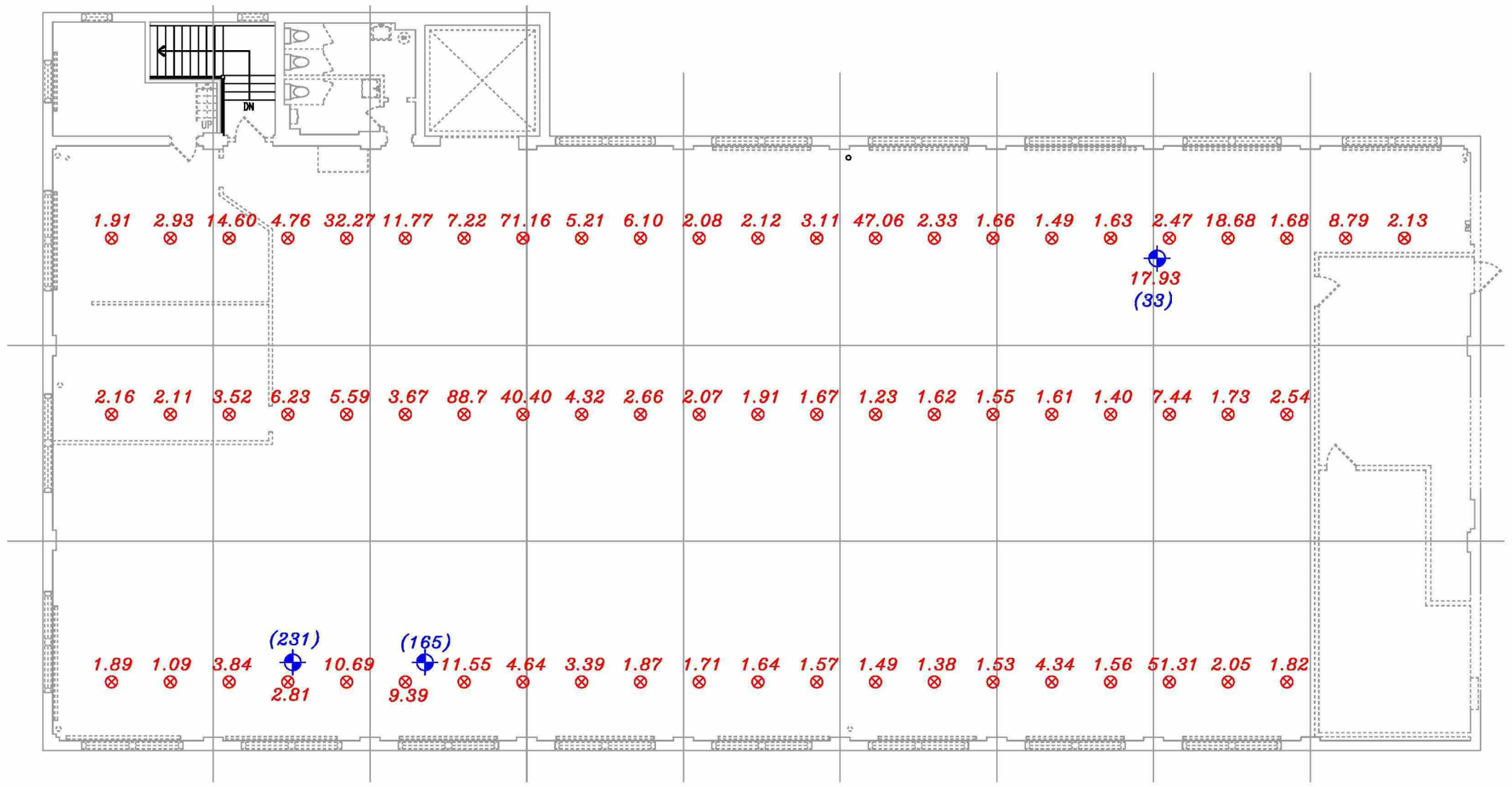
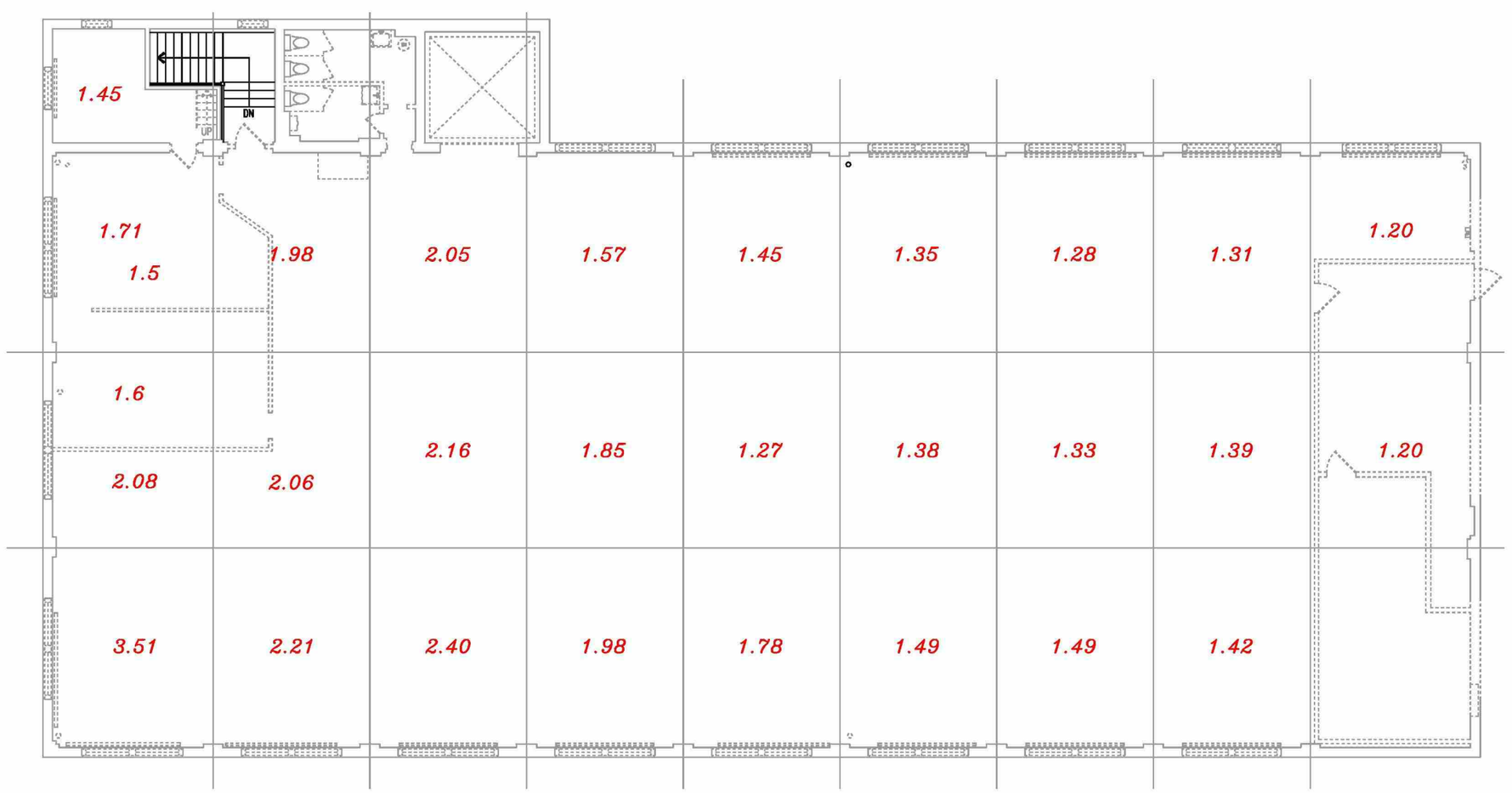
READINGS AT FLOOR LEVEL
(BIASED TO CRACKS AND HOLES)




BUILDING C
TOP FLOOR PLAN

READINGS AT 5 FEET ABOVE
FLOOR




BUILDING C
TOP FLOOR PLAN

## LEGEND

11.54 Mercury Field Measurement (ug/L)

AET Sample Location (2012)

AET Sample Result (ug/L)

NOTES:
1. FIELD DATA OBTAINED USING JEROME J505 MERCURY VAPOR ANALYZER


LANGAN
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DUBAI ISTANBUL
Langan Engineering, Environmental, Surveying and Landscape Architecture, D.P.C.
Langan Engineering and Environmental Services, Inc.
Langan ECI, Inc.
Langan International LLC
Collectively known as Langan
NJ CERTIFICATE OF AUTHORIZATION No. 24GA27996400


Project

Proposed Lamp Works
400 South 5th street
Block#: 156 Lot 1

Harrison NEW JERSEY

Drawing Title

MERCURY VAPOR
FIELD SCREENING
RESULTS (ug/m$^3$)
9 OCTOBER 2015

| | |
|---|---|
| Project No. 100484301 | Drawing No. |
| Date 10/12/2015 | |
| Scale NTS | |
| Drawn By AR / Checked By – | |
| Submission Date – | Sheet of 08 |


PLBRG000080837
Filename: \\langan.com\data\EP\data3\100484301\Cadd Data - 100484301\SheetFiles\Figures\Environmental\FG01-100484301-N\103-0101.dwg Date: 10/13/2015 Time: 16:15 User: jcoso Style Table: Langan.stb Layout: ARCHD-SL

# ANALYTICAL REPORT

| | |
|---|---|
| Lab Number: | L1525715 |
| Client: | Langan Engineering & Environmental<br>River Drive Center 1<br>619 River Drive<br>Elmwood Park, NJ 07407-1338 |
| ATTN: | Anthony Kaufman |
| Phone: | (201) 398-4576 |
| Project Name: | BRG HARRISON LAMP WORKS |
| Project Number: | 100484301 |
| Report Date: | 10/13/15 |

The original project report/data package is held by Alpha Analytical. This report/data package is paginated and should be reproduced only in its entirety. Alpha Analytical holds no responsibility for results and/or data that are not consistent with the original.

Certifications & Approvals: NY (11627), CT (PH-0141), NH (2206), NJ NELAP (MA015), RI (LAO00299), ME (MA00030), PA (68-02089), VA (460194), LA NELAP (03090), FL (E87814), TX (T104704419), WA (C954), USFWS (Permit #LE2069641), USDA (Permit #P330-11-00109), US Army Corps of Engineers.

320 Forbes Boulevard, Mansfield, MA 02048-1806
508-822-9300 (Fax) 508-822-3288 800-624-9220 - www.alphalab.com

**Project Name:** BRG HARRISON LAMP WORKS
**Project Number:** 100484301

**Lab Number:** L1525715
**Report Date:** 10/13/15

| Alpha Sample ID | Client ID | Matrix | Sample Location | Collection Date/Time | Receive Date |
|---|---|---|---|---|---|
| L1525715-01 | BRG-BLDG-C-FL-2 | AIR MEDIA | 400 S FIFTH ST., HARRISON, NJ | 10/09/15 15:30 | 10/09/15 |
| L1525715-02 | BRG-BLDG-C-FL-3 | AIR MEDIA | 400 S FIFTH ST., HARRISON, NJ | 10/09/15 16:00 | 10/09/15 |

**Project Name:** BRG HARRISON LAMP WORKS **Lab Number:** L1525715
**Project Number:** 100484301 **Report Date:** 10/13/15

## Case Narrative

The samples were received in accordance with the Chain of Custody and no significant deviations were encountered during the preparation or analysis unless otherwise noted. Sample Receipt, Container Information, and the Chain of Custody are located at the back of the report.

Results contained within this report relate only to the samples submitted under this Alpha Lab Number and meet all of the requirements of NELAC, for all NELAC accredited parameters. The data presented in this report is organized by parameter (i.e. VOC, SVOC, etc.). Sample specific Quality Control data (i.e. Surrogate Spike Recovery) is reported at the end of the target analyte list for each individual sample, followed by the Laboratory Batch Quality Control at the end of each parameter. Tentatively Identified Compounds (TICs), if requested, are reported for compounds identified to be present and are not part of the method/program Target Compound List, even if only a subset of the TCL are being reported. If a sample was re-analyzed or re-extracted due to a required quality control corrective action and if both sets of data are reported, the Laboratory ID of the re-analysis or re-extraction is designated with an "R" or "RE", respectively. When multiple Batch Quality Control elements are reported (e.g. more than one LCS), the associated samples for each element are noted in the grey shaded header line of each data table. Any Laboratory Batch, Sample Specific % recovery or RPD value that is outside the listed Acceptance Criteria is bolded in the report. All specific QC information is also incorporated in the Data Usability format of our Data Merger tool where it can be reviewed along with any associated usability implications. Soil/sediments, solids and tissues are reported on a dry weight basis unless otherwise noted. Definitions of all data qualifiers and acronyms used in this report are provided in the Glossary located at the back of the report.

In reference to questions H (CAM) or 4 (RCP) when "NO" is checked, the performance criteria for CAM and RCP methods allow for some quality control failures to occur and still be within method compliance. In these instances the specific failure is not narrated but noted in the associated QC table. The information is also incorporated in the Data Usability format of our Data Merger tool where it can be reviewed along with any associated usability implications.

Please see the associated ADEx data file for a comparison of laboratory reporting limits that were achieved with the regulatory Numerical Standards requested on the Chain of Custody.

HOLD POLICY
For samples submitted on hold, Alpha's policy is to hold samples (with the exception of Air canisters) free of charge for 21 calendar days from the date the project is completed. After 21 calendar days, we will dispose of all samples submitted including those put on hold unless you have contacted your Client Service Representative and made arrangements for Alpha to continue to hold the samples. Air canisters will be disposed after 3 business days from the date the project is completed.

Please contact Client Services at 800-624-9220 with any questions.

| | | | |
|---|---|---|---|
| **Project Name:** | BRG HARRISON LAMP WORKS | **Lab Number:** | L1525715 |
| **Project Number:** | 100484301 | **Report Date:** | 10/13/15 |

**Case Narrative (continued)**

Mercury in Air

Report Submission

All non-detect (ND) or estimated concentrations (J-qualified) have been quantitated to the limit noted in the MDL column.

I, the undersigned, attest under the pains and penalties of perjury that, to the best of my knowledge and belief and based upon my personal inquiry of those responsible for providing the information contained in this analytical report, such information is accurate and complete. This certificate of analysis is not complete unless this page accompanies any and all pages of this report.

Authorized Signature: Christopher J. Anderson

Title: Technical Director/Representative Date: 10/13/15

# METALS

| | | | |
|---|---|---|---|
| **Project Name:** | BRG HARRISON LAMP WORKS | **Lab Number:** | L1525715 |
| **Project Number:** | 100484301 | **Report Date:** | 10/13/15 |

**SAMPLE RESULTS**

| | | | |
|---|---|---|---|
| Lab ID: | L1525715-01 | Date Collected: | 10/09/15 15:30 |
| Client ID: | BRG-BLDG-C-FL-2 | Date Received: | 10/09/15 |
| Sample Location: | 400 S FIFTH ST., HARRISON, NJ | Field Prep: | Not Specified |
| Matrix: | Air Media | | |

| Parameter | Result | Qualifier | Units | RL | MDL | Dilution Factor | Date Prepared | Date Analyzed | Prep Method | Analytical Method | Analyst |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Mercury in Air - Mansfield Lab** | | | | | | | | | | | |
| Mercury, Total | 3.35 | | ug/m3 | 0.221 | 0.022 | 2 | 10/12/15 19:50 | 10/13/15 12:09 | 114,6009(M) | 114,6009(M) | LC |

| | | | |
|---|---|---|---|
| **Project Name:** | BRG HARRISON LAMP WORKS | **Lab Number:** | L1525715 |
| **Project Number:** | 100484301 | **Report Date:** | 10/13/15 |

**SAMPLE RESULTS**

| | | | |
|---|---|---|---|
| Lab ID: | L1525715-02 | Date Collected: | 10/09/15 16:00 |
| Client ID: | BRG-BLDG-C-FL-3 | Date Received: | 10/09/15 |
| Sample Location: | 400 S FIFTH ST., HARRISON, NJ | Field Prep: | Not Specified |
| Matrix: | Air Media | | |

| Parameter | Result | Qualifier | Units | RL | MDL | Dilution Factor | Date Prepared | Date Analyzed | Prep Method | Analytical Method | Analyst |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Mercury in Air - Mansfield Lab** | | | | | | | | | | | |
| Mercury, Total | 1.38 | | ug/m3 | 0.110 | 0.011 | 1 | 10/12/15 19:50 | 10/13/15 12:00 | 114,6009(M) | 114,6009(M) | LC |

**Project Name:** BRG HARRISON LAMP WORKS **Lab Number:** L1525715

**Project Number:** 100484301 **Report Date:** 10/13/15

# Method Blank Analysis
# Batch Quality Control

| Parameter | Result | Qualifier | Units | RL | MDL | Dilution Factor | Date Prepared | Date Analyzed | Analytical Method | Analyst |
|---|---|---|---|---|---|---|---|---|---|---|
| Mercury in Air - Mansfield Lab for sample(s): 01-02 Batch: WG830147-1 | | | | | | | | | | |
| Mercury, Total | ND | | ug/m3 | 0.100 | 0.010 | 1 | 10/12/15 19:50 | 10/13/15 11:46 | 114,6009(M) | LC |

**Prep Information**

Digestion Method: 114,6009(M)

# Lab Control Sample Analysis

## Batch Quality Control

**Project Name:** BRG HARRISON LAMP WORKS

**Project Number:** 100484301

**Lab Number:** L1525715

**Report Date:** 10/13/15

| Parameter | LCS %Recovery | Qual | LCSD %Recovery | Qual | %Recovery Limits | RPD | Qual | RPD Limits |
|---|---|---|---|---|---|---|---|---|
| Mercury in Air - Mansfield Lab Associated sample(s): 01-02 Batch: WG830147-2 WG830147-3 SRM Lot Number: HPHGAF | | | | | | | | |
| Mercury, Total | 107 | | 103 | | 90-110 | 4 | | |

**Project Name:** BRG HARRISON LAMP WORKS
**Project Number:** 100484301

**Lab Number:** L1525715
**Report Date:** 10/13/15

## Sample Receipt and Container Information

Were project specific reporting limits specified? YES

**Reagent H2O Preserved Vials Frozen on:** NA

**Cooler Information Custody Seal**

| Cooler | |
|---|---|
| A | Absent |

**Container Information**

| Container ID | Container Type | Cooler | pH | Temp deg C | Pres | Seal | Analysis(*) |
|---|---|---|---|---|---|---|---|
| L1525715-01A | Sorbent Tube (Disposable) | A | N/A | 2.2 | Y | Absent | A2-HG-6009(30) |
| L1525715-02A | Sorbent Tube (Disposable) | A | N/A | 2.2 | Y | Absent | A2-HG-6009(30) |

*Values in parentheses indicate holding time in days

**Project Name:** BRG HARRISON LAMP WORKS **Lab Number:** L1525715

**Project Number:** 100484301 **Report Date:** 10/13/15

# GLOSSARY

### *Acronyms*

EDL - Estimated Detection Limit: This value represents the level to which target analyte concentrations are reported as estimated values, when those target analyte concentrations are quantified below the reporting limit (RL). The EDL includes any adjustments from dilutions, concentrations or moisture content, where applicable. The use of EDLs is specific to the analysis of PAHs using Solid-Phase Microextraction (SPME).

EPA - Environmental Protection Agency.

LCS - Laboratory Control Sample: A sample matrix, free from the analytes of interest, spiked with verified known amounts of analytes or a material containing known and verified amounts of analytes.

LCSD - Laboratory Control Sample Duplicate: Refer to LCS.

LFB - Laboratory Fortified Blank: A sample matrix, free from the analytes of interest, spiked with verified known amounts of analytes or a material containing known and verified amounts of analytes.

MDL - Method Detection Limit: This value represents the level to which target analyte concentrations are reported as estimated values, when those target analyte concentrations are quantified below the reporting limit (RL). The MDL includes any adjustments from dilutions, concentrations or moisture content, where applicable.

MS - Matrix Spike Sample: A sample prepared by adding a known mass of target analyte to a specified amount of matrix sample for which an independent estimate of target analyte concentration is available.

MSD - Matrix Spike Sample Duplicate: Refer to MS.

NA - Not Applicable.

NC - Not Calculated: Term is utilized when one or more of the results utilized in the calculation are non-detect at the parameter's reporting unit.

NI - Not Ignitable.

NP - Non-Plastic: Term is utilized for the analysis of Atterberg Limits in soil.

RL - Reporting Limit: The value at which an instrument can accurately measure an analyte at a specific concentration. The RL includes any adjustments from dilutions, concentrations or moisture content, where applicable.

RPD - Relative Percent Difference: The results from matrix and/or matrix spike duplicates are primarily designed to assess the precision of analytical results in a given matrix and are expressed as relative percent difference (RPD). Values which are less than five times the reporting limit for any individual parameter are evaluated by utilizing the absolute difference between the values; although the RPD value will be provided in the report.

SRM - Standard Reference Material: A reference sample of a known or certified value that is of the same or similar matrix as the associated field samples.

TIC - Tentatively Identified Compound: A compound that has been identified to be present and is not part of the target compound list (TCL) for the method and/or program. All TICs are qualitatively identified and reported as estimated concentrations.

### *Footnotes*

1 - The reference for this analyte should be considered modified since this analyte is absent from the target analyte list of the original method.

### *Terms*

Total: With respect to Organic analyses, a 'Total' result is defined as the summation of results for individual isomers or Aroclors. If a 'Total' result is requested, the results of its individual components will also be reported. This is applicable to 'Total' results for methods 8260, 8081 and 8082.

Analytical Method: Both the document from which the method originates and the analytical reference method. (Example: EPA 8260B is shown as 1,8260B.) The codes for the reference method documents are provided in the References section of the Addendum.

### *Data Qualifiers*

**A** - Spectra identified as "Aldol Condensation Product".

**B** - The analyte was detected above the reporting limit in the associated method blank. Flag only applies to associated field samples that have detectable concentrations of the analyte at less than ten times (10x) the concentration found in the blank. For MCP-related projects, flag only applies to associated field samples that have detectable concentrations of the analyte at less than ten times (10x) the concentration found in the blank. For DOD-related projects, flag only applies to associated field samples that have detectable concentrations of the analyte at less than ten times (10x) the concentration found in the blank AND the analyte was detected above one-half the reporting limit (or above the reporting limit for common lab contaminants) in the associated method blank. For NJ-Air-related projects, flag only applies to associated field samples that have detectable concentrations of the analyte above the reporting limit. For NJ-related projects (excluding Air), flag only applies to associated field samples that have detectable concentrations of the analyte, which was detected above the reporting limit in the associated method blank or above five times the reporting limit for common lab contaminants (Phthalates, Acetone, Methylene Chloride, 2-Butanone).

**C** - Co-elution: The target analyte co-elutes with a known lab standard (i.e. surrogate, internal standards, etc.) for co-extracted analyses.

*Report Format:* DU Report with 'J' Qualifiers

**Project Name:** BRG HARRISON LAMP WORKS **Lab Number:** L1525715

**Project Number:** 100484301 **Report Date:** 10/13/15

***Data Qualifiers***

**D** - Concentration of analyte was quantified from diluted analysis. Flag only applies to field samples that have detectable concentrations of the analyte.

**E** - Concentration of analyte exceeds the range of the calibration curve and/or linear range of the instrument.

**G** - The concentration may be biased high due to matrix interferences (i.e, co-elution) with non-target compound(s). The result should be considered estimated.

**H** - The analysis of pH was performed beyond the regulatory-required holding time of 15 minutes from the time of sample collection.

**I** - The lower value for the two columns has been reported due to obvious interference.

**M** - Reporting Limit (RL) exceeds the MCP CAM Reporting Limit for this analyte.

**NJ** - Presumptive evidence of compound. This represents an estimated concentration for Tentatively Identified Compounds (TICs), where the identification is based on a mass spectral library search.

**P** - The RPD between the results for the two columns exceeds the method-specified criteria.

**Q** - The quality control sample exceeds the associated acceptance criteria. For DOD-related projects, LCS and/or Continuing Calibration Standard exceedences are also qualified on all associated sample results. Note: This flag is not applicable for matrix spike recoveries when the sample concentration is greater than 4x the spike added or for batch duplicate RPD when the sample concentrations are less than 5x the RL. (Metals only.)

**R** - Analytical results are from sample re-analysis.

**RE** - Analytical results are from sample re-extraction.

**S** - Analytical results are from modified screening analysis.

**J** - Estimated value. The Target analyte concentration is below the quantitation limit (RL), but above the Method Detection Limit (MDL) or Estimated Detection Limit (EDL) for SPME-related analyses. This represents an estimated concentration for Tentatively Identified Compounds (TICs).

**ND** - Not detected at the method detection limit (MDL) for the sample, or estimated detection limit (EDL) for SPME-related analyses.

*Report Format:* DU Report with 'J' Qualifiers

**Project Name:** BRG HARRISON LAMP WORKS **Lab Number:** L1525715
**Project Number:** 100484301 **Report Date:** 10/13/15

## REFERENCES

114 Analysis of Mercury in Air with a Modified NIOSH 6009 Method, U.S. EPA Environmental Response Team Standard Operating Procedure, SOP 1827, Revision 2, May 13, 1999.

## LIMITATION OF LIABILITIES

Alpha Analytical performs services with reasonable care and diligence normal to the analytical testing laboratory industry. In the event of an error, the sole and exclusive responsibility of Alpha Analytical shall be to re-perform the work at it's own expense. In no event shall Alpha Analytical be held liable for any incidental, consequential or special damages, including but not limited to, damages in any way connected with the use of, interpretation of, information or analysis provided by Alpha Analytical.

We strongly urge our clients to comply with EPA protocol regarding sample volume, preservation, cooling, containers, sampling procedures, holding time and splitting of samples in the field.

# Certification Information

**The following analytes are not included in our Primary NELAP Scope of Accreditation:**

**Westborough Facility**
**EPA 8260C:** 1,2,4,5-Tetramethylbenzene, 4-Ethyltoluene, Iodomethane (methyl iodide) (soil), Methyl methacrylate (soil), Azobenzene.
**EPA 8270D:** Dimethylnaphthalene,1,4-Diphenylhydrazine.
**EPA 625:** 4-Chloroaniline, 4-Methylphenol.
**SM4500**: Soil: Total Phosphorus, TKN, NO2, NO3.

**Mansfield Facility**
**EPA 8270D:** Biphenyl.
**EPA 2540D:** TSS
**EPA TO-15:** Halothane, 2,4,4-Trimethyl-2-pentene, 2,4,4-Trimethyl-1-pentene, Thiophene, 2-Methylthiophene, 3-Methylthiophene, 2-Ethylthiophene, 1,2,3-Trimethylbenzene, Indan, Indene, 1,2,4,5-Tetramethylbenzene, Benzothiophene, 1-Methylnaphthalene.

**The following analytes are included in our Massachusetts DEP Scope of Accreditation, Westborough Facility:**

***Drinking Water***
**EPA 200.8**: Sb,As,Ba,Be,Cd,Cr,Cu,Pb,Ni,Se,Tl; **EPA 200.7**: Ba,Be,Ca,Cd,Cr,Cu,Na; **EPA 245.1:** Mercury;
**EPA 300.0**: Nitrate-N, Fluoride, Sulfate; **EPA 353.2**: Nitrate-N, Nitrite-N; **SM4500NO3-F**: Nitrate-N, Nitrite-N; **SM4500F-C, SM4500CN-CE, EPA 180.1, SM2130B, SM4500Cl-D, SM2320B, SM2540C, SM4500H-B**
**EPA 332**: Perchlorate.
**Microbiology**: **SM9215B; SM9223-P/A, SM9223B-Colilert-QT, Enterolert-QT.**

***Non-Potable Water***
**EPA 200.8**: Al,Sb,As,Be,Cd,Cr,Cu,Pb,Mn,Ni,Se,Ag,Tl,Zn;
**EPA 200.7**: Al,Sb,As,Be,Cd,Ca,Cr,Co,Cu,Fe,Pb,Mg,Mn,Mo,Ni,K,Se,Ag,Na,Sr,Ti,Tl,V,Zn;
**EPA 245.1, SM4500H,B, EPA 120.1, SM2510B, SM2540C, SM2340B, SM2320B, SM4500CL-E, SM4500F-BC, SM426C, SM4500NH3-BH**, **EPA 350.1**: Ammonia-N, **LACHAT 10-107-06-1-B**: Ammonia-N, **SM4500NO3-F, EPA 353.2**: Nitrate-N, **SM4500NH3-BC-NES, EPA 351.1, SM4500P-E, SM4500P-B, E, SM5220D, EPA 410.4, SM5210B, SM5310C, SM4500CL-D, EPA 1664, SM14 510AC, EPA 420.1, SM4500-CN-CE, SM2540D.**
**EPA 624**: Volatile Halocarbons & Aromatics,
**EPA 608**: Chlordane, Toxaphene, Aldrin, alpha-BHC, beta-BHC, gamma-BHC, delta-BHC, Dieldrin, DDD, DDE, DDT, Endosulfan I, Endosulfan II, Endosulfan sulfate, Endrin, Endrin Aldehyde, Heptachlor, Heptachlor Epoxide, PCBs
**EPA 625**: SVOC (Acid/Base/Neutral Extractables), **EPA 600/4-81-045**: PCB-Oil.
**Microbiology**: **SM9223B-Colilert-QT; Enterolert-QT, SM9222D-MF**.

For a complete listing of analytes and methods, please contact your Alpha Project Manager.

# AIR ANALYSIS - SORBENT MEDIA
## CHAIN OF CUSTODY

Page ___ of ___

Date Rec'd in Lab 10/10/15

ALPHA Job # L1525715

Westborough, MA TEL: 508-898-9220 FAX: 508-822-3288
Mansfield, MA TEL: 508-822-9300 508-822-3288

**Client Information**

Client: Langan
Address: 619 River Dr, Center Elmwood Park NJ
Phone: 201-794-6900
Fax:
Email: AKaufman@langan.com

**Project Information**

Project Name: BRG HARRISON LAMP WORKS
Project Location: 400 S Fifth St, Harrison NJ
Project #: 100484301
(Use Project name as Project #) ☐
Project Manager: Anthony Kaufman
ALPHA Quote #:

**Turn-Around Time**

Standard ☐ Due Date: 10/15
Rush (only if pre approved) ☒ 2 DAY Time:

**Report Information - Data Deliverables**

☐ FAX
☐ ADEx
Criteria Checker:
Other Formats:
☒ EMAIL
☐ Add'l Deliverables
Report to: (if different than Project Manager)

**Billing Information**

☒ Same as Client Info
PO # 100484301

**Regulatory Requirements/Report Limits**

| State/Fed | Program | Criteria |
|---|---|---|
| | | |
| | | |

These samples have been previously analyzed by Alpha ☐

Other Project Specific Requirements/ Comments/Detection Limits

**For PCBs, selection is REQUIRED:**
☐ Congeners
☐ Homologs
☐ Aroclors (Low Vol only)

**NOTE: For metals, please specify elements of interest and media type.**
☐ PM-10
☐ TSP
☐ MCE

**All Columns Below Must Be Filled Out**

| ALPHA Lab ID (Lab Use Only) | Sample ID | Collection Date | Start Time | End Time | Flow Rate (L/min) | Total Volume (L) | Sample Matrix* | Sampler's Initials | Media ID# (1) | TO-13A | PCBs (High Vol) | PCBs (Low Vol) | TO-11A | Hg via NIOSH 6009 Mod. | Metals | TO-17 | | Sample Comments (i.e. PID) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 25715 -01 | BRG-BLDG-C-FL2 | 10-9-15 | 0903 | 1530 | 0.234 | 90.55 | AAir-T | KL | 4880004056 | | | | | X | | | | |
| -02 | BRG-BLDG-C-FL-3 | 10-9-15 | 0945 | 1600 | 0.2428 | 90.80 | AAir-T | KL | 4880004060 | | | | | X | | | | |
| | | | | | | | | | | | | | | | | | | |
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*** SAMPLE MATRIX CODES**
AA = Ambient Air (Indoor/Outdoor)
SV = Soil Vapor/Landfill Gas/SVE
Other = Please Specify

(1) Required for PUF cartridges, PM-10 and TSP filters and TO-17 sorbent tubes.

| Media Type | P | P | P | D | T | F | T |
|---|---|---|---|---|---|---|---|

Media Code
D = DNPH Cartridge
F = Filter
P = PUF Cartridge
T = Sorbent Tube
O = Other

| Relinquished By: | Date/Time | Received By: | Date/Time |
|---|---|---|---|
| [signature] | 10-9-15 | [signature] AAL | 10/9/15 17:32 |
| [signature] AAL | 10/9/15 2300 | [signature] | 10/9/15 2300 |
| [signature] | 10/10/15 0515 | Am Bitty Bird | 10/10/15 5:15 |

Please print clearly, legibly and completely. Samples can not be logged in and turnaround time clock will not start until any ambiguities are resolved. BY EXECUTING THIS COC, THE CLIENT HAS READ AND AGREES TO BE BOUND BY ALPHA'S TERMS & CONDITIONS. (See reverse side.)

Form No: 101-13 (rev 01-OCT-2013)

# Attachment B

**Mercury – Roy Conversation 10-15-15**

Mercury Source: used in vacuum pumps

**Experience: Grand St, Hoboken**

- Mercury in subfloor
- Readings were much higher, 900 samples, sniff it out on a 6' grid, sample the wood, delineate and dispose. Disposal of hazardous is 3x – 6x more than normal demo; if really high goes to a mercury retort
- Scarify the bottom 1" of the brick and dispose – vs entire brick itself
- Our levels "frankly not that bad."

**Process for Us**

- Grid and screen, core samples of wood in identified hot spots
- Create material characterization plan
- Delineate
- Remove wood, seal in the mercury where necessary. If all hot perhaps remove entire floor layer
- No issue proceeding with doing demo & lead paint at levels Langan identified prior to mercury remediation but suggests having a Jerome meter on site to sample. Have "stop work" level established in advance. (They had to stop in hot weather - but our levels are much lower although standards more stringent now.)

Why Different Than AET?

Sprinklers wouldn't have done it. Maybe temperature. Maybe different process (no).Different measurements

**Questions for Langan**

1. Did measurements on 2nd & 3rd floor get reversed?
2. Confusion vs prior and current numbers? Anthony says conditions worse – Roy says levels are lower now.
3. Why just 3 AET data points? They took 81 samples?
4. Microgram per cubic liter vs microgram per cubic meter?

# Attachment C

Message

**From**: Matthew Frankenberry [mcf@albaneseorg.com]
**Sent**: 10/14/2015 1:52:46 PM
**To**: Jack Becker [jcb@albaneseorg.com]; Russell Albanese [rca@albaneseorg.com]; Jim Wansor [jdwansor@gmail.com]; Tom Berkenkamp [tomberkenkamp@brgrealty.com]; Mark Schaevitz [mschaevitz@paragonrg.com]
**CC**: Anthony Kaufman [akaufman@Langan.com]
**Subject**: FW: Mercury Data - Building C

**Flag**: Follow up

All,
Based on the email below, and further discussions today, Langan feels that we can commence with the selective demo and lead paint remediation work on Monday. Anthony indicated that we should notify the contractors and indicate that we have a mercury issue and that the contractor needs to have a health and safety plan in place.

Also, Anthony is recommending that we do some preliminary swaps of the walls to confirm existing conditions.

Just wanted to get everyone's thoughts before I notify the contractors.

Matt

---

**From:** Anthony Kaufman [mailto:akaufman@Langan.com]
**Sent:** Tuesday, October 13, 2015 6:13 PM
**To:** Matthew Frankenberry <mcf@albaneseorg.com>
**Cc:** Tom Berkenkamp <tomberkenkamp@brgrealty.com>; Robert H. Crespi Esq. (rcrespi@csglaw.com) <rcrespi@csglaw.com>; Steve Ciambruschini <sciambruschini@Langan.com>
**Subject:** RE: Mercury Data - Building C

Matt,

The primary mercury source is likely the wood floors and presumably the selective demo is for the light fixtures and sheetrock office walls, so I would not expect additional mercury distribution. Health and safety monitoring for mercury during their work should enable them to adjust methods if they see liquid mercury or higher vapor levels during their activities. The light fixtures hold mercury fluorescent tubes so they must be handled appropriately and not be broken unless in a sealed system. The scraped lead paint needs to be collected and disposed (likely as hazardous waste for lead) and the contractor will need to ensure that there is not hazardous levels of mercury in the waste so that it gets classified and disposed properly.

I don't think it a high likelihood that the sealer would become contaminated after application. We can inquire of the manufacturer, and if needed conduct wipe sampling for mercury after the paint is removed before the sealer is applied. I assume the lead abatement will include HEPA vacuuming which should be done throughout so as to remove dust that may contain mercury that could settle in wet sealer as it is applied.
Regards,

**Anthony Kaufman**
**Senior Project Manager**
Direct: 201.398.4576
Mobile: 914.649.6720
File Sharing Link

*LANGAN*
www.langan.com

NEW JERSEY NEW YORK CONNECTICUT PENNSYLVANIA OHIO WASHINGTON, DC FLORIDA TEXAS NORTH DAKOTA CALIFORNIA

**From:** Matthew Frankenberry [mailto:mcf@albaneseorg.com]
**Sent:** Tuesday, October 13, 2015 5:34 PM
**To:** Anthony Kaufman
**Cc:** Tom Berkenkamp; Stingone, Michael G.; Robert H. Crespi Esq. (rcrespi@csglaw.com); Steve Ciambruschini
**Subject:** Re: Mercury Data - Building C

Anthony,
I am not sure about the last paragraph. Will the future work disturb the Mercury and create additional problems. If we do the selective demo then lead abatement and seal the walls, would the Mercury vapors contaminate the lead sealer?
Matt

On Oct 13, 2015, at 4:51 PM, Anthony Kaufman <akaufman@Langan.com<mailto:akaufman@langan.com>> wrote:

Group,
We received and have attached the laboratory report for the two indoor air samples collected 10/9/15 for total mercury analyses from Building C floors 2 and 3. These were >6-hour samples collected on sorbent tubes analyzed via method 6009. Mercury was reported 3.35 ug/m3 and 1.38 ug/m3 on floors 2 and 3, respectively. These sample results are consistent with field screening data obtained that day using a Jerome J505 mercury analyzer (MA) which identified mercury concentrations ranging from 1 to 3.5 ug/m3 throughout floor 3 at height of five feet above the floor and mercury concentrations ranging from 1 to 88 ug/m3 at floor level. The MA readings were obtained along a grid pattern on floor 3, and results are depicted on the attached figure. While not formally screened on a grid pattern, random MA readings on floor 1 and 2 at 5 feet above the floor level were similar to those observed on floor 3.

As discussed, these data are inconsistent with AET's past survey data and the past indoor air sample data obtained by GE. The current data and observations indicate more widespread mercury is present than previously reported. In light of these observations, further assessment is necessary to identify the extent of mercury. With respect to forthcoming lead abatement, limited demo, and GE work activities, mercury data should be provided to contractors so that they can incorporate the information into worker health and safety planning and can implement appropriate waste management and disposal related to their activities.

Feel free to call and discuss.
Regards,
Anthony K.

Anthony Kaufman
Senior Project Manager
Direct: 201.398.4576
Mobile: 914.649.6720
File Sharing Link<http://clients.langan.com/FileSharing/default.aspx?shareCD=632734574>

LANGAN
Phone: 201.794.6900 Fax: 201.794.0366
River Drive Center 1
619 River Drive
Elmwood Park, NJ 07407-1338
www.langan.com<http://www.langan.com>

NEW JERSEY NEW YORK CONNECTICUT PENNSYLVANIA OHIO WASHINGTON, DC FLORIDA TEXAS NORTH DAKOTA CALIFORNIA
ABU DHABI ATHENS DOHA DUBAI ISTANBUL PANAMA

Langan's goal is to be SAFE (Stay Accident Free Everyday)
Electronic communication provided by "Langan" encompasses "Langan Engineering, Environmental, Surveying and Landscape Architecture, D.P.C.," "Langan Engineering and Environmental Services, Inc.," "Langan International LLC," "Langan Treadwell Rollo," "Langan CT, Inc." and "Langan Engineering and Environmental Services, Inc., PC." This electronic transmission may contain confidential, proprietary or privileged information. No confidentiality or privilege is intended to be waived or lost by erroneous transmission of this message. If you receive this message in error, please notify the sender immediately by return email and delete this message from your system. Disclosure, use, distribution or copying of this message, any attachments thereto or their contents is strictly prohibited.
<Mercury Vapor Field Screening Results - October 2015 101215.pdf>
<IA HG -Alpha Analytical L1525715.pdf>

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# Attachment D

**Roger Florio**
Counsel - Environmental Matters

GE
640 Freedom Business Center
King of Prussia, PA 19406

T 610 992 7969
F 610 992 7898
roger.florio@ge.com

*Via Regular and e- mail*

March 1, 2013

Shari M. Blecher
Lieberman & Blecher P.C.
10 Jefferson Plaza, Suite 400
Princeton NJ 08540

Re: 400 South Fifth Street, Harrison NJ
Response to Notice of Potential Claim

Dear Ms. Blecher:

This responds to your letter of December 12, 2012, notifying GE of a potential claim with respect to environmental conditions at a property located at 400 South Fifth Street in Harrison, NJ, owned and operated by your clients V.I.P Realty Associates and its predecessor Vo-Toys, Inc. (collectively, VIP), since 1977; and your subsequent letter of February 4, 2013, providing information relevant to that notice.

As noted in your letter, until early 1976, this property was part of an RCA facility for the production of radio tubes. By Agreement dated March 23, 1976 (copy enclosed) RCA sold the property to International Fastener Research Corporation (IFR). Paragraph 3.8 of that agreement makes clear that IFR acquired the property on as "as is" basis:

> IFR represents to RCA that it has examined the premises; that it is fully satisfied with the physical condition thereof; and that neither RCA nor any representative of RCA has made any representation or promise upon which IFR has relied concerning the condition of the premises or of any property conveyed by this agreement ..."

VIP's predecessor Vo-Toys acquired the property from IFR by an agreement dated August 3, 1977.[1] VIP paid $343,000 for the property, which consisted of one City block with three three-story buildings totaling approximately 200,000 feet of warehouse space, as well as a parking easement on a lot across the street. Here again, paragraph 4 of the agreement makes clear that VIP assumed full responsibility for the condition of the property:

> Purchaser acknowledges that neither Seller nor any other party makes any representation or warranty, express, implied or otherwise, with respect to the Premises or any other property or the use, design, merchantability, fitness for use, purpose, condition or durability thereof ... it being agreed that Purchases assumes all risks incident thereto and purchases the Premises and all other property thereon "AS IS."

In short, neither RCA nor GE bear any legal responsibility to VIP or Vo-Toys in connection with this property. When it acquired the property VIP was fully aware the premises and buildings had a long manufacturing history. Once in possession, VIP apparently waited more than thirty years before undertaking any environmental investigation of the property. Accordingly, as between VIP and GE/RCA, responsibility for the current condition of the property rests with VIP.

Please feel free to contact me if you have any questions concerning the above, or if you wish to discuss this matter further.

Very truly yours,

Roger Florio

cc: Roy Blickwedel, GE (via email only)

[1] Note we have not been provided with a copy of the 1990 Agreement between VIP and Vo-Toys.

# Attachment E

McCARTER &ENGLISH
ATTORNEYS AT LAW

April 25, 2016

VIA E-MAIL

Laurence M. Smith, Esq.
Chiesa Shahinian & Giantomasi PC
One Boland Dr.
West Orange, NJ 07052

Re: BRG Harrison – Building Interior Mercury Conditions at Property Located at 400 South 5th Street, Harrison, NJ

Ira M. Gottlieb
Partner
T. 973-639-7984
F. 973-297-3976
igottlieb@mccarter.com

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056
T. 973.622.4444
F. 973.624.7070
www.mccarter.com

BOSTON
HARTFORD
STAMFORD
NEW YORK
NEWARK
EAST BRUNSWICK
PHILADELPHIA
WILMINGTON
WASHINGTON, DC

Dear Larry:

We write on behalf of General Electric Company ("GE") in response to your letter of April 19, 2016, setting forth BRG Harrison Lofts Urban Renewal, LLC ("BRG") positions concerning responsibility for addressing the suspected presence of mercury within buildings located at the property owned by BRG at 400 South 5th Street, Harrison, NJ (the "Site").

Your letter suggests there is an obligation on GE's part to test for and remediate any mercury that may be present within the buildings at the Site. For the reasons set forth below (among others), GE is not obligated or required, either under the Indemnity and Settlement Agreement, dated November 5, 2014, (the "Indemnity Agreement") or under applicable New Jersey site remediation laws or regulations, to address, investigate or remediate the presence of mercury within buildings materials at the Site.

Section 4(a) of the Indemnity Agreement obligates GE to perform "***Environmental Response Activities in a good and workmanlike manner and in accordance with customary industry standards, the direction of the LSRP and then prevailing laws, including Environmental Laws.***" (Emphasis added.) The term "***Environmental Response Activities***" is defined in pertinent part in Section 1(c) of the Indemnity Agreement as "***all environmental activities of any kind carried out … at or near the Site in connection with conditions arising out of GE's or RCA's prior activities at the Former RCA Facility,…all as required to obtain an RAO (as defined below) from an LSRP….***" (Emphasis added.)

As the foregoing sections of the Indemnity Agreement make clear, GE's obligation under the Indemnity Agreement is limited to environmental activities that are "***required to obtain an RAO.***" (Emphasis added.) Accordingly, if the environmental activity is not required in order to obtain the issuance of an RAO by an LSRP for the Site, such activities do not fall within the purview of GE's obligations under the Indemnity Agreement.

Under applicable New Jersey Site Remediation Program requirements, activities to address, investigate or remediate building interiors are expressly excluded from the activities required for the issuance of an RAO, unless the contaminant is present in the building interior as a result of a discharge to the environment or has migrated from the building to the environment. In the Guidance for the Issuance of Response Action Outcomes, dated April 2016 (the "RAO Guidance"), the NJDEP states that:

> [t]he Department of Environmental Protection does not regulate the remediation of building interiors unless there is a known or suspected discharge of a hazardous substance or hazardous waste that may result in a discharge to the environment, or if a discharge from outside of the building is determined to be entering the building (for example, blooms of hexavalent chromium).[1]

Consistent with this exclusion, the NJDEP has established a specific notice for inclusion within RAOs that is intended to "***clarify to all parties that the RAO did not address contamination that may be in the building***":

> Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of hazardous substances that may be present in building interiors or equipment, including, but not limited to, radon, asbestos and lead. As a result, any risk to human health presented by the building interior or equipment remains.[2]

(Emphasis added.)

Therefore, pursuant to the RAO Guidance, unless the contaminant present within a building has resulted from, or is causing, a discharge of a hazardous substance or hazardous waste to the environment,[3] no investigation or remediation of such contamination is required for an LSRP to issue an RAO, even if the presence of such contamination within a building or equipment presents a risk to human health.

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[1] RAO Guidance, page 14.

[2] RAO Guidance, page 15.

[3] We note that GE's Remedial Investigation of the Site indicated that a limited area of mercury is present in soils beneath Building B, at levels lower than the New Jersey residential direct contact soil remediation standards, but above impact to groundwater soil screening levels, indicating that mercury vapor detected within indoor air in the Site buildings has not resulted from a discharge of mercury to the environment. As BRG is aware, GE plans further investigation to determine the extent to which contaminants within Building B floors may be a potential source of such limited soil impacts, and to the extent that proves to be the case, intends to address and remove such flooring materials as part of its Environmental Response Activities.

BRG also contends that the mercury condition in the buildings is an "immediate environmental concern" ("IEC") and, based on such designation, GE is obligated under the SRRA to address the mercury condition. We disagree.

The New Jersey Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.1 et seq. (the "TRSR"), define an "***immediate environmental concern***" as "***a condition where any of the following types of contamination, or any of the following conditions related to a discharge, are found.***" [List of contamination and conditions omitted and emphasis added]. Based on this definition, in order for any of the listed conditions or contamination to be deemed an IEC, as a threshold matter, such condition or contamination must be "related to a discharge." In that regard, the TRSR defines a discharge in pertinent part as: "**any intentional or unintentional action or emission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance, hazardous waste or pollutant into the waters or onto the lands of the State.**"[4] (Emphasis added.) Taken together, these defined terms establish that none of the conditions or contamination listed under the definition of an IEC are, in fact, IECs unless the condition or contamination is related to a discharge into the water or land. Accordingly, because the mercury conditions detected in the buildings are not related to a defined discharge, the mercury conditions do not constitute an IEC (regardless of whether or not indoor mercury vapor concentrations may be above the IEC threshold as you indicate). Therefore, GE has no obligation under the SRRA or the Indemnity Agreement to investigate or remediate the suspected presence of mercury within building materials at the Site.

The absence of an affirmative obligation in the Indemnity Agreement for BRG to perform any Environmental Response Activities has no bearing on the scope of GE's obligations. The relevant fact is, as demonstrated above, GE has no obligation under the Indemnity Agreement or applicable law to address the mercury conditions in the buildings. Moreover, as you acknowledge in your letter, GE also has no obligation to indemnify BRG with respect to (among other things) any costs or expenses arising out of the investigation, removal, disposal or remediation of building materials or any contaminants (including mercury) that may be present therein. We must note that the parties intent, *vis-à-vis* one another, was that BRG would be responsible for remediation or redevelopment activities within the buildings' superstructure and interior, including "the investigation, removal, disposal or remediation of any existing or residual building materials which might be present at the Site, or of any contaminant which might be present in building materials at the Site (*e.g.,* asbestos, lead, mercury, mold, or any other building material or contaminant of building material) …." Section 3(b) of the Indemnity Agreement.

Finally, the provisions of the agreement setting out GE's obligations to properly handle and dispose of building materials removed by GE in the course of its

[4] N.J.A.C. 7:26E-1.8.

Environmental Response Activities at the Site, and to make commercially reasonable efforts not to damage the property or interfere with site development in the course of carrying out Environmental Response Activities at the Site, address only the manner in which GE is obligated to perform its Environmental Response Activities, and do not expand the scope of such activities, as implied by the penultimate paragraph of your letter.

In closing, BRG's refusal to share any costs to delineate the extent of the mercury contamination within the building does not change or alter the scope of GE's obligations under the Indemnity Agreement or applicable law with respect to the Site. While GE remains willing to work cooperatively with BRG, neither this letter nor any of the statements set forth herein shall be construed to be an admission by GE of any responsibility for addressing the mercury conditions within the buildings or as a waiver of any rights, claims or defenses that GE may have now or in the future against BRG, its affiliates or any other party under the Indemnity Agreement or otherwise with respect to the Site.

Very truly yours,

Ira M. Gottlieb

cc: Roger Florio, Esq.
Mr. Roy Blickwedel
Paul Dritsas, Esq.

# Attachment F

**From:** Dritsas, Paul [mailto:PDritsas@McCarter.com]
**Sent:** Wednesday, October 19, 2016 3:37 PM
**To:** Toft, Dennis M.
**Cc:** Smith, Laurence M.; Gottlieb, Ira M.
**Subject:** Harrison VoToys - Review of Louis Berger Work Plan

Dennis:

On behalf of GE, I have attached a letter prepared by LSRP Toskos, and an accompanying memorandum prepared by Anchor QEA, setting for technical comments on the SOP/QAPP and HASP prepared by Louis Berger in connection with the proposed mercury investigatory activities at the Harrison site.

In light of the comments and concerns set forth in the attached documents to Berger's proposals and planned procedures, the substantial threats of media cross-contamination and environmental releases if the investigation is conducted in the manner proposed by Berger, and the questions concerning the reliability and usability of the data that would be generated from the investigation (as proposed), GE requests that Berger not proceed with the investigation until the comments and concerns expressed in the attached documents are satisfactorily addressed by Berger.

In light of the foregoing, please be advised that GE will hold BRG responsible for, and reserves all of its claims, rights, remedies and causes of action with respect to any and all damages resulting from, any releases of mercury that may be effected or caused by any of the work to be conducted by Berger and/or its subcontractors at the site pursuant to the SOP/QAPP or the HASP. Finally, if, despite GE's request that no work proceed, BRG authorizes Berger to conduct the investigation, we expect BRG to preserve all evidence, information, data (hard copy, hard materials, digital or electronic or otherwise), including without limitation: samples; sampling records; sampling results; data; reports; logs; recordings (audio, digital, photographic or otherwise); field or other notes; schematics; drawings; pictures; maps; materials used for testing or materials tested (nothing should be destroyed); and any other information generated or obtained as a result of its sampling and investigation.

If you have any questions, please do not hesitate to contact Ira or me.

Paul

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*Thank you.*

# Attachment G

## EXHIBIT B

## LIST OF MEMBERS, CONTRIBUTIONS AND PERCENTAGES

| Member Name and Address | Initial Capital Contribution | Enhanced Value Contribution | Total | Percentage |
|---|---|---|---|---|
| | | | | |
| ALBANESE HARRISON LOFTS LLC<br>c/o Albanese Organization, Inc.<br>1050 Franklin Avenue<br>Garden City, New York 11530 | $9,333,333.00 | $0.00 | $9,333,333.00 | 50.00% |
| | | | | |
| BRG LAMPWORKS VENTURES, LLC<br>c/o Berkenkamp Realty Group<br>307 Frank E. Rodgers Blvd. So.<br>Harrison, New Jersey 07029 | $2,336,667.00 | $2,330,000.00 | $4,666,667.00 | 50.00% |
| | | | | |
| Total | $11,670,000.00 | $2,330,000.00 | $14,000,000.00 | 100.00% |