U.S. Environmental Protection Agency
Region 2

In the Matter of:	:	Approval for Risk-Based Disposal of Polychlorinated Biphenyl Remediation Waste
Former Alcoa Building 12 Site Edgewater, New Jersey	:	

This document is the United States Environmental Protection Agency, Region 2's (EPA Region 2) response to and approval of the request for a risk-based disposal of polychlorinated biphenyl (PCB) remediation waste (as defined at 40 C.F.R. §761.3). The disposal approval request was submitted to EPA Region 2 by Pennjersey Environmental Consulting (Pennjersey) on behalf of North River Mews Associates, LLC (North River Mews), dated March 19, 2015 and amended thereafter by North River Mews' current consultant, LSRP Consulting. The document addresses the remediation and redevelopment of property located at 660 River Road in the Borough of Edgewater, Bergen County, New Jersey and owned by North River Mews (the Site). EPA Region 2's approval is issued in accordance with the federal regulations for PCBs promulgated pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 *et seq*., and set forth in Part 761 of Title 40 of the Code of Federal Regulations (40 C.F.R. Part 761). In EPA Region 2, the authority to issue such approvals under 40 C.F.R. §761.61(c)(2) has been delegated to the Director of the Division of Enforcement and Compliance Assistance (DECA).

The completed application that EPA Region 2 considered in determining whether to approve North River Mews' request consists of the following:

- the March 19, 2015 request, submitted by Pennjersey on behalf of North River Mews, to EPA Region 2 for a risk-based PCB disposal Approval; and

- correspondence dated September 30, 2015, February 2, 2016, August 31, 2016, September 30, 2016, October 4, 2016, November 1, 2016, and November 2, 2016 from LSRP Consulting to EPA Region 2, amending the March 19, 2015 request.

Pennjersey's and LSRP Consulting's aforementioned submittals collectively will be referred to herein as the "Application."

Based on the information reviewed, EPA Region 2 has determined that implementation of the actions proposed in the Application will not pose an unreasonable risk of injury to human health or the environment.

EPA hereby issues this Approval for the risk-based disposal of PCB remediation waste at the Site, subject to the terms and conditions specified herein. This Approval is being issued pursuant to 40

C.F.R. § 761.61(c), a regulation promulgated by EPA under the authority granted it under TSCA, 15 U.S.C. § 2601 et seq. This Approval also constitutes an order issued under the authority of Section 6 of TSCA, 15 U.S.C. § 2605.

1. Effective Date

This Approval shall become effective on the date the Director of DECA, EPA Region 2, receives written notification from North River Mews, signed by an authorized representative of North River Mews, of North River Mews' acceptance of, and intention to comply with, the terms and conditions of this Approval. This offer may be withdrawn if EPA Region 2 does not receive, within forty-five (45) calendar days of the date of this Approval, written notification from North River Mews of its acceptance of, and intention to comply with, the terms and conditions of this Approval.

2. Description of the Site and the Extent of PCB Contamination

The Site is 0.991 acres in area and was historically a portion of the larger Alcoa Edgewater facility. During its operation of the Edgewater facility, Alcoa manufactured aluminum products and developed fabrication techniques. Alcoa reportedly developed the Site in 1938 as Building 12. The primary use of Building 12 was reportedly for ingot milling.

The Site has been the subject of prior environmental investigations and remedial activities. PCBs are currently present in the soil across the Site and throughout the soil column, from the soil surface to the top of bedrock (at approximately a 21-foot depth), at levels primarily below 500 parts per million (ppm)[1]. Groundwater was typically not encountered during the investigation and remedial activities; however, groundwater samples were collected from three temporary wells. The depth to groundwater ranged from approximately 12 feet below surface in the western portion of the Site to approximately 6.5 to 7.5 feet below surface in the eastern portion. PCBs were not detected in these samples.

Building 12 has been razed and the Site is being redeveloped for commercial use as a spa facility. As part of the redevelopment, the entire Site has been covered by a six-inch-thick concrete building slab (herein referred to as the Site Cap).

3. Work to be Performed

This Approval addresses the institutional and engineering controls that will ensure that the Site Cap remains an effective barrier to the residual PCBs in the soil.

The work to be completed shall include, but it is not limited to, the following components:

1) development and implementation of a Monitoring and Maintenance Plan (MMP) for the Site Cap (see Section 4 of this Approval);
2) submittal of financial assurance (see Section 5 of this Approval);

[1] Based on LSRP Consulting's estimates, there could be a de minimis volume of soil on the Site, ranging from 3.5 to 7.5 cubic yards, with PCBs up to 735 ppm. This soil could not be removed during prior remedial work and is located approximately 10 feet below the surface, covered with clean backfill, and is located under a new building slab.

3) submittal of a Remedial Action Report (see Section 6 of this Approval); and

4) recording a Deed Notice (see Section 9 of this Approval).

Nothing herein shall preclude additional work measures from being implemented, provided that any such measure not be inconsistent with or violate any express provision in this Approval or any PCB regulatory provision of 40 C.F.R. Part 761.

For any work at the Site that might materially affect the Site Cap, such as a change of use affecting the Site Cap, a penetration of the Site Cap, a disturbance of the PCB remediation waste underlying the Site Cap, and/or a change that otherwise might disrupt the physical integrity of the Site Cap, where such work might adversely impact the ability of the Site Cap to continue safely to contain the PCB remediation waste, North River Mews shall submit a modification request to EPA Region 2 pursuant to the provisions of Section 12 of this Approval.

4. Project Implementation

Within thirty (30) calendar days of the effective date of this Approval, North River Mews shall submit a draft Maintenance and Monitoring Plan (MMP) to EPA Region 2 for review and approval. The draft MMP shall include the following components:

1) technical specifications for the Site Cap;
2) a detailed schedule of inspections/maintenance including inspection and maintenance reporting templates;
3) preventive maintenance schedules and procedures;
4) corrective maintenance procedures; and,
5) a detailed schedule for reporting inspection and maintenance activities to EPA Region 2.

Within thirty (30) calendar days of EPA Region 2's approval of the draft MMP, North River Mews shall commence implementation of said plan. To the extent that North River Mews hires any sub-contractor, independent agent or other third party to perform said work, North River Mews shall be responsible to ensure that any such sub-contractor, independent agent or other third party performs said work in accordance with the terms and conditions of North River Mews' Application and this Approval.

5. Financial Assurance

North River Mews shall provide financial surety, subject to EPA approval, sufficient for the work required by Section 3 of this Approval. North River Mews shall establish financial assurance by choosing from the financial assurance mechanisms set forth in 40 C.F.R. §761.65(g) (referencing provisions of Subpart H of 40 C.F.R. Part 264), or any combination of such mechanisms.

Documentation that this financial surety is in effect shall be provided to EPA Region 2 within thirty (30) calendar days of the effective date of this Approval. EPA Region 2 retains the right, upon written

notice to North River Mews, to require that variations to, or modifications from, the language prescribed in 40 C.F.R. §264.151 be made in the instrument(s) North River Mews selects under 40 C.F.R. §264.151 to effect financial assurance.

North River Mews shall submit an annual certification to EPA Region 2 that the selected financial assurance mechanism(s) is/are still in effect. The certification shall be submitted by July 1st covering the previous calendar year (January through December).

Beginning five years from the effective date of this Approval and repeating every five years thereafter, North River Mews shall demonstrate to EPA Region 2 that the financial assurance mechanism(s) is/are sufficient to cover any increased costs of a future cleanup. If North River Mews wishes to change the financial assurance mechanism(s) due to factors other than inflation, North River Mews shall submit an adjusted financial assurance mechanism(s) (as applicable) to EPA Region 2. EPA Region 2 will review the change(s) and may require North River Mews to revise the adjusted financial assurance mechanism(s) prior to approving it.

In the event that North River Mews sells any portion of the Site or the Site in its entirety, these financial assurance obligations shall be transferred from North River Mews to the buyer or lessee, provided that the terms and conditions specified in Section 10 of this Approval are met. If North River Mews leases any portion of the Site, these financial assurance obligations shall remain the responsibility of North River Mews. If North River Mews sells or leases any portion of the Site or the Site in its entirety, but has not transferred the financial assurance obligations to such buyer or lessee, North River Mews shall remain liable for such obligations as if such sale or leasing arrangement had not been effected.

6. Remedial Action Report

Within thirty (30) calendar days of the effective date of this Approval, North River Mews shall submit to EPA Region 2 a Remedial Action Report (RAR) that includes:

1) a detailed description of the specific redevelopment activities performed on the Site;

2) "as-built" figures depicting the Site Cap; and

3) a certification, signed by a professional engineer licensed by the State of New Jersey and on behalf of North River Mews, verifying that the Site Cap has been constructed in accordance with the TSCA capping requirements at 40 C.F.R. §761.61(a)(7).

7. Inspection, Maintenance, and Related Reporting Obligations

Annual inspections and reporting will be required as part of the final approved MMP. The Site Cap shall be maintained to prevent access to or release of the contaminated material from under the cap.

North River Mews shall perform at least annual visual inspections of the Site Cap and shall maintain it. North River Mews shall prepare written reports of all inspections performed and maintenance activities completed and shall submit each year a copy of all such cap inspection and maintenance reports, as

well as any other information pertaining to maintenance of the Site Cap, to EPA Region 2. Such reports shall be submitted by July 1st of each year covering the previous calendar year (January through December). If the Site Cap remains uncompromised for two consecutive years, then North River Mews may submit a request to EPA Region 2 for modification of the reporting requirement. Until EPA Region 2 approves a modification of the reporting requirement, written reports shall be submitted in accordance with the aforementioned schedule.

In the event that North River Mews identifies a breach in the Site Cap, North River Mews shall notify EPA Region 2 in writing within fourteen (14) calendar days of discovery. The notification shall include the anticipated corrective measures and a schedule for implementation.

8. Records

As long as PCB remediation waste above 1ppm remains on the Site, North River Mews, or any new owner pursuant to Section 10, shall maintain the following records:

1) the final construction drawings and any other construction-related documents pertaining to the Site Cap; and

2) all records and information related to characterization and analysis of PCB-contaminated material at the site, and the long-term monitoring of the Site Cap.

9. Deed Restriction and Certification to EPA

Within one hundred and twenty (120) calendar days of the effective date of this Approval, North River Mews shall do the following.

1) Prepare and record a Deed Notice with the County Clerk's Office, Bergen County, New Jersey in accordance with 40 C.F.R. §761.61(a)(8) and applicable New Jersey law. The Deed Notice shall, at a minimum, include a description of the extent of contamination found at the Site; a description of the work performed under this Approval; the restrictions on use included in Section 11 of this Approval; a description of the inspection, maintenance, and reporting requirements associated with the final approved MMP; and a copy of this Approval, appended as an attachment.

2) Submit to EPA Region 2 a certification signed by an authorized representative of North River Mews indicating that North River Mews has recorded the revised Deed Notice as required by 40 C.F.R. §761.61(a)(8) and specified in subparagraph (1) of this Section.

10. Sale of the Site

North River Mews shall not sell any portion of the Site (or the Site in its entirety) unless North River Mews notifies EPA Region 2, in writing, no less than thirty (30) calendar days prior to such sale. This notification shall include the name, address and telephone number of the proposed new owner(s). In the event that North River Mews sells any portion of the Site (or the Site in its entirety), North River Mews shall continue to be bound by all the terms and conditions of this Approval, and be responsible

to ensure the timely and satisfactory completion of all work required thereunder, unless and until the following three conditions occur:

1) the new owner requests, in writing, that EPA Region 2 reissue this Approval to the new owner, transferring all responsibility to comply with the terms and conditions of this Approval to the new owner;

2) EPA Region 2 reissues this Approval to the new owner, transferring all responsibility to comply with the terms and conditions of this Approval to the new owner; and

3) the new owner provides written notification to EPA Region 2 of its acceptance of and intention to comply with the terms and conditions of the reissued Approval.

EPA Region 2 may withdraw the reissued Approval if it does not receive written notification from the new owner of its acceptance of, and intention to comply with, the terms and conditions of the reissued or as modified Approval within forty-five (45) calendar days of the date of the reissued or as modified Approval. Where EPA Region 2 has withdrawn the reissued or as modified Approval, this Approval, as originally issued to North River Mews, will remain in effect. In such case, North River Mews shall provide EPA Region 2, in writing, documentation that North River Mews will be afforded access to the Site, as necessary, to fulfill any and all obligations included in this Approval.

In the event that the three conditions listed above are met and the Approval is reissued to and accepted by a new owner, North River Mews will transfer custody of the documents required to be preserved pursuant to 40 C.F.R. Part 761, and to the extent not inconsistent with applicable TSCA statutory or regulatory requirements, North River Mews will then be released from any further obligations as mandated by this Approval.

11. Restrictions on Use

As long as PCB remediation waste above 1 ppm is present on the Site, North River Mews or any successor in interest may not use any area of the Site for purposes other than the anticipated commercial use as set forth in the Application, unless otherwise approved in writing by EPA Region 2.

12. Modifications and Changes in Use

Any proposed modification to any of the terms or conditions of this Approval, whether expressly stated herein or incorporated by reference, must receive prior written approval from the Director of DECA, EPA Region 2. North River Mews shall notify EPA Region 2 in writing of any such proposed modification at least sixty (60) calendar days prior to the anticipated date for implementation of the modification unless EPA agrees in writing to shorten the prior notice period. No action shall be taken to implement any such modification unless EPA Region 2 has approved the modification in writing. EPA Region 2 may request additional information in order to determine whether or not the modification should be approved. If a modification were to involve a change in the use of the Site, EPA Region 2 may revoke, suspend and/or modify this Approval if it determines that North River Mews' proposed modification, if approved, may pose an unreasonable risk to human health or to the environment resulting from the change in use, or if EPA Region 2 does not receive the information from North River

Mews that it feels it needs to assess and/or make a determination regarding such potential risk.

13. EPA Entry and Inspection

By signing this Approval, North River Mews consents to EPA Region 2's authorized representatives entering the Site at reasonable times for any purpose authorized by Section 11 of TSCA, 15 U.S.C. § 2610, including but not limited to the following purposes:

1) to inspect the Site, and any other location where non-privileged records are stored related to the Application and work conducted pursuant to this Approval, to assess compliance with this Approval and/or the federal PCB regulations;

2) to inspect records related to this Approval and work conducted pursuant to this Approval and/or federal PCB regulations; and

3) to collect samples to assess compliance with this Approval and/or the federal PCB regulations. North River Mews will be given the opportunity to split samples collected by EPA Region 2 representatives, provided this does not compromise EPA Region 2's sampling activities or the samples which EPA Region 2 collects.

Any refusal to allow any of the above actions may result in the suspension and/or revocation of this Approval.

14. Confidential Business Information

Information supplied to EPA is presumptively available to the public under the Freedom of Information Act, 5 U.S.C. § 552, and the regulations at 40 C.F.R. Part 2. As provided in Section 14(c) of TSCA, North River Mews may claim information provided to EPA Region 2 to be Confidential Business Information (CBI) provided it complies with the substantive criteria in 40 C.F.R. § 2.208. Information designated as CBI will be disclosed by EPA Region 2 only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2.

Factors that EPA Region 2 considers in determining whether a claim of CBI is valid, in the event that a claim is evaluated, are set out in 40 C.F.R. § 2.204(e)(4). These factors include but are not limited to the following:

1) North River Mews has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures;

2) the information is not, and has not been, reasonably obtainable without North River Mews' consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on showing of special need in a judicial or quasi-judicial proceeding);

3) the information is not publicly available elsewhere; and

4) disclosure of the information would cause substantial harm to North River Mews' competitive

position.

The information requested under this Approval concerns the proper handling of PCB remediation waste and is not expected to involve CBI. However, in the event that information is claimed to be CBI by North River Mews, it must be clearly identified as such on the documents submitted.

15. Addresses for Correspondence

1) EPA Addresses.

(a) All non-CBI correspondence to be submitted to EPA Region 2 shall be sent via certified mail or next-day commercial carrier to:

James S. Haklar, Ph.D., Senior PCB Disposal Specialist
Pesticides and Toxic Substances Branch
United States Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679
Telephone: (732) 906-6817

(b) All CBI information with cover letter designating it as such that is to be submitted to EPA Region 2 shall be sent via certified mail or next-day commercial carrier to:

Mark Bean, Document Control Officer
Pesticides and Toxic Substances Branch
United States Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679
Telephone: (732) 321-6606

2) North River Mews Address. All correspondence to North River Mews shall be submitted to the following representatives:

Mr. Fred A. Daibes
Managing Member
North River Mews Associates LLC
1000 Portside Drive
Edgewater, New Jersey 07020

Keith Gagnon
LSRP Consulting LLC
11 Lake Michigan Drive
Little Egg Harbor Township, NJ 09087

16. Conclusion

Based on the information included in the Application, EPA Region 2 finds that the PCB disposal authorized by this Approval and the use of the Site as set forth in the Application does not present an unreasonable risk to human health or the environment. Acceptable concentrations of PCB remediation waste remaining on-site under this Approval are based on a site-specific risk determination pursuant to TSCA, and are not applicable to any other site. Notwithstanding any other provision of this Approval, this Approval may be reviewed, revoked, suspended and/or modified at any time before or after North River Mews' acceptance thereof if EPA Region 2 determines that implementation of this Approval may present an unreasonable risk of injury to human health or the environment. Nothing in this Approval is intended or shall be construed to prejudice any sanction or remedy otherwise available to EPA (or the United States on behalf of EPA) under Section 6 of TSCA, 15 U.S.C. §2 605, and 40 C.F.R. Part 761, or under other applicable law.

This Approval, issued pursuant to 40 C.F.R. § 761.61(c), is based upon North River Mews having provided EPA Region 2 with a complete and truthful disclosure of all material facts related to the Site in its Application. The misrepresentation or omission by North River Mews of any material fact in its Application or in any document associated with or supporting this Approval may result in EPA Region 2's revocation, suspension and/or modification of this Approval, and such other legal or equitable remedy, either civil or criminal, that EPA (or the United States on behalf of EPA) is authorized to pursue under applicable law.

North River Mews' acceptance of this Approval constitutes North River Mews' agreement to comply with the following:

1) all terms and conditions of this Approval; and

2) all applicable provisions of federal, state and local law pertaining to the PCB remediation waste present in or beneath the Site. This Approval only specifies the applicable requirements under TSCA and does not cite to or make any determination regarding the requirements that may be applicable under other federal, state or local law. TSCA disposal requirements do not supersede other, more stringent, applicable federal, state or local laws. Any failure by North River Mews to comply with any condition or term of this Approval shall constitute a violation of the Approval, which has been issued pursuant to 40 C.F.R. § 761.61(c). Any such violation is made unlawful by Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), and may result in EPA Region 2's revocation, suspension and/or modification of this Approval and such other legal or equitable remedy that EPA Region 2 (or the United States on behalf of EPA) may choose to pursue under applicable law (including the imposition of penalties).

6/29/17

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2

Date