UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of North River Mews Associates, LLC Respondent. Proceeding under the Toxic Substances Control Act.	**CONSENT AGREEMENT AND FINAL ORDER** **Docket No. TSCA-02-2018-9102**

This administrative proceeding for the assessment of a civil penalty is being commenced pursuant to Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a) ("TSCA" or the "Act"). Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides, in part, that "[a]ny person who violates a provision of section 2614 [of TSCA, 15 U.S.C. § 2614] … shall be liable to the United States for a civil penalty…."

The Agency, under authority of TSCA, has promulgated regulations that govern the manufacture, processing, distribution in commerce, use, disposal, storage and marking of, *inter alia*, polychlorinated biphenyls (PCBs) and PCB-containing wastes. These regulations are codified at 40 C.F.R. Part 761.

Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against North River Mews Associates, LLC, without further litigation. To that end, the parties have met and discussed settlement. No adjudicated findings of fact or conclusions of law have been made in either a judicial or administrative forum. The following constitute EPA's Findings of Fact and Conclusions of Law based on information of which EPA, Region 2, was aware as of the date this CA/FO has been executed.

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of EPA, Region 2, and Complainant has been duly delegated the authority to commence this proceeding. Respondent is North River Mews Associates, LLC.

EPA FINDINGS OF FACT

1. Respondent is North River Mews Associates, LLC, a limited liability company organized and existing under the laws of the State of New Jersey with offices at 1000 Portside Drive in Edgewater, New Jersey.

2. Fred Daibes, who maintains an office at 22 Route 5 in Edgewater, New Jersey, is a shareholder and the managing member of Respondent.

3. Until the late 1960s, the Aluminum Corporation of America ("Alcoa") conducted business operations at a site the address of which is 660 River Road in Edgewater, New Jersey (hereinafter, "the Site"), and these operations included the manufacture of fire-resistant hydraulic fluids that contained PCBs. Among the structures on the Site for which Alcoa was responsible and in which it conducted operations was a building known as Building 12. Testing demonstrated that some of the walls of Building 12 were contaminated with PCBs. Several of these walls subsequently collapsed and were stored in the shell of Building 12 until later disposal. A portion of Building 12 was demolished in the summer of 2013.

4. Waterside Construction, LLC ("Waterside"), a limited liability company organized and existing under New Jersey law, demolished a portion of Building 12 in the summer of 2012 as part of Respondent's remediation and development of the Site. Fred Daibes is the managing member of Waterside.

5. Since at least February 10, 2015, and for times prior to that, Respondent has held title to the Site. At all times relevant, Respondent owned, controlled, and/or was otherwise responsible for the Site.

6. Since at least August 2015, Keith Gagnon, a Licensed Site Remediation Professional, who was/is associated with LSRP Consulting LLC, oversaw the remediation work at the Site.

7. In the course of such remediation work at the Site, Respondent accumulated in October 2015 a 450-cubic yard soil stockpile at the site of generation. Analysis of the stockpiled soil in February 2016 revealed PCB concentrations exceeding 50 parts per million (ppm), with some samples indicating a PCB level as high as 90 ppm

8. The PCB-containing waste stockpile remained in storage for over six months (180 days).

9. On September 7, 8, and 9, 2016, 30 loads of the PCB-containing waste from the Site were shipped for disposal to Chemical Waste Management in Emelle, Alabama, after they had been accumulating for more than 180 days. In total, the 30 loads exceeded 688 tons.

10. The manifests accompanying the 30 loads of PCB-containing waste shipped off-site were signed by Paul Daibes.

11. On November 14, 2017, EPA, Region 2, issued to Respondent an approval to its request for risk-based disposal of PCB remediation waste at the Site.

EPA CONCLUSIONS OF LAW

1. Respondent has been, and continues to be, a "person" within the meaning of 40 C.F.R. § 761.3.

2. Respondent, for the period including but not limited to the time the PCB-containing waste was generated and then accumulated, was, in conducting its remediation operations at the Site, subject to the regulations and requirements pertaining to PCBs and PCB Items promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), and set forth at 40 C.F.R. Part 761.

3. The PCB-containing waste identified and discussed in the "EPA Findings of Fact," above, constituted "PCB remediation waste" (as defined in 40 C.F.R. § 761.3).

4. The PCB-containing waste identified and discussed in the "EPA Findings of Fact," above, constituted, "bulk PCB remediation waste" or "PCB bulk product" (within the meaning of 40 C.F.R. § 761.65(c)(9)).

5. Forty C.F.R. § 761.65(c)(9) provides, in relevant part, that bulk PCB remediation waste or PCB bulk product waste may be stored at the site of generation for up to 180 days.

6. Respondent's aforementioned storage (paragraphs 7, 8 and 9 of the "EPA Findings of Fact," above) of the PCB-containing waste soil did not comply with a requirement set forth in 40 C.F.R. § 761.65(c)(9) for the storage of such waste.

7. Respondent's failure or refusal to comply with 40 C.F.R. § 761.65(c)(9) is made unlawful by, and thus constitutes a violation of, Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C).

8. Forty C.F.R. § 761.65(c)(9) is a rule duly promulgated by EPA under authority of Section 6 of TSCA, 15 U.S.C. § 2605.

9. For the aforementioned (paragraph 7 of this section) violation of Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22," it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: **(a)** admits EPA, Region 2, has jurisdiction under TSCA to prosecute this proceeding; **(b)** neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; and **(c)** consents to the issuance of the Final Order accompanying this Consent Agreement.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty in the amount of **THIRTY-SEVEN THOUSAND FIVE HUNDRED ($37,500) DOLLARS,** to be paid for the violation herein alleged in the "EPA Findings of Fact" and "EPA Conclusions of Law" sections, above. Said amount must be received (at the address or account set forth below) within thirty (30) calendar days [all subsequent references to "days" mean "calendar days"] after the Regional Judicial Officer of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (said payment date henceforth referred to as the "due date").

2. Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's check, certified check, or electronically via Fedwire. If payment is made by cashier's check or by certified check, each such check shall be made payable to the **"Treasurer, United States of America,"** and shall be identified with a notation thereon listing the following: ***In the Matter of North River Mews Associates, LLC,* Docket Number TSCA-02-2018-9102.** If payment is made by either form of check, such payment shall be mailed to the following address:

   U.S. Environmental Protection Agency
   Fines and Penalties
   Cincinnati Finance Center
   P.O. Box 979077
   St. Louis, Missouri 63197-9000

3. Alternatively, if Respondent chooses to make payment via Fedwire, Respondent shall then provide the following information to its remitter bank when each such payment is made in accordance with the provision below.

   a. Amount of Payment

   b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**

   c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**

   d. Federal Reserve Bank of New York ABA routing number: **021030004**

   e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**

   f. Name of Respondent: **North River Mews Associates, LLC**

   g. Case docket number: **TSCA-02-2018-9102**

4. The following provide additional payment instructions for Respondent:

   a. Payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, then such check shall be *received* at the above-listed address on or before the due date. If Respondent makes payment by the EFT method, then the EFT shall be *received* on or before the due date.

   b. Failure to pay the specified amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

   c. Furthermore, if the required payment is not received on or before the due date, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date payment has been received. In addition, a late payment handling charge of $15.00 will be assessed for each thirty (30) day period or any portion thereof, following the due date, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the due date.

5. The civil penalty provided for in this section (including any payment for interest and late

payment handling charge that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

6. By entering into this Consent Agreement, Respondent hereby certifies that Respondent, in its ongoing operations and activities at the Site, complies with all applicable PCB regulatory requirements and prohibitions as set forth in 40 C.F.R. Part 761.

7. Complainant shall mail to Respondent (to the addressee designated in Paragraph 9, below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2. Receipt of the fully executed CA/FO at the address below shall constitute Respondent's receipt and acceptance of said CA/FO.

8. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the $37,500 civil penalty (including any interest charge and any late payment handling charge, if applicable) that becomes due in accordance with the terms and schedule set forth above.

9. Any responses, documentation and other communications submitted in connection with this Consent Agreement shall be sent to: Vivian Chin, U.S. Environmental Protection Agency, Pesticide and Toxic Substances Branch, 2890 Woodbridge Avenue, Building 10, Edison, New Jersey 08837. Unless the above-named EPA contact is later advised in writing, EPA shall address any future written communications relating to this matter (including any correspondence [including electronic] related to payment of the penalty) to Respondent at the following address:

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

10. This CA/FO is not intended, and shall not be construed, to supersede, pre-empt, negate, invalidate, waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations governing the manufacture, processing, distribution in commerce, use, disposal, storage and marking of PCBs and/or PCB-containing wastes, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit pertaining to PCBs or PCB-containing wastes. Payment of the civil penalty in full as provided herein (and including any applicable interest or late payment handling charge) shall not nullify, abrogate or otherwise render nugatory Respondent's obligation to comply with applicable 40 C.F.R. Part 761 requirements and prohibitions, and to maintain such compliance.

11. This Consent Agreement is being voluntarily and knowingly entered into by the parties in

order to resolve the allegations set forth in the "EPA Findings of Fact" and "EPA Conclusions of Law" sections, above. Respondent making full payment of the penalty amount set forth above (*i.e.* $37,500), including any applicable interest and late payment handling charge(s), and subject to 40 C.F.R. § 22.31(a), the final order accompanying this consent agreement shall only resolve Respondent's liability for federal civil penalties for the facts and violations alleged in the "EPA Findings of Fact" and "EPA Conclusions of Law" sections, above. Notwithstanding the above, nothing herein shall affect the authority of EPA or the United States on behalf of EPA to pursue appropriate injunctive or otherwise seek equitable relief or criminal sanctions for any violation(s) of applicable provisions of 40 C.F.R. Part 761.

12. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent, in entering this Consent Agreement, hereby waives any right it might possess to seek or obtain judicial review of the Final Order under the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq*. Respondent, in entering this Consent Agreement, waives any right it might possess under Section 16(a)(3) of TSCA, 15 U.S.C. § 2615(a)(3), to file a petition for judicial review of the Final Order with regard to the claims set forth in or arising from the "EPA Findings of Fact" and "EPA Conclusions of Law" sections, above, and also on the claims set forth in or arising from the terms and conditions of this Consent Agreement.

13. This Consent Agreement, and any provision herein, shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce the Consent Agreement, any of its terms and conditions, and/or the accompanying Final Order.

14. EPA entering into this Consent Agreement is premised upon Respondent not having misrepresented or concealed any material fact in any of its written or oral representations to the Agency. If any material fact has been misrepresented or concealed, EPA may, at its discretion, declare this Consent Agreement and accompanying Final Order null and void *ab initio*.

15. Nothing in this Consent Agreement is intended or is to be construed to operate to resolve or serve as a defense to any criminal liability of Respondent for any 40 C.F.R. Part 761 violations, whether such violations occurred prior or subsequent to the filing of the Final Order accompanying this Consent Agreement.

16. If any requirement or provision of this Consent Agreement is held invalid or stayed by a court of competent jurisdiction, such ruling shall not affect the validity and Respondent's obligation to comply, and to maintain such compliance, with the remaining requirements and provisions of this Consent Agreement.

17. Pursuant to 40 C.F.R. § 22.31(b), the Final Order accompanying this Consent Agreement, and ratifying it, shall become effective as of the date of the filing of this CA/FO with the Regional Hearing Clerk of EPA, Region 2.

18. Each party shall bear its own costs and fees in connection with this proceeding.

19. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and to bind the parties on behalf of which such signatory has executed this Consent Agreement.

20. This Consent Agreement shall not be used as evidence to establish the facts set forth above except in a proceeding to enforce its terms.

In re North River Mews Associates, LLC
Docket Number TSCA-02-2018-9102

RESPONDENT:

BY: _____

NAME: FRED A. DAIBES
[PRINT]

TITLE: MANAGING MEMBER

DATE: 9-24-18

COMPLAINANT:

_____
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

DATE: 9/24/18

In re North River Mews Associates, LLC
Docket Number TSCA-02-2018-9102

FINAL ORDER

The Regional Judicial Officer EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of North River Mews Associates, LLC*, bearing Docket Number TSCA-02-2018-9102. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order under Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

DATED: September 25, 2018
New York, New York

Helen Ferrara
HELEN FERRARA
Regional Judicial Officer
United States Environmental Protection Agency – Region 2