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**Via Email**
Sharon E. Kivowitz, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

**Re: Comments on proposed OU-1 and OU-3 Consent Order**

Dear Ms. Kivowitz:

Please accept this letter as Next Millennium Realty LLC's and 101 Frost Street Associates, LP's (the "Frost Street Parties") conceptual comments on the proposed OU-1 and OU-3 Consent Order ("Consent Order"). The Frost Street Parties participated in the preparation of the general comments being submitted by a number of the other New Cassel Industrial Area ("NCIA") Respondents as transmitted to you today by Charlotte Biblow. Generally, the Frost Street Parties agree with the comments submitted by the other NCIA Respondent, with the exception of their agreement to be held jointly and severally responsible for the design costs for the entire OU-1 area. As discussed below, the Eastern Plume is a separate and distinct plume from the Central and Western Plumes. Accordingly, there is no basis in law or fact for the Frost Street Parties to agree to be jointly and severally liable for the Central and Western Plumes' design costs.

The EPA OU-1 Record of Decision ("OU-1 ROD") dated September 2013; the OU-1 Supplement Feasibility Study prepared by HDR/O'Brien Gere dated July 2013 ("Supplemental FS"); the New York State DEC Record of Decision for OU-3 dated October 2003; Affidavits submitted in the State Cost Recovery Action by the State; and deposition testimony in the State Cost Recovery Action, conclusively establish that the Eastern Plume is separate and distinct from the Central and Western Plumes. I am aware of no data, drawing or evidence to the contrary.

Most telling on the divisibility of the Eastern Plume from the Central and Western Plumes is the EPA's own delineation of the Eastern Plume in the OU-1 ROD and Supplemental FS. In both of these documents, the EPA, and/or its consultants, depict(s) the Eastern Plume as totally separate and distinct from the other plumes. See Figure 2 in the OU-1 ROD and Figures 3-2, 3-3, and 3-4 in the Supplemental FS. Importantly, the Supplemental FS delineates the Eastern Plume down to 5ppb, below action levels. The divisibility of the Eastern Plume from the Central plume is confirmed by the non-detect samples taken from MW-15, which is located between the Eastern and Central Plumes.

Finally, as the EPA points out in the OU-1 ROD and Supplemental FS, the Central Plume has a TCA marker. Little to no TCA is observed in the Eastern Plume. Accordingly, the divisibility of the plumes is confirmed based upon the plumes documented locations, chemical constituents, and the confirmed clean water in the area between the plumes.

The following Respondents have contributed contamination to the Eastern Plume: Utility Manufacturing parties, Adchem parties, Sylvania parties and General Instrument parties (collectively the "Eastern Plume Contributors"). The EPA asserts that the Frost Street Parties are PRPs for the Eastern Plume based upon their status as current owners of the Frost Street Properties.

As indicated to you on the phone this week, the Frost Street Parties stand ready and willing to conduct the remedial design work for the Eastern Plume with or without the Eastern Plume Contributors. If necessary, the Frost Street Parties will pursue the non-cooperating Eastern Plume Contributors in a cost recovery action. However, the Frost Street Parties will not accept financial responsibility for costs associated with the Central or Western Plumes and they will not accept joint and severable liability for those plumes.

Finally, the EPA's delineation of the Eastern Plume demonstrates that the Eastern Plume does not leave the boundaries of the OU-1 geographical area. Accordingly, there is no basis in fact or law to require the Frost Street Parties to investigate OU-3, which the EPA's own data and diagrams demonstrate it is not a result of the Eastern Plume contamination.

Likewise the threat to use EPA's power to issue unilateral orders, in an attempt to compel the Frost Street Parties to conduct remedial and investigatory work in OU-3 or the Central Plume or Western Plume will be aggressively defended by the Frost Street Parties. Any issuance of unilateral orders to the Frost Street Parties for OU-3, the Central or the Western Plumes are contrary to the EPA's own data demonstrating divisibility of the Eastern Plume and data showing the Eastern Plume's precise location. Moreover, it would be contrary to EPA's policy documents on the appropriate use of unilateral orders.

Thank you for your consideration of these conceptual comments as well as the more specific comments presented by the other NCIA Respondents. The Frost Street Parties remain committed to addressing contamination in the Eastern Plume that their historic tenants, upgradient parties and others created. The Frost Street Parties look forward to working with the EPA in addressing the environmental issues that exist in the Eastern Plume.

Sincerely,

Kevin Maldonado