

# BERNSTEIN SHUR

COUNSELORS AT LAW

603-623-8700 main  
603-623-7775 facsimile  
bernsteinshur.com

Jefferson Mill Building  
670 North Commercial Street  
Suite 108  
PO Box 1120  
Manchester, NH 03105-1120

RECEIVED

DEC 23 2014

EPA ORC  
Office of Regional Hearing Clerk

Michael A. Klass  
mklass@bernsteinshur.com

December 5, 2014

Wanda A. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912

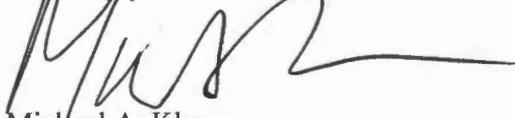
Re: United States Environmental Protection Agency v. Waterway Realty, LLC,  
Brian Colsia, Owner/Manager – 6 Mitchell Street, Nashua, NH –  
Docket No.: TSCA-01-2014-0066

Dear Ms. Santiago:

Enclosed please find an original and one copy of Respondent's Amended Answer and Request for Hearing as well as an Assented-To Motion For Leave to File Amended Answer and Request for Hearing in connection with the above-captioned matter.

Please do not hesitate to contact me if you have any questions. Thank you for your assistance.

Sincerely yours,



Michael A. Klass

MAK/kp  
Enclosure

cc: Peter DeCambre

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED

DEC 23 2014

EPA ORC  
Office of Regional Hearing Clerk

In the Matter of: )  
)  
Waterway Realty, LLC )  
8030 South Willow Street )  
Building 3, Unit 5 )  
Manchester, New Hampshire )  
)  
Respondent. )  
)  
Proceeding under Section 16(a) of the )  
Toxic Substances Control Act, )  
42 U.S.C. § 2615(a) )  
)

Docket No.

TSCA-01-2014-0066

AMENDED ANSWER AND  
REQUEST FOR HEARING

**AMENDED ANSWER AND REQUEST FOR HEARING**

NOW COMES the Respondent, Waterway Realty, LLC (“Waterway”), by and through counsel, Bernstein, Shur, Sawyer & Nelson, P.A., and answers the Complaint and Notice of Opportunity for Hearing (“Complaint”) as follows:

**I. STATUTORY AND REGULATORY BACKGROUND**

1. Paragraph 1 of the Complaint is introductory in nature and contains no factual statements requiring a response. In further answering, Waterway states that Paragraph 1 states conclusions of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. To the extent that a response is required, Paragraph 1 is denied.

2. Paragraph 2 of the Complaint is introductory in nature and contains no factual statements requiring a response. In further answering, Waterway is without sufficient information to either admit or deny the remaining allegations contained within Paragraph 2 and therefore denies same. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

3. Paragraph 3 of the Complaint is introductory in nature and contains no factual statements requiring a response. In further answering, Waterway is without sufficient information to either admit or deny the remaining allegations contained within Paragraph 3 and therefore denies same. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

4. Paragraph 4 of the Complaint is introductory in nature and contains no factual statements requiring a response. In further answering, Waterway is without sufficient information to either admit or deny the remaining allegations contained within Paragraph 4 and therefore denies same. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. To the extent that this paragraph states conclusions of law, no response is required.

5. Paragraph 5 of the Complaint is introductory in nature and contains no factual statements requiring a response. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. Waterway states that this paragraph states conclusions of law to which no response is required. To the extent that a response is required, Waterway denies same.

6. Paragraph 6 of the Complaint is introductory in nature and contains no factual statements requiring a response. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. Waterway states that this paragraph states conclusions of law to which no response is required. To the extent that a response is required, Waterway denies same.

7. Paragraph 7 of the Complaint is introductory in nature and contains no factual statements requiring a response. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. To the extent that a response is required, Waterway denies same.

8. Paragraph 8 of the Complaint is introductory in nature and contains no factual statements requiring a response. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. Waterway states that this paragraph states conclusions of law to which no response is required. To the extent that a response is required, Waterway denies same.

## **II. GENERAL ALLEGATIONS**

9. Waterway admits the allegations contained within the first sentence of Paragraph 9 of the Complaint. With respect to the second sentence, Waterway states that the nature of its business involves general real estate activities, including buying, selling, leasing, and renovating.

10. Waterway admits the first sentence contained within Paragraph 10 of the Complaint. In answering the second sentence of Paragraph 10, Waterway admits that it purchased the property located at 6 Mitchell Street in Nashua ("Property") for purposes consistent with Waterway's Certificate of Formation, which include general real estate business. To the extent that a further response is required, Waterway denies same.

11. Waterway is without sufficient information to either admit or deny the allegations contained in the first clause of Paragraph 11 regarding the year of the Property's construction, and therefore denies same. The second clause contained within Paragraph 11 contains a conclusion of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

12. Waterway admits that Brian W. Colsia ("Mr. Colsia") is a manager and member of Waterway. Waterway denies the allegations contained within the second and third sentences of Paragraph 12 of the Complaint. In further answering, Waterway states that, while it held title the

Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

13. The allegations contained within Paragraph 13 of the Complaint state conclusions of law to which no response is required. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. To the extent that a further response is required, Waterway denies same.

14. The allegations contained within Paragraph 14 of the Complaint state conclusions of law to which no response is required. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. To the extent that a further response is required, Waterway denies same.

15. The allegations contained within Paragraph 15 of the Complaint state conclusions of law to which no response is required. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

16. Waterway denies the allegations contained within Paragraph 16 of the Complaint. In further answering, this paragraph contains conclusions of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. Although Waterway held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

17. Waterway admits that an individual identifying himself as an EPA inspector inspected the Property on October 3, 2012. Waterway is without sufficient information to either admit or deny the allegations contained in the second clause of Paragraph 17 and therefore denies same. Waterway admits that such individual spoke with Mr. Colsia at the Property on October 3, 2012. Waterway admits the

allegations contained within the third sentence of Paragraph 17 of the Complaint. Waterway denies the fourth sentence of Paragraph 17 of the Complaint.

18. Waterway denies the allegations contained within Paragraph 18 of the Complaint. In further answering, Waterway states that while it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case. As such, Waterway's RRP Rule status was unnecessary at the time of the renovations at issue. Notwithstanding the above, shortly after the October 3, 2012 meeting, Waterway took immediate actions to obtain appropriate firm and renovator certifications, which it obtained on or around October 17 and October 19, 2012, respectively.

19. Waterway is without sufficient information to either admit or deny the allegations contained in Paragraph 19 and therefore denies same. To the extent that Paragraph 19 contains conclusions of law, no response is required.

### **III. VIOLATIONS**

#### **Count 1 – Failure to Obtain Firm Certification**

20. Waterway incorporates by references paragraphs 1 through 19.

21. The allegations contained within the first sentence of Paragraph 21 of the Complaint state conclusions of law to which no response is required. To the extent that the first sentence of Paragraph 21 refers to a statute, regulation, or writing, it speaks for itself. Waterway is without sufficient information to either admit or deny the allegations contained in the second sentence of Paragraph 21 and therefore denies same. In further answering, the process identified in the second sentence of Paragraph 21 appears consistent with how Waterway obtained firm certification from the EPA in October 2012.

22. The allegations contained within Paragraph 22 of the Complaint state conclusions of law to which no response is required. To the extent that Paragraph 22 refers to a statute, regulation, or writing, it speaks for itself.

23. Waterway denies the allegations contained within Paragraph 23 of the Complaint. In further answering, Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case. As such, Waterway's RRP Rule status was immaterial at the time of the renovations at issue. Notwithstanding the above, shortly after the October 3, 2012 meeting, Waterway took immediate actions to obtain appropriate firm and renovator certifications, which it obtained on or around October 17 and October 19, 2012, respectively. To the extent that Paragraph 23 contains conclusions of law, no response is required.

24. Waterway denies the allegations contained within Paragraph 24 of the Complaint. To the extent that Paragraph 24 contains conclusions of law, no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself. In further answering, Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case. As such, Waterway's RRP Rule status was immaterial at the time of the renovations at issue. Notwithstanding the above, shortly after the October 3, 2012 meeting, Waterway took immediate actions to obtain appropriate firm and renovator certifications, which it obtained on or around October 17 and October 19, 2012, respectively.

**Count 2 – Failure to Cover Floor with Plastic Sheeting**

25. Waterway incorporates by references paragraphs 1 through 24.

26. Paragraph 26 of the Complaint contains conclusions of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

27. Waterway denies the allegations contained within Paragraph 27 of the Complaint. In further answering, Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

28. Waterway denies the allegations contained within Paragraph 28 of the Complaint. In further answering, this paragraph contains conclusions of law to which no response is required. Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

**Count 3 – Failure to Cover Ground with Plastic Sheeting**

29. Waterway incorporates by references paragraphs 1 through 28.

30. Paragraph 30 of the Complaint contains conclusions of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

31. Waterway denies the allegations contained within Paragraph 31 of the Complaint.

32. Waterway denies the allegations contained within Paragraph 32 of the Complaint. In further answering, this paragraph contains conclusions of law to which no response is required. Waterway states that it did not conduct the renovation activities at the Property which are the subject of

the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

**Count 4 – Failure to Contain Waste from Renovation Activities**

33. Waterway incorporates by references paragraphs 1 through 32.

34. Paragraph 34 of the Complaint contains conclusions of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

35. Waterway denies the allegations contained within Paragraph 35 of the Complaint. In further answering, Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case. With respect to the allegations within Paragraph 35 concerning alleged observations by the inspector, Waterway is without sufficient information to either admit or deny the allegations contained therein and therefore denies same.

36. Waterway denies the allegations contained within Paragraph 36 of the Complaint. In further answering, this paragraph contains conclusions of law to which no response is required. Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

**Count 5 – Failure to Ensure Workers are Certified or Trained by a Certified Renovator**

37. Waterway incorporates by references paragraphs 1 through 36.

38. Paragraph 38 of the Complaint contains conclusions of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

39. Waterway denies the allegations contained within Paragraph 39 of the Complaint. In further answering, Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case. Notwithstanding the above, shortly after the October 3, 2012 meeting, Waterway took immediate actions to obtain appropriate firm and renovator certifications, which it obtained on or around October 17 and October 19, 2012, respectively.

40. Waterway denies the allegations contained within Paragraph 40 of the Complaint.

41. Waterway denies the allegations contained within Paragraph 41 of the Complaint. In further answering, this paragraph contains conclusions of law to which no response is required. Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

**Count 6 – Failure to Assign a Certified Renovator**

42. Waterway incorporates by references paragraphs 1 through 41.

43. Paragraph 43 of the Complaint contains conclusions of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

44. Waterway denies the allegations contained within Paragraph 44 of the Complaint. In further answering, Waterway states that it did not conduct the renovation activities at the Property which

are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case. Notwithstanding the above, shortly after the October 3, 2012 meeting, Waterway took immediate actions to obtain appropriate firm and renovator certifications, which it obtained on or around October 17 and October 19, 2012, respectively.

45. Waterway denies the allegations contained within Paragraph 45 of the Complaint.

46. Waterway denies the allegations contained within Paragraph 46 of the Complaint. In further answering, this paragraph contains conclusions of law to which no response is required. Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

#### **Count 7 – Failure to Post Signs**

47. Waterway incorporates by references paragraphs 1 through 46.

48. Paragraph 48 of the Complaint contains conclusions of law to which no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

49. Waterway denies the allegations contained within Paragraph 49 of the Complaint. In further answering, Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case. With respect to the second sentence of Paragraph 49 of the Complaint, concerning alleged observations by the inspector, Waterway is without sufficient information to either admit or deny the allegations contained therein and therefore denies same.

50. Waterway denies the allegations contained within Paragraph 50 of the Complaint.

51. Waterway denies the allegations contained within Paragraph 51 of the Complaint. In further answering, this paragraph contains conclusions of law to which no response is required.

Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case.

#### **IV. PROPOSED PENALTY**

52. Paragraph 52 of the Complaint states conclusions of law to which no response is required. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

53. Waterway is without sufficient information to either admit or deny the allegations contained within the first and second sentences of Paragraph 53 of the Complaint and therefore denies same. Waterway denies, and/or objects to, the proposed penalty identified in the third and fifth sentence of Paragraph 53. In further answering, Waterway states that it did not conduct the renovation activities at the Property which are the subject of the Complaint. While it held title to the Property, it hired a third-party general contractor (Kevin Pinet) to perform work on the Property, including the renovations at issue in this case. The fourth sentence of Paragraph 53 refers to a document that speaks for itself.

#### **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

54. Paragraph 54 of the Complaint purports to provide statutory notice and contains no factual statements requiring a response. In further answering, to the extent that this paragraph contains conclusions of law, no response is required. To the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

55. Paragraph 55 of the Complaint contains no factual statements requiring a response and contains conclusions of law to which no response is required. In further answering, to the extent that this paragraph refers to a statute, regulation, or written document, it speaks for itself.

56. Paragraph 56 of the Complaint contains no factual statements requiring a response and contains conclusions of law to which no response is required.

57. Paragraph 57 of the Complaint contains no factual statements requiring a response and contains conclusions of law to which no response is required.

58. Paragraph 58 of the Complaint contains conclusions of law to which no response is required.

#### **VI. SETTLEMENT CONFERENCE**

59. Paragraph 59 of the Complaint contains no factual statements requiring a response and contains conclusions of law to which no response is required.

60. Paragraph 60 of the Complaint refers to certain attachments to the Complaint that speak for themselves.

#### **WATERWAY'S DEFENSES AND REQUEST FOR HEARING**

61. Waterway refers to and incorporates by reference Paragraphs 1 through 60, above.

62. Waterway requests a hearing on the issues raised in the Complaint and this Answer.

63. Waterway contests material facts upon which the Complaint is based, and Waterway contends that the alleged violation and the proposed penalty is inappropriate.

64. To the extent that any factual allegations were not addressed, above, Waterway hereby denies same.

65. Waterway states that neither it, nor Mr. Colsia, functioned as the general contractor for the Property's renovations that are the subject of this Complaint and did not perform such renovation activities.

66. With respect to the Property and the alleged improper renovations, Waterway was not a "renovator," as defined in 40 C.F.R. § 745.83.

67. Waterway reserves its right to claim that it employed less than four employees at times relevant to the Complaint and this Answer.

68. While Waterway held title to the Property, it hired a third-party, non-employee general contractor (Kevin Pinet ("Pinet")) to perform work on the Property, including the renovations at issue in this case. Waterway and Pinet did not memorialize their agreement concerning the Property in an integrated, formal written contract; however, in connection with their agreement, Waterway obtained a certificate of Pinet's liability insurance. A partially redacted copy of such Certificate, naming Waterway as Certificate Holder, is attached hereto for reference. Waterway paid Pinet a total of approximately \$30,000 to \$35,000 in connection with Pinet's work on the Property. A yearly Form 1099 was completed. A partially redacted copy of information found on Waterway's Form 1099-MISC from 2012, as obtained from the IRS's taxpayer assistance center in Manchester, NH, is attached hereto for reference.

69. Waterway first became aware of potential issues concerning the Property's renovation and lead paint during the October 3, 2012 inspection. While Waterway maintains that it was not the general contractor in charge of the Property's renovations at issue here, and that it did not perform such renovations, following the October 3, 2012 inspection, Waterway took immediate actions to obtain appropriate firm and renovator certifications, which it obtained on or around October 17 and October 19,

2012, respectively. Shortly thereafter, Waterway communicated notice of such certifications with the EPA.

70. In conclusion and consistent with the above, Waterway denies the Complaint's alleged violations and objects to the proposed penalty.

Respectfully Submitted,  
Waterway Realty, LLC  
By and through their counsel,  
Bernstein, Shur, Sawyer & Nelson, P.A.



Roy W. Tilsley Jr. Esq., Bar # 9400  
rtilsley@bernsteinshur.com  
Michael A. Klass Esq., Bar# 18947  
mklass@bernsteinshur.com  
Bernstein, Shur, Sawyer & Nelson, P.A.  
670 N. Commercial Street, Ste 108  
PO Box 1120  
Manchester, NH 03105-1120  
603-623-8700

December 5, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that the following copies of the foregoing Amended Answer and Request for Hearing was this 5 day of December, 2014 sent via regular 1st class mail to:

***Original and one copy to:***

Wanda A. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912

***And one copy to:***

Peter DeCambre  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: OES04-2  
Boston, MA 02109-3912

December 5, 2014



Michael A. Klass



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
**05/09/2012**

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

PRODUCER Phone: (603) 424-2339 Fax: 603-424-0079 <b>PARAMOUNT INSURANCE AGENCY, INC.</b> 579 DANIEL WEBSTER HIGHWAY MERRIMACK NH 03054	CONTACT NAME: <b>Paramount Insurance Agency, Inc.</b> PHONE (A/C, No, Ext): <b>(603) 424-2339</b> FAX (A/C, No): <b>603-424-0079</b> E-MAIL ADDRESS: <b>Info@paramountinsure.com</b> PRODUCER CUSTOMER ID: <b>11135</b>														
INSURED <b>KEVIN PINET</b> <b>DBA WATERWAY BUILDING &amp; CONSTRUCTION MANAGEMEN</b> <b>T LLC</b> <b>8 PINWOOD DRIVE</b> <b>MERRIMACK NH 03054</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : <b>Vermont Mutual</b></td> <td><b>26018</b></td> </tr> <tr> <td>INSURER B : <b>Vermont Mutual</b></td> <td><b>26018</b></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : <b>Vermont Mutual</b>	<b>26018</b>	INSURER B : <b>Vermont Mutual</b>	<b>26018</b>	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A : <b>Vermont Mutual</b>	<b>26018</b>														
INSURER B : <b>Vermont Mutual</b>	<b>26018</b>														
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

**COVERAGES** **CERTIFICATE NUMBER: 33579** **REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <hr/> GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC			██████████	01/27/12	01/27/13	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>50,000</b> MED. EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>1,000,000</b> \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			WC STATU-TORY LIMITS <input type="checkbox"/> OTH ER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE-EA EMPLOYEE \$ E.L. DISEASE-POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**  
 Operations Usual to a Handyman

<b>CERTIFICATE HOLDER</b>  Waterway Realty, LLC 830 South Willow Street Manchester, NH 03103  Attention: Brian 1-603-669-0493	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  Jonathan M. Samel
-------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2012

Form 1099-MISC

Payer:

Payer's Federal Identification Number (FIN): [REDACTED]  
WATERWAY REALTY LLC  
8030 S WILLOW ST BLD 3 UNIT 5  
MANCHESTER, NH 03103-0000

Recipient:

Recipient's Identification Number: [REDACTED]  
KEVIN PINET  
34 PEASLEE RD  
MERRIMACK, NH 03054-0000

Submission Type: Original document  
Account Number (Optional): N/A  
Tax Withheld: 0.00  
Non-Employee Compensation: \$51,179.00  
Medical Payments: 0.00  
Fishing Income: 0.00  
Rents: 0.00  
Royalties: 0.00  
Other Income: 0.00  
Substitute Payments for Dividends: 0.00  
Excess Golden Parachute: 0.00  
Crop Insurance: 0.00  
Attorney Fees: 0.00  
Section 409A Deferrals: 0.00  
Section 409A Income: 0.00  
Direct Sales Indicator: Not Direct Sales  
Second Notice Indicator: No Second Notice

INTERNAL REVENUE SERVICE  
A1-TI-GROUP 113

NOV 25 2014

TAXPAYER ASSISTANCE CENTER  
MANCHESTER, NH 03101

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of: )  
)  
Waterway Realty, LLC )  
8030 South Willow Street )  
Building 3, Unit 5 )  
Manchester, New Hampshire )  
)  
Respondent. )  
)  
Proceeding under Section 16(a) of the )  
Toxic Substances Control Act, )  
42 U.S.C. § 2615(a) )  
)

**Docket No.**

**TSCA-01-2014-0066**

**[ASSENTED-TO]  
MOTION FOR LEAVE TO FILE  
AMENDED ANSWER AND  
REQUEST FOR HEARING**

NOW COMES the Respondent, Waterway Realty, LLC (“Waterway”), by and through counsel, Bernstein, Shur, Sawyer & Nelson, P.A., and, pursuant to Rule 22.15(e) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (“Rules”), respectfully moves for leave to file the enclosed, signed Amended Answer and Request for Hearing. Attorney Peter DeCambre, counsel for the Complainant, has assented to Waterway seeking leave to amend its Answer. In support of this Motion, Waterway states the following:

Waterway filed its original Answer and Request for Hearing under cover letter dated November 14, 2014. Waterway seeks leave to file this Amended Answer to (a) correct references to the appropriate entity of the third-party contractor that Waterway hired in connection with the Property, (b) confirm and clarify regarding said contractor’s insurance during the time period in question, and (c) supplement the attached supporting documentation by including the relevant Form 1099 MISC

information from 2012. This information is provided to clarify the record, to support Waterway's affirmative defenses, and to more fully answer the allegations against Waterway.

The Rules allow for amendments of the answer upon motion granted by the Presiding Officer. See 40 C.F.R. § 22.15(e). While Rule 22.15(e) does not specifically provide a standard for determining when leave should be granted, reference to Rule 15(a) of the Federal Rules of Civil Procedure proves instructive. Rule 15(a)(2), regarding other amendments, states that courts "should freely give leave when justice so requires." This is a liberal standard allowing amendment absent any apparent reason such as undue delay, bad faith, or dilatory motive. See Foman v. Davis, 371 U.S. 178, 182 (1962).

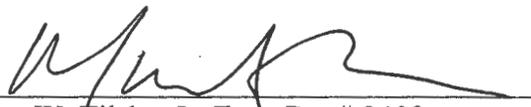
Given that this motion is filed less than one month after Waterway's original Answer, and that a Presiding Officer has yet to be assigned to the matter, there is no undue delay. Moreover, Waterway moves to amend its Answer in good faith in an effort to clarify the record and further support its affirmative defenses with documentation obtained after it filed its original Answer. The Complainant will not be prejudiced by such motion given the infancy of the matter.

Finally, prior to filing this motion, undersigned counsel for Waterway conferred with Attorney Peter DeCambre, who assents to Waterway seeking leave to file its Amended Answer.

WHEREFORE, Waterway respectfully requests that the Amended Answer and Request for Hearing, filed herewith, be allowed.

Respectfully Submitted,  
Waterway Realty, LLC

By and through their counsel,  
Bernstein, Shur, Sawyer & Nelson, P.A.



Roy W. Tilsley Jr. Esq., Bar # 9400  
rtilsley@bernsteinshur.com  
Michael A. Klass Esq., Bar# 18947  
mklass@bernsteinshur.com  
Bernstein, Shur, Sawyer & Nelson, P.A.  
670 N. Commercial Street, Ste 108  
PO Box 1120  
Manchester, NH 03105-1120  
603-623-8700

December 5, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that the following copies of the foregoing [Assented-to] Motion for Leave to File Amended Answer and Request for Hearing was this 5 day of December, 2014 sent via regular 1st class mail to:

***Original and one copy to:***

Wanda A. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: ORA 18-1  
Boston, MA 02109-3912

And

***One copy to:***

Peter DeCambre, Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square – Suite 100  
Mail Code: OES04-2  
Boston, MA 02109-3912

December 5, 2014

  
Michael A. Klass