

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE FILLED OUT BY ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Joyce Howell 9/11/2009  
*Name of Contact person* *Date*

in the Office of Regional Counsel, EPA R 3 at 215-814-2644  
*Office* *Phone number*

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS  Administrative Order/  
Consent Agreement  
FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt  This is a modification

Name of Person and/or Company/Municipality making the payment  
East River Park L.L.C.

The Total Dollar Amount of Receivable \$5,142.00  
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number RCRA-03-2009-0147

The Site-Specific Superfund Acct. Number N/A

The Designated Regional/HQ Program Office: Office of Land Enforcement, Land and Chemicals Division, Region 3

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
*Name of Contact* *Date*

in the Financial Management Office, phone number: \_\_\_\_\_

**JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:**

- |  |                              |
|--|------------------------------|
| 1. Rosemarie Pacheco<br>Environmental Enforcement Section<br>Lands Division, Room 130044<br>1425 New York Avenue, N.W.<br>Washington, D.C. 20005 | 2. Originating Office (ORC)  |
|  | 3. Designated Program Office |

**ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:**

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 2. Designated Program Office |
| 3. Regional Hearing Clerk | 3. Regional Counsel          |



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

September 22, 2009

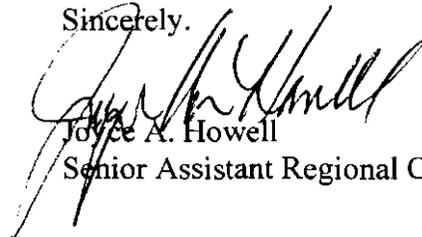
Lori Weidner  
U.S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, OH 45268

Re: In the Matter of: East River Park L.L.C.  
Docket No. RCRA-03-2009-0147

Dear Ms. Weidner:

Enclosed please find a stamped copy of the SCAFO filed in this matter, together with a completed EARCNF. Thank you.

Sincerely,

  
Joyce A. Howell  
Senior Assistant Regional Counsel

RECEIVED  
SEP 22 11 21 06



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	
	)	
East River Park L.L.C.	)	
	)	U.S. EPA Docket Number
RESPONDENT,	)	RCRA-03-2009-0147
	)	
	)	Proceeding Under Section 9006 of the
	)	Resource Conservation and Recovery Act,
East River Park Shopping Center	)	as amended, 42 U.S.C. Section 6991e,
3919 Benning Road, NE	)	
Washington, DC 20019	)	
	)	
	)	
FACILITY.	)	
	)	
	)	
	)	

**CONSENT AGREEMENT**

This Consent Agreement ("CA") is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and the East River Park L.L.C. ("Respondent"), pursuant to Section 9006 of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

This CA and the Final Order (collectively "CAFO"), resolve violations of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program by Respondent in connection with its underground storage tank at Respondent's facility located at East River Park Shopping Center, 3919 Benning Road, NE, Washington, DC, 20019 (the "Facility").

Effective May, 4, 1998, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, and 40 C.F.R. Part 281, Subpart A, the District of Columbia was granted final authorization to administer a state UST management program *in lieu* of the Federal UST management program

established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991m. The provisions of the District of Columbia UST management program, through this final authorization, are enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e. The District of Columbia's authorized UST program regulations are set forth in the District of Columbia Municipal Regulations, Title 20, Chapters 55 *et seq.*, and will be cited hereinafter as 20 DCMR §§ 5500 *et seq.*

### **GENERAL PROVISIONS**

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order ("FO"), or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
5. Respondent consents to the issuance of this CAFO, and agrees to comply with its terms and conditions.
6. Respondent shall bear its own costs and attorney's fees.
7. The person signing this CA on behalf of the Respondent certifies to EPA by his signature herein that Respondent, as of the date of this CA, is in compliance with the provisions of RCRA, Subtitle I, 42 U.S.C. §§ 6991-6991m, and the District of Columbia's federally authorized underground storage tank program set forth at 20 DCMR §§ 5500 *et seq.* at the Facility referenced herein.
8. The provisions of this CAFO shall be binding upon Respondent, and its members, officers, directors, employees, successors and assigns.
9. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor does this CAFO constitute a waiver, suspension or modification of the requirements of RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, or any regulations promulgated thereunder.

10. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate. Respondent is aware that the submission of false or misleading information to the United States government may subject Respondent to separate civil and/or criminal liability.
11. Respondent agrees not to deduct for civil taxation purposes the civil penalty specified in this Consent Agreement and the attached Final Order.
12. EPA has given the District of Columbia prior notice of the issuance of this CAFO in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

### **FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW**

13. The United States Environmental Protection Agency - Region III ("EPA" or the "Region") and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, 40 C.F.R. Part 280 and 40 C.F.R. § 22.1(a)(4) and .4(c).
14. At all times relevant to this CAFO, East River Park LL.C. ("Respondent") has been a corporation organized under the laws of the State of Delaware and authorized to do business in the District of Columbia.
15. Respondent is a "person" as defined in Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 20 DCMR § 6899.1.
16. At all times relevant to this CAFO, Respondent has been the "owner" and "operator," as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and 20 DCMR § 6899.1, of an "underground storage tank" ("UST") and "UST system" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and 20 DCMR § 6899.1, located at the East River Park Shopping Center, 3919 Benning Road, NE, Washington, DC, 20019 (the "Facility").
17. On May 15, 2008, an EPA representative conducted a Compliance Evaluation Inspection ("CEI") of the Facility pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d.
18. At the time of the May 15, 2008 CEI, and at all times relevant to the applicable violations alleged herein, the UST, as described in the following subparagraph, was located at the Facility:

A). A 5,000 gallon fiberglass reinforced plastic tank that was installed in or about September, 1989 and that, at all times relevant hereto, routinely contained and was used to store diesel fuel, a “regulated substance” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1 (“UST No. 1”).

- 19. At all times relevant to the applicable violations alleged herein, UST No. 1 has been a “petroleum UST system” and an “existing UST system” as these terms are defined in 20 DCMR § 6899.1, respectively.
- 20. USTs No. 1 is and was, at all times relevant to the applicable violations alleged herein, used to store “regulated substance(s)” at Respondent’s Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 20 DCMR § 6899.1, and has not been “empty” as that term is defined at 20 DCMR § 6100.7.
- 21. Pursuant to RCRA Section 9005, 42 U.S.C. § 6991d, on August 20, 2008, EPA issued an Information Request to Respondent concerning its petroleum UST system at the Facility.

**COUNT 1**

(Failure to Provide Financial Assurance)

- 22. The allegations in Paragraphs 1 through 21 of this CAFO are incorporated herein by reference.
- 23. 20 DCMR §§ 6700.1 and 6700.10 through 6700.17 provide that owners and operators of petroleum UST systems are required, with exceptions not here relevant, to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Subject to the limitations set forth in 20 DCMR §§ 6701.1 through 6701.7, an owner or operator may demonstrate financial responsibility using any of the mechanisms set forth in 20 DCMR §§ 6703 through 6711.
- 24. From June 7, 2007 until July 1, 2008, Respondent did not demonstrate financial responsibility for the UST described in Paragraph 18, above, by any of the methods set forth in 20 DCMR §§ 6703 through 6711.
- 25. Respondent’s act and/or omission as alleged in Paragraph 24, above, constitutes violations by Respondent of 20 DCMR § 6700.1 and §§ 6700.10 through 6700.17.

**COMPLIANCE ORDER**

- 26. Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered, within five (5) days of the effective date of this Compliance Order, to: 1) comply with the

financial responsibility requirements set forth in 20 DCMR §§ 6700.1 and 6700.10 through 6700.17 for the UST system located at the Facility; and 2) forward documentation showing compliance with this requirement to EPA within seven (7) days of the effective date of this Compliance Order at the address provided in paragraph 28.

- 27. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this CAFO which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this CAFO shall be certified by a general partner, as defined at 40 C.F.R. § 270.11(a):

The certification required above shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

- 28. All documents and reports to be submitted pursuant to this CAFO shall be sent to the following persons:
  - a. Documents to be submitted to EPA shall be sent either by overnight mail or by certified mail, return receipt requested to:

Gary Morton (3LC70)  
 U. S. Environmental Protection Agency Region III

1650 Arch Street  
Philadelphia, Pennsylvania 19103

- b. One copy of all documents submitted to EPA shall be sent by first class mail to:

Fianna Phill  
Chief, UST/LUST Branch  
Toxics Substances Division  
District Department of the Environment  
51 N Street, NE, 6<sup>th</sup> floor  
Washington, DC 20002-3327

**CIVIL PENALTY**

29. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty in the amount of **\$5,142.00** and perform the tasks set forth in the Compliance Order. The civil penalty amount is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of **\$5,142.00** within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).
30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
31. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
32. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

33. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
34. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the seriousness of Respondent's violations and any good faith efforts by Respondent to comply with all applicable requirements as provided in RCRA Section 9006(c), 42 U.S.C. § 6991e(c), and with EPA's Penalty Guidance for Violations of UST Regulations ("UST Guidance") dated November 4, 1990.
35. Respondent shall remit the civil penalty and any interest, administrative fees, and late payment penalties, by cashier's check, certified check or electronic wire transfer, in the following manner:
- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action,, RCRA-03-2009-0147;
  - B. All checks shall be made payable to "**United States Treasury**";
  - C. All payments made by check and sent by regular mail shall be addressed to:  

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Eric Volck 513-487-2105
  - D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:  

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- G. Additional payment guidance is available at:  
[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

- I. A copy of Respondent’s check or a copy of Respondent’s electronic fund transfer shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103 - 2029, and

Joyce A. Howell  
Sr. Assistant Regional Counsel (3LC70)

U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

**FULL AND FINAL SATISFACTION**

36. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to 9006(a) of RCRA, 42 U.S.C. § 6991e(a), for the violations alleged in this Consent Agreement.

**RESERVATION OF RIGHTS**

37. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

**OTHER APPLICABLE LAWS**

38. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

**AUTHORITY TO BIND THE PARTIES**

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto.

**ENTIRE AGREEMENT**

40. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

**EFFECTIVE DATE**

41. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

For Respondent:

East River Part L.L.C.

9/11/2009  
Date

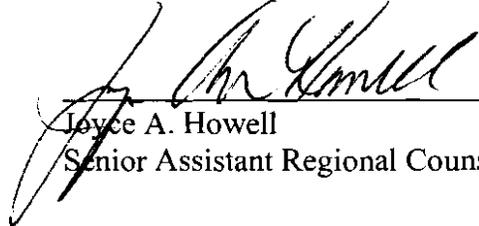


by: Alan R. Novak, member  
Urban Retail Investors, LLC, member  
~~Urban~~  
URI Retail Portfolio, member

For Complainant:

U.S. Environmental Protection Agency,  
Region III

9/11/2009  
Date

  
\_\_\_\_\_  
Joyce A. Howell  
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

9/17/09  
Date

By:   
\_\_\_\_\_  
Abraham Ferdas, Director,  
Land and Chemicals Division,  
EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103**

In the Matter of:	)	
	)	
	)	
East River Park L.L.C.	)	U.S. EPA Docket Number
	)	RCRA-03-2009-0147
RESPONDENT,	)	
	)	
	)	Proceeding Under Section 9006(a) of the
	)	Resource Conservation and Recovery
East River Park Shopping Center	)	Act, as amended, 42 U.S.C. § 6991e(a).
3919 Benning Road, NE	)	
Washington, DC 20019	)	
	)	
FACILITY.	)	
	)	
	)	

RECEIVED  
 5/22/09 2:05 PM  
 REGION III  
 PHILADELPHIA

**FINAL ORDER**

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, East River Park L.L.C., have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

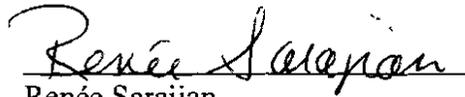
**NOW, THEREFORE, PURSUANT TO** Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 9006(c) of the Resource Conservation and Recovery Act, 42 U.S.C.

§ 6991e(c) ("RCRA"), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the factors set forth in Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c),

**IT IS HEREBY ORDERED** that Respondent pay a civil penalty of \$5,142.00 in accordance with the payment provisions set forth in the attached Consent Agreement, and comply with each of the additional terms and conditions as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 9/22/09

  
Renée Sarajian  
Regional Judicial Officer  
U.S. EPA, Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	)	
	)	
East River Park L.L.C.	)	
	)	
RESPONDENT,	)	U.S. EPA Docket Number
	)	RCRA-03-2009-0147
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Washington, DC 20019	)	
	)	
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FACILITY.	)	
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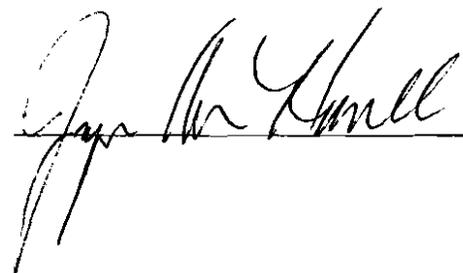
SEP 22 2009 11:20:05 AM  
EPA REGION III

CERTIFICATE OF SERVICE

I certify that on the date noted below, I send by Federal Express, a copy of the CONSENT AGREEMENT AND FINAL ORDER to the addressee listed below. The original and two copies of the same were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Daniel Diaz  
East River Park LLC c/o  
Lincoln Property Co.  
1030 15<sup>th</sup> Street, NW Suite 250 West  
Washington, DC 20005

Dated: September 22, 2009

  
\_\_\_\_\_