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Michael A. Klass
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November 14, 2014

VIA – FEDERAL EXPRESS

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 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

RECEIVED
NOV 17 2014
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Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

NOV 17 2014

EPA ORC WJ
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

ANSWER AND
REQUEST FOR HEARING

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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC) 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 (Pinet Construction, LLC ("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 was named as an insured on Pinet's insurance policy. A partially redacted copy of the declaration pages, and the page showing Waterway was an additional insured, taken from a Pinet insurance policy that is similar to what existed at the time of the inspection, 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 as required.

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.



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rtilsley@bernsteinshur.com
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670 N. Commercial Street, Ste 108
PO Box 1120
Manchester, NH 03105-1120
603-623-8700

November 14, 2014

CERTIFICATE OF SERVICE

I hereby certify that the following copies of the foregoing Answer and Request for Hearing was this 14th day of November, 2014 sent via overnight 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

November 14, 2014



Michael A. Klass



**THE
MAIN
STREET
AMERICA
GROUP**

Policy Number: M [REDACTED]

BUSINESSOWNERS COMMON DECLARATIONS

MAIN STREET AMERICA ASSURANCE COMPANY

4601 TOUCHTON ROAD EAST, SUITE 3400, JACKSONVILLE, FL 32245-6000

Item 1. Named Insured and Mailing Address

PINET CONSTRUCTION LLC
8030 S WILLOW ST BLDG 3
MANCHESTER NH 03103-2319

Agent Name and Address

FOY INSURANCE GROUP MANCHESTER

1889 ELM STREET
MANCHESTER, NH 03104-2525

Agent Phone No. (603) 641-8111

Agent No. 280140

Item 2. Policy Period

From: 01-27-2013 **To:** 01-27-2014

at 12:01 A.M., Standard Time at your mailing address shown above.

Item 3. Form of Business: LIMITED LIABILITY COMPANY

Item 4. In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

This policy consists of the following coverage parts for which a premium is indicated. Where no premium is shown, there is no coverage. This premium may be subject to adjustment.

COVERAGE	PREMIUM
Section I – Property	NOT APPLICABLE
Section II – Liability	\$ 1,211.00
Inland Marine	\$ 175.00

Total Policy Premium: \$ 1,386.00

For Coverages subject to premium audit: Annual Audit Applies

Item 5. Form(s) and Endorsement(s) made a part of this policy at time of issue:

See Schedule of Forms and Endorsements

Countersigned:

Date: _____

By:  _____

Authorized Representative

THIS BUSINESSOWNERS COMMON DECLARATIONS AND SUPPLEMENTAL DECLARATION(S), TOGETHER WITH SECTION III – COMMON POLICY CONDITIONS, COVERAGE PARTS, COVERAGE FORMS AND ENDORSEMENTS, IF ANY, COMPLETE THE ABOVE NUMBERED POLICY.

Named Insured: PINET CONSTRUCTION LLC

Effective Date: 01-27-2013

Agent Name: FOY INSURANCE GROUP MANCHESTER

Agent No. 280140

SECTION II – LIABILITY – DECLARATIONS

COVERAGES

LIMITS

Liability & Medical Expenses – Each Occurrence	\$ 1,000,000
Personal & Advertising Injury Limit	\$ 1,000,000
Damage To Premises Rented To You	\$ 500,000
Aggregate Limit- Products-Completed Operations	\$ 2,000,000
Aggregate Limit- Except Products-Completed Operations	\$ 2,000,000
Medical Expense Limit - Per Person	\$ 10,000

LIABILITY -- SCHEDULE

STATE: NH TERRITORY: 005 PREMISES NO: 1/1
 CLASS CODE: 74171 DEDUCTIBLE - PROPERTY DAMAGE LIABILITY: NONE
 CLASSIFICATION: CARPENTRY -- RESIDENTIAL -- THREE STORIES OR LESS

PREMIUM BASIS	EXPOSURE	RATE	ADVANCE PREMIUM
PAYROLL	26,800		\$ 933

