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December 22, 2016

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**VIA UPS OVERNIGHT**

Ms. Nicoletta DiForte  
USEPA, Region II  
290 Broadway  
New York, NY 10007-1866

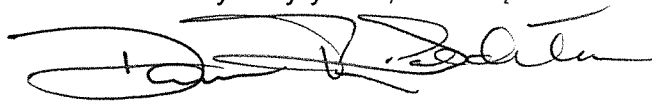
RE: Diamond Alkali Superfund Site, Lower 8.3 Miles of Lowe Passaic River  
Essex and Hudson Counties, New Jersey

Dear Ms. Ms. DiForte:

In response to your March 31, 2016 Notice of Potential Liability letter sent to Fiske Brothers, Fiske commissioned a review of the nexus documents which were provided to my client by EPA. The review was conducted by Neil Ram, PhD. LSP CHMM of Roux Associates, Inc. The conclusions reached by Roux are contained in the attached letter report.

We provide this information for your review and trust your office will give full weight to the arguments and conclusions contained therein.

Very truly yours,



DAMON R. SEDITA

DRS/mjp  
cc: Mr. Juan Fajardo-via e-mail  
Ms. Sarah Flanagan-via e-mail



December 22, 2016

Ms. Nicoletta Di Forte  
Deputy Director of Enforcement  
Emergency and Remedial Division  
USEPA, Region II  
290 Broadway  
New York, New York 10007-1866

Re: Alleged Nexus to Lower Passaic River  
Fiske Brothers Refining Company  
129 Lockwood Street  
Newark, New Jersey

Dear Ms. Nicoletta Di Forte:

This letter is in response to the United States Environmental Protection Agency's (USEPA's) March 31, 2016 Notice of Potential Liability issued to Fiske Brothers Refining Co. ("Fiske Brothers") for the Lower Passaic River ("LPR") portion of the Diamond Alkali Superfund Site. The Fiske Brothers facility is located at 129 Lockwood Street, Newark, New Jersey (the "Property").

In December 2009, USEPA sent Fiske Brothers a General Notice Letter (GNL) notifying them of their potential liability for response actions in the Lower Passaic River Study Area (LPRSA).<sup>1</sup> On January 25, 2010, Fiske Brothers responded to USEPA's GNL, stating, among other things, that "our preliminary investigation does not appear to support Fiske becoming a member of the CPG... Given the tenuous connection between Fiske and the Lower Passaic River Study Area, the products Fiske dealt with, and the huge financial commitment which the CPG appears to require (As you know from your investigation, Fiske is not a Fortune 500 company.), joining said Group does not appear to make sense from either a legal or financial point of view."<sup>2</sup>

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<sup>1</sup> USEPA, 2009. General Notice Letter from USEPA to Fiske Brothers Refining Co, RE: Notice of Potential Liability for Response Actions in the LPRSA. December 11, 2009.  
Letter from Sedita, Campisano, and Campisano, LLC, to USEPA, January 25, 2010, re: Notice of Potential Liability for Response Actions in the LRPSA, New Jersey.

Ms. Nicoletta Di Forte  
Deputy Director of Enforcement  
December 22, 2016  
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In addition, in March 2010, the USEPA sent a Request for Information (RFI) to Fiske Brothers in reference to the LPRSA.<sup>3</sup> Later that month, Fiske Brothers responded to USEPA's RFI, providing the requested information.<sup>4</sup>

In response to USEPA's GNL, outside counsel for Fiske Brothers spoke to Sarah Flanagan at USEPA and requested that USEPA's Fiske Brothers Nexus Package be supplied to counsel. On December 30, 2009, Ms. Flanagan electronically provided the "Fiske Nexus Package" to outside counsel.

### **Roux Associates (Roux) Scope of Work**

Roux has been retained to review the "Fiske Nexus Package" to opine on whether it establishes a nexus between Fiske Brothers and the LPR.

### **Nexus Documents**

The material supplied by the USEPA consisted of three attachments to its December 30<sup>th</sup> email:

1. "Passaic River Study Area, Potentially Responsible Parties" for Fiske Brothers and attachments dated September 1993 (hereinafter referred to as the "1993 Nexus Documents");<sup>5</sup>
2. "Lower Passaic River Study Area PRP Data Extraction Form" (dated December 27, 2005); and
3. "PRP Data Extraction Forms and Evidence Concerning Fiske Brothers," prepared for LPRSA Cooperating Parties Group (CPG) also dated December 27, 2005.<sup>6</sup>

Items 2 and 3 above are hereinafter referred to as the "2005 Nexus Documents."

Roux has reviewed the 1993 and 2005 Nexus Documents in an attempt to determine USEPA's basis for identifying Fiske Brothers as a Potentially Responsible Party (PRP). Based on that review, Roux has identified the following information discussed below that USEPA apparently relied upon when it issued the December 2009 GNL to Fiske Brothers. This information falls into two categories:

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<sup>3</sup> USEPA, 2010. Letter from USEPA to Fiske Brothers Refining Co Re: Diamond Alkali Superfund Site Request for Information Pursuant to 42 U.S.C. 9601-9675. March 3, 2010.

<sup>4</sup> Letter from Sedita, Campisano, and Campisano, LLC, to USEPA re: Request for Information. March 24, 2010.

<sup>5</sup> The 1993 Nexus Document (847920001 through 847920032) includes select pages from the "Annual Report to the Passaic Valley Sewerage Commissioners for the Year 1973," as well as "City of Newark, New Jersey, Feasibility Study, Pollution Abatement Program" prepared by Clinton Bogert Associates and dated January 1979 (revised).

<sup>6</sup> 932110001 through 932110114.

- I. Property-specific allegations; and
- II. General Allegations

**I. Property-Specific Allegations**

- (a) A February 1973 Chemical Leaman Tank Lines, Inc. (Chemical Leaman) spill of 60-75 gallons of “bright stock oil” onto Esther Street;
- (b) The intermittent release of black oily chemicals discharging from Fiske Brothers’ railroad siding into a storm water inlet for the Lister Avenue storm sewer (approximate 1978-1979 timeframe);
- (c) A low volume oil and water discharge from Fiske Brothers entering a storm water inlet on Esther Street, which entered the Lister Avenue storm sewer and then the LPR via the Lockwood Street outfall (approximate 1978-1979 timeframe); and
- (d) A cooling water discharge pipe from Fiske Brothers into the storm water inlet at the southwest corner of Lockwood Street and Lister Avenue (approximate 1978-1979 timeframe).

**II. General Allegations**

- (a) Data from sediment Sample 92, collected at the Lockwood Street storm sewer outfall to the LPR, that indicates “significant concentrations of total extractable petroleum hydrocarbons, as well as total PAHs in exceedance of NOAA criteria;”<sup>7</sup>
- (b) The alleged storage or use of hazardous substances by Fiske Brothers; and,
- (c) Generation of hazardous waste by Fiske Brothers.

As discussed more fully below, none of the above information supports a conclusion that hazardous substances were released from the Fiske Brothers property and discharged to the LPR. In short, USEPA has not provided a sufficient basis to support their allegation of a nexus between the Property and the LPR.

**Analysis of Information Provided in Nexus Documents**

The following provides Roux’s evaluation of the Property-specific and general allegations provided in the 1993 and 2005 Nexus Documents:

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<sup>7</sup> 1993 Nexus Document at page 847920001.

*Property-Specific Allegations:*

I (a) February 1973 Chemical Leaman spill of 60-75 gallons of “bright stock oil” onto Esther Street

In 1993 and 2005 Nexus Document contain a portion of the 1973 Annual Report to the Passaic Valley Sewerage Commissioners (“1973 PVSC Report”) which describes a 60-75 gallon spill of “bright stock oil into Esther Street” which occurred at a hose coupling strap from “a Tank Truck Break.” The truck was owned by Tank Truck Rentals of Croydon, PA and was on lease to Chemical Leaman of Downingtown, Pa. making a delivery to Fiske Brothers. The 1973 PVSC Report alleges that the stock oil spilled from the tank leased by Chemical Leaman potential impacted the LPRSA by flowing into a catch basin that discharged to the LPR. Specifically as reported in select pages of which were provided as part of the 1993 and 2005 Nexus Documents, on February 7, 1973, an inspector from the Passaic Valley Sewerage Commission (PVSC) observed the release of approximately 60-75 gallons of bright stock oil onto Esther Street<sup>8</sup> when the hose coupling strap from the tank truck making a delivery to Fiske Brothers broke.<sup>9</sup> As stated in the 1973 PVSC Report, the terminal manager for the company delivering the oil to Fiske Brothers contacted Sampson Tank Cleaning Co to “clean up the oil,” while at the same time, the Fiske Brothers supervisor directed two Fiske Brothers employees and the truck driver to spread oil-dry over the area to prevent it from flowing into the catch basin at Lister and Esther Streets. The 1973 PVSC report further states that “Sampson Tank Cleaning Co., crew and equipment arrived at approximately 4:30 P.M. and completed the clean-up and removal at 5:30 PM.”<sup>10</sup>

First, there is no analysis provided of the chemical makeup of the liquid spilled.

Second, the spill occurred from a truck owned by Tank Truck Rentals on lease to Chemical Leaman.

Thir, the Nexus Documents do not state where on Esther Street the spill occurred and therefore documentation is lacking to conclude that it occurred on the Fiske Brothers property.

Fourth, based on this information, there is no evidence that the oil ever flowed into the catch basin. In fact, the 1973 PVSC Report suggests that the opposite is true – that Fiske Brothers employees and the truck driver placed oil-dry over the spill to keep it from reaching a catch basin, and the contractor, (Sampson Tank Cleaning Co) later completed the clean-up and removal of the oil. Further, even if the “bright stock oil” had flowed into the catch basin and discharged into the LPR, the 1993 and 2005 Nexus Documents provide

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<sup>8</sup> Esther Street abuts the Fiske Brothers property to the west.

<sup>9</sup> 1993 Nexus Document at page 847920003, and 2005 Nexus Document at 932110113.

<sup>10</sup> 1993 Nexus Document at page 847920003 - 847920004, and 2005 Nexus Document at 932110113-932110114.

no information indicating that the oil contained hazardous substances (hazardous substances, as defined by Federal statute at 40 CFR 302.4, excludes petroleum).

Therefore, (a) any material from the 1973 spill should be sourced to Tank Truck Rentals and Chemical Leaman and (b) the documents cited in the 1993 and 2005 Nexus Documents for this spill do not support a conclusion that hazardous substances were released from the Fiske Brothers property into the LPR.

I (b) Black Oily Chemical Discharge from Fiske Brothers to Storm Drain (1978-1979 timeframe)

The 1993 and 2005 Nexus Documents also reference to a statement in the 1979 Pollution Abatement Program report prepared by Clinton Bogert Associates (“the 1979 PAP report”) that “Intermittent **spillage of black oily chemicals** was noted at the Fiske Brothers Refining Company railroad siding” (emphasis added by Roux) which flowed into the storm water inlet for the Lister Avenue storm sewer, which in turn discharged to the Lockwood Street storm sewer into the LPR.<sup>11</sup> The Inspector speculated that since Fiske Brothers received tank car deliveries along the railroad spur on the Property, “chemicals may have been released when valves on the tank cars were not completely closed, causing chemicals to drip out.”<sup>12</sup> No information or data are provided about the actual composition of the spilled material and the Nexus Documents do not include the underlying primary inspection report associated with the spill or the name and title of the inspector who observed the spill.

Based on the description of the observed intermittent spillage, there is no basis for USEPA to conclude that this discharge was anything other than one of several petroleum distillates used by Fiske Brothers (See pages 2 to 3 of the 2005 Nexus Document for the products used by Lubriplate Division (operated by Fiske Brothers) which include various petroleum distillates), which are excluded as hazardous substances under CERCLA. Any attempt to characterize this discharge as a “chemical” release without a laboratory’s report or analysis is unfounded and without proof or merit. Further, the 1993 and 2005 Nexus Documents do not document that the spill even reached the LPR.

I (c) Oil and Water discharge from Fiske Brothers to storm drain (1978-1979 timeframe)

As another allegation that Fiske Brothers discharged hazardous substances into the LPR, the 1993 and 2005 Nexus Documents reference a “low volume oil and water discharge from Fiske entering a storm water inlet on Esther Street, which enters the Lister Avenue storm sewer and then the Passaic River via the Lockwood Street outfall,” as reported in the 1979 PAP report. This report is not sufficient to support FiskeBrothers as a PRP for the River because: (a) petroleum is not a hazardous substance under CERCLA, (b) notwithstanding that petroleum is excluded as a hazardous substance under CERCLA, there are no data to support that any reportable quantity of such oil was released at the time

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<sup>11</sup> 1993 Nexus Document at page 847920016, and 2005 Nexus Document at 932110037.

<sup>12</sup> 2005 Nexus Document. Page 4 (no bates-number).

and (c) none of the ingredients listed in Fiske Brothers' petroleum product MSDS' provided by USEPA are LPR COCs.

I (d) Cooling Water Discharge from Fiske Brothers to storm drain (1978-1979 timeframe)

A fourth incident cited as a nexus between the Property and the LPRSA was the identification of a "cooling water discharge pipe from Fiske into the stormwater inlet at the southwest corner of Lockwood Street and Lister Avenue," which reportedly connected to the Lockwood Street outfall and LPR. Because of the diameter of the pipe, which was not flowing when inspected, the 2005 Nexus Document (specifically the 1979 PAP report) concluded that "it is improbable that this line contains waste."<sup>13</sup> Therefore, based on the information provided in the Nexus Documents regarding the cooling water discharge pipe, USEPA has not provided a sufficient basis to support their allegation of a nexus between the Fiske Brothers' property and the LPR via this piping.

*General Allegations:*

II (a) Sediment Data from Sample 92 at Lockwood Street Outfall at the LPR

The 1993 Nexus Document lists "PAHs" as the "Probable Hazardous Substances" for the Fiske Brothers Refining Co.<sup>14</sup> In support of this allegation, the document states that "Sediment in Sample 92, collected at the Lockwood Street storm sewer outfall to the LPR, contained significant concentrations of total extractable petroleum hydrocarbons, as well as total PAHs in exceedance of NOAA criteria."<sup>15</sup> However, the actual sediment data for Sample 92 are not provided. Notwithstanding the fact that the Sample 92 data were not provided, sediment data collected at the Lockwood Street storm sewer outfall is not sufficient to demonstrate a nexus between the Property and the LPR because:

- (i) Analytical test results provided as Appendix A in excerpts from the 1979 PAP report (which accompanied the 1993 Nexus Document) provides only generic wet chemistry data for a storm sewer flow sample from the Lockwood Street outfall (LW-0) and therefore are insufficient to conclude that PAHs or other hazardous substances were present in that sample (See table excerpt that follows for Lockwood Street outfall (LW-0) sample collected on May 2, 1978).

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<sup>13</sup> 1993 Nexus Document at 947920017.

<sup>14</sup> 1993 Nexus Document at 847920001.

<sup>15</sup> 1993 Nexus Document at 847920001.

ANALYSIS OF STORM SEWER FLOW SAMPLES  
 (POLLUTANT CONCENTRATIONS IN PPM)

SAMPLING POINT	pH	COD	TOC	BOD	Cl	TURB	TSS	F.C. /100 ML	TKN	NH4-N	Grease & Oil		
LW-0	7.4	216	165	141	340	100	65	-	.13	0	0	101	93

The 1979 PAP report indicates that storm water from several other properties drain into the Lister Avenue sewer and discharge at the Lockwood Street outfall. Inspections of manholes and inlets indicated the following:

- The manholes, inlets and pipes in Lister Avenue sewer were coated with black oily material, the source of which was “spillage from the B-Line Trucking Company.” Tank trucks were reportedly allowed to drain while parked at this facility and “[b]lack oil chemicals flow into inlets on Lister Avenue and Ester Street. The flow into Esther Street is continuous and the curb has been broken out to facilitate it.”<sup>16</sup>
- “A continuous flow of viscous orange chemicals was observed entering an inlet on Cornelia Street, which came from leaking drums on the Cellomer Corporation property. These chemicals were entering the Lister Street Storm Sewer.”<sup>17</sup>

Therefore the chemical constituents observed in Sample 92 would be sourced to the B-Line Trucking Company and the Cellomer Corporation.

- (ii) PAHs are present in general urban runoff and therefore data from the Lockwood Street outfall cannot be attributed to the Fiske Brothers’ Property. For example, Hunter notes, “that urban stormwater runoff may be responsible for a considerable petroleum hydrocarbon load to the environment.”<sup>18</sup> Further, Aryal, et. al. noted that PAHs were the most prevalent chemical constituent in road runoff and that much of the PAHs are typical of road surface material, fuel combustion products, lubrication system losses and degradation of automobile tires.<sup>19</sup> In another study, Walker, et.al.<sup>20</sup> demonstrated that “PAH distributions in the sediments within the Passaic watershed is similar to other urban areas.”

<sup>16</sup> 1993 Nexus Document at 847920016, and 2005 Nexus Document at 932110037.  
<sup>17</sup> 1993 Nexus Document at 847920016, and 2005 Nexus Document at 932110037.  
<sup>18</sup> Hunter, J.V., Sabatino, R. Gomperts R., and MacKenzie, M.J. 1979. Contribution of Urban Runoff to Hydrocarbon Pollution. Water Pollution Control Federation. Vol. 51, No. 8. August 1979. Pages 2129-2138.  
<sup>19</sup> Aryal, R., S. Vigneswaran, J. Kandasamy and R. Naidu, “Urban stormwater quality and treatment,” Korean J. Chem. Eng. 27(5), 1343-1369.  
<sup>20</sup> Walker, William, R. McNutt and C. Maslanda, “The Potential Contribution of Urban Runoff to Surface Sediments of the Passaic River: Sources and Chemical Characteristics,” Chemosphere, Vol. 38, No. 2, pp 363-377 (1999).



(iii) Therefore, the presence of PAHs at the Lockwood Street outfall does not provide an adequate basis to conclude that such PAHs originated from spillage at the Fiske Brothers' property.

## II (b) Use of Hazardous Substances by Fiske Brothers' Operations

In a further attempt to characterize the petroleum distillates used by Fiske Brothers as hazardous substances, the 2005 Nexus Document includes several material safety data sheets (MSDS) for "certain Fiske products" stating that such products include "zinc, mineral oil, calcium soap, unspecified additives, o-dichlorobenzene, and 1,2-dichlorobenzene (ortho)" as ingredients within products used by Fiske Brothers.<sup>21</sup> However:

- i. Mineral oil and calcium soap are not hazardous substances under CERCLA and only certain specific zinc compounds (and not generic "zinc") are listed as CERCLA hazardous substances.
- ii. The only ingredients listed in the MSDS for Fiske Brothers' products which are hazardous substances are o-dichlorobenzene and 1,2-dichlorobenzene (ortho). However, USEPA has presented no data to demonstrate that either of these two chemicals were present in any of the products used by Fiske Brothers or, if so, whether the concentrations within the chemicals and alleged spillage would have resulted in a Reportable Quantity under CERCLA.
- iii. Further, neither o-dichlorobenzene or 1,2-dichlorobenzene (ortho) are chemicals of concern (COCs) in LPR surface sediment as listed in Table 1 of the March 3, 2016 Record of Decision (ROD) for the lower 8.3 miles of the LPR.<sup>22</sup>

Therefore USEPA's statement that "Material Safety Data Sheets for certain Fiske products indicate that zinc, mineral oil, calcium soap, unspecified additives, o-dichlorobenzene, and 1,2-dichlorobenzene (ortho) were product ingredients (932110091 through 932110110 at Tab 12)"<sup>23</sup> is irrelevant and does not support Fiske Brothers alleged nexus to the LPR.

## II (c) Generation of Hazardous Waste by Fiske Brothers Operations

Finally, there is an inference based on Fiske Brother's waste manifest information that Fiske Brothers released hazardous substances to the LPR. The 2005 Nexus Document states, "Hazardous waste removed from the Site includes corrosive waste (waste code D002), ignitable waste (waste code D001), non-halogenated solvents (waste code F003), as well as oil spill cleanup material (waste code X725) (932110005 and 932110006 at Tab

<sup>21</sup> 2005 Nexus Document at page 3. (no bates number).

<sup>22</sup> USEPA's 2016 ROD describes COCs at page 23 as "Those COPCs identified in the HHRA [Human Health Risk Assessment] as posing the greatest risk are referred to as COCs, and are the primary focus of the response action proposed in this ROD" (COPCs are chemicals of potential concern). COCs for the River were provided in Table 1 of the USEPA 2016 ROD, "Contaminants of Concern in Surface Sediment."

<sup>23</sup> LPRSA PRP Data Extraction Form: Fiske Brothers Refining Co. pages 1-6 at page 5.

1).”<sup>24</sup> While the New Jersey Department of Environmental Protection (NJDEP) waste manifests included as 932110005 and 932110006 do indeed include these waste codes, there is nothing in the Nexus Documents provided indicating that such wastes were released at the Property or that such wastes reached the LPR. Indeed, the waste manifest information cited in the 2005 Nexus Documents demonstrate that Fiske Brothers was properly managing its hazardous waste in accordance with the Resource Conservation and Recovery Act (RCRA) and associated NJDEP regulations. If anything, Fiske Brothers’ manifesting these hazardous wastes demonstrates that it was properly adhering to environmental regulations which require proper use and disposal from cradle to grave and that no such wastes were released on the Property or to the LPR.

### **Summary**

In conclusion, based on information provided in the 1993 and 2005 Nexus Documents, USEPA has not provided a sufficient basis to support their allegation of a nexus between the Property and the LPR:

1. The 1973 Chemical Leaman oil delivery which spilled 60 to 75 gallons of bright stock oil on Esther Street does not provide a nexus between Fiske and the LRP contamination issue.
  - (a) The stock oil was never analyzed
  - (b) The problem was related a truck owned by Tank Truck Rentals on lease to Chemical Leaman; and
  - (c) The 1993 and 2005 Nexus Documents do not state the spill on Esther Street the spill occurred, and there is no documentation that it occurred on the Fiske Brothers property. Further, the oil was immediately cleaned up and workers spread oil-dry over the area to prevent impacts to the catch basin at Lister and Esther Streets. Thus there is no information or data to support that this release reached the LPR.
2. The 1978/79 report of a “black oily chemical” discharging from Fiske Brothers’ railroad siding and entering the Lister Street stormwater inlet which discharges via the Lockwood Street outfall to the LPR is not sufficient to support Fiske Brothers as a PRP for the LPR because no information or laboratory analytical data are provided about the actual composition of the spilled material and there is no basis for USEPA to conclude that this discharge was anything other than a petroleum distillate which is excluded as a hazardous substance under CERCLA. Any attempt to label this discharge (which was not chemically analyzed by USEPA) as a non-petroleum “chemical” release is unfounded and without proof or merit.

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<sup>24</sup> 2005 Nexus Document at Page 3.

3. The 1978/79 report of a “low volume” of oil and water from Fiske entering a storm water inlet on Esther Street, which allegedly flowed via the Lockwood Street outfall to the River is not sufficient to support Fiske as a PRP for the River because: (a) petroleum is not a hazardous substance under CERCLA, (b) notwithstanding that petroleum is excluded as a hazardous substance under CERCLA, there are no data to support that any reportable quantity of such oil was released at the time and (c) none of the ingredients listed in Fiske Brothers’ petroleum product MSDS’ provided by USEPA are LPR COCs.
4. The 2005 Nexus Document (specifically the 1979 PAP report) concluded that “it was improbable that” the 1978/79 cooling water discharge into the Lister Avenue sewer “contains waste.” Therefore, there is no evidence whatsoever to suggest that this discharge contained hazardous substances. Further, it is Roux Associates professional experience that cooling water would not be expected to contain hazardous substances, or any chemicals for that matter.
5. The mere presence of PAHs in exceedance of NOAA criteria in Sample 92 collected at the Lockwood Street storm sewer outfall to the River is insufficient to demonstrate a nexus between any of the above events on the Fiske Brothers property with River impacts because; (a) USEPA has not demonstrated that any PAHs in Sample 92 originated from the Fiske Brothers property; (b) there are dozens of other commercial/industrial facilities whose stormwater discharges flowed to the LPR via the Lockwood Street outfall and the specific source or sources for the PAHs observed in Sample 92 cannot be determined; (c) PAHs in Sample 92 could also equally have originated from sediment transport within the River itself and may, in fact, not even be sourced from materials flowing out of the Lockwood Street outfall;<sup>25</sup> and (d) notwithstanding any of the above, any PAHs associated with the petroleum products used by Fiske Brothers are not considered hazardous substances because they would be associated with petroleum which is excluded from CERCLA liability.
6. Further, project documents associated with the LPR concluded that PAHs identified in Passaic River sediment are associated with historical coal tar residue or from general urban background sources;<sup>26</sup> Fiske Brothers did not conduct operations that produced coal tar.

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<sup>25</sup> According to the 2014 Remedial Investigation Report for the Focused Feasibility Study of the Lower Eight Miles of the Lower Passaic River (prepared by The Louis Berger Group for the USEPA), the COPCs (such as PAHs) “tend to sorb to sediment particles” (page 5-2) and “are subject to repeated resuspension, returned the contaminated solids to the water column for redistribution by tidally driven currents. High flows resulting from large storm events can also result in erosion and redistribution of contaminated sediments in the Lower Passaic River” (page 5-3).

<sup>26</sup> 2014 Remedial Investigation Report for the Focused Feasibility Study of the Lower Eight Miles of the Lower Passaic River (prepared by The Louis Berger Group for the USEPA) at page 5-17.

Ms. Nicoletta Di Forte  
Deputy Director of Enforcement  
December 22, 2016  
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None of the above mechanisms constitute a basis for USEPA to conclude that hazardous substances were released from the Fiske Brothers Property to the LPR.

Sincerely,

**ROUX ASSOCIATES, INC.**



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Neil M. Ram, PhD, LSP, CHMM  
Executive Vice President



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Nancy Nevins, PG  
Senior Hydrogeologist