EXHIBIT C

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

X

In the Mater of Alleged Violations of Article 27 of the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York,

AFFIDAVIT OF
EDWARD N. SAILER, CHMM, LEP

-by-

20 REWE STREET LTD.,

NYSDEC File No.
R2-202110416-52

Respondent X

STATE OF CONNECTICUT)

SS:

COUNTY OF NEW HAVEN)

Edward N. Sailer, of full age, being duly sworn according to law, upon his oath deposes and says:

Qualifications and Experience

1. I am an Associate and Business Line Manager at Fuss & O'Neill, Inc. (F&O) and I am the former President of Sailer Environmental, Inc. (SEI). F&O acquired SEI in 2018. Note that F&O does business in the State of New York as Fuss & O'Neill Professional Engineers, P.C.

2. I am, and have been, a practicing environmental professional for over 43 years. I have a B.S. in Environmental Science from Nasson College. I am, and have been, a Master Level Certified Hazardous Materials Manager (CHMM) since January 1995. My CHMM credential number is 05757. I am, and have been, a Connecticut Licensed Environmental Professional (LEP) since August 1997. My LEP license number is 185. As a Connecticut Department of Energy and Environmental

Protection (CT DEEP) LEP, I am a "Qualified Environmental Professional" as defined in 6 NYCRR 375-1.2(ak)(2).

3. I began my career with the New Jersey Department of Environmental Protection (NJDEP) Solid Waste Administration (later known as the Division of Waste Management (DWM)) in 1979 as an environmental engineer. Over the course of six years, NJDEP promoted me to Principal Environmental Engineer and acting Assistant Chief Engineer of the DWM. My responsibilities included, but were not limited to: reviewing engineering designs and permit applications for sanitary landfills and transfer stations; issuing or denying permits for the operation of sanitary landfills and transfer stations; conducting remedial investigations at sanitary landfills; reviewing and approving or denying remedial designs for sanitary landfills; inspecting the operations of sanitary landfills and transfer stations and working with the office of the New Jersey Attorney General as an expert witness to enforce New Jersey's environmental regulations. My responsibilities also included ranking New Jersey solid and hazardous waste facilities for inclusion in the National Priorities List (the Superfund List) pursuant to the federal Comprehensive Environmental Response Cleanup and Liability Act (CERCLA).

4. In 1985 I began working for Waste Conversation, Inc. (WCI) as a Special Projects Coordinator. My first project at WCI was to manage the surficial cleanup of the Shore Realty Site in Glenwood Landing, New York under contract with the New York State Department of Environmental Conservation (NYSDEC). The Shore Realty Site is a New York State and federal Superfund site. This project involved the removal and disposal of approximately 600,000 gallons waste solvents (including solvents that were TSCA regulated for PCBs) from an abandoned solvent recycling facility. I was subsequently promoted to Manager of Environmental Affairs where I was responsible for the preparation of the RCRA Part B Permit applications for WCI and its sister companies.

5. In 1987 I began working as an environmental consultant. Since that time, I have held the following positions:

    a) Vice President of Diversified Environmental Resources, Inc. (1987-1989)
    b) Associate, Environmental Risk Limited. (1989-1990)
    c) President, Sailer Environmental Associates, Inc. (1990-1993)
    d) President, Sailer Environmental, Inc. (1993-2018)
    e) Associate and Business Line Manager, Fuss & O'Neill, Inc. (2018 – Present)

6. During my 35 years as an environmental consultant, I have worked on, or overseen the work on, well over a thousand site assessment, site investigation and/or remediation projects in 28 states in the continental United States and Alaska. These projects have ranged in size and scope from residential underground storage tank projects to multi-million-dollar assessment, investigation and remediation projects.

7. In addition to my practical experience, I have routinely participated in continuing education courses. The content of many of these courses are directly relevant to the issues involved in this administrative action. Copies of my Continuing Education Attendance Certifications are attached as Exhibit A.

8. I have prepared this Affidavit in response to the June 28, 2022 Motion for Order Without Hearing, the March 29, 2022 Affidavit of Michael Haggerty in Support of Motion for Order Without Hearing and the June 21, 2022 Affidavit of Michael Haggerty in Support of the Penalty (hereinafter referred as "NYSDEC Pleadings").

Definitions

9. Throughout this affidavit I will be using terms including "The Site", "The Remedial Investigation Area", the "The Meeker Avenue Plume Track Down Site", "The Klink Cosmo Cleaners Site", "The Acme Steel/Metal Works Site" and "The Acme Steel/Brass Foundry". For the purposes of this affidavit those terms are defined as follows:

   a) "The Site" is Lot 1, Block 2821 171 Lombardy Street, Brooklyn, NY as shown on the Boundary & Topographic Survey for Lot 1, Block 2821, 171 Lombardy Street, Borough of Brooklyn, Kings County, City and State of New York prepared by Gallas Survey Group and dated September 29, 2014 (Exhibit B). The Site is completely occupied by a 100' by 200' building.

   b) "The Remedial Investigation Area" is the "RI Area" shown on Figure 2, Groundwater Monitoring Well and Soil Boring Locations Former Lombardy Street Lacquer and Soap Mfg. and Surrounding Areas in the URS Corporation, May 10, 2018, Former Lombardy Street Lacquer and Soap Mfg., Phase 1 Remedial Investigation 2017 Data Report (Exhibit C).

   c) "The Meeker Avenue Plume Trackdown Area" is an area located in the Greenpoint and East Williamsburg sections of Brooklyn, NY. The area currently being investigated is bounded by the

former Mobil Brooklyn Refinery/current British Petroleum (BP) Terminal to the north along Norman Avenue and Bridgewater Street, Newtown Creek to the east, Lombardy and Withers Streets to the south, and Kingsland (aka Grandparents) Avenue to the west. (Exhibit D).

d) "The Klink Cosmo Site" is the site identified by the NYSDEC as DEC Site ID 224130 located at 364 Richardson Street, Brooklyn, NY (Exhibit E).

e) "The Acme Steel/Metal Works Site" is the site identified by the NYSDEC as DEC Site ID 224131 located at 95 Lombardy Street, Brooklyn, NY (Exhibit F).

f) "The Acme Steel/Brass Foundry Site" is the site identified by the NYSDEC as DEC Site ID 224132 located at 72, Anthony Street, Brooklyn, NY (Exhibit G).

Background

10. In early 2015, I was contacted by Christopher Carpentieri, Esq concerning the Site. He advised me that the NYSDEC had contacted his client, 20 Rewe Street, Ltd., and advised it that the Site had been identified as a source of halogenated volatile organic compounds (HVOCs) including tetrachloroethylene, and its daughter compounds formed by reductive de-chlorination; trichloroethylene, cis 1,2- dichloroethylene, trans 1,2-dichlorothhylene and vinyl chloride in soil and groundwater. He further advised me that 20 Rewe Street, Ltd. had no information about the environmental history of the Site. Based on that information, I advised Mr. Carpentieri that it would be appropriate to conduct a Phase I Environmental Site Assessment (Phase I ESA) of the Site as a first step in responding to the NYSDEC's allegations. In February 2015, SEI was retained to perform a Phase I ESA and develop a Conceptual Site Model (CSM) based on the historical information obtained through the Phase I ESA process. Then, based on the CSM developed from the Phase I ESA, SEI would develop a scope of work to perform a subsurface investigation at the Site.

11. From February 2015 through July 2015 SEI conducted a Phase I ESA including, but not limited to, an inspection of the Site, review of public files concerning the Meeker Avenue Plume Trackdown at the Brooklyn Public Library – Leonard Branch, submittal of a New York State Freedom of Information Law (FOIL) request to NYSDEC for the Meeker Avenue Plume Trackdown public documents and review of over 32,000 pages of documents provided by NYSDEC in response to SEI's FOIL request.

12. The information collected during the Phase I ESA did not provide any conclusive information concerning the past owners or operators of the Site or whether any of them may have handled HVOCs. However, the November 2013 Site Characterization, Meeker Avenue Plume Trackdown, Phase VII Report prepared by URS Corporation (the Phase VII Report) (Exhibit H) provided in response to SEI's FOIL request did provide information on soil and groundwater sampling adjacent to, but not on, the Site. The Phase VII Report documented the presence of HVOCs in shallow soil samples (less than 10' below ground surface (bgs)) and HVOCs in groundwater at approximately 50' bgs. The data suggested that the source of the HVOCs in shallow soils was from surface spills and that there was no correlation between the HVOCs in the surface soils and the groundwater. The Phase VII Report also included, as an appendix, an April 29, 2013 report prepared by Zymax Forensics (Exhibit I), that provided an evaluation of Compound Specific Isotope Analysis (CSIA) of groundwater samples. The Zymax report concluded that the groundwater collected from monitoring wells immediately west of, and adjacent to, the Site were impacted by a different source of HVOCs than groundwater in other areas of the Meeker Avenue Plume Trackdown including monitoring wells upgradient of the Site.

13. Based on the available information, SEI developed a sampling plan to investigate the horizontal and vertical extent of the HVOC impacted soils identified in the Phase VII report. That investigation was implemented in during October and November 2015 and is documented in in SEI's December 21, 2015, Environmental Site Investigation letter report to Chris Carpentieri, Esq. (Exhibit J). The results of SEI's soil sampling confirmed that HVOCs were present in the shallow soils (less than 10' bgs) adjacent to the western side of the Site along Varick Avenue and under the floor of the building within the Site. The investigation did not fully delineate the horizontal extent of HVOC impacted soils and SEI recommended that additional soil sampling be conducted.

14. During SEI's 2015 investigation three of the soil samples collected were retained for CSIA. The selected samples (B2, IN2-T and IN6-T) were submitted to Pace Analytical for two-dimensional (2d-) CSIA of carbon and chlorine in PCE. The results of those analysis were provided to GZA GeoEnvironmental, Inc. (GZA) for interpretation and comparison to groundwater data for monitoring wells DEC-80 and DEC-80D (PCE Source 7) presented in the April 29, 2013 XymaX Forensics report. As set forth in GZA's May 12, 2016 letter report to Edward N. Sailer, "The different carbon isotope signatures, however, suggest that Site PCE may be from a different source than PCE Source 7, within a 90% confidence interval…" (Exhibit K).

15. In 2016, SEI conducted additional soil sampling to further delineate the horizontal and vertical extent of the HVOCs in soils at and adjacent to the western side of the Site. That investigation was implemented during July 2016 (sub slab soil vapor sampling) and August 2016 (soil sampling) and is documented in SEI's December 31, 2018, letter report to Chris Carpentieri, Esq. (Exhibit M). As more fully described in that letter report, the results of the additional investigation found that the horizontal extent of the HVOCs were far more widespread than originally anticipated. However, the investigation continued to confirm that the HVOCs were present in the shallow soils well above the groundwater table. Although the investigation did not fully delineate the full extent of the HVOCs in the soils, it did provide enough information for SEI to begin to evaluate appropriate and feasible alternatives to remediate the HVOC impacted soils. The results of that preliminary evaluation are also set forth in Exhibit L.

16. From 2019 through 2021, F&O performed an additional investigation of the horizontal and vertical extent of the HVOC impacted soils, installed two groundwater monitoring wells, and collected one round of groundwater samples. The results of that investigation are documented in F&O's Supplemental Subsurface Investigation Report, Former Lombardi Street Lacquer and Soap Manufacturing Facility dated September 2021 and revised October 2021 (Exhibit M). It should be noted that this report includes all the HVOC data included in SEI's prior investigations. Consistent with the findings from SEI's prior investigations, the data presented in this report continues to demonstrate that that the HVOCs in the soils at and adjacent to the Site are located well above the groundwater table and are not comingled with the groundwater plume from upgradient sources.

The Site is Not a Source of the HVOC Groundwater Contamination

17. The NYSDEC Pleadings allege that the Site is a source of the HVOCs found in the groundwater beneath and downgradient of it. As set forth above and documented in the reports described above (Exhibits J, K, L and M), the HVOCs identified in the soils at and adjacent to the Site have not migrated to the groundwater table. In fact, there is an approximately 20' zone between the HVOCs in the soils at the Site and the groundwater table that is not impacted by HVOCs above the Protection of Groundwater criteria outlined in 6NYCRR Part 375-6. Further, it is the conclusion of GZA GeoEnvironmental (Exhibit K) that available CSIA data supports the conclusion that the HVOCs in the Site soils are from a different source than the HVOCs in the groundwater. The HVOC impacted soils at the Site have not impacted the groundwater.

NYSDEC's own consultant (URS Corporation) has documented that the HVOCs in the soils are from surface spills and have not migrated below 10' bgs. Specifically, at page 2 of Exhibit C, URS Corporation states that "During the SC Phase VII investigation, soil samples collected along the east side of Varick Avenue from soil borings (i.e., ASB-02 through ASB-19, DEC-094/DEC-094D and DEC-095/DEC-095D/DEC-095DA) have confirmed a shallow soil source of PCE [emphasis added]. The PCE impacted soil was identified in the top 10 feet of soil and was found adjacent to a cesspool situated east of DEC-095DA between DEC-095 and DEC-095D, and near ASB-06 and DEC-094D. PCE was detected in the soil at ASB-06 in the 0.5–1.5-foot and 9.5–10-foot bgs intervals at 1,400 and 98 mg/kg, respectively; DEC-094D in the 0.5–1-foot, 2.5–3-foot, and 6–7-foot bgs intervals at 150, 790, and 22 mg/kg, respectively; DEC-095 in the 1-1.5-foot and 2–2.5-foot bgs intervals at 23,000 and 1,800 mg/kg, respectively; DEC-095DA in the 4–4.5 foot bgs interval at 3,200 mg/kg; and DEC-095D in the 6–7 foot bgs interval at 34 mg/kg. The soil analytical data discussed above is presented in Figures 3A and 3B. A cross section, displaying the subsurface along Varick Avenue, along with PCE concentrations, is presented in Figure 4."

18. URS Corporation has mapped the groundwater plumes from multiple upgradient sources that have migrated beneath the Site. These sources include but are not limited to, the Klink Cosmo Site, the Acme Steel/Metal Works Site and the Acme Steel/Brass Foundry Site.

The Site Investigation Activities Did Not Pose a Risk to Human Health and/or the Environment and Did Not Constitute a "Change of Use"

19. The NYSDEC Pleadings incorrectly allege that the investigations performed by SEI and F&O may have posed a risk to worker safety. Both SEI and F&O performed their respective investigations in accordance with OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) standards promulgated at 29 CFR 1910.120. OSHA compliance by both companies included, but was not limited to, the preparation and implementation of Site-specific Health and Safety Plans (HASPs) and employee training. A copy of the F&O HASP is attached as Exhibit N. (Note that the SEI HASP prepared in 2015, seven years ago, was discarded in the normal course of business and is no longer available.)

20. The NYSDEC Pleadings also incorrectly attempt to characterize the investigations as posing a risk to the community. First, the Site is not a source of groundwater contamination. Second, there is no residential community within approximately 500' of the Site. Third, the only residential community identified in the NYSDEC Pleadings is located southwest of and upgradient of the Site. It is impacted by an HVOC contaminated groundwater plume from the Klink Cosmo Site.

21. The NYSDEC Pleadings also incorrectly attempt to characterize the subsurface investigation activities as a "Change of Use". The act of placing 3" diameter borings throughout a Site, which

borings were restored to their original condition the same workday does not constitute a "Change of Use".

EDWARD N. SAILER

Sworn to before me this
4th day of October 2022

Notary Public

TRACY O. GARGANO
Notary Public, State of Connecticut
My Commission Expires Feb. 28, 2023

TRACY O. GARGANO NOTARY PUBLIC CONNECTICUT