

**U.S. Environmental Protection Agency
Region 2**

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: In the Matter of: :
: : : Approval for Risk-Based Cleanup
Port of Albany : : and Disposal of Polychlorinated
Albany, New York : : Biphenyl Remediation Waste
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This document is the United States Environmental Protection Agency, Region 2’s (“EPA Region 2”) response to and approval of the request for a risk-based disposal of polychlorinated biphenyl (“PCB”) remediation waste (as defined at 40 C.F.R. § 761.3). The disposal approval request was submitted to EPA Region 2 by CHA Consulting Inc. (“CHA”), the consultant for the Albany Port District Commission (hereafter referred to as “APDC”), dated July 2019. The document addresses the remediation of property located at 700 Smith Boulevard in the Port of Albany, City of Albany, New York (the “Site”). EPA Region 2’s approval is issued in accordance with the federal regulations for PCBs promulgated pursuant to the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 - 2697 *et seq.* as amended and set forth in Part 761 of Title 40 of the Code of Federal Regulations (40 C.F.R. Part 761). In EPA Region 2, the authority to issue such approvals under 40 C.F.R. § 761.61(c)(2) has been delegated to the Director of the Land, Chemicals & Redevelopment Division (“LCRD”).

The completed application that EPA Region 2 considered in determining whether to approve APDC’s request consists of the May 2020 request submitted by CHA, on behalf of APDC, to EPA Region 2, for a risk-based PCB cleanup and disposal approval, and CHA’s June 29, 2020 correspondence regarding the on-site buildings, including the submittal of sampling results (“Application”).

EPA Region 2 reviewed APDC’s Application to determine whether the remedial actions proposed in the Application would be protective of human health and the environment, and technically feasible and appropriate. EPA Region 2 has also reviewed APDC’s Application to ensure that safeguards, including long-term maintenance and monitoring commitments, associated with the remediation of the Site will be in place.

Based on the information provided in the Application, EPA Region 2 has determined that implementation of the remedial actions proposed in the Application to address the presence of residual PCBs at the Site will not pose an unreasonable risk of injury to health or the environment.

EPA hereby issues approval for the risk-based disposal of PCB remediation waste at the Site, subject to the terms and conditions specified herein (“Approval”). This Approval is being issued under the authority granted to EPA by TSCA as codified in 40 C.F.R. § 761.61(c). This Approval also constitutes an order issued under the authority of Section 6 of TSCA, 15 U.S.C. § 2605.

1. Effective Date

This Approval shall become effective on the date the Director of LCRD, EPA Region 2, receives written notification from APDC, signed by an authorized representative of APDC, of APDC's acceptance of, and intention to comply with, the terms and conditions of this Approval. This offer may be withdrawn if EPA Region 2 does not receive, within forty-five (45) calendar days of the date of this Approval, written notification from APDC of its acceptance of, and intention to comply with, the terms and conditions of this Approval.

2. Description of the Site and the Extent of PCB Contamination

The Site is 12+ acres in area and is located approximately 800 feet west of the Hudson River. The Site has been owned by the APDC since approximately 1925, with no industrial use before then. Sometime after 1937, the Site was used by Atlantic Steel Corporation as a rail yard until 1951. Subsequently, the Site was used for metal recycling operations beginning around 1964. Through a series of assigns, metal recycling operations continued on the site with SIMs Metal Management being the most recent and occupying the site until June of 2012. Two existing one-story structures are located on the east side of the Site, and the Site is currently vacant.

The Site has been the subject of prior environmental investigations. PCBs are currently present in the soil at depths of 5 feet or less and at concentrations up to 2,170 parts per million ("ppm"). There are eleven localized "hot spot" areas containing PCBs greater than 25 ppm (*i.e.*, PCB concentrations above EPA's "low occupancy" and "high occupancy" PCB cleanup levels, as well as the New York State Department of Environmental Conservation's Soil Cleanup Objective for industrial use). The terms "low occupancy" and "high occupancy," are defined at 40 C.F.R. § 761.3.

APDC has also found PCBs in the floors of the two on-site buildings. While the PCB concentrations in the locker room of the office building are less than 1 ppm, the PCB concentrations in the garage floor range from 0.455 ppm to 5.53 ppm (the average of two duplicate samples). In CHA's June 29, 2020 correspondence to EPA Region 2, the consultant states:

Given the PCB concentrations in the concrete of the garage at >1.0 ppm as discussed above, the existing floor slab will be addressed in accordance with the high occupancy area cleanup levels in [40] CFR 761.61 paragraphs (a)(4)(i) through (a)(4)(iv) in order to retain the high occupancy designation for the entire Site. Alternatively, the slab may be demolished during site remediation and removed from the Site. A separate remedial work plan, establishing a parallel remedial path for the garage floor slab, will be prepared and submitted to EPA/NYSDEC for approval prior to any remedial activities being undertaken.

While PCBs were historically found in on-site groundwater at low (single-digit part per billion) levels in unfiltered groundwater samples, the most recent sampling of the 11 on-site monitoring wells (in 2015) included filtering of the groundwater samples and found no detected concentrations of PCBs.

3. Work to be Performed

APDC shall comply with all the conditions in this approval and complete and/or implement the work as described in the Application. Particularly, the following work shall be completed:

- 1) excavation of PCB-contaminated soil to 25 ppm, with off-site disposal of the excavated soil;
- 2) removal of two on-site catch basins, identified as CB01 and CB02; cleaning/rehabilitation of two other on-site catch basins, identified as CB03 and CB04; and removal of an underground vault identified as CB05;
- 3) Installation of a minimum of 12" of Reclaimed Asphalt Pavement ("Site Cap") as outlined in the Risk-Based Application, over all unpaved areas and unimproved areas (areas without buildings) of the 12.14 acre Site;
- 4) continuation of restriction of access to the Site by maintenance of the six (6) foot tall chain link fence affixed with barbed wire, repair of any areas where the fence either is not present or is compromised, and maintenance of the locked gate located on the eastern property line limiting vehicular and pedestrian traffic to the Site;
- 5) long-term, at a minimum 30 years, maintenance and monitoring of the Site Cap and existing pavement to ensure that they effectively isolate the PCBs remaining on the Site; and,
- 6) Any other remedial actions, if deemed necessary, to prevent migration of or unacceptable exposures to PCB contamination at the Site.

Within thirty (30) calendar days after this Approval becomes effective, APDC shall submit to EPA Region 2 the following documents:

- a draft Work Plan for the investigation of the potential for off-site impacts associated with the catch basins on site. Prior to the start of off-site remediation, APDC shall install appropriate soil and erosion controls around the catch basins and maintain such controls until the investigation, evaluation, and remediation (if required) of the potential off-site impacts are completed.;
- a draft remedial work plan for the garage floor slab; and
- a reasonably detailed schedule for performance of the remedial work and the projected date for commencement of the long-term monitoring, as identified in Section 3.

At least sixty (60) calendar days before any work that requires modification of the Site Cap and existing pavement as per Sections 3 and 5, above, APDC shall submit to EPA, for approval, a work plan that describes in detail the specific development activities including, but not limited to:

- modification of the Site Cap and existing pavement;
- installation of stormwater controls; and

- off-site disposal of materials that are either contaminated or potentially contaminated with PCBs.

To the extent that APDC hires any sub-contractor, independent agent or other third party to perform said work, APDC shall be responsible to ensure that any such sub-contractor, independent agent or other third party performs said work in accordance with the terms and conditions of the Application and this Approval.

Nothing herein shall preclude additional work measures from being implemented, provided that any such measure not be inconsistent with or violate any express provision in this Approval or any PCB regulatory provision of 40 C.F.R. Part 761.

4. Periodic Reporting Requirements

APDC shall provide EPA Region 2 with a written report, every three (3) months, of the status of the relevant remedial actions performed in accordance with Sections 3 of this Approval (Work to be Performed) and any other remedial actions, if deemed necessary, under this Approval.

Beginning the first July following the completion of the work identified in Section 3 and continuing every July thereafter, APDC shall submit to EPA Region 2, no later than July 31, an annual written report (the "Annual Report") covering the previous annual reporting period (July 1 through June 30).

The Annual Report shall include the relevant information collected during implementation of the long-term maintenance and monitoring performed pursuant to Section 3.

5. Remedial Action Report

Within sixty (60) calendar days of completing the work specified in Sections 3 of this Approval, APDC shall submit to EPA Region 2 a Remedial Action Report ("RAR") that includes the following:

- 1) a detailed description of the specific activities performed to address the PCB contamination present on the Site;
- 2) a tabular summary (with supporting laboratory documentation) of the results of all sampling conducted in connection with the remedial work;
- 3) documentation of off-site disposal of any PCB remediation waste that is removed from the Site;
- 4) "as-built" figures depicting conditions at the Site after the remedial work has been completed; and,
- 5) a certification, signed by a professional engineer licensed by the State of New York and on behalf of APDC, verifying that all engineering components directed by this Approval have been completed in accordance with this Approval.

A supplemental RAR shall be submitted within sixty (60) calendar days of completing any other remedial action as identified under Section 3[6] of this Approval and shall include the information specified above.

6. Inspection, Monitoring, Maintenance, and Related Obligations

A Site Management Plan (SMP) was prepared as part of the risk-based PCB cleanup and disposal application. Within thirty (30) calendar days after this Approval becomes effective, APDC shall commence implementation of the SMP.

Annual inspections and reporting are required as part of the SMP. The Site Cap and existing pavement shall be maintained to prevent access to or release of contaminated material. APDC shall perform at least annual visual inspections of the Site Cap and existing pavement and shall maintain them. APDC shall prepare written reports of all inspections performed and maintenance activities completed and shall submit each year a copy of all such cap inspection and maintenance reports, as well as any other information pertaining to maintenance of the Site Cap and existing pavement, to EPA Region 2. Such reports shall be submitted by July 31st of each year covering the previous calendar year (January through December).

In the event that APDC identifies a breach in the Site Cap and existing pavement, APDC shall notify EPA Region 2 in writing within fourteen (14) calendar days of discovery. The notification shall include the anticipated corrective measures and a schedule for implementation.

Any proposed revisions or modifications to the SMP will be provided to EPA and NYSDEC for review and approval. If necessary, EPA may coordinate with NYSDEC for the review and approval.

7. Financial Assurance

APDC shall demonstrate that it has financial assurance sufficient for the work required by Section 3 of this Approval. APDC shall establish financial assurance by choosing among the financial assurance mechanisms set forth in 40 C.F.R. § 761.65(g) (referencing provisions of Subpart H of 40 C.F.R. Part 264). Documentation that this financial assurance is in effect shall be provided to EPA Region 2 within thirty (30) calendar days of the effective date of this Approval. Variations to, or modifications from, the language prescribed in 40 C.F.R. § 264.151 can be made in the instrument(s) APDC elects under 40 C.F.R. § 264.151 to effect financial assurance, however, EPA Region 2 will review the change(s) and may require APDC to revise the adjusted financial assurance mechanism(s) prior to approving it.

No later than March 1st of each year, APDC shall submit an annual certification to EPA Region 2 that the selected financial assurance mechanism(s) covered the prior calendar year and that APDC has and will maintain such coverage for the current year.

Beginning five years from the effective date of this Approval and repeating every five years thereafter, APDC shall demonstrate to EPA Region 2 that the financial assurance mechanism(s) is/are sufficient to cover any reasonably contemplated increased costs of a future cleanup as determined by APDC or its representatives. If APDC wishes to change the financial assurance mechanism(s), APDC shall submit an adjusted financial assurance mechanism(s) (as applicable) to EPA Region 2. EPA Region 2

will review the change(s) and may require APDC to revise the adjusted financial assurance mechanism(s) prior to approving it.

In the event that APDC sells or leases any portion of the Site or the Site in its entirety, these financial assurance obligations shall be transferred from APDC to the buyer or lessee, provided that the terms and conditions specified in Section 10 of this Approval are met and the buyer or lessee has demonstrated that it has a financial assurance mechanism acceptable to EPA in place. If APDC sells or leases any portion of the Site or the Site in its entirety but satisfactory demonstration of financial assurance has not been provided by such buyer or lessee to EPA, APDC shall remain liable for financial assurance as if such sale or leasing arrangement had not taken place.

In the event APDC fails to perform Approval obligations, is seriously or repeatedly deficient in its performance, and fails to correct the situation after notice from EPA, EPA shall be entitled to obtain funds from APDC's financial assurance mechanism to effect proper performance.

8. Records

As long as PCB remediation waste above 1 ppm remains on the Site, APDC, or any new owner pursuant to Section 10, shall maintain the following records at a central location and shall make them available to EPA upon request:

- 1) the final construction drawings and any other construction-related documents pertaining to the Site Cap and existing pavement;
- 2) all records and information related to characterization, analysis,¹ sampling, shipping and disposal of PCB-contaminated material at the site; and,
- 3) all records and information related to the long-term monitoring including monitoring of both the Site Cap and existing pavement.

9. Environmental Easement/Deed Restriction and Certification to EPA

Within sixty (60) calendar days of completing the work specified in Section 3-1 through 3-4 of this Approval, APDC shall do the following:

- 1) Prepare and record an Environmental Easement/Deed Restriction with the County Clerk's Office, Albany County, New York in accordance with 40 C.F.R. § 761.61(a)(8) and applicable New York law. The Environmental Easement/Deed Restriction shall, at a minimum, include a description of the extent of contamination found at the Site; a description of the work performed under this Approval; the restrictions on use included in Section 11 of this Approval; a description of the inspection, maintenance, and reporting requirements associated with the final approved SMP; and a copy of this Approval, appended as an attachment.

¹ APDC shall use an appropriately sensitive and selective testing method from the latest update of the document entitled: "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as SW-846, or validated equivalent, or as otherwise specified in this Approval.

- 2) Submit to EPA Region 2 a certification signed by an authorized representative of APDC indicating that APDC has recorded the Environmental Easement/Deed Restriction as required by 40 C.F.R. § 761.61(a)(8) and specified in subparagraph (1) of this Section.

10. Sale or Lease of the Site

APDC shall not sell or lease any portion of the Site (or the Site in its entirety) unless APDC notifies EPA Region 2, in writing, no less than thirty (30) calendar days prior to such sale or lease. This notification shall include the name, address and telephone number of the proposed new owner(s) or lessee(s). In the event that APDC sells or leases any portion of the Site (or the Site in its entirety), APDC shall continue to be bound by all the terms and conditions of this Approval, and be responsible to ensure the timely and satisfactory completion of all work required thereunder, unless and until the following three conditions occur:

- 1) the new owner or lessee requests, in writing, that EPA Region 2 reissue this Approval to the new owner or lessee, transferring all responsibility to comply with the terms and conditions of this Approval to the new owner or lessee, and the new owner or lessee indicates how it intends to comply with the financial assurance and other requirements of this Approval;
- 2) EPA Region 2 reissues this Approval to the new owner or lessee, transferring all responsibility to comply with the terms and conditions of this Approval to the new owner or lessee; and,
- 3) the new owner or lessee provides written notification to EPA Region 2 of its acceptance of and intention to comply with the terms and conditions of the reissued Approval.

Any sale or lease agreement must provide that APDC has continued access to the site to perform its obligations under the Approval, and that EPA has access to the site for inspection and/or monitoring activity until all three conditions are met.

EPA Region 2 may withdraw the reissued Approval if it does not receive written notification from the new owner or lessee of its acceptance of, and intention to comply with, the terms and conditions of the reissued or as modified Approval within forty-five (45) calendar days of the date of the reissued or as modified Approval. Where EPA Region 2 has withdrawn the reissued or as modified Approval, this Approval, as originally issued to APDC, will remain in effect. In such case, APDC shall provide EPA Region 2, in writing, documentation that APDC will be afforded access to the Site, as necessary, to fulfill any and all obligations included in this Approval.

In the event that the three conditions listed above are met and the Approval is reissued to and accepted by a new owner or lessee, APDC will transfer custody of the documents required to be preserved pursuant to 40 C.F.R. Part 761, and to the extent not inconsistent with applicable TSCA statutory or regulatory requirements, APDC will then be released from any further obligations, except as otherwise set out in Section 7 (Financial Assurance), above, mandated by this Approval.

11. Restrictions on Use

As long as PCB remediation waste above 1 ppm is present on the Site, APDC or any successor in interest may not use any area of the Site for purposes other than the industrial use as set forth in the Application, unless otherwise approved in writing by EPA Region 2.

12. Modifications and Changes in Use

Any proposed modification to any of the terms or conditions of this Approval, whether expressly stated herein or incorporated by reference, must receive prior written approval from the Director of LCRD, EPA Region 2. APDC shall notify EPA Region 2 in writing of any such proposed modification at least sixty (60) calendar days prior to the anticipated date for implementation of the modification unless EPA agrees in writing to shorten the prior notice period. No action shall be taken to implement any such modification unless EPA Region 2 has approved the modification in writing. EPA Region 2 may request additional information in order to determine whether or not the modification should be approved.

If a proposed modification involves a change in the use of the Site that has the potential to affect the Site Cap and existing pavement or to result in other unacceptable changes, EPA Region 2 may not approve the proposed modification, and if EPA determines that the change in use of the Site may pose an unreasonable risk to human health or to the environment, or if EPA Region 2 does not receive the information from APDC that EPA reasonably requires to assess and/or make a determination regarding such potential risk, then EPA Region 2 may revoke, suspend and/or modify this Approval, or take other action as appropriate. APDC shall prepare and record any amendment to the Deed Notice and/or this Approval, resulting from any approved modification(s), within sixty (60) days of such changes(s).

13. EPA Region 2 Authority for Entry and Inspection

By signing this Approval, APDC consents to EPA Region 2's authorized representatives entering the Site at reasonable times, upon notice to APDC to coordinate such access, for any purpose authorized by Section 11 of TSCA, 15 U.S.C. § 2610, including but not limited to the following purposes:

- 1) to inspect the Site to assess compliance with this Approval and/or the federal PCB regulations;
- 2) to inspect records related to this Approval and/or federal PCB regulations; and,
- 3) to collect samples to assess compliance with this Approval and/or the federal PCB regulations. APDC will be given the opportunity to split samples collected by EPA Region 2 representatives, provided this does not compromise EPA Region 2's sampling activities or the samples which EPA Region 2 collects.

Any refusal to allow any of the above actions may result in the suspension and/or revocation of this Approval.

14. Confidential Business Information

Information supplied to EPA is presumptively available to the public under the Freedom of Information Act, 5 U.S.C. § 552, and the regulations at 40 C.F.R. Part 2. As provided in Section 14(c) of TSCA, 15 U.S.C. § 2613(c), APDC may claim information provided to EPA Region 2 to be Confidential Business Information (“CBI”) provided it complies with the substantive criteria in 40 C.F.R. § 2.208. Information designated as CBI will be disclosed by EPA Region 2 only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2.

Factors that EPA Region 2 considers in determining whether a claim of CBI is valid, in the event that a claim is evaluated, are set out in TSCA § 14(c) and at 40 C.F.R. § 2.204(e)(4). These factors include but are not limited to the following:

- 1) APDC has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures;
- 2) the information is not, and has not been, reasonably obtainable without APDC’s consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on showing of special need in a judicial or quasi-judicial proceeding);
- 3) the information is not publicly available elsewhere; and,
- 4) disclosure of the information would cause substantial harm to APDC’s competitive position.

The information requested under this Approval concerns the proper handling of PCB remediation waste and is not expected to involve CBI. However, in the event that information is claimed to be CBI by APDC, it must be clearly identified as such on the documents submitted and the claims to confidentiality must be substantiated at the time of submittal.

15. Addresses for Correspondence

- 1) EPA Addresses.
 - (a) All non-CBI correspondence to be submitted to EPA Region 2 shall be sent via electronic mail to:

Chief, Corrective Action Section
Land and Redevelopment Programs Branch
United States Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

Adolph Everett
Environmental Engineer
Land, Chemical and Redevelopment Division
United States Environmental Protection Agency, Region 2
everett.adolph@epa.gov

(b) All CBI information with cover letter designating it as such that is to be submitted to EPA Region 2 shall be placed in a sealed envelope marked 'CONTAINS TSCA CBI TO BE OPENED BY ADDRESSEE ONLY' and that envelope shall be placed inside a regular mailing envelope addressed as below. DO NOT indicate on the outer envelope that it contains CBI or that the addressee is the Document Control Officer. The records should be submitted to:

Document Control Officer
Land and Redevelopment Programs Branch
United States Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

2) APDC Address. All correspondence to APDC shall be submitted to the following representatives:

Patrick K. Jordan
General Counsel
Albany Port District Commission
106 Smith Boulevard
Albany, NY 12202
pjordan@portofalbany.us

and

Richard J. Hendrick
General Manager
Albany Port District Commission
106 Smith Boulevard
Albany, NY 12202
rhendrick@portofalbany.us

3) The EPA and APDC reserve the right to designate additional or different addressees for communication upon written notice to each other.

16. Conclusion

Based on the information included in the Application, EPA Region 2 finds that the PCB disposal authorized by this Approval and the use of the Site as set forth in the Application does not present an unreasonable risk to human health or the environment. Acceptable concentrations of PCB remediation waste remaining on-site under this Approval are based on a site-specific risk determination pursuant to TSCA and are not applicable to any other site. Notwithstanding any other provision of this Approval, this Approval may be reviewed, revoked, suspended and/or modified at any time before or after APDC's acceptance thereof if EPA Region 2 determines that implementation of this Approval may present an unreasonable risk to human health or the environment. Nothing in this Approval is intended or is to be construed as prejudicing, waiving or negating any authority or sanction available to EPA (or the United States on behalf of EPA) under Section 6 of TSCA, 15 U.S.C. § 2605, any other section of

TSCA, and 40 C.F.R. Part 761, and/or under other applicable law or regulation, nor is anything in this Approval intended or is to be construed as barring or precluding EPA (and/or the United States on behalf of EPA) from commencing and maintaining an enforcement action under Sections 16 and 17 of TSCA, 15 U.S.C. §§ 2615 and 2616, respectively, for any relief authorized thereunder, with regard to or concerning the Site.

This Approval, issued pursuant to 40 C.F.R. § 761.61(c), is based upon APDC having provided EPA Region 2 with a complete and truthful disclosure of all material facts related to the Site in its Application. The misrepresentation or omission by APDC of any material fact in its Application or in any document associated with or supporting this Approval may result in EPA Region 2's revocation, suspension and/or modification of this Approval, and such other legal or equitable remedy, either civil or criminal, that EPA (or the United States on behalf of EPA) is authorized to pursue under applicable law.

APDC's acceptance of this Approval constitutes APDC's agreement to comply with the following:

- 1) all terms and conditions of this Approval; and,
- 2) all applicable provisions of federal, state and local law pertaining to the PCB remediation waste present in or beneath the Site. This Approval only specifies the applicable requirements under TSCA and does not cite to or make any determination regarding the requirements that may be applicable under other federal, state or local law. TSCA disposal requirements do not supersede other, more stringent, applicable federal, state or local laws. Any failure by APDC to comply with any condition or term of this Approval shall constitute a violation of the Approval, which has been issued pursuant to 40 C.F.R. § 761.61(c). Any such violation is made unlawful by Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C), and may result in EPA Region 2's revocation, suspension and/or modification of this Approval and such other legal or equitable remedy that EPA Region 2 (or the United States on behalf of EPA) may choose to pursue under applicable law.

Ariel Iglesias, Director
Land, Chemicals & Redevelopment Division
United States Environmental Protection Agency, Region 2

December 14, 2020