

U.S. Environmental Protection Agency
Region 2

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In the Matter of

Gibson Scrapyard Site
Corning, Steuben County, New York

Approval for Risk-Based Cleanup
and Disposal of Polychlorinated
Biphenyl Remediation Waste

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 cleanup and disposal of polychlorinated biphenyl ("PCB") remediation waste (as defined at 40 C.F.R. § 761.3) ("Approval") for the Gibson Scrapyard Site ("Site") located at 2972 Main Street in the Hamlet of Gibson in the Town of Corning, Steuben County, New York. The request (the "Application") was submitted to EPA Region 2 by EA Engineering, P.C. and its affiliate EA Science and Technology, on behalf of the New York State Department of Environmental Conservation ("NYSDEC"), in the form of a Risk Based Polychlorinated Biphenyl Cleanup Plan ("Plan") dated January 2025, which is annexed to this document as Attachment A. The Plan addresses the remediation of PCB contamination located at the Site. NYSDEC has concluded that the current Site owners, Corning Materials, Inc. and Corning Waste Materials Inc., are not viable parties to clean up contamination including PCBs remaining at the Site and has assumed responsibility to fund, investigate, and implement the remedy under the State Superfund Program.¹

EPA Region 2 reviewed the 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 also reviewed the 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 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 Region 2 therefore hereby issues this Approval to NYSDEC for the risk-based cleanup and disposal of PCB remediation waste in and at the Site, subject to the terms and conditions specified herein. This Approval is issued under the authority granted to EPA Region 2 by Subchapter I of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 - 2629, as amended, and in accordance with the federal regulations for PCB promulgated pursuant thereto and set forth in 40 C.F.R. Part 761. In EPA Region 2, the authority to issue approvals under 40 C.F.R. § 761.61(c)(2) has been duly delegated to the Director of the Land, Chemicals & Redevelopment Division ("LCRD").

¹ NYSDEC's investigation into the Site owners is detailed at Page 107 of the Plan, which is included in its entirety as Appendix A of this Approval.

1. Effective Date

This Approval becomes effective on the date the Director of LCRD, EPA Region 2, receives written notification from NYSDEC, signed by an authorized representative, of NYSDEC's acceptance of, and intention to comply with, the terms and conditions of this Approval. EPA Region 2 may withdraw this Approval if it does not receive written notification, within forty-five (45) calendar days ("Days"), of the date that EPA Region 2 electronically transmits the Approval to the representatives of NYSDEC.

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

The Site is located at 2972 Main Street in the Hamlet of Gibson in the Town of Corning, Steuben County, New York. The 3.2-acre Site is zoned for commercial use and is comprised of three parcels, which are owned by Corning Materials Inc.²

The Site, which is currently unoccupied, is bounded by a vacant residential property, Main Street, Narrows Creek, and a railroad. In addition to access via Main Street, it is accessible by a small steel bridge with a crumbling foundation that is closed to vehicles.

The only structure on the Site is a concrete slab associated with a former weigh station.

PCB characterization at the Site took place from 2010-2021.³ A Phase II Site Investigation (SI) was conducted in February 2010, which consisted of the characterization and evaluation of on-site soil and groundwater, and offsite surface water. A Remedial Investigation (RI) was conducted from 2019-2021. The investigations identified PCBs in soils in concentrations up to 218 mg/kg and low levels of PCBs in groundwater, which may have been impacted by high turbidity.⁴ Off-site surface water and off-site sediment were not impacted by PCBs.

3. Work to be Performed

NYSDEC shall perform the work required by this Approval in accordance with (1) the applicable provisions of the PCB regulations, 40 C.F.R. Part 761, including but not limited to the regulatory provisions regarding on-Site storage of remediation waste, off-Site transport and disposal, and decontamination of equipment utilized in remediation, and (2) all the conditions in this Approval. NYSDEC shall complete and/or implement the work as described in the application. NYSDEC shall also be responsible for the tasks specified below in this Approval. In the event of

² The three parcels are identified by tax map parcel numbers 318.00-01-003, 318.11-01-001, and 318.11-01-041. The deed to parcel 318.00-01-003 names Corning Waste Materials, Inc., a former corporate name of Corning Materials, Inc. from 1948 to 1965, as the owner.

³ A Phase I Environmental Assessment conducted by Fagan Engineers took place in 1997, and another, conducted by The ARGO Team (ARGO Systems, LLC and its subcontractors EA Engineering, P.C. and its affiliate EA Science and Technology), took place in 2009. Neither assessment focused on PCBs.

⁴ As described in Section 3 of this Approval, groundwater monitoring will continue to assess PCB impacts on site groundwater.

an apparent conflict between the text of this Approval and 40 C.F.R. Part 761, the regulatory language controls.

Engineering Controls

- Soil Cover: NYSDEC will install a cover system consisting of a geotextile demarcation layer followed by 2 feet of clean fill across the Site. Soil and topsoil materials will be sampled prior to introduction to the Site to verify that they are not contaminated at a level equal to or greater than 1 mg/kg PCB. Debris and other materials removed prior to installation of the soil cover will be sampled to ensure that, should they contain as-found PCB concentrations in excess of 1 mg/kg, they are disposed of consistent with 40 CFR Part 761 and applicable state law.
- Fencing and Signage: Security fencing will be maintained to control access to contaminated materials. Vehicle and pedestrian access to the site via bridge will be blocked by concrete blockades. Signage will be installed to alert the public to Site conditions and the nature of project activities. The fencing and signage may only be removed after EPA approves in writing a written request for such removal.

Institutional Controls

NYSDEC shall file an Environmental Notice (EN) in the public land records (office of the appropriate county clerk) for the Site, unless and until an environmental easement is placed on the property. NYSDEC shall ensure that the EN is filed by the county clerk and check every year that it remains attached to the deed, renewing the EN if necessary, unless and until an environmental easement is placed on the property.

Groundwater and Surface Water Monitoring

NYSDEC shall conduct groundwater monitoring consistent with the Site Management Plan ("SMP") described in and approved pursuant to Section 6 of this Approval

Long Term Maintenance and Monitoring

Until such a time that the current owner or a future owner of the site enters into an environmental easement as described herein, NYSDEC shall perform maintenance and monitoring activities in accordance with the SMP.

To the extent that NYSDEC hires or otherwise employs any contractor, sub-contractor, independent agent or other third party to perform, on its behalf or at its behest, any work required or otherwise authorized by this Section, then such hiring entity shall direct, and be responsible to ensure, that such contractor, sub-contractor, independent agent or other third party perform any such work in accordance with the terms and conditions of this Approval and in accordance with all applicable provisions of 40 C.F.R. Part 761.

Nothing herein is intended or is to be construed to preclude additional work measures from being implemented, provided that any such measure(s) be not inconsistent with nor violate any provisions in this Approval and any applicable provision of 40 C.F.R. Part 761. EPA may require

NYSDEC to carry out additional investigation or mitigation measures should it find that the plan being implemented is not protective and that PCB contamination at the Site poses an unreasonable risk of injury to health or the environment.

4. Reporting Requirements

NYSDEC shall submit the following reports to EPA Region 2:

Work Schedule. Within thirty (30) calendar days of this Approval's effective date, NYSDEC shall submit to EPA Region 2 a reasonably detailed schedule for performance of the remedial work identified in Section 3.

Quarterly Work Status Report. Within ninety (90) calendar days of this Approval's effective date, NYSDEC shall commence providing EPA Region 2 with a written report, every three (3) months, of the status of the relevant remedial actions performed in accordance with Section 3 of this Approval and of any other remedial actions taken at the Site.

Groundwater Monitoring Reports. NYSDEC shall submit groundwater monitoring reports in accordance with the SMP approved in accordance with Section 6 of this Approval.

Remedial Action Report. Within 120 calendar days of completing the work specified in Section 3 of this Approval, except for long-term maintenance and monitoring, NYSDEC shall submit to EPA Region 2 for review and approval a Remedial Action Report ("RAR") in accordance with the provisions of Section 5 of this Approval.

Deed Notice. Within seven (7) calendar days of filing the Environmental Notice identified and further described in Section 9 of this Approval, NYSDEC shall submit proof of filing to EPA Region 2 in accordance with Section 9. Every year, NYSDEC shall confirm through a property records search that the Environmental Notice remains attached to the deed to the Site, and shall renew or re-file the notice if it is not. NYSDEC shall include the steps it took to verify that the Environmental Notice remained in place in its Annual Report, described below. Within seven (7) calendar days of any owner of the Site recording the *Declaration of Covenants, Restrictions and Environmental Easement* identified and further described in Section 9 below, NYSDEC shall submit proof of recording to EPA Region 2 in accordance with Section 9.

Annual Report after Work Complete. Beginning July first following the completion of the work identified in Section 3 and continuing every July thereafter, NYSDEC shall submit to EPA Region 2, no later than July 31, an annual written report covering the previous annual reporting period (July 1 through June 30) (the "Annual Report"). The Annual Report shall include the information collected during implementation of the long-term maintenance and monitoring performed pursuant to Sections 3 and 6 of this Approval.

5. Remedial Action Report

Within 120 calendar days of completing the work specified in Section 3 of this Approval, except for long-term maintenance and monitoring, NYSDEC shall submit to the Region a RAR that includes the following:

- A detailed description of the specific activities performed to address the PCB contamination present on the Site;
- A tabular summary (with supporting laboratory documentation) of the results of all sampling conducted in connection with the remedial work and corresponding figures;
- Documentation of off-Site disposal, including certificates of disposal or similar certifications issued by the disposal facility, of any PCB remediation waste that is removed from the Site;
- “As-built” figures depicting conditions at the Site after the remedial work has been completed; and,
- A certification, signed by a professional engineer licensed by the State of New York and on behalf of NYSDEC, verifying that all engineering components directed by this Approval have been completed in accordance with this Approval.

A supplemental RAR shall be submitted within 120 calendar days of completing any other remedial action as required under Section 3 of this Approval and shall include the information specified above.

6. Inspection, Monitoring, Maintenance, and Related Obligations

NYSDEC shall submit a draft SMP for the Site to EPA Region 2 for review and approval 60 days prior to the anticipated date for completion of the work specified in Section 3 (excluding long-term maintenance and monitoring). The draft SMP must include the following components:

- A detailed schedule for inspections and maintenance of the soil cover, including inspection and maintenance record templates;
- A groundwater monitoring plan for the Site, including the number and locations of the groundwater monitoring wells;
- Preventive and corrective maintenance procedures; and
- Any supplemental or other additional measures required for the implementation of additional remedial actions pursuant to Section 3 of this Approval.

If EPA Region 2 disapproves of the draft SMP and directs that revisions or modifications be made thereto, EPA Region 2’s determination shall be final and binding upon NYSDEC.

Within 30 days of EPA Region 2’s approval of the draft SMP and completion of work specified in Section 3, NYSDEC shall commence soil cover monitoring. NYSDEC shall be required to maintain the soil cover. NYSDEC shall prepare written reports of all inspections performed and maintenance activities completed, and it shall submit to EPA Region 2 each year a copy of all such soil cover inspection and maintenance reports, as well as any other information pertaining to maintenance of the soil cover. Such reports must be included in the Annual Reports.

If NYSDEC identifies a breach in the soil cover, it shall notify EPA Region 2 in writing within seven days of discovery. Such notification must include any anticipated corrective measures and a schedule for implementation.

7. Financial Assurance

In the event that NYSDEC is approached regarding a future change of use and/or ownership, including a lease of any portion of the Site or the Site in its entirety, then NYSDEC shall ensure that any negotiated agreement to take over responsibility for the work to be performed at the Site, including long term maintenance and monitoring, shall include adequate financial assurance mechanisms consistent with 40 C.F.R. § 761.65(g). NYSDEC shall further advise the buyer or lessee that it may be required to comply with the terms and conditions specified in this Approval. NYSDEC shall inform EPA of any bona fide approach regarding a future change of use and/or ownership, including a lease of any portion of the Site or the Site in its entirety, within 30 days of such approach, and shall provide copies of any final signed agreement, including financial assurance mechanisms, within seven days of the agreement becoming effective.

If the owner 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 the buyer or lessee to EPA, NYSDEC shall remain liable for funding all obligations required by this Approval as if such sale or leasing arrangement had not taken place.

8. Records

As long as PCB remediation waste above 1 ppm remains on the Site, subject to Section 10 regarding the transfer of all responsibility to comply with the terms and conditions of the Approval, NYSDEC shall maintain the following records at 625 Broadway, Albany, NY 12233 and shall make them available to EPA upon request:⁵

- The final construction drawings and any other construction-related documents pertaining to the Soil Cover;
- All records and information related to characterization, analysis,⁶ sampling, shipping and disposal of PCB-contaminated material at the Site; and,
- All records and information related to the long-term monitoring including monitoring of the Soil Cover.

NYSDEC shall confirm and certify that these records are maintained at NYSDEC's central office location at 625 Broadway, Albany, NY 12233. Such certification shall be provided to EPA with the notification pursuant to Section 1, above. In the event that the three conditions listed below in

⁵ These documents are currently available online at: <https://extapps.dec.ny.gov/data/DecDocs/851058/>.

⁶ NYSDEC 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.

Section 10 of this Approval are met and the Approval is reissued to and accepted by a new owner or lessee, NYSDEC will, unless otherwise approved by EPA, 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, NYSDEC will then be released from any further recordkeeping obligations mandated by this Approval.

9. Environmental Notice, Declaration of Covenants, Restrictions and Environmental Easement, and Certification to EPA

Within sixty (60) calendar days of completion of the work specified in Section 3 (except for long-term maintenance and monitoring) and the approval of the Site Management Plan under 3 and Section 6 of this Approval, NYSDEC shall, in consultation with EPA Region 2:

1. Prepare and file an Environmental Notice with the County Clerk's Office, Steuben County, New York in accordance with 40 C.F.R. § 761.61(a)(8) and applicable New York State law. The Environmental Notice shall, at a minimum, identify EPA as a third-party beneficiary and include a description of the extent of PCB 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 and any additional limitations; 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; and
2. Submit to EPA Region 2 (through the method specified in Section 15) proof of filing of the Environmental Notice for the Site, complete with book and page number or instrument number.

In the event that NYSDEC is approached regarding a future change of use/change of ownership, including a lease of any portion of the Site or the Site in its entirety, then NYSDEC shall ensure that any new owner/lessee, pursuant to Section 10, within sixty (60) calendar days of completion of the negotiated agreement, shall in consultation with NYSDEC do both of the following:

1. Prepare and record a Declaration of Covenants, Restrictions and Environmental Easement with the County Clerk's Office, Steuben County, New York in accordance with 40 C.F.R. § 761.61(a)(8) and applicable New York State law. The Declaration of Covenants, Restrictions and Environmental Easement shall, at a minimum, identify EPA as a third-party beneficiary and include: a description of the extent of PCB 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 and any additional limitations; 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; and

2. Submit to EPA Region 2 (through the method specified in Section 15) proof of recording of the Declaration of Covenants, Restrictions and Environmental Easement for the Site, complete with book and page number or instrument number.

10. Sale or Lease of the Site

If NYSDEC discovers that the Site has been leased or sold, either through a search of property records such as that described in Section 4 or through outreach by a third party, NYSDEC may invite the then-owner to enter into a Declaration of Covenants, Restrictions and Environmental Easement (“Environmental Easement”). The Environmental Easement shall be at least as protective of human health and the environment as 40 C.F.R. § 761.61(a) and shall identify EPA as a third-party beneficiary.

NYSDEC shall notify EPA Region 2, in writing, no more than thirty (30) calendar days after learning of such sale or lease. This notification shall include the name, mailing and email address and telephone number of the proposed new owner(s) or lessee(s) and contact information for any person representing them.

NYSDEC 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. NYSDEC negotiates an agreement with any owner/lessee pursuant to Section 10 to perform site management and placement of an Environmental Easement in exchange for a liability release and requests, in writing, that EPA Region 2 reissue this Approval to the owner or lessee, transferring all responsibility to comply with the terms and conditions of this Approval to the owner or lessee, and the owner or lessee indicates how it intends to comply with the financial assurance and all applicable requirements of this Approval;
2. EPA Region 2 reissues this Approval to the 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 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.

EPA Region 2 may withdraw the reissued Approval if EPA does not receive written notification from the 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 NYSDEC, will remain in effect and NYSDEC shall provide EPA Region 2, in writing, documentation that NYSDEC 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 an owner or lessee, NYSDEC 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, NYSDEC will then be released from any further obligations.

11. Restrictions on Use

As long as PCB remediation waste above 1 ppm is present on the Site, the State, any owner/lessee pursuant to Section 10 or any successor in interest may not use any area of the Site for purposes other than commercial or industrial use as set forth in the Application and in accordance with any additional limitations recorded in the Proposed Remedial Action Plan,⁷ Environmental Notice or Environmental Easement, unless otherwise approved in writing by EPA Region 2. The State, any owner/lessee, or any successor in interest shall not cause the Site to become occupied or new permanent buildings to be placed on the Site until and unless EPA Region 2 has approved those actions, and appropriate additional protective measures, in writing.

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 the Land, Chemicals, and Redevelopment Division, EPA Region 2. NYSDEC shall notify EPA Region 2 in writing of the 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 from NYSDEC additional information or clarification in order to determine whether the modification(s) should be approved.

At least sixty (60) calendar days before any work that requires modification of the Soil Cover identified in Section 3, above, NYSDEC shall submit to EPA Region 2, for approval, a work plan that describes in detail the specific activities including, but not limited to:

- The reason for the modification;
- How the Soil Cover is to be modified;
- Installation of stormwater controls;

⁷ The Proposed Remedial Action Plan is a document prepared by NYSDEC that identifies the preferred remedy for threats to public health and the environment posed by disposal of hazardous wastes at the Site and explains why that remedy is preferred to alternatives. As the PRAP explains, complete clearance of unexploded ordnance (UXO) at the site was not possible to the degree that allows certain uses, especially unrestricted use, restricted residential or passive recreational uses. Land use controls are necessary to ensure protection of human health and public safety. Additionally, since complete UXO clearance was not possible, annual notifications will be provided to the current land owner and appropriate local authority of the potential presence of an explosives safety hazard.

- Any off-Site disposal of materials that are either contaminated or potentially contaminated with PCBs; and
- Any necessary proposed revisions to the SMP to address the modification, which shall be made in accordance with Section 6, above.

If a proposed modification to the terms and conditions of the Approval involves a change in the use of the Site that has the potential to affect the soil cover or to result in other unacceptable changes (e.g., is inconsistent with the goal and objectives of this Approval or might prevent attaining them), EPA Region 2 retains the discretion not to approve the proposed modification. If EPA Region 2 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 NYSDEC that EPA Region 2 has requested in accordance with the prior paragraph, then EPA Region 2 retains the discretion to revoke, suspend and/or modify this Approval or take other action as appropriate pursuant to 40 C.F.R. Part 761.

NYSDEC shall prepare and record any amendment to the Environmental Notice, Environmental Easement, and/or this Approval resulting from any approved modification(s) within sixty (60) days of such change(s).

13. EPA Region 2 Authority for Entry and Inspection and NYSDEC Access to Site

By accepting this Approval, NYSDEC consents to EPA Region 2's authorized representatives entering the Site at reasonable times, upon notice to NYSDEC 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:

- To inspect the Site to assess compliance with this Approval and/or the federal PCB regulations; and
- To collect samples to assess compliance with this Approval and/or the federal PCB regulations.

NYSDEC 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), NYSDEC and its contractors 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, and in the evaluation of a claim, 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:

- NYSDEC's contractor has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures;
- The information is not, and has not been, reasonably obtainable without NYSDEC's contractor'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);
- The information is not publicly available elsewhere; and,
- Disclosure of the information would cause substantial harm to NYSDEC's contractor'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, if that information is claimed to be CBI by NYSDEC or its contractor, it must be clearly identified as such on the documents submitted and the claims to confidentiality must be certified and substantiated at the time of submittal. Submissions should be made electronically via EPA's Central Data Exchange (CDX). Instructions for electronic submission of TSCA CBI can be found at <https://www.epa.gov/assessing-and-managing-chemicals-under-tscas-electronic-reporting-requirements-certain-information>. Additional information on TSCA CBI, including certification and substantiation templates, can be found at <https://www.epa.gov/tsca-cbi>.

15. Correspondence

All non-CBI correspondence to be submitted to EPA Region 2 shall be sent via electronic mail to:

Andrew Park, Manager
Corrective Action Section
Land and Redevelopment Programs Branch
United States Environmental Protection Agency, Region 2,
Broadway
New York, New York 10007-1866
park.andy@epa.gov

All correspondence to NYSDEC shall be submitted to the following representative:

Anna Calderon
New York State Department of Environmental Conservation
Division of Environmental Remediation

625 Broadway, 12th Floor
Albany, NY 12233-7012
anna.calderon@dec.ny.gov

The EPA and the NYSDEC may designate additional or different addressees for communication upon written notice to the other party.

16. Failure to Comply with the Terms and Conditions of this Approval; Material Misrepresentations

Any failure to comply with the terms and conditions of this Approval constitutes a violation of this Approval, which EPA Region 2 is issuing under the authority of 40 C.F.R. § 761.61(c), and of Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

EPA Region 2 may, in its discretion, take any of the following activities independently or concurrently:

1. Revoke, suspend or modify this Approval;
2. Commence a proceeding pursuant to Section 17 of TSCA, 15 U.S.C. § 2616, to compel compliance with the terms and conditions of this Approval or with the PCB remediation waste cleanup and disposal provisions of 40 C.F.R. § 761.61(a) or 40 C.F.R. § 761.61(b), or as otherwise applicable 40 C.F.R. § 761.50; and/or
3. Prosecute a proceeding to obtain any other appropriate legal or equitable sanction and relief as authorized under or pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) or other law.

This Approval, issued pursuant to 40 C.F.R. § 761.61(c), is based upon NYSDEC having provided in its Application to EPA Region 2 a complete and truthful disclosure of all material facts related to the Site. The misrepresentation, concealment or omission of any material fact in the Application or in any document associated with or supporting this Approval may result in EPA Region 2 revoking, suspending and/or modifying this Approval.

17. Retention of Authority

Nothing in this Approval is intended or is to be construed as prejudicing, waiving or negating any authority or sanction or relief available to EPA (or the United States on behalf of EPA) including those under Sections 16 and 17 of TSCA, 15 U.S.C. §§ 2615 and 2616, or any duly promulgated regulation codified at 40 C.F.R. Part 761, to prosecute an enforcement proceeding for any relief or sanction, legal, equitable or criminal, as authorized under any such applicable provision(s) of TSCA or other law with regard to or concerning the presence in and at the Site of PCB remediation waste, and nothing herein is intended or is to be construed as barring or precluding any proceeding.

18. 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 if EPA Region 2 determines that implementation of this Approval may present an unreasonable risk to human health or the environment.

The acceptance by NYSDEC of this Approval pursuant to Section 1 above constitutes NYSDEC's agreement that it shall comply with all terms and conditions of this Approval and 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.

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

Date