

U.S. Environmental Protection Agency
Region 2

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In the Matter of : Approval for Risk-Based
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Flushing Town Center III, L.P. : Clean-up/Disposal of Polychlorinated
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Flushing, New York : Biphenyl Remediation Waste
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This document is the United States Environmental Protection Agency's (EPA) response to, and approval of, the request for a risk-based PCB disposal approval submitted by Flushing Town Center III, L.P., in a letter dated March 3, 2008. This approval is for portions of the Flushing Industrial Park located in Queens, New York and further identified in Section 2, below. This approval is done in accordance with the federal regulations for polychlorinated biphenyls (PCBs) promulgated pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and set forth in Part 761 of Title 40 of the Code of Federal Regulations (40 C.F.R. Part 761).

The complete Application that EPA considered in issuing this approval includes the following documents (hereinafter collectively referred to as the "Application") which are incorporated by reference into this approval.

- June 6, 2008 correspondence from Sive, Paget & Riesel, P.C.;
- March 3, 2008 correspondence with attachments from Flushing Town Center III, L.P. to EPA, Region 2;
- January 17, 2008 correspondence from AKRF to EPA, Region 2;
- December 8, 2006 correspondence with attachments from AKRF to EPA, Region 2 ;
- October 26, 2006 correspondence with attachments from AKRF to EPA, Region 2;
- August 22, 2006 correspondence with attachments from AKRF to EPA, Region 2; and
- September 1, 2005 correspondence with attachments from AKRF to EPA, Region 2.

Based on the information provided in the Application, EPA has determined that implementation of the cleanup actions described herein and in the Application will not pose an unreasonable risk of injury to human health or the environment.

EPA hereby issues approval for the risk-based disposal of soils contaminated with PCBs located at the Flushing Industrial Park Site, subject to the conditions specified herein. This approval is being issued under the authority granted to EPA by the Toxic Substances Control Act (TSCA) as codified in 40 C.F.R. § 761.61(c). This approval also constitutes an order under the authority of Section 6 of TSCA, 15 U.S.C. §2605.

1. Effective Date and Review Date

This approval shall become effective on the date the Regional Administrator of EPA Region 2 receives written notification from Flushing Town Center III, L.P., signed by an official of the company authorized to do so, indicating acceptance of and intention to comply with the conditions of this approval. This offer may be withdrawn if EPA Region 2 does not receive written notification from Flushing Town Center III, L.P. of its acceptance of, and intention to comply with, the conditions and terms of this approval within 45 days of the date of its signature.

The EPA will review this approval no later than 5 years from its effective date. At that time, if the EPA finds that the continued implementation of the remedy granted by this approval presents an unreasonable risk to human health or the environment, the EPA may modify, suspend, or revoke this approval. Alternatively, the EPA may request further information to make such a determination.

2. Description of the Flushing Industrial Park Site and the Extent of PCB Contamination

The Flushing Industrial Park Site (the "Site") is located at 40-22 College Point Boulevard, Flushing, NY 11354 (corner of College Point Boulevard and 40th Road). In 2000, C.E. Flushing, LLC entered into a Voluntary Cleanup Agreement with the New York State Department of Environmental Conservation (NYSDEC) to remediate 13.6 acres of real estate property, identified as Parcels 1, 2, 3 and 4 (refer to Attachment 1 for a sketch of the parcels). In December 2004 this site remediation transitioned to the New York State Brownfield Cleanup Program. This approval addresses Parcels 1, 2 and 3. Parcel 1 consists of the eastern portion of the property and comprises approximately 5.42 acres. Parcel 2 consists of approximately 6.99 acres of the western portion of the property. Parcel 3 consists of approximately 0.88 acres of the waterfront portion of the property. The property was formerly owned by the Con Edison Company of New York and past uses included fueling facilities, maintenance of transformers, and storage of transformer oil. All structures and manufacturing equipment have been removed from the Site. Commercial and residential use is proposed for Parcels 1 and 2. This development will include retail and parking structures occupying the majority of the property, with residential towers above these structures. Parcel 3 will consist of a waterfront esplanade. The request for this approval was originally made in a letter dated October 26, 2006 by AKRF Engineering (AKRF) on behalf of C.E. Flushing, LLC. Parcels 1, 2, and 3, however, were sold to Flushing Town Center III, L.P in April 2007. AKRF Engineering remained the technical representative for Flushing Town Center III, L.P.

Self-implementing cleanup notification, per 40 CFR § 761.61(a) was provided by letter dated September 1, 2005 and approved by EPA's letter dated November 15, 2005. The cleanup goal of

the self-implementing cleanup involved excavation and off-site disposal of all PCB contaminated soils with concentrations above 10 parts per million (ppm). Post-excavation bottom endpoint sampling showed PCB contamination up to 39 ppm remains on the Site, with a total of 11 sample results greater than 10 ppm.

Sidewall PCB sampling showed results in excess of 10 ppm in nine locations along the northern and southern Site boundary with the highest level at 230 ppm. Off-site remediation is not required; however, these Site boundary levels must be recorded on the Deed Notice discussed below.

3. Remedial Action and Cap Remedy

This risk-based PCB disposal approval is for the areas of the Site contaminated with PCBs at concentrations of 1 ppm or greater. Those portions of the Site with PCB contamination at concentrations less than 1 ppm, and which are not addressed under Federal regulations are subject to, and shall be addressed in accordance with, NYSDEC requirements.

Flushing Town Center III, L.P. shall excavate contaminated on-site materials, dispose of said materials, and construct a cap for remaining soils in accordance with the documents that comprise the Application described above, and this approval, unless EPA Region 2 provides written approval of any additional proposed modification. A request of intent from Flushing Town Center III, L.P. to modify the remedy must be received by EPA at least 60 calendar days prior to the proposed implementation of the modification. The provisions of this approval supersede any inconsistent provisions which may be contained in documents that are part of the Application.

According to the Application, from 2006 through 2007 remedial excavation was performed at the Site. Over 22,174 tons of soils with PCB concentrations greater than 50 ppm were disposed of. The remediation of Parcel 1 consisted of the removal of delineated hot spots (soils above 10 ppm PCBs). The remediation on Parcels 2 & 3 consisted of excavation of all soils to the water table, and for one sheeted area, excavation extended approximately five to six feet below the water table with dewatering.

The areas with residual concentrations of PCBs between 10 and 39 ppm were backfilled with a minimum of two feet of clean fill. Outside of the planned building footprint, a geotextile fabric demarcation layer was placed at the base of the excavation prior to backfilling. As part of the final cap remedy, all areas of residual PCB contamination will be covered with either at least four feet of clean compacted fill, six inches of asphalt paving, and/or six inches of concrete slabs associated with the new building. The cap remedy will extend over the entirety of Parcels 1, 2 and 3. The cap remedy must be designed and constructed in accordance with 40 CFR § 264.310(a), and must comply with the permeability, sieve, liquid limit, and plasticity index parameters in 40 CFR § 761.75(b)(1)(ii) through (b)(1)(v). The cap remedy must be of sufficient strength to maintain its effectiveness and integrity during the use of the cap surface which is exposed to the environment.

Within thirty (30) days of completing the cap remedy, or within thirty (30) days of the effective date of this approval, whichever is later, Flushing Town Center III, L.P. shall submit to EPA Region 2 a certification, signed by a professional engineer, verifying that the work was completed in accordance with this approval and the Application.

4. Recording of Approval and Deed Notice

Institutional controls will be implemented to ensure that no unacceptable exposure to residual contamination will occur in the long-term. A deed notice will be filed to ensure the following: that any future excavation activities are conducted in accordance with the Site Management Plan which will be prepared as part of the Final Remediation Report required by NYSDEC to control any potential future exposure; that the soil cover is inspected and maintained; and that groundwater on the property is not used for any purpose.

Within sixty (60) days of construction of the cap, as described in the Application, or no later than sixty (60) days after this approval becomes effective, Flushing Town Center III, L.P. shall prepare and record a Deed Notice, in accordance with 40 CFR § 761.61(a)(8) and New York law, with the County Clerk's Office, Queens County, New York. The Deed Notice shall be consistent with NYSDEC requirements and shall include: a description of the extent of contamination found at the Site; a description of the excavation and off-site disposal activities; a description of the cap remedy; survey information necessary to identify the precise locations of soils with PCBs greater than 1 ppm; restrictions on use; and a copy of this approval, appended as an attachment. Within 10 days of receipt of a stamped, filed Deed Notice, Flushing Town Center III, L.P. shall submit a copy of same to EPA Region 2.

5. Inspection and Maintenance Obligations; Annual Report to EPA.

The cap shall be maintained in perpetuity to prevent access to the contaminated material (e.g., soil) under the cap and to prevent such material from being released. Flushing Town Center III, L.P. shall also, by July 1 of each year, submit to EPA Region 2 an annual written summary report covering the previous reporting period (January through December of the previous year). The Annual Report shall provide the following information: reports of visual inspections and maintenance needed to maintain the as-built integrity of the cap; and information regarding any problems maintaining, or apparent breach of, any element of the remedy.

6. Sale of the Site

If at any time, Flushing Town Center III, L.P. intends to sell or lease any portion of the property that is the subject of this approval, Flushing Town Center III, L.P. shall notify EPA Region 2, in writing, no later than 30 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). Flushing Town Center III, L.P. shall visually inspect the cap within 30 days prior to sale or lease of any such property, and shall, thereafter, provide a written report of the results of inspection, and any as yet unreported inspections and/or maintenance on the cap to EPA Region 2 and to the buyer or lessee no later than 10 days prior to such sale or lease. In the event that Flushing Town Center III, L.P. sells or leases any portion of the Site, it shall continue to be bound by all the terms and conditions

of this approval, unless the following occurs:

- 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;
- 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. The reissued approval may be withdrawn if EPA Region 2 does not receive written notification from the new owner or lessee of their acceptance of, and intention to comply with, the conditions and terms of the reissued approval within 45 days of the date of the reissued approval. Under such circumstances, this approval, issued to Flushing Town Center III, L.P., will remain in effect. In such case, Flushing Town Center III, L.P. shall provide EPA, in writing, documentation that Flushing Town Center III, L.P. will be afforded access to the Site, as necessary, to fulfill any and all obligations included in this approval.

7. Modifications and Changes in Use

Any modification(s) in the plan, specifications, or information submitted in the Application, based on which this approval has been issued, will be considered by EPA to be major modification(s) and must receive prior written approval from the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2. Other modifications to this approval, which EPA determines to be minor, may be authorized, in writing, by the Chief of the Pesticides and Toxic Substances Branch of the Division of Enforcement and Compliance Assistance, EPA Region 2. Flushing Town Center III, L.P. shall inform EPA Region 2 of any proposed change, in writing, at least 60 days prior to the effective date of the proposed change. No action may be taken to implement any such modification unless EPA Region 2 has approved of the modification, in writing. EPA Region 2 may request additional information in order to determine whether or not it approves of the modification. If such modification involves a change in the use of the Site, EPA may revoke, suspend and/or modify this approval if it finds that the Flushing Town Center III, L.P. remedy may pose an unreasonable risk to human health or to the environment due to the change in use, or if EPA Region 2 does not receive information it deems appropriate from Flushing Town Center III, L.P. to make a determination regarding such potential risk. Flushing Town Center III, L.P. shall prepare and record any amendment to the Deed Notice and/or this approval, resulting from any modification(s), within 60 days of such changes(s).

8. EPA Entry and Inspection

By accepting this approval, Flushing Town Center III, L.P. is also providing access to EPA's representatives to enter the Site at reasonable times for the purposes listed below:

- 1) to inspect the Site to assess compliance with this approval and/or the federal PCB

regulations;

- 2) to inspect any records related to this approval and/or federal PCB regulations; and
- 3) to collect samples for the purpose of assessing compliance with this approval and/or the federal PCB regulations. Flushing Town Center III, L.P. will be given the opportunity to split samples collected by EPA representatives, provided this does not compromise EPA's sampling activities or the samples which EPA collects.

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

By accepting this approval, Flushing Town Center III, L.P. is also certifying that it has provided EPA Region 2 with complete, accurate and forthright disclosure of all material facts. Any misrepresentation or omission by Flushing Town Center III, L.P. of any material fact in the Application or other documents associated with this approval may result in EPA's revocation, suspension and/or modification of this approval, in addition to any other legal or equitable relief or remedy EPA may choose to pursue under applicable law.

Flushing Town Center III, L.P.'s acceptance of this approval constitutes Flushing Town Center III, L.P.'s agreement to comply with:

- 1) all conditions and terms of this approval; and
- 2) all applicable provisions of federal, state and local law. This approval specifies the requirements applicable under TSCA and does not make any determination regarding requirements which 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, including any applicable requirements under the Solid Waste Disposal Act and its amendments, including the Resource Conservation and Recovery Act. Any failure by Flushing Town Center III, L.P. to comply with any condition or term of this approval shall constitute a violation of this approval, which has been issued pursuant to 40 CFR § 761.61(c); such violation is made unlawful by Section 15(1)(C) of TSCA, 15 U.S.C. § 2614(1)(C). Any such violation(s) may result in an action by EPA for any legal or equitable relief or remedy available under applicable law. Any such violation may also result in EPA revoking, suspending and/or modifying this approval.

9. Confidential Business Information

Information supplied to EPA is generally available to the public under the Freedom of Information Act, 5 U.S.C. § 552, and the regulations issued thereunder, 40 CFR Part 2. As Provided in Section 14(c) of TSCA, Flushing Town Center III, L.P. may claim information provided to EPA to be Confidential Business Information (CBI), in which case the information so designated will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2.

The following guidelines are used by EPA in determining if a claim of CBI is valid in the event the

claim is challenged:

- 1) The company 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 the company'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 the company's competitive position.

Most of the information requested under this approval concerns the proper handling of PCB material and is not expected to involve CBI. When information is claimed as CBI, it must be clearly identified on the material submitted.

10. Address for Correspondence

a. Correspondence with EPA, Region 2

All correspondence to be submitted to EPA, Region 2, except as indicated above for specific correspondence, shall be sent to:

PCB Approvals
Pesticides and Toxic Substances Branch
United States Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679
Telephone: (732) 906-6179 Facsimile: (732) 321-6788

b. Correspondence with Flushing Town Center III, L.P.

All correspondence to be submitted to Flushing Town Center III, L.P, shall be sent to:

Flushing Town Center III, L.P.
118-35 Queens Boulevard
Forest Hills, New York 11375
Telephone: (718) 263-3800

Flushing Town Center III, L.P, shall notify EPA, Region 2 in writing, within seven (7) calendar days of any changes to the above address and telephone number.

11. Conclusion

Based on the information included in the Application, EPA Region 2 finds that the PCB disposal authorized under this approval will not present an unreasonable risk to human health or the environment. Permitted levels of PCB concentration for material 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, this approval may be revoked, suspended and/or modified after Flushing Town Center III, L.P.'s acceptance thereof at any time if EPA Region 2 determines that implementation of this approval may present an unreasonable risk of injury to human health or the environment. Nothing in this approval is intended or is to be construed to prejudice any right or remedy concerning the operation of the Site otherwise available to EPA under Section 6 of TSCA, 15 U.S.C. § 2605 and/or 40 CFR Part 761.

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

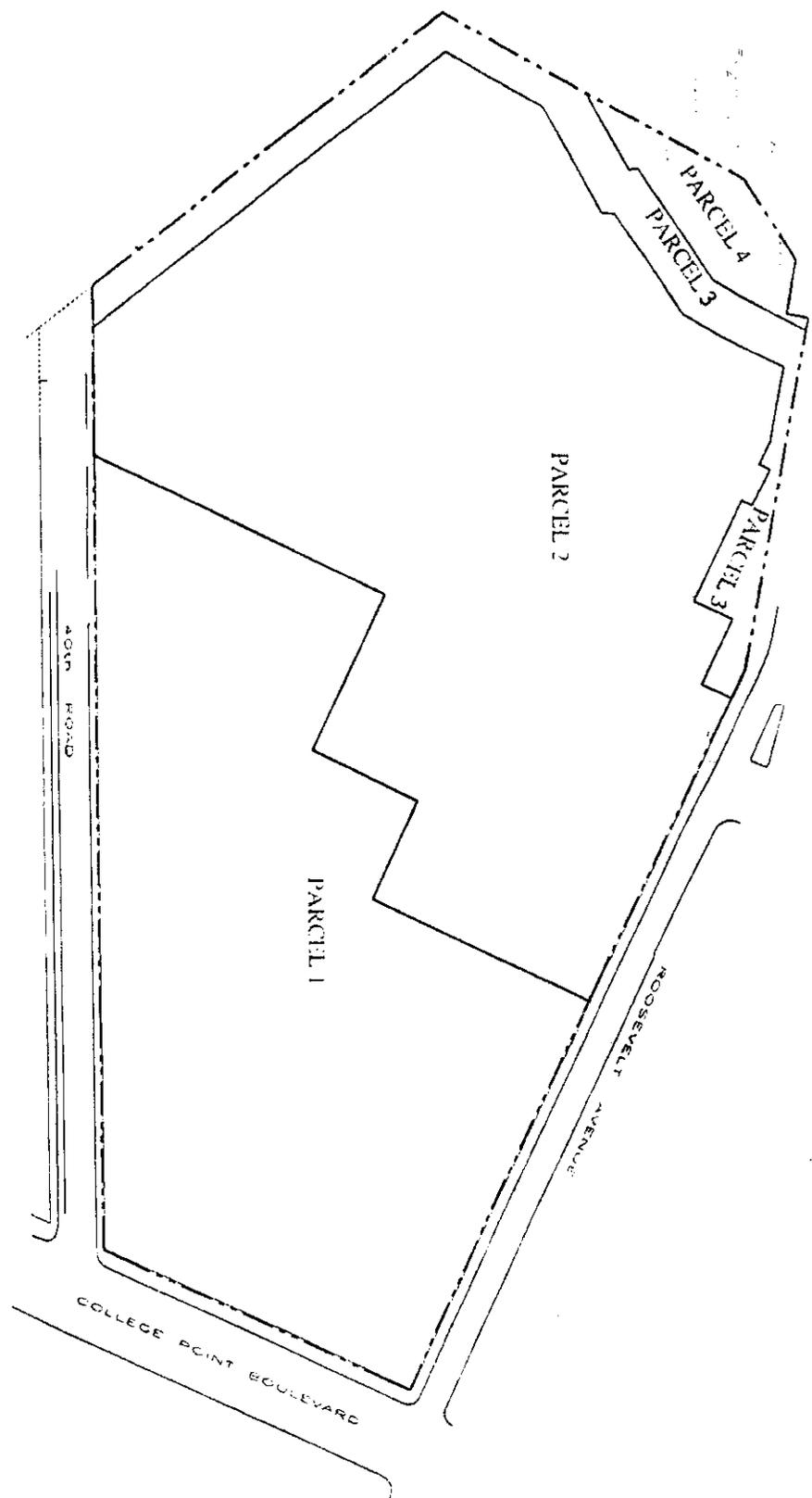
Date

Attachment 1

© 2004 AKRF, Inc. Environmental Consultants. All Rights Reserved. Max Planck of NY 20103 Flushing Park Properties Engineering, Inc. Form 11-09-07 Parcel Development Map

Legend:

- PLANNED BUILDING LINE
- - - PARCEL BOUNDARY
- - - - - PROPERTY BOUNDARY



64% Scale



2	PARCEL 1	DATE	FLUSHING INDUSTRIAL PARK, PARCELS 1 - 4 Flushing, New York	
	301-41	11.09.07	PARCEL BOUNDARIES	

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