U.S. Environmental Protection Agency
Region 2

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In the Matter of:

New York University

Former Metropolitan Transit Authority
Headquarters Building
Brooklyn, New York

Approval for Risk-Based Cleanup
and Disposal of
Polychlorinated 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 an application for approval of a risk-based cleanup and disposal of polychlorinated biphenyl ("PCB") remediation waste at the Former Metropolitan Transit Authority Headquarters Building located at 370 Jay Street in Brooklyn, New York (also referred to as the "Site"). New York University ("NYU") is a party to a 99-year lease/buyout authorization agreement with the City of New York and the New York City Land Development Corporation in regard to the Site and has represented to EPA Region 2 that it has legal authority to act in this matter.

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 *et seq.*, and the regulations set forth in Part 761 of Title 40 of the Code of Federal Regulations ("40 C.F.R. Part 761"). The authority to issue such approvals under 40 C.F.R. § 761.61(c)(2) within Region 2 has been redelegated from the Regional Administrator to the Director of the Division of Enforcement and Compliance Assistance ("DECA").

The completed application that EPA Region 2 considered in determining whether to approve NYU's request consists of the following:

- the January 14, 2015 document entitled "Request for Approval of TSCA Risk-Based Cleanup of PCBs" ("Request") prepared by TRC Environmental Corporation ("TRC") including attached documentation; and
- correspondence, dated September 22, 2015, from TRC to EPA Region 2 including attached documentation.

NYU's January 14, 2015 Request, the correspondence dated September 22, 2015, and any documents attached to or referenced thereunder are collectively referred to herein as the "Application."

EPA Region 2 reviewed NYU'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 NYU'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 human health or the environment.

EPA hereby issues approval for the risk-based remediation of residual PCBs at the Site, subject to the terms and conditions specified herein. 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 and Review

This approval shall become effective on the date the Director of DECA, EPA Region 2 receives written notification from NYU, signed by an authorized representative of NYU, of its 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 signature on this approval, written notification from NYU of its acceptance of, and intention to comply with, the terms and conditions of this approval.

EPA Region 2 reserves the right to review this approval at any time after its effective date. If EPA Region 2 finds that continued implementation of the remedial measures approved herein presents an unreasonable risk to human health or the environment, EPA Region 2 may modify, suspend, or revoke this approval, and EPA Region 2 may exercise any such authority in whole or in part. Alternatively, EPA Region 2 may request further information to make such a determination.

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

The Site is a fourteen story building with three mechanical penthouse floors (i.e., fifteenth, sixteenth, and sixteenth plenum floors). With the exception of the first and fourteenth floors that respectively have granite and stucco facades, the exterior façade is bare limestone with metal windows. NYU is performing a gut renovation of the entire building including replacement of approximately 1,100 exterior windows and 64 exterior doors. Future use of the Site will consist of classrooms and office spaces for the Center for Urban Studies and Progress, part of the NYU Polytechnic School of Engineering.

PCBs have been found in the exterior window caulk and glazing at levels up to 97,000 parts per million (ppm), exceeding EPA's regulatory benchmark of 50 ppm. Caulk and glazing tested on the first and fourteenth floors contained PCBs below 50 ppm. NYU has informed EPA that as part of the window replacement work the caulk and glazing with PCBs at or above 50 ppm will be disposed as PCB Bulk Product Waste in accordance with 40 C.F.R. § 761.62.

PCBs were detected in the exterior limestone façade at levels up to 990 ppm. It is believed that the PCBs in the limestone facade are present due to contact with the PCB-contaminated caulk and glazing. The portion of the Site subject to the activities specified in Section 3, below, is the exterior limestone façade located on the second through sixteenth floors.

The Site contains PCB remediation waste, as defined in 40 C.F.R. § 761.3, that exceeds the cleanup levels under the federal PCB regulations at 40 C.F.R. § 761.61.

3. Work to be Performed

The work to be completed is described in detail in the Application, and shall include, but is not limited to, the following components:

1) encapsulation of limestone facade surfaces (having PCBs at or above 25 ppm) through application of the encapsulant identified as Sikaguard 670W;

2) disposal of PCB-contaminated waste associated with the encapsulation of the limestone facade, in accordance with the Application which stipulates that such disposal will be in accordance with the applicable PCB regulations;

3) performance of indoor air sampling, upon completion of the gut renovation, to verify that EPA's indoor air exposure level of 500 nanograms per cubic meter has not been exceeded; and

4) long-term maintenance and monitoring, including collection of surface wipe samples from the limestone façade, to verify that the clearance value of 100 ug/100 cm^2 has not been exceeded.

Within thirty (30) calendar days after this approval becomes effective, NYU shall submit to EPA Region 2 a detailed schedule for performing the remedial work and the commencement of the long-term monitoring to be performed. To the extent that NYU hires any sub-contractor, independent agent or other third party to perform said work, NYU shall be responsible to ensure that any such sub-contractor, independent agent or other third party perform said work in accordance with the terms and conditions of NYU's Application and this approval.

4. Periodic Reporting Requirements

NYU shall provide EPA Region 2 with a written report, every three (3) months, of the status of the remedial actions performed in accordance with the EPA-approved schedule referenced in Section 3 of this approval (Work to be Performed).

Beginning the first July following the completion of the work identified in Sections 3[1 – 3] and continuing every July thereafter, NYU 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 information collected during implementation of the Maintenance and Monitoring Implementation Plan and the sampling performed pursuant to Section 3[4], which was submitted with the September 22, 2015 correspondence from TRC to EPA Region 2.

5. Remedial Action Report

Within sixty (60) calendar days of completing the work specified in Section 3 of this approval (Work to be Performed), except for long-term maintenance and monitoring, NYU 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 NYU, verifying that all work directed by this approval has been completed in accordance with this approval.

6. Inspection, Maintenance and Related Reporting Obligations

NYU's designated field representative and/or consultant shall inspect the encapsulant and perform the activities set forth in the Maintenance and Monitoring Implementation Plan and Section 3[4] and maintain the encapsulant's integrity. Repair of the encapsulant shall be initiated within sixty (60) calendar days of the verification of damage or other loss of integrity. Until the repairs are completed, NYU shall implement sufficient measures to isolate the affected area to prevent the migration of material potentially containing PCBs.

Within fourteen (14) calendar days of completion of repairs, NYU shall submit to EPA Region 2 the following information:

1) a detailed description of the specific breach, damage, or loss;

2) the steps that had been taken to prevent further breach, damage or loss of integrity that occurred to the encapsulant; and

3) the steps taken to prevent a repeat of the specific breach, damage, or loss.

7. Records

As long as PCB remediation waste is present on the Site, NYU shall maintain the following records:

1) the final construction drawings and any other construction-related documents; and

2) all records and information related to characterization, analysis[1], sampling, shipping and disposal of materials associated with the cleanup and the long term monitoring (including records of inspections and any repairs of the encapsulant).

8. Deed Restriction and Certification to EPA

Within sixty (60) calendar days of completion of the work identified in Section 3 (Work to be Performed), except for long-term maintenance and monitoring, NYU shall do the following.

1) NYU shall prepare and record a Deed Notice with the County Clerk's Office, Kings County, New York State in accordance with 40 C.F.R. § 761.61(a)(8) and applicable New York State law. The Deed Notice shall, at a minimum, include a description of the extent of contamination found at the Site; a description of the work performed including the encapsulation remedy; the restrictions on use included in Section 10 of this approval; a description of the inspection, maintenance, and reporting requirements associated with this approval; and a copy of this approval, appended as an attachment.

2) NYU shall submit to the Director of DECA, EPA Region 2 a certification signed by an authorized representative of NYU indicating that it has recorded the Deed Notice as required by 40 C.F.R. § 761.61(a)(8) and specified in subparagraph (1) of this Section.

9. Sale of the Site

Until such time as the work required under this approval has been completed, NYU shall not sell, assign its lease agreement or sublease any portion of the Site (or the Site in its entirety) unless NYU notifies EPA Region 2, in writing, no later than thirty (30) calendar days prior to any such sale, assignment or subleasing arrangement. This notification shall include the name, address and telephone number of the proposed new owner, lessee(s) or sublessee(s). In the event that NYU sells, assigns or subleases any portion of the Site (or the Site in its entirety), NYU 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 the following occurs:

1) the new owner, lessee or any sublessee requests, in writing, that EPA Region 2 reissue this approval to the new owner, lessee or sublessee, transferring all responsibility to comply with the terms and conditions of this approval to the new owner, lessee or sublessee and the new owner, lessee or sublessee provides EPA with such further documentation as EPA requires;

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1 NYU 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) EPA Region 2 reissues this approval to the new owner, lessee or any sublessee, transferring all responsibility to comply with the terms and conditions of this approval to the new owner, lessee or sublessee; and

3) the new owner, lessee or any sublessee 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 it does not receive written notification from the new owner, lessee or sublessee 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 NYU, will remain in effect. In such case, NYU shall provide EPA Region 2, in writing, documentation that NYU 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, lessee or sublessee, NYU will transfer to the new owner, lessee or sublessee custody of the documents which had been required to be preserved pursuant to 40 C.F.R. Part 761.

10. Restrictions on Use

As long as PCB remediation waste is present on the Site, NYU may not use any area of the Site for purposes other than its current use, i.e., as an educational institution that offers education services to college students. It is assumed that individuals who are not students, faculty, administrative, or custodial/maintenance staff will only be present on an incidental basis.

11. 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 DECA, EPA Region 2. NYU 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 modification were to involve a change in the use of the Site, EPA Region 2 may revoke, suspend and/or modify this approval if it determines that NYU's proposed modification, if approved, may pose an unreasonable risk to human health or to the environment resulting from the change in use, or if EPA Region 2 does not receive the information from NYU that it feels it needs to assess and/or make a determination regarding such potential risk.

12. EPA Region 2 Entry and Inspection

By signing this Approval, NYU consents to EPA Region 2's authorized representatives entering the Site and any other location where non-privileged records related to work conducted pursuant to this Approval are stored at reasonable times for any purpose authorized by Section 11 of TSCA, 15 U.S.C. § 2610, including:

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 compliance with the federal PCB regulations; and

3) to collect samples to assess compliance with this approval and/or the federal PCB regulations. NYU 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.

13. 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 at 40 C.F.R. Part 2. As provided in Section 14(c) of TSCA, NYU 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 40 C.F.R. § 2.204(e)(4). These factors include but are not limited to the following:

1) NYU 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 NYU'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); and

3) the information is not publicly available elsewhere.

The information requested under this approval concerns the proper handling of PCB material and is not expected to involve CBI. However, in the event that information is claimed to be CBI by NYU, it must be clearly identified as such on the documents submitted.

14. Addresses for Correspondence

1) EPA Addresses.

   (a) All non-CBI correspondence to be submitted to EPA Region 2 shall be sent via certified mail or next-day commercial carrier to:

Dr. James S. Haklar, Senior PCB Disposal Specialist
Pesticides and Toxic Substances Branch
United States Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679
Telephone: (732) 906-6817

(b) The address for submission of CBI information (via certified mail or next-day commercial carrier) is:

Mr. Mark Bean
Pesticides and Toxic Substances Branch
United States Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679
Telephone: (732) 321-6606

2) NYU Address. All correspondence to NYU shall be submitted to the following NYU representative:

Stephanie Kung
New York University
10 Astor Place, 6th Floor
New York, New York 10003
Telephone: (212) 998-1439

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

15. Conclusion

Based on the information included in the NYU Application, EPA Region 2 finds that the PCB cleanup and disposal authorized by this approval will not present an unreasonable risk to human health or the environment. Acceptable concentrations of PCB 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 any other provision of this approval, this approval may be revoked, suspended and/or modified at any time before or after NYU's acceptance thereof 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 shall be construed to prejudice any right or remedy otherwise available to EPA (or the United States on behalf of EPA) under Section 6 of TSCA, 15 U.S.C. § 2605, and 40 C.F.R. Part 761, or under other applicable law.

This approval, issued pursuant to 40 C.F.R. § 761.61(c), is based upon NYU 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 NYU 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) may choose to pursue under applicable law.

NYU's acceptance of this approval constitutes NYU's agreement to comply with:

1) all terms and conditions of this approval; and

2) all applicable provisions of federal, state and local law pertaining to 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, including any applicable requirements under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and its amendments. Any failure by NYU 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.

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Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Date