

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

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In the Matter of :  
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 : Approval for Risk-Based Cleanup and  
 : Disposal of Polychlorinated Biphenyl  
Former Henkel Corporation Site : Remediation Waste  
Borough of Carlstadt, New Jersey :  
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This document is the United States Environmental Protection Agency, Region 2’s (“EPA” or “EPA Region 2”) response to a request for approval of a risk-based disposal of polychlorinated biphenyl (“PCB”) remediation waste (as defined at 40 C.F.R. § 761.3) submitted pursuant to 40 C.F.R. § 761.61(c). The request was submitted to EPA Region 2 by EcolSciences, Inc. (“ESI”), on behalf of Russo Meadowlands Park, LLC (“Russo”), in the form of a Risk Based Cleanup and Disposal Plan dated October 15, 2020 and supplemental information provided by ESI via an email dated April 12, 2023, hereinafter referred to as the “Application.” The Application addresses the remediation of PCB-contaminated property owned by Russo located at 651 12<sup>th</sup> Street in Carlstadt, Bergen County, New Jersey (the “Site”).

EPA Region 2 reviewed the Application to determine whether the remedial actions proposed would be protective of human health and the environment, and technically feasible and appropriate. EPA Region 2 has 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 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 this Approval to Russo for the risk-based disposal of PCB remediation waste at the Site, subject to the terms and conditions specified herein (“Approval”). EPA’s authority to issue Approvals derives from the federal regulations for PCBs promulgated pursuant to the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 - 2697 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 Approvals under 40 C.F.R. § 761.61(c)(2) has been delegated to the Director of the Land, Chemicals & Redevelopment Division (“LCRD”).

**1. Effective Date**

This Approval shall become effective on the date the EPA Region 2 Director of LCRD receives written notification from Russo 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 this Approval, written notification from Russo 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 19.95-acre Site was first utilized in the late 1800s and early 1900s by a clay brick manufacturer. Starting in the 1920s, the Site was developed and used for the production of chemicals by a number of companies, most recently by the Henkel Corporation (“Henkel”). By-products of these operations were primarily calcium sulfate, zinc oxides, and elemental sulfur, which were stored in the onsite lagoons and ponds until the mid-1970s. Site soils contained elevated levels of volatiles, metals, base neutrals, and PCBs.

The sale of the Site to Henkel in 1987 triggered the requirements of the New Jersey Environmental Cleanup Responsibility Act, now the Industrial Site Recovery Act, N.J.A.C. 7:26B. Pursuant to these requirements, Henkel conducted site investigation and remediation activities from the late 1980s until 1998 under the oversight of the New Jersey Department of Environmental Protection (NJDEP). Henkel ceased operating at the Site in 1990 and demolished the facility buildings, tanks and surface structures between 1990 and 1992.

Pursuant to the NJDEP remediation activities conducted, the Site was divided into twelve areas: Area I (Employee Parking Lot & Offices); Area II (Zinc and Sulfur Area); Area III (Plant Production Pond); Area IV (South Basin); Area V (Equalization and Alternate Basins); Area VI (North Basin); Area VII (Facilities and Storage Buildings); Area VIII (Tank Farm 3); Area IX (Oil UST Area); Area X (Pallet Area); Area XI (Main Plant Production Area); and Area XII (Storage Building). The soil remediation implemented for Areas II through XII included excavation, stabilization of soils and/or installation of a multilayer or asphalt cap. The stabilization of soils was completed in two phases: Areas IV, V, VI, VII, VIII in 1993 where PCB concentrations were up to 55 milligrams per kilogram (mg/kg; also referred to as parts per million (ppm)); and Area III in 1997 where PCB concentrations were up to 820 ppm. In addition, a slurry wall was constructed along the downgradient edge of the Site, keyed into the native silty clay. An interlocking sheet pile wall was installed around the eastern, northern, and southern perimeters of the stabilized former plant production pond (which now serves as a stormwater detention pond with a geomembrane liner isolating the underlying stabilized sediments from the stormwater collected in the pond) and on the northern and eastern boundaries of the Zinc and Sulfur Area (Area II). The investigations performed in 2012 and 2014 for the former employee parking lot (part of Area I) showed that the lot was contaminated with PCBs. This contamination was addressed pursuant to a November 20, 2017 Self-Implementing Plan approved by EPA Region 2 on December 18, 2017 (“2017 SIP”). A deed notice was filed on November 26, 2018, serving as an institutional control for the Site and limiting use of the Site based on the levels of PCBs in soil. In addition, the NJDEP issued a Soil Remedial Action Permit (Soil RAP) on March 11, 2022.

In 1990, prior to remediation, groundwater at the Site was contaminated with PCBs as high as 13,000 micrograms per liter ( $\mu\text{g/L}$ ) with a mean concentration of 628  $\mu\text{g/L}$ . A groundwater pump and treatment system was brought online in 1994 and has been in operation since. The system consists of: five collection trenches (only one currently active) connected to sumps outfitted with recovery pumps; a system of pipes connected to the sumps carrying recovered groundwater for treatment; a bioreactor to treat organic compounds including PCBs; an electrochemical precipitator to remove metals; and a carbon polishing unit. Treated water is discharged to the Bergen County Utilities Authority (BCUA) pursuant to a Significant Industrial User Permit issued by NJDEP. The groundwater pump and treatment

system along with the slurry wall and sheet pile wall provides hydraulic control of onsite groundwater. The NJDEP issued a Groundwater Remedial Action Permit (GW RAP) for Site groundwater on April 28, 2022, that updated the Classification Exception Area (CEA), a designation first established at the Site in 2003 by NJDEP which defines an area that does not meet groundwater standards and restricts groundwater usage, and requiring monitoring and long-term maintenance. The maximum concentration of PCBs detected in groundwater from 2016-2021 was 14.9 µg/L, with a mean of 0.554 µg/L. The groundwater data indicates that PCBs are sporadically detected at concentrations slightly above the TSCA decontamination standard for water containing PCBs (less than or equal to 0.5 µg/L for unrestricted use) per 40 C.F.R. § 761.79(b)(1)(iii), mostly to the northeast of the Site near the collection trenches and the slurry wall.

Current site conditions are displayed in Figure 1 which was provided in the Application. The Application was submitted to EPA for review and approval of the activities proposed as part of the Site remediation and redevelopment plans. The proposed redevelopment will include a warehouse/office building with slabs, associated parking lot with asphalt pavement, concrete pads, sidewalks, and landscaped areas as engineering controls. As part of the planned redevelopment, the existing cap will be disturbed, and onsite soil and some stabilized material with elevated PCB concentrations will be relocated as part of site regrading. The overall elevation of the property will be lowered in the northeast areas and raised elsewhere on the property from its current elevation. Some of the stabilized material beneath the cap in the northeastern corner of the Site will be disturbed. In addition, clean fill will be imported for regrading and/or raising the Site elevation. The building slabs, asphalt pavement, concrete pads and sidewalks and landscaped areas will be installed as new caps as part of the redevelopment.

A new stormwater detention basin is planned to be built in the eastern portion of the Zinc and Sulfur Area (Area II). In order to connect the new basin to the new stormwater collection system, the slurry wall will need to be penetrated. The penetrated section will be sealed afterward. In addition, a gap to be formed in the slurry wall after removal of the concrete spillway will be sealed with the same type of mixture used to construct the wall.

The building housing the current groundwater treatment system which is located within the planned footprint of the new warehouse building will be demolished. The proposed location of the new groundwater treatment system is in the northern corner of the Site.

The 2018 Deed Notice will be terminated and a new one will be recorded to reflect the new site conditions after redevelopment, in an effort to ensure that the engineering controls remain protective of public health and safety and of the environment and prevent unauthorized access to the restricted area. The new deed notice will be included in a Remedial Action Report to be submitted to EPA and will also be submitted to NJDEP in a RAP modification application for soils.

### **3. Work to be Performed**

All work to be performed must be conducted in accordance with the Application, which is herein incorporated by reference, as well as the terms and conditions specified in this Approval and the PCB regulations under TSCA. All work required by this Approval must be conducted in accordance with the PCB regulations, 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 pursuant to 40 C.F.R. § 761.79.

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

- 1) As part of the Site redevelopment, the Site will be disturbed and regraded in phases. The existing cap will be disturbed and soil and some stabilized material with elevated PCB concentrations will be relocated as part of Site regrading. After completion of regrading, interim caps will be placed;
- 2) The stormwater detention pond (former plant production pond) will be dewatered. After dewatering, it will be filled with soils and stabilized material generated from Site regrading activities and building foundation excavations. Clean fill will be imported as necessary to achieve final grades. The stabilized soils below the pond will not be disturbed;
- 3) The new caps will be installed as engineering controls for the Site and will be installed as part of the Site redevelopment, in accordance with 40 C.F.R. § 761.61(a)(7), as described on pdf-pages 42 to 45, 232 and 235 of the Application, consisting of building slab, paved asphalt for roadways and parking areas, concrete for truck pads and sidewalks, 20-mil thick geomembrane liner (20-mil geomembrane) for the new detention basin, and clean soil cap overlying a 20-mil geomembrane for landscaped areas;
- 4) Onsite collection sumps will be cleaned as part of the Site development and will be maintained and cleaned periodically with removal of sediment that accumulates in the collection sumps; removed sediment will be tested and disposed of appropriately;
- 5) The new stormwater detention basin will be connected to the new stormwater collection system causing penetration of the slurry wall. The penetrated section of the slurry wall will be repaired and sealed. In addition, a gap to be formed in the slurry wall after removal of the concrete spillway will be sealed with the same type of mixture used to construct the wall;
- 6) The groundwater treatment system central controls will be relocated and housed in a new slab-on grade building. The existing treatment plant and ancillary buildings will be demolished;
- 7) A groundwater remediation and monitoring program will be implemented in accordance with Section 4 of this Approval;
- 8) The 2018 Deed Notice for the Site will be terminated and replaced with a new deed notice at the conclusion of site redevelopment activities to reflect the allowable land uses of the Site. The new deed notice will be included in the Remedial Action Report required in Section 6 of this Approval;
- 9) Long-term maintenance and monitoring of the new caps will be implemented in accordance with Section 7 of this Approval;

- 10) Russo will perform any other remedial actions, if deemed necessary, to prevent migration or unacceptable exposures of PCB contamination at the Site. In the event that new PCB data reveals higher concentrations of PCBs than had been previously identified, Russo shall immediately notify EPA Region 2 of the new Site conditions to discuss next steps. Additional activities including excavation may be required.

To the extent that Russo hires any contractor, sub-contractor, independent agent, or other third party to perform said work, it 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 the Application and this Approval.

Nothing herein shall preclude additional work measures from being implemented, provided that any such measure shall not be inconsistent with nor violate any express provision in this Approval or any PCB regulatory provision of 40 C.F.R. Part 761. EPA may require additional investigation or mitigation measures should it find that the implemented plan is not protective and that PCB contamination at the Site poses an unreasonable risk of injury to health and/or the environment.

#### **4. Groundwater Remediation and Monitoring Plan**

As described in Section 2 of this Approval, groundwater underneath the Site is currently impacted by PCBs at concentrations above the TSCA decontamination standard. A groundwater remediation and monitoring plan in order to assess the current levels of PCBs in groundwater, to evaluate a trend of PCB levels in groundwater, and to implement remedial measures, if necessary, will be submitted to EPA for review and approval. Upon EPA's approval, the plan will be implemented.

#### **5. Reporting Requirements**

The following reports shall be submitted to EPA pursuant to this approval:

- 1) **Work Schedule.** Within thirty (30) calendar days after this Approval becomes effective, Russo shall submit to EPA Region 2 a reasonably detailed schedule for performance of the remedial work and sampling identified in Section 3 [1-7] and the date for commencement of the long-term monitoring to be performed as per Section 3[10].
- 2) **Work Status Report.** After the effective date of this Approval, Russo 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 Section 3 (Work to be Performed) of this Approval and any other remedial actions, if deemed necessary.
- 3) **Groundwater Report.** Within sixty (60) calendar days of the effective date of this Approval, Russo will submit a groundwater remediation and monitoring plan to EPA for review and approval. Groundwater reports will be submitted according to the schedule in the approved plan.
- 4) **Remedial Action Report.** Within sixty (60) calendar days of completing the work specified in Section 3[1-8] of this Approval, Russo shall submit to EPA Region 2 for review and approval a

Remedial Action Report (“RAR”) in accordance with Section 6 below.

- 5) **Deed Notice.** Within seven (7) calendar days of recording the new deed notice identified in Section 3[8] above and further described in Section 10 below, Russo shall submit proof of recording to EPA Region 2 in accordance with Section 10.
- 6) **Annual Report.** Beginning the first July following the completion of the work identified in Section 3 [1-8] and the commencement of the long-term maintenance and monitoring identified in Section 3[9] and continuing every July thereafter, Russo 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 long-term maintenance and monitoring and any sampling performed pursuant to Section 3.

**6. Remedial Action Report.** Within sixty (60) calendar days of completing the work specified in Section 3 [1 - 8] of this Approval, Russo 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, including the Site Cap as required by Section 3 [3], after the remedial work has been completed; and
- 5) a certification signed by a professional engineer licensed by the State of New Jersey, on behalf of Russo, verifying that all engineering components directed by this Approval have been completed in accordance with this Approval.

## **7. Inspection, Monitoring, Maintenance, and Related Obligations**

At least sixty (60) calendar days prior to the anticipated date for completion of the work specified in Section 3 [1-7], Russo shall submit a draft Maintenance and Monitoring Plan (“MMP”) for site groundwater and soils to EPA Region 2 for review and approval. The draft MMP shall include the following components:

- 1) a detailed schedule for the inspections/maintenance of the Cap, operation and maintenance of the site groundwater treatment system, and maintenance of the site basins, including inspection and maintenance templates; and
- 2) preventive and corrective maintenance procedures.

Within thirty (30) calendar days of EPA Region 2's approval of the draft MMP, Russo shall commence implementation of said plan. To the extent that Russo hires any contractor, sub-contractor, independent agent or other third party to perform said work, Russo 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.

As part of the final approved MMP, annual inspections and reporting must be performed for the Site caps, collection sumps, and groundwater treatment system. The proposed Site caps shall be maintained to prevent access to or release of contaminated material. Russo shall perform at least annual visual inspections of the Site caps and shall maintain them. Russo 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 caps to EPA Region 2. Such reports shall be included in the Annual Report (see Section 5 above).

Any breach in the Site caps (i.e., significant cracking or deterioration of asphalt surfaces, soil erosion in the landscaped areas) observed during routine inspections will be repaired. Russo shall notify EPA Region 2 in writing within seven (7) calendar days of discovery. The notification shall include the anticipated corrective measures and a schedule for implementation.

General maintenance tasks will include patching any cracked areas in the impervious surfaces and ensuring that a vegetative cover is maintained in the landscaped areas. Access to the restricted area will be maintained in accordance with the controls and applicable laws.

The collection sumps will be maintained on a long-term basis to periodically remove sediment associated with the high silt and solids content of the water that accumulates in the very bottom of the collection sumps over time.

Any proposed revisions or modifications to the Work as described in Section 3 [1-8] of this Approval shall be submitted to EPA for review and approval prior to implementation.

## **8. Financial Assurance**

Russo shall demonstrate that it has in place financial assurance sufficient for the costs of operation and maintenance as will be described in the Soil and GW RAPS. Russo 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 by Russo 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, with EPA approval, be made in the instrument(s) Russo elects under 40 C.F.R. § 264.151 to effect financial assurance; however, EPA Region 2 will review the change(s) and may require Russo to revise the adjusted financial assurance mechanism(s) prior to approving it.

Unless otherwise directed, the financial assurance mechanism shall designate EPA as a beneficiary of funds. In the event Russo fails to perform Approval obligations, is seriously or repeatedly deficient in its performance, and fails to correct the situation after notice from EPA, Russo's financial assurance

mechanism will be available to effect proper performance.

No later than March 1st of each year, Russo shall submit an annual certification to EPA Region 2 that the selected financial assurance mechanism(s) covered the prior calendar year and that Russo 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 until otherwise notified, Russo shall demonstrate to EPA Region 2 that the financial assurance mechanism(s) is/are sufficient to cover any reasonably contemplated changed costs (with any adjustments for inflation), reflecting costs for any work that may already have been performed and costs of a future cleanup. If Russo wishes to change the financial assurance mechanism(s), Russo 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 Russo to revise the adjusted financial assurance mechanism(s) prior to approving it.

In the event that Russo sells any portion of the Site or the Site in its entirety, these financial assurance obligations shall be transferred from Russo to the buyer, provided that the terms and conditions specified in Section 11 of this Approval are met and the buyer has demonstrated that it has a financial assurance mechanism acceptable to EPA in place. If Russo leases any portion of the Site or the Site in its entirety, these financial assurance obligations shall remain the responsibility of Russo. If Russo sells any portion of the Site or the Site in its entirety but satisfactory demonstration of financial assurance is not provided by such buyer to EPA, Russo shall remain liable for financial assurance as if such sale arrangement had not taken place.

## **9. Records**

As long as PCB remediation waste above 1 ppm remains on the Site, Russo 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 caps;
- 2) all records and information related to characterization, analysis, 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 the Site caps.

## **10. Deed Notice**

Within sixty (60) calendar days of the completion of the work specified in Sections 3 [1-6] of this Approval, Russo will:

- 1) Prepare and record a deed notice with the County Clerk's Office, Bergen County, New Jersey in accordance with 40 C.F.R. § 761.61(a)(8) and applicable New Jersey 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 under this Approval; the restrictions on use included in Section 12 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.

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

## **11. Sale or Lease of the Site**

Russo shall not sell any portion of the Site (or the Site in its entirety) unless Russo notifies EPA Region 2, in writing, no less than sixty (60) calendar days prior to such sale. Russo shall not lease any portion of the Site (or the Site in its entirety) that has potential to impact the Site Cap unless Russo notifies EPA Region 2, in writing, no less than sixty (60) calendar days prior to the commencement of such lease. For any leases of portions of the Site that do not have the potential to impact the Site Cap, Russo shall notify EPA Region 2, in writing, within forty-five (45) calendar days following the date of execution of any such lease. These notifications shall include the name, address and telephone number of the proposed (or actual) new owner(s) or lessee(s). In the event that Russo sells or leases any portion of the Site (or the Site in its entirety), Russo 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 revised Approval.

Any sale or lease agreement must provide that Russo 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 of the above 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 modified Approval within forty-five (45) calendar days of the date of the reissued or modified Approval. Where EPA Region 2 has withdrawn the reissued or modified Approval, this Approval, as originally issued to Russo will remain in effect. In such case, Russo shall provide EPA Region 2, in writing, documentation that Russo 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, Russo will transfer to the new owner 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, Russo will then be released from any further obligations as mandated by this Approval except as set out in Section 8 (Financial Assurance), above.

## **12. Restrictions on Use**

As long as PCB remediation waste above 1 mg/kg is present on the Site, Russo or any successor in interest may not use any area of the Site for purposes other than the non-residential use as set forth in the Application, unless otherwise approved in writing in advance by EPA Region 2

## **13. 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. Russo 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 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 Russo 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. Russo shall prepare and record any amendment to the deed notice (including any modification to this Approval), resulting from any modification(s), within sixty (60) days of such changes.

## **14. EPA Region 2 Authority for Entry and Inspection**

By accepting the terms of this Approval, Russo consents to EPA Region 2's authorized representatives entering the Site at reasonable times, upon notice to Russo 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. Russo 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 interference with any of the above actions may result in the suspension and/or revocation of this Approval.

## **15. 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), Russo 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) Russo 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 Russo’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,
- 3) disclosure of the information would cause substantial harm to Russo’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 information is claimed to be CBI by Russo, it must be clearly identified as such on the documents submitted, and the claims must be substantiated at the time of submission.

## **16. Addresses for Correspondence**

- 1) EPA Addresses.

- (a) All non-CBI correspondence to be submitted to EPA Region 2 shall be sent via E-mail to:

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

park.andy@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.

Chief, Land and Redevelopment Programs Branch  
Land and Redevelopment Programs Branch  
United States Environmental Protection Agency, Region 2  
290 Broadway, 25<sup>th</sup> Floor  
New York, New York 10007-1866

2) All correspondence to Russo shall be submitted to the following representatives:

Mr. Edward Russo  
Russo Meadowlands Park, LLC  
570 Commerce Boulevard  
Carlstadt, New Jersey 07072

Christopher H. Minks, Esq.  
Russo Development  
570 Commerce Boulevard  
Carlstadt, New Jersey 07072

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

## 17. 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 do not present an unreasonable risk of injury 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 the determination is 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 Russo'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 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 Russo, and ESI acting on behalf of Russo, 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 Russo 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.

Any failure by Russo 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.

Russo's acceptance of this Approval constitutes its 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.

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

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Date

Figure 1

