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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OCT 21 2011

Mr. Erik Bankey
Project Manager, Capital Programs and Environmental Affairs
Logan Office Center
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, Massachusetts 02128

Re: PCB Risk-Based Disposal Approval under § 761.61(c)
Former Schiavone Property- Moran Terminal
Charlestown, Massachusetts
RTN: 3-0694

Dear Mr. Bankey:

This is written in response to the Massachusetts Port Authority (Massport) Notification [1] for approval of a proposed PCB risk-based disposal for its property located at 100 Terminal Street, Charlestown, Massachusetts. A 12-acre portion of the property known as the Former Schiavone Property (hereinafter "the Site"), was previously closed under the Massachusetts Contingency Plan (MCP) with a Response Action Outcome (RAO) and an Activity and Use Limitation (AUL) in 1997.

On October 20, 2009, EPA issued a Risk-Based Disposal Approval to address PCB-contaminated soils located in the construction area for the Wind Technology Testing Center (WTTC). The area of the property which was impacted by the WTTC construction activities (approximately 1.1 acres) is located within the 12-acre area previously closed under the MCP.

Massport has requested approval under 40 CFR § 761.61(c) to leave PCB-contaminated soil at greater than (>) 1 part per million (ppm) on the Site beneath the existing concrete cap. Massport will maintain the existing concrete cap but will update the existing Activity and Use Limitation (AUL), which will prohibit use of the Site for residences, day care or agricultural purposes; will include provisions to perform future utility work and excavation; and, will mandate maintenance of the concrete cap.

[1] Information was submitted on behalf of Massport by GEI Consultants, Inc. to satisfy the notification requirement under 40 CFR § 761.61(c). Information was provided dated August 2011 (Risk-Based Cleanup Plan) and October 19, 2011 (e-mails to clarify site boundaries and size). These submittals will be referred to as the "Notification".

Based on EPA's review of the information provided by Massport, EPA finds that disposal of PCB-contaminated soil in-place beneath the existing concrete cap will not create an unreasonable risk to public health or the environment. EPA applies this reasonable risk standard in accordance with the PCB regulations at 40 CFR § 761.61(c), and the Toxic Substances Control Act, at 15 USC § 2605(e).

Massport may proceed with its project in accordance with 40 CFR § 761.61(c); its Notification; and, this Approval, subject to the conditions of Attachment 1. Please note that this Approval only addresses PCB-contaminated soils located under the existing concrete cap and within the Site Boundary as identified in Figure 2a of the October 19, 2011 electronic transmittal. In the event that PCBs exceeding the allowable concentrations for unrestricted use are present in other locations on the property, a separate plan to address this contamination will be required in accordance with 40 CFR § 761.61.

Questions and correspondence regarding this Approval should be directed to:

Kimberly N. Tisa, PCB Coordinator (OSRR07-2)
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
Telephone: (617) 918-1527
Facsimile: (617) 918-0527

This Approval may be revoked, suspended and/or modified as described in Attachment 1 if the EPA determines that implementation of this Approval may present an unreasonable risk of injury to health or the environment. Nothing in this Approval is intended or is to be construed to prejudice any right or remedy concerning PCBs or other federally-regulated contaminants at the Site otherwise available to the EPA under Section 6 of TSCA, 15 U.S.C. 2605, 40 CFR Part 761, or other provisions of federal law.

EPA shall not consider this project complete until it has received all submittals required under this Approval. Please be aware that upon EPA receipt and review of the submittals, EPA may request any additional information necessary to establish that the work has been completed in accordance with 40 CFR Part 761, the Notification, and this Approval.

Sincerely,

Nancy Barmakian for

James T. Owens III, Director
Office of Site Remediation & Restoration

cc I. Gladstone, GEI
Mass DEP – NERO
File

Attachment 1

ATTACHMENT 1:

PCB RISK-BASED DISPOSAL APPROVAL CONDITIONS FORMER SCHIAVONE PROPERTY – MORAN TERMINAL CHARLESTOWN, MASSACHUSETTS

GENERAL CONDITIONS

1. This Approval is granted under the authority of Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2605(e), and the PCB regulations at 40 CFR Part 761, and applies solely to *PCB remediation waste* identified in the Notification.

2. The Massachusetts Port Authority (Massport) shall conduct on-site activities in accordance with the conditions of this Approval and with the Notification.

3. In the event that the activities described in the Notification differ from the conditions specified in this Approval, the conditions of this Approval shall govern.

4. The terms and abbreviations used herein shall have the meanings as defined in 40 CFR § 761.3 unless otherwise defined within this Approval.

5. Massport must comply with all applicable federal, state and local regulations in the storage, handling, and disposal of all PCB wastes, including PCBs, PCB Items and decontamination wastes generated under this Approval. In the event of a new spill of PCBs during these actions, Massport shall contact EPA within 24 hours for direction on sampling and cleanup requirements.

6. Massport is responsible for the actions of all officers, employees, agents, contractors, subcontractors, and others who are involved in activities conducted under this Approval. If at any time Massport has or receives information indicating that Massport or any other person has failed, or may have failed, to comply with any provision of this Approval, it must report the information to EPA in writing within 24 hours of having or receiving the information.

7. This Approval does not: 1) waive or compromise EPA's enforcement and regulatory authority; 2) release Massport from compliance with any applicable requirements of federal, state or local law; or 3) release Massport from liability for, or otherwise resolve any violations of federal, state or local law.

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[2] Information was submitted on behalf of Massport by GEI Consultants, Inc. to satisfy the notification requirement under 40 CFR § 761.61(c). Information was provided dated August 2011 (Risk-Based Cleanup Plan) and October 19, 2011 (emails to clarify site boundaries and size). These submittals will be referred to as the "Notification".

NOTIFICATION AND CERTIFICATION CONDITIONS

8. This Approval may be revoked if the EPA does not receive written notification from Massport of its acceptance of the conditions of this Approval within 10 business days of receipt.

INSPECTION, MODIFICATION AND REVOCATION CONDITIONS

9. Massport shall allow any authorized representative of the Administrator of the EPA to inspect the Site and to inspect records and take samples as may be necessary to determine compliance with the PCB regulations and this Approval. Any refusal by Massport to allow such an inspection (as authorized by Section 11 of TSCA) shall be grounds for revocation of this Approval.

10. Any modification(s) in the plan, specifications, or information submitted by Massport, contained in the Notification, and forming the basis upon which this Approval has been issued, must receive prior written approval from the EPA. Massport, as applicable, shall inform the EPA of any modification, in writing, at least 10 days prior to such change. No action may be taken to implement any such modification unless the EPA has approved of the modification, in writing. The EPA may request additional information in order to determine whether to approve the modification.

11. If such modification involves a change in the use of the Site which results in exposures not considered in the Notification, the EPA may revoke, suspend, and/or modify this Approval if it finds that this risk-based cleanup and disposal action may pose an unreasonable risk of injury to health or the environment due to the change in use. EPA may take similar action if the EPA does not receive requested information from Massport, as applicable, needed to make a determination regarding potential risk.

12. Any departure from the conditions of this Approval without prior, written authorization from the EPA may result in the revocation, suspension and/or modification of the Approval, in addition to any other legal or equitable relief or remedy the EPA may choose to pursue.

13. Any misrepresentation or omission of any material fact in the Notification or in any records or reports may result in the EPA's revocation, suspension and/or modification of the Approval, in addition to any other legal or equitable relief or remedy the EPA may choose to pursue.

14. Approval for these activities may be revoked, modified or otherwise altered at any time EPA finds a violation of the conditions of this Approval or of 40 CFR Part 761 or other applicable rules and regulations; if EPA finds that these activities present an unreasonable risk to public health or the environment; or if EPA finds that changes are necessary to comply with new rules, standards, or guidance for such approvals. Massport may apply for such a modification in the event new rules, standards, or guidance comes into effect.

DEED RESTRICTION AND USE CONDITIONS

15. Massport shall submit for EPA review and approval, a draft deed restriction (or updated activity and use limitation (AUL)) for the Site. Within forty-five (45) days of receipt, EPA shall, in writing, review and approve the draft deed restriction, approve with minimal conditions, or request specific changes. If EPA requests specific changes, Massport shall submit a revised draft deed restriction for EPA review and approval within thirty (30) days of EPA's request. The deed restriction shall include: a description of the extent and levels of contamination at the Site; a description of the actions taken at the Site; a description of the use restrictions for the Site; and the long-term monitoring and maintenance requirements on the Site. The long-term monitoring and maintenance shall include: a description of the activities that will be conducted, including inspection criteria, frequency, and routine maintenance activities; sampling protocols, sampling frequency, and analytical criteria; and EPA reporting requirements.

16. Within thirty (30) days of receipt of EPA's approval of the draft deed restriction (or updated AUL), the deed restriction shall be signed and recorded. A copy of this Approval shall be attached to the deed restriction, but the specific terms of the deed restriction (and not the Approval) shall govern any issue of interpretation of the deed restriction.

17. Massport and any subsequent owner, lessee, or transferee seeking the benefit of this Approval, shall notify the EPA of the sale, lease or transfer of any portion of the Site, in writing, no later than thirty (30) days prior to any sale, lease or transfer. This notification shall include the name, address, and telephone number of the new owner(s), lessee(s) or transferee(s). In the event that Massport sells, leases or transfers any portion of the Site, Massport shall continue to be bound by all the terms and conditions of this Approval, except as provided below. EPA may allocate some or all of this Approval's responsibilities to a new owner, lessee or transferee through the issuance of a modification of this Approval ("New Owner Modification") as follows:

    a. Massport and the new owner(s), lessee(s) or transferee(s) must request, in writing, that the EPA issue a New Owner Modification to the new owner(s), lessee(s) or transferee(s) which transfers some or all responsibilities to comply with the terms and conditions of this Approval to that entity or entities;

b. The EPA reviews the request, and determines whether to issue a New Owner Modification;

c. EPA provides a draft New Owner Modification for comment by the requesting party(ies) and, following its receipt and review of any written comments, if acceptable, EPA shall provide the final New Owner Modification to the party(ies); and,

d. The new owner(s), lessee or transfer entity provides written notification to the EPA of its acceptance of and intention to comply with the terms and conditions of the final New Owner Modification. The New Owner Modification may be withdrawn if the EPA does not receive written notification from the new owner(s), lessee(s) or transferee(s) of its acceptance of, and intention to comply with, the terms and conditions of the New Owner Modification within thirty (30) days of the date of the New Owner Modification. Under such circumstances, all terms and conditions of this Approval will continue to be binding on Massport.

18. In the event that the sale, lease or transfer of the Site will involve or result in a change in the use of the Site, EPA may revoke, suspend, and/or modify this Approval or the New Owner Modification if it finds, due to the change in use, that this risk-based disposal action will not be protective of health or the environment. The new owner shall record any amendment to the deed restriction, resulting from any approved modification(s), within sixty (60) days of such change(s). To be effective in amending the original deed restriction as it may apply to Massport, the New Owner must secure the agreement and consent of Massport to amend the deed restriction, and obtain any necessary subordinations of prior recorded interests that may be affected by the terms of the amended deed restriction.

19. In any sale, lease or transfer of the Site, Massport shall retain sufficient access rights to enable it to continue to meet the obligations under this Approval for long-term maintenance and monitoring of the Site, except as provided otherwise in a re-issued approval.

RECORDKEEPING AND REPORTING CONDITIONS

20. Massport shall prepare and maintain all records and documents required by 40 CFR Part 761, including but not limited to the records required under Subparts J and K, in one centralized location. All records and documents shall be made available for inspection by authorized representatives of the EPA, until such time as EPA approves in writing a request for an alternative disposition of such records.

21. Massport shall submit a Final Completion Report (Report) to the EPA within 60 days of completion of the activities described under this Approval. At a minimum, this Report shall include: a short narrative of the project activities; characterization and confirmation sampling analytical results; copies of the accompanying analytical chains of custody; field and laboratory quality control/quality assurance checks; an estimate of the quantity of PCBs removed and disposed of off-site, if applicable; copies of manifests, as applicable; and copies of certificates of disposal or similar certifications issued by the disposer, as applicable. Massport shall also submit any additional report required by the Massachusetts Department of Environmental Protection and the Massachusetts Contingency Plan.

22. Massport shall submit the results of the long-term maintenance and monitoring activities to EPA as specified in the deed restriction to be approved by EPA pursuant to Condition 15.

23. Required submittals shall be mailed to:

    Kimberly N. Tisa, PCB Coordinator
    United States Environmental Protection Agency
    5 Post Office Square, Suite 100 – (OSRR07-2)
    Boston, Massachusetts 02109-3912
    Telephone: (617) 918-1527
    Facsimile: (617) 918-0527

24. No record, report or communication required under this Approval shall qualify as a self-audit or voluntary disclosure under EPA audit, self disclosure or penalty policies.

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END OF ATTACHMENT 1