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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OCT 24 2011

Fall River Redevelopment Authority
Attn: Kenneth Fiola, Jr., Executive Director
One Government Center
Fall River, Massachusetts 02722

Re: PCB Risk-Based Cleanup and Disposal Approval under 40 CFR § 761.61(c)
City of Fall River City Pier
Fall River, Massachusetts
MassDEP RTN: 4-17012

Dear Mr. Fiola:

This is in response to the Notification [1] by the Fall River Redevelopment Authority (FRRA) for approval of a PCB risk-based cleanup and disposal plan under § 761.61(c) to address PCB-contaminated soils at the property known as City Pier and located on Davol Street, Fall River, Massachusetts (the Site). The Site contains PCB-contaminated soils that exceed the allowable PCB level for unrestricted use under the federal PCB regulations at 40 CFR § 761.61(a).

FRRA's proposed plan includes the following major activities:

- Excavate and dispose of soil with PCB concentrations greater than (>) 100 parts per million (ppm) at a TSCA-permitted or RCRA hazardous waste landfill;
- Excavate and consolidate on-site PCB-contaminated soils with PCB concentrations > 1 ppm but less than or equal to (≤ 100 ppm. Soils will be placed beneath an engineered barrier (i.e., cap) over an approximately 83,000 square foot area in the central portion of the Site. Any excess soils that will not fit beneath the cap will be disposed of off-site; and,

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1 Information was submitted by BETA Group, Inc. on behalf of FRRA to support a risk-based cleanup and disposal approach for PCB remediation waste under 40 CFR § 761.61(c). Information was provided dated July 15, 2011 (Risk-Based Cleanup Plan); September 1, 2011 (Response to EPA Comments via e-mail on September 15, 2011); October 5, 2011 (Historical Data and Response to EPA Comments via e-mail); and, October 12, 2011 (duplicate report results). These submissions will be referred to as the "Notification."

- Place an Activity and Use Limitation (AUL) on the capped portion of the Site to require maintenance of the engineered control and to detail necessary actions if future excavation activities are planned within the cap area.

The information provided meets the notification requirements under § 761.61(c) and § 761.61(a)(3). Given the sampling that has been conducted to-date and the additional sampling that will be conducted during soil excavation, it appears that the PCB-contaminated soils will be adequately defined for purposes of either off-site disposal or on-site disposal. For the consolidation area, FRRA is proposing to meet a PCB cleanup standard of 100 ppm with a compliant cap which EPA has determined to be appropriate for a *low occupancy area* cleanup under § 761.61(a). The proposed consolidation of the > 1 ppm but ≤100 ppm PCB-contaminated soils beneath a compliant cap should reduce the overall PCB risk at the Site and also limit the size of the required cap.

In areas located outside the consolidation/cap area, PCB-contaminated soils will be removed to achieve a PCB cleanup standard of less than (<) 1 ppm in the top 1-foot of soil at a minimum. In deeper soils where PCB concentrations have been identified at > 1 ppm, these soils also will be removed. In addition, clean fill and/or other surface covers such as pavement, will be placed in some areas.

EPA finds that the proposed plan will not create an unreasonable risk of injury to public health or the environment based on the proposed reuse of the Site as a marina and as a boat launch to the Taunton River. FRRA 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. EPA may revoke, suspend, and/or modify this Approval upon finding that this risk-based cleanup and disposal action may pose an unreasonable risk of injury to health or the environment due to a change in Site use.

Please be aware that this Risk-Based Approval is based on the use of the Site as a marina and for a boat launch to provide river access. These uses would not require disturbance of deeper subsurface soils (i.e. greater than 1-foot below ground surface) in the areas located outside the consolidation/cap area. Given the past filling and historic Site uses, there is potential that PCBs at > 1 ppm may be present in deeper soils outside the consolidation/cap area, which have not been characterized. In the event that future Site activities differ from those currently planned, and/or that result in disturbance of these deeper soils, sampling should be conducted to determine if any additional cleanup and/or additional measures are necessary to support the proposed activities, which could include a change in Site use (see Attachment 1, Condition 19). This requirement may not be necessary if the deeper soils outside the consolidation/cap area are more fully characterized and, if necessary appropriately remediated, during the excavation and consolidation of the PCB-contaminated soils.

This Approval does not release FRRA from any applicable requirements of federal, state or local law, including the requirements related to cleanup and disposal of PCBs or other contaminants under the Massachusetts Department of Environmental Protection (MassDEP) regulations.

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.

Questions and correspondence regarding this Approval should be directed to:

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

EPA shall consider this project complete only when it has received documents evidencing construction of the cap and recording of the deed restriction (i.e., AUL). Should you have any questions on this matter, please contact Kimberly Tisa at (617) 918-1527.

Sincerely,

FOR JTO

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

Attachment 1

cc: J. McLoughlin, BETA
G.Martin, MassDEP
File

ATTACHMENT 1:

PCB RISK-BASED CLEANUP AND DISPOSAL APPROVAL CONDITIONS
CITY OF FALL RIVER CITY PIER
DAVOL STREET
FALL RIVER, 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] and located at the Site.

   a. In the event that the Fall River Redevelopment Authority (FRRA) identifies other PCB-contaminated wastes subject to cleanup and disposal under the PCB regulations, FRRA will be required to notify EPA and to clean up the PCB-contaminated wastes in accordance with 40 CFR Part 761.

   b. FRRA may submit a separate plan to address the PCB contamination or may modify the Notification to incorporate cleanup of the PCBs under this Approval in accordance with Condition 19.

2. FRRA 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. FRRA 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 during response actions, FRRA shall contact EPA within twenty-four (24) hours for direction on sampling and cleanup requirements.

[2] Information was submitted by BETA Group, Inc. on behalf of FRRA to support a risk-based cleanup and disposal approach for PCB remediation waste under 40 CFR § 761.61(c). Information was provided dated July 15, 2011 (Risk-Based Cleanup Plan); September 1, 2011 (Response to EPA Comments via e-mail on September 15, 2011); and, October 5, 2011 (Historical Data and Response to EPA Comments via e-mail); and, October 12, 2011 (duplicate report results). These submissions will be referred to as the "Notification."

6. FRRA 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 FRRA has or receives information indicating that FRRA 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 twenty-four (24) hours of having or receiving the information.

7. This Approval does not constitute a determination by EPA that the transporters or disposal facilities selected by FRRA are authorized to conduct the activities set forth in the Notification. FRRA is responsible for ensuring that its selected transporters and disposal facilities are authorized to conduct these activities in accordance with all applicable federal, state and local statutes and regulations.

NOTIFICATION AND CERTIFICATION CONDITIONS

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

9. FRRA shall notify EPA in writing of the scheduled date of commencement of on-site activities at least three (3) business days prior to conducting any work under this Approval.

10. Prior to initiating onsite work under this Approval, FRRA shall submit the following information for EPA review and/or approval:

    a. A certification signed by its selected contractor, stating that the contractor(s) has read and understands the Notification, and agrees to abide by the conditions specified in this Approval;

    b. A contractor work plan prepared and submitted by the selected contractor, detailing the procedures that will be employed for cleanup and disposal of PCB-contaminated soils. This work plan should also include information on dust monitoring; waste storage, handling, and disposal for each waste stream type; and, for equipment decontamination; and,

    c. A certification signed by the selected analytical laboratory, stating that the laboratory has read and understands the analytical and quality assurance requirements specified in the Notification and in this Approval.

REMEDIAL AND DISPOSAL CONDITIONS

11. The cleanup level for *PCB remediation waste* (i.e. soil) at the Site shall be less than or equal to (≤) 100 parts per million for consolidation beneath a compliant cap in accordance with § 761.61(a)(7).

    a. *Bulk PCB remediation waste* verification samples (i.e. soil) shall be collected on a bulk basis (e.g. mg/Kg) and in accordance with frequency detailed in the Notification. Samples shall be collected from both excavation bottoms and sidewalls.

    b. Chemical extraction for PCBs shall be conducted using Methods 3500B/3540C of SW-846 for solid matrices and Method 3500B/3510C of SW-846 for aqueous matrices; and, chemical analysis for PCBs shall be conducted using Method 8082 of SW-846, unless another extraction or analytical method(s) is validated according to Subpart Q.

12. To the maximum extent practical, engineering controls shall be utilized to minimize the potential for PCB releases during the cleanup. In addition, to the maximum extent possible, disposable equipment and materials, including PPE, will be used to reduce the amount of decontamination necessary.

13. PCB waste (at any concentration) generated as a result of the activities described in the Notification, excluding any decontaminated materials, shall be marked in accordance with § 761.40; stored in a manner prescribed in § 761.65; and, disposed of in accordance with 40 CFR § 761.61, unless otherwise specified below:

    a. Decontamination wastes and residues shall be disposed of in accordance with 40 CFR § 761.79(g)(6).

    b. Moveable equipment, tools, and sampling equipment shall be decontaminated in accordance with either 40 CFR § 761.79(b)(3)(i)(A), § 761.79(b)(3)(ii)(A), or § 761.79(c)(2).

    c. PCB-contaminated water generated during decontamination or dewatering shall be decontaminated in accordance with 40 CFR § 761.79(b)(1) or disposed of under § 761.60.

DEED RESTRICTION AND USE CONDITIONS

14. FRRA shall submit for EPA review and approval, a draft deed restriction for the Site. The draft deed restriction may be in the form of an activity and use limitation (AUL) pursuant to the Massachusetts Department of Environmental Protection (MassDEP) regulations. Within forty-five (45) days of receipt, EPA shall review and approve the draft deed restriction, approve with minimal conditions, or request specific changes. If

EPA requests specific changes, FRRA 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 property, including both the consolidation/cap area and the areas located outside the consolidation/cap area, and the PCB remedial actions conducted; 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.

FRRA shall submit the results of these long-term monitoring and maintenance activities to EPA as detailed in the deed restriction. Based on its review of the results, EPA may determine that modification to the deed restriction is necessary in order to monitor and/or evaluate the long-term effectiveness of the engineered control (i.e., cap).

15. Within fourteen (14) days of receipt of EPA's approval of the draft deed restriction, 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.

16. FRRA, 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 FRRA sells, leases or transfers any portion of the Site, FRRA 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. FRRA 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, 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 FRRA.

17. 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 cleanup and 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 Site use change(s) or plan modification(s), within sixty (60) days of such change(s). To be effective in amending the original deed restriction as it may apply to FRRA, the New Owner must secure the agreement and consent of FRRA 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.

18. In any sale, lease or transfer of the Site, FRRA 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.

INSPECTION, MODIFICATION AND REVOCATION CONDITIONS

19. Any modification(s) in the plan, specifications, and information submitted by FRRA, contained in the Notification, and forming the basis upon which this Approval has been issued, must receive prior written approval from the EPA. FRRA shall inform the EPA of any modification, in writing, at least ten (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.

    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 upon finding 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 needed from FRRA to make a determination regarding potential risk.

20. 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.

21. Any misrepresentation or omission of any material fact in the Notification or in any future 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.

22. Approval for these activities may be revoked, modified or otherwise altered: if EPA finds a violation of the conditions of this Approval or of 40 CFR Part 761, including EPA's PCB Spill Cleanup Policy, or other applicable rules and regulations; if EPA finds that these activities present an unreasonable risk to public health or the environment; if EPA finds that there is migration of PCBs from the Site; or if EPA finds that changes are necessary to comply with new rules, standards, or guidance for such approvals. FRRA may apply for appropriate modifications in the event new rules, standards, or guidance comes into effect.

23. FRRA 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 FRRA to allow such an inspection (as authorized by Section 11 of TSCA) shall be grounds for revocation of this Approval.

RECORDKEEPING AND REPORTING CONDITIONS

24. FRRA shall prepare and maintain all records and documents required by 40 CFR Part 761, including, but not limited to, the records required by Subparts J and K. FRRA shall maintain a written record of the cleanup and the analytical sampling for activities conducted under this Approval in one central location. All records 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.

25. FRRA shall submit a Final Completion Report (Report) to the EPA within 120 days of completion of the activities described under this Approval. At a minimum, this Report shall include: a discussion 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 off-site; copies of manifests; and, copies of certificates of disposal or similar certifications issued by the disposer, if applicable. The Report shall also include a copy of the recorded deed restriction and a certification signed by a FRRA official verifying that the authorized activities have been implemented in accordance with this Approval and the Notification.

26. Required submittals shall be mailed to:

    Kimberly N. Tisa, PCB Coordinator
    United States Environmental Protection Agency
    5 Post Office Square, Suite 100
    Mail Code: OSRR07-2
    Boston, Massachusetts 02109-3912

27. 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