

1. Council Meeting Agenda

Documents:

[1-09-18-17 AGENDA.PDF](#)

2. Council Meeting Packet

Documents:

[SEPTEMBER 18TH SPECIAL MEETING PACKET.PDF](#)



(Revised 9-18-19)

**CITY OF YPSILANTI
COUNCIL SPECIAL MEETING
YPSILANTI FREIGHT HOUSE – 100 MARKET PLACE
MONDAY, SEPTEMBER 18, 2017
7:00 P.M.**

I. CALL TO ORDER –

II. ROLL CALL –

Council Member Bashert	P A	Council Member Robb	P A
Mayor Pro-Tem Brown	P A	Council Member Vogt	P A
Council Member Murdock	P A	Mayor Edmonds	P A
Council Member Richardson	P A		

III. INVOCATION –

IV. PLEDGE OF ALLEGIANCE –

"I pledge allegiance to the flag, of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all."

V. AGENDA APPROVAL-

VI. PRESENTATIONS –

— Housing Affordability Presentation – Amber Fellows, Ka’Ron Gaines, and Kyle Hunter members of the Human Relations Commission.

VII. AUDIENCE PARTICIPATION -

VIII. REMARKS FROM THE MAYOR –

IX. MOTIONS, RESOLUTIONS, DISCUSSIONS -

— Discussion on the International Village Development specific to housing affordability.

X. AUDIENCE PARTICIPATION –

XI. REMARKS FROM THE MAYOR –

XII. ADJOURNMENT -

Resolution No. 2017-207, adjourning the City Council Meeting.



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Memo

To: Darwin McClary, City Manager, Mayor and City Council
From: Beth Ernat, Economic Development Director
Date: September 18, 2017
Subject: Affordable Housing in Ypsilanti

At the last meeting, Council approved a resolution to set a public meeting to discuss affordable housing for the Water Street development area. Staff has compiled some information in preparation to the meeting set for September 18th.

In 2016 one of Council's identified goals was "An essential part of the financial strategy is the sale of the Water Street property."

In fiscal year 2016, the Development Department has maintained the Water Street website, www.cityofypsilanti.com/waterstreet as well as created and distributed a marketing piece to realtors and other interested parties. Staff has provided presentations on Water Street to City Council, Ypsilanti Rotary Club, EMU Academic Service Learning. Additionally, staff has appeared on the Lucy Ann Lance Radio show, Michigan National Public Radio features, and WEMU radio. The Water Street property was featured on CPIX and LoopNet until May 24, 2017.

Staff has marketed the site as dividable to suit development. Staff intended to develop and market the property again through a request for proposal, however, there has been no lack of interest in the property. Most development ideas have stalled due to lack of funding or inability to finance public improvement required to access the site for development, and/or the remediation required to develop the property.

Several potential buyers have offered ideas and plans for the site:

Plan Presented	Land Requirement	Status	Additional Info
Artist Pods	1 acre minimum	Still Interested	Funding and access to desired site issues. Inability to pay desired land price. Little return in taxable value.

Affordable Housing (3)	2-10 acres	Still interested	MSHDA will not approve site without site being fully developed or fully remediated.
Small Homes	10 acres	Still interested	Project in early stages and not yet funded or designed.
Youth Sports Complex	36 acres	Expanded in Belleville	Funding not secured for new development, not prepared to remediate property.
Solar Field and Parking	?	Still interested	Needs research and development
Office Complex	40 acres	Realtor inquiry, no follow-up from interested party	
Recreation Center	4 acres	WCPARC withdrew interest	
Wellness Center	4-15 acres	Withdrew interest due to lack of partners	WCPARC unable to commit and St. Joes withdrew interest
Medical Marijuana Facility (5)	1-20 acres	Not permitted use	Multiple and reoccurring inquiries
International Village	36 acres	In process (due diligence)	

Affordable Housing proposals for Water Street

The City of Ypsilanti has twice entered into purchase agreements with affordable housing development, Herman and Kittle Properties. The first agreement was for Water Street Flats and the second for Riverwalk Commons. Both proposals were approved through the Planning Commission. There was mixed support from Council but ultimately both purchase agreements were terminated due to MSHDA being unable to support the environmental review required for tax credit approval. The first environmental review was so damning to affordable housing the City hired an Environmental Attorney to intervene with MSHDA. There were long periods of working with environmental consultants AKT Peerless, Michigan Department of Environmental Quality, state legislators, and environmental attorneys at Plunkett Clooney to resolve the issues cited by MSHDA. At the end of the process it was determined that it would not be successful for the City to pursue affordable housing at this site until and unless the Water Street development area were to be fully remediated. The email from MSHDA is provided as an attachment.

Affordable Housing

The Office of Community and Economic Development for Washtenaw County completed a county-wide affordable needs assessment. Here is the link to the completed document, <http://www.ewashtenaw.org/government/departments/community-and-economic-development/plans-reports-data/housing-and-infrastructure/2015/washtenaw-county-affordability-and-economic-equity.pdf> The document is also attachment to this report.

As an update to the needs assessment, OCED is currently working with the Washtenaw Urban County to complete the Affirmatively Furthering Fair Housing (AFFH) report. This is a locally-driven assessment of access to fair housing and community assets. The goal from the report is to create a tool for local governments to address and reduce residential segregation and areas of concentrated poverty.

The draft plan is here: <http://www.ewashtenaw.org/government/departments/community-and-economic-development/housing-and-community-infrastructure/affh/WashtenawUrbanCountyAFHPlan9132017.compressed.pdf> It is also attached.

The single most important question regarding affordable housing is, *what is affordable housing for Ypsilanti?*

This question has not been answered by the community. The technical answer is 30 percent of the Area Median Income (AMI). The 2017 AMI for Washtenaw County is \$88,300.00. Thirty percent of the AMI is considered extremely low income (\$26,500.00). Here is a link to the 2017 Income limits and affordable housing, <http://www.ewashtenaw.org/government/departments/community-and-economic-development/plans-reports-data/graphics/copy-of-2017-income-limits-affordable-housing.pdf> . It is also attached.

Below is a link to a website that I have found useful for explaining the difficulty for funding affordable housing in communities:

<http://apps.urban.org/features/cost-of-affordable-housing/>

County Affordable Housing report summary

- While most believe the region values the need for affordable housing, there is a sense that the region lacks a common definition or understanding of what affordable housing is.
- The importance of reshaping the county into an equitable community across jurisdictions cannot be overstated. Segregation of any sort - racial, economic, other - is also a two way street. It is never mathematically possible for one area to become segregated unless other areas as oppositely comprised. The more segregated into a high income area Ann Arbor becomes, the more segregated Ypsilanti will be. This group should be responsible for educating the community on equity issues.
- On the whole, for-sale housing is fairly affordable in Washtenaw County. Countywide, half of all units are valued below \$200,000 (according to the 2012 American Community Survey 5-Year Estimates); just 25% were valued at \$300,000 or higher (Graph 1). This breakdown varies greatly, though, between local municipalities: in Ann Arbor city, nearly two-thirds of all owner-occupied units were valued over \$200,000, as were almost 90% in Ann Arbor township; in Ypsilanti city and Ypsilanti township, in contrast, roughly three in five units (60% and 64%, respectively) were valued below \$150,000.

- Renters are far more likely than owners to have excessive housing costs in Washtenaw County. In the Census tracts in Central Ann Arbor city (near the University of Michigan), as well as those in far northern and southern Ypsilanti city and throughout much of Ypsilanti township, in excess of 60% of renters pay more than 30% of their income on housing (see map below).
- **According to data from the Multiple Listing Service, the average lease price for units listed on the MLS was lowest in Ypsilanti city and Ypsilanti township (and in a few scattered Census tracts in Ann Arbor city), and highest throughout much of Ann Arbor city and Ann Arbor township (and in a few scattered Census tracts in Pittsfield and Ypsilanti township).**
- The county recently completed an inventory of Affordable Housing Units, those units with both income and rent restrictions that would make these units available to households at or under 60% of the Area Median Income.
- **As seen in the table below, the City of Ypsilanti, with 1/6th the population of Ann Arbor, has almost the same number of committed affordable units. Using census data for comparison, the committed affordable units in Ypsilanti make up 21 % of rentals in the City. While in Ann Arbor, the committed affordable units make up 5% of all Ann Arbor rentals.**
- **When the City of Ypsilanti and Ypsilanti Township are combined, the total committed affordable units is 2,043 units or 51% of all committed affordable units in the county. The two Ypsilanti's make up only 20% of the county's population.**

Jurisdiction	Affordable Housing Developments	AH Units	% of all county AH units	Total rentals	% of all rentals in jurisdiction that are affordable
City of Ann Arbor	62	1,222	28%	26,056	5%
City of Dexter	3	73	2%	541	13%
City of Milan	1	36	1%	403	9%
City of Saline	2	96	2%	975	10%
City of Ypsilanti	23	1,132	26%	5,397	21%
Pittsfield Township	4	313	7%	6,214	5%
Scio Township	3	288	7%	1,715	17%
Superior Township	1	150	3%	1,061	14%
Manchester	2	56	1%	290	19%
Ypsilanti Township	10	1,021	23%	9,775	10%
Totals					
Washtenaw County	111	4,387		55,542	8%

Source: Affordable housing counts from Washtenaw County Affordable Housing inventory 2017
Total rental units by jurisdiction represent total occupied rentals ACS 2011-2015

- The target area is increasingly splitting into winning municipalities and losing municipalities, and, as time goes by, the gap between the two is only widening. An analysis of the residential choices made by Eastern Michigan University faculty and staff, Washtenaw County employees and University of Michigan graduate students all show the same thing: households with choice (higher incomes and more mobility) are concentrating in Ann Arbor city and Ann Arbor township and pricing out everyone else; those beat out for housing in these communities are concentrating in Ypsilanti city and Ypsilanti township.
- Most renters with household incomes below \$35,000 (or below roughly 40% of HUD's Area Median Income) in Washtenaw County generally, and the target area in particular, face housing cost burdens. In fact, over 90% of renter households with incomes below \$20,000 pay more than 30% of their income on rent; roughly three-quarters of households with incomes between \$20,000 and \$34,999 do so (Graph 6). While housing cost burdens are less common among renter households with incomes between \$35,000 and \$49,999 (or between 40% and 60% of Area Median Income), unaffordable rents remain an issue for two-fifths of renters in this income bracket – and for 45% of renters in this income bracket in Ann Arbor city. (Rents are more affordable for households in this income bracket in Ypsilanti city and Ypsilanti township, where only about one-fifth of households with incomes between \$35,000 and \$49,999 pay more than 30% of income on rent.)
- Ypsilanti cannot remain the de facto affordable housing policy for Ann Arbor and Pittsfield; continuation of this default way of operating will ensure further decline of property values and fiscal stability. Ypsilanti must find partners to intervene in the destabilizing cycle of foreclosure, disinvestment, abandonment, flipping, and distress. Ann Arbor and Pittsfield Ypsilanti (City and Township) Add 3,139 non student affordable rentals next 20 years Grow demand by 4,178 college educated HHs next 20 years.

2017 WORKING DOCUMENT								
INCOME LIMITS & AFFORDABLE HOUSING LIMITS (as published by HUD)								
2017 Income Limits- Washtenaw County (as published by Office of Policy Development and Research (PD&R))								
Household Size	1	2	3	4	5	6	7	8
120% Median	\$74,200	\$84,800	\$95,400	\$106,000	\$115,120	\$131,840	\$148,560	\$165,280
Median income	\$61,900	\$70,700	\$79,500	\$88,300	\$95,400	\$102,500	\$109,500	\$116,600
85% AMI (Covenant Units Only)	\$52,615	\$60,095	\$67,575	\$75,055	\$81,090	\$87,125	\$93,075	\$99,110
Low income (80% / 78%)	\$47,600	\$54,400	\$61,200	\$68,000	\$73,450	\$78,900	\$84,350	\$89,800
Low income (60%)	\$37,100	\$42,400	\$47,700	\$53,000	\$57,560	\$65,920	\$74,280	\$82,640
Very low income (50%)	\$30,950	\$35,350	\$39,750	\$44,150	\$47,700	\$51,250	\$54,750	\$58,300
Extremely low income (30%)	\$18,550	\$21,200	\$23,850	\$26,500	\$28,780	\$32,960	\$37,140	\$41,320
Effective 4.14.17 for all programs except HOME. Note: the 80% AMI level may not exceed the U.S. Median level. Consequently, our median income is actually 78% of median income. Data Location https://www.huduser.gov/portal/datasets/il/il2017/2017summary.odn								
2017 Maximum Housing Expense Levels by Household Size (30% of gross monthly income)								
Household Size	1	2	3	4	5	6	7	8
120% Median Income	\$1,855	\$2,120	\$2,385	\$2,650	\$2,878	\$3,296	\$3,714	\$4,132
Median income	\$1,548	\$1,768	\$1,988	\$2,208	\$2,385	\$2,563	\$2,738	\$2,915
Low income (80% / 78%)	\$1,190	\$1,360	\$1,530	\$1,700	\$1,836	\$1,973	\$2,109	\$2,245
Low income (60%)	\$928	\$1,060	\$1,193	\$1,325	\$1,439	\$1,648	\$1,857	\$2,066
Very low income (50%)	\$774	\$884	\$994	\$1,104	\$1,193	\$1,281	\$1,369	\$1,458
Extremely low income (30%)	\$464	\$530	\$596	\$663	\$720	\$824	\$929	\$1,033
Effective 6.15.17 Note: For Rental -Includes utilities (except telephone). For Homeownership- Includes taxes, utilities, condo fees, & insurance.								
2017 Fair Market Rents (as published by Office of Policy Development and Research (PD&R))								
SRO	\$598	Fair Market Rents (FMRs) are primarily used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents, and to serve as a rent ceiling in the HOME rental assistance program are gross rent estimates. They include the shelter rent plus the cost of all tenant-paid utilities, except telephones, cable or satellite television service, and internet service						
Efficiency	\$797							
1 bedroom	\$850							
2 bedroom	\$1,025							
3 bedroom	\$1,407							
4 bedroom	\$1,765							
Effective 1.1.17 Data Location: http://www.huduser.org/portal/datasets/fmr.html								
2017 HOME Program Income Limits (Washtenaw County)								
Household Size	1	2	3	4	5	6	7	8
120% Median	\$74,200	\$84,800	\$95,400	\$106,000	\$114,600	\$123,000	\$131,600	\$140,000
Median income	\$61,900	\$70,700	\$79,500	\$88,300	\$95,400	\$102,500	\$109,500	\$116,600
85% AMI (Covenant Units Only)	\$52,615	\$60,095	\$67,575	\$75,055	\$81,090	\$87,125	\$93,075	\$99,110
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Low income (60%)	\$37,140	\$42,420	\$47,700	\$52,980	\$57,240	\$61,500	\$65,700	\$69,960
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Effective 6.15.17 or all HOME programs. Note: the 80% median income level may not exceed the U.S. median income level, consequently our median income it is actually 78% of median. Data Location: https://www.hudexchange.info/programs/home/home-income-limits/								
2017 HOME Program Maximum Housing Expense Levels by Household Size (30% of gross monthly income)								
Household Size	1	2	3	4	5	6	7	8
120% Median Income	\$1,855	\$2,120	\$2,385	\$2,650	\$2,865	\$3,075	\$3,290	\$3,500
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Low income (60%)	\$929	\$1,061	\$1,193	\$1,325	\$1,431	\$1,538	\$1,643	\$1,749
Very low income (50%)	\$774	\$884	\$994	\$1,104	\$1,193	\$1,281	\$1,369	\$1,458
Extremely low income (30%)	\$464	\$530	\$596	\$663	\$716	\$769	\$823	\$875
Effective 6.15.17 for all HOME. For Rental -Includes utilities (except telephone). For Homeownership- Includes taxes, utilities, condo fees, & insurance.								
2017 HOME Program LOW and HIGH Rent Rates								
		LOW		HIGH		50% Rent Limit		65% Rent Limit
SRO*		\$581		\$598		\$581		\$815
Efficiency		\$775		\$797		\$775		\$1,086
1 bedroom		\$830		\$850		\$830		\$1,165
2 bedroom		\$996		\$1,025		\$996		\$1,399
3 bedroom		\$1,150		\$1,407		\$1,150		\$1,609
4 bedroom		\$1,283		\$1,765		\$1,283		\$1,775
5 bedroom		\$1,416		\$1,940		\$1,416		\$1,940
6 bedroom		\$1,548		\$2,104		\$1,548		\$2,104
Effective 6.15.17. HOME-assisted unit's rent and utilities cannot exceed the HIGH rent rate. A project with 5 or more HOME-assisted units must rent 20% of the units at the LOW rent rate or below families with incomes at 50% AMI or below. *SRO= 75% of Efficiency. Data Location: https://www.hudexchange.info/programs/home/home-rent-limits/								
FY 2017 Homeownership Purchase Price Limits (homeowner only)								
	1 Unit	2 Unit	3 Unit	4 Unit	Median Value*			
Maximum (Existing)	\$199,000	\$254,000	\$308,000	\$381,000	\$209,000			
Maximum (New)	\$224,000	\$286,000	\$347,000	\$430,000	\$235,500			
Effective 3.1.17. OCED procedures adhere the established purchase price limits. Data Location: https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/								
Maximum Per-Unit Subsidy 221(d)3 (rental and homeowner)								
	0-bdrm	1-bdrm	2-bdrm	3-bdrm	4-bdrm			
Maximum	143,813	165,972	201,822	261,090	286,597			
Effective 1.1.12. Data Location: https://www.onecpd.info/resource/2315/home-per-unit-subsidy/ Starting in 2013, Section 221(d)(3) program limits will no longer be calculated and published by HUD due to the elimination of the 221(d)(3) Mortgage Program. Because HUD is no longer calculating 221(d)(3) limits, PJs must continue to use the 2012 published Section 221(d)(3) limits for all HOME projects, until further notice from the Office of Community Planning & Development at HUD. Limits were published in December 2011, and became effective January 1, 2012.								
Prepared by: Darnishous Thompson, Comm. Dev. Spec., Washtenaw County (OCED), 734-544-3009							7/7/17 v.3	

All:

Below is a comprehensive overview of the environmental review/NEPA issues MSHDA has identified for Riverwalk Commons.

Attached is the health risk evaluation MSHDA requested be conducted of the Riverwalk Commons development (3.1 acres, aka “subject parcel”) and the associated surrounding property, the Water Street Redevelopment Area (WSRA). For context, the WSRA is a 38-acre, vacant brownfield that would surround Riverwalk Commons for a significant distance in all directions. Hamp, Mathews, and Associates (HMA) was subcontracted through PM Environmental (PME) to conduct the analyses. Both firms provided concurring opinions. The information provided for this evaluation consisted of the draft DDCC report, historical data and figures, and supporting documentation submitted by the City of Ypsilanti’s consultant, AKT Peerless, for the WSRA, and reports submitted by the developer’s consultant, ASTI, for the subject parcels, including Phase I, Phase II, due care and conceptual site model reports. Soils and groundwater within the WSRA remain contaminated from over one-hundred years of industrial and commercial use with PCBs, PNA’s, VOCs, and several metals, including lead, arsenic, cadmium, and mercury above DEQ Part 201’s generic residential cleanup criteria (GRCC).

HMA’s risk evaluation report and PME’s subsequent review support a cautious approach to the redevelopment of the WSRA, citing, most particularly, the inability to reliably estimate the health risk to future residents. This inability stems from several open questions regarding existing contamination within the WSRA. Solutions presented to these problems include additional soil sampling to increase confidence in the contamination situation and with that the ability to reliably estimate health risks and acceptable due care measures (Incremental Sampling methodology seems well suited to this task), the installation of exposure barriers/covers, and reliably restricting access of residents to the off-property WSRA brownfield site.

Issues:

PCB and Lead Removal Areas

Two soil removal areas--a six-acre PCB Removal Area and the north-adjointing lead removal area—appear to have no verifying documentation to support their having been completed, such as manifests, soil volumes, photographs, fill documentation, VSR results, etc. AKT’s draft DDCC, seems to accept the completion of this remediation as part of the basis for their analyses (AKT Peerless, DRAFT-Ypsilanti Water Street DDCC Text, Section 3.1; Figures 2-6). Contradicting this is a February 4, 2015, Brownfield Plan available from the City of Ypsilanti’s website, and also prepared by AKT Peerless for the Washtenaw County Brownfield Redevelopment Authority where, in Attachment C “Remaining Areas of Contamination,” the same removal areas are identified as having remaining PCB and lead contamination remaining, albeit the PCB contamination (0’-4’ BGS) is noted as being below DEQ GRCC. But if these areas had truly had soil remediated down to 4’ BGS, it is unclear why any contamination should exist. As a corollary, it is also unclear how it can be stated that the PCB contamination that does (somehow) remain in the PCB removal area is below DEQ GRCC, as stated in Attachment C, if the removal action cannot be verified and the samples prior to removal showed results exceeding those standards.

Such contradictions contribute to the general lack of confidence regarding the contamination situation within the WSRA. Additional evidence will be required for MSHDA to consider the remediation of these areas as more than supposition.

Contamination boundaries

Clearly delineated areas are depicted on many of the maps and figures of all reports. These purport to show boundaries of areas where specific contamination of any significance begins and ends. Confidence in these boundaries is key toward estimating risk and choosing the best due care measures. There are indications that the contamination concerns cannot be so neatly defined in an area as large and with as many decades of industrial use as the WSRA. The confidence of these boundaries is called into question by both recent and historical sampling. For example, the 2014 Phase II sampling conducted by ASTI on the Riverwalk Commons Parcel, which is outside of any denoted "PCB area", found PCB contamination above direct contact criteria. One sample (42 ppm @ SB-1) exceeded MDEQ GRCC (4 ppm) by over tenfold and TSCA "high density" standards (1 ppm) by fortyfold. A second sample from this same data set (SB-6) also exceeded both standards. Looking through the historical dataset, there are detections of PCBs above GRCC and/or TSCA high density at locations east of the subject parcel (29-7B (33 ppm) and 29-8B (1.6 ppm)), which are well outside of the areas delineated "PCB areas". This demonstrates significant contamination outside designated boundaries. Going the other way, where contaminants are found within what is stated as a removal area for that same contaminant, 2014 sampling showed soil lead concentrations exceeding DC GRCC by several times in the western portion of the subject parcel, which appears to overlap the reported lead removal area.

Such discrepancies may indicate a wider distribution of contaminants than is currently considered. Additional sampling would answer this concern. Incremental Sampling methodology appears well suited here. Also see note on TSCA vs Part 111/201 standards, below.

Fugitive dust

Fugitive dust concerns, whereby disturbed contaminated soil becomes airborne and transported offsite, remain a significant challenge here. The city's draft DDCC does not address fugitive dust directly, but calls for maintaining vegetative cover, which is not uniform, and for the use of erosion controls when soil is disturbed. The draft DDCC may also be considering fugitive dust when it makes the repeated statement that all necessary due care becomes the responsibility of future owners. While perhaps true, this is unspecific and would rely on future entities with unknown experience and intent to execute a critical function in keeping Riverwalk Commons safe.

If the WSRA enjoys the future development that is hoped for over the next few years, it is fair to say that the area will be an active construction and remediation zone, on and off for the next several years. So, it is not a far-fetched scenario to imagine children from Riverwalk Commons playing outside their homes, downwind and only yards from where a building foundation is being dug in the known PCB or TCE area, a roadway is constructed through the old foundry property, pipes are being laid, and contaminated soil is being characterized for disposal. Any successful plan will need a plan that fully contemplates and accounts for such a scenario, and asks if that is actually possible; a plan whose requirements would be imposed on any future owners of WSRA property close enough to impact the Riverwalk Commons site. As all these events are foreseeable and reasonable, the proper place for that plan would seem to be the DDCC.

Perhaps most significantly, the location of the proposed site, toward the southern-middle of the WSRA, closest to the area of remaining (denoted) PCB and lead contamination, greatly exacerbates the fugitive dust concern. It may, in fact, not be possible to satisfactorily address fugitive dust concerns such as is described in the paragraph above in the current location. A safer approach would be to develop first around the north and western perimeters, particularly

the west, and work inward, instead of placing units of your most sensitive population before all else and in the center, nearest the highest areas of contamination.

MSHDA requests that the Riverwalk Commons site be moved north, closer to Michigan Avenue, and as far west, to get ahead of prevailing winds, as feasible within the WSRA. In addition, the city's DDCC must include an adequate soil management plan whose requirements will be mandatory for future purchasers of property that may impact the Riverwalk Commons site, regardless of where it is eventually sited.

TSCA, Part 111/RCRA, or Part 201 authorities

PCB contamination may invoke differing authorities. HMA's report and PME's review indicate that the PCB contamination within the WSRA appears to most correctly fall under the provisions of TSCA, though elements of Part 111/RCRA and Part 201 may also apply. The report recommends that the owner of the property employ a "Coordinated Approval" process, as described in the report handouts.

MSHDA is asking that the city obtain a written opinion from DEQ regarding the applicability of TSCA or Part 111/201 authorities as they apply to the PCB contamination at the WSRA.

Access restrictions

The current draft of the city's DDCC, which provides for no fencing, seems more geared to an occasional visitor to the WSRA property (i.e., TSCA low-occupancy criteria) than a year-round resident (TSCA high occupancy criteria). While the current DDCC may be perfectly adequate for occasional public access, the exposure profile of an occasional pedestrian differs greatly from that of the full time residents, many of them children, that can be expected at Riverwalk Commons. Without greater confidence in the contamination characterization, as described, restricting off-site access to the WSRA is prudent. Fencing the development would still allow adults and older children to "walk around" and thereby access the WSRA, while still providing a prudent barrier to small children, who are more susceptible to contamination, likely to play in the dirt, not wash their hands, ingest, etc.

Section 7a(c) of Part 201, requires the owner or operator of contaminated property to "Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions." It is entirely foreseeable that the residents of Riverwalk Commons will leave their homes to explore and play in the large, vacant land surrounding them (or that workers constructing a walking path, building foundation, or detention pond might disturb contaminated soil).

MSHDA recommends a fence to restrict off-site access be a part of the Riverwalk Commons project. In addition, a dedicated 1 to 2 acre park or play area with a clean soil cap and maintained ground cover, adjoining Riverwalk Commons and provided by the city within the fenced area, should be considered as a means to provide a reliably safe, outdoor environment for children to play. This would alleviate some of the recreational use and play otherwise anticipated in the surrounding brownfield.

Detention Pond

AKT's DDCC makes no mention of the detention pond planned southwest of the development. As it is anticipated that third-parties, such as workers, might necessarily come into contact with contamination

in the creation of such a pond, the DDCC should account for it and any other ongoing or proposed activities associated with site development.

Plastics waste

Significant mounds of what appears to be waste from an industrial process involving the thermal or chemical processing of plastics were identified by MSHDA staff during September 2015 site visit. The debris piles are located just south, or perhaps on, the subject property. Neither the AKT or ASTI DDCC's make mention of this waste or address the concerns.

The implications of plastic processing onsite regarding the possible unique contaminants associated with that process may need further exploration. Investigations of historical documents regarding the origin and nature of this industrial waste should be undertaken by the city.

On-site DDCC

The due care measures described in ASTI's DDCC for the actual Riverwalk Parcel appear adequate to protect potential residents from exposures to contaminants in soil, vapor, and groundwater. This is accomplished through a variety of barrier, institutional, and engineering controls, including the installation of a vapor intrusion system. The challenges to mitigating onsite exposures, where building, asphalt, and landscaping all but cover the entire area and a vapor intrusion system is proposed, are considerably less complex than those off-site.

Noise

NEPA requires MSHDA to consider all significant noise sources when federal funds are requested, as they are here. With future development and infrastructure construction anticipated over the next several years in and around Riverwalk Commons, a plan to minimize impacts of noise will need to be developed and proposed as part of the NEPA review.

Environmental Justice

NEPA (under 24 CFR Part 58.5(j)) requires MSHDA, as a federal Responsible Entity, to clear all projects of the provisions of Environmental Justice. In short, to "*determine if the proposed site... suffers from disproportionate adverse health and environmental effects relative to the community at large. If the project... has the potential for new or continued disproportionately high and adverse human health and environmental effects on minority or low-income populations, the environmental review must consider mitigation or avoidance of adverse impacts from the project to the extent practicable*" (HUD OIG Report 2008; HUD Frequently Asked Environmental Questions, May 2002). That said, a combination of factors allows most contaminated sites to meet Environmental Justice requirements. First, the site has been adequately characterized. This allows the risk from various exposure pathways to be reliably estimated, and appropriate due care selected. Second, any contaminated properties around the subject parcel are typically developed, and so exposures can be controlled. This combination enables the Responsible Entity to certify with confidence that Environmental Justice has been satisfied.

The situation at Riverwalk Commons, where risks cannot be reliably estimated due to the incomplete characterization and the area surrounding the proposed site is a contaminated brownfield that is fully anticipated to be active with construction and redevelopment over the next several years, intractable off-site exposure issues such as fugitive dust and direct contact become bona fide Environmental Justice concerns that will need specific answers. The Environmental Justice language cites "avoidance" as one

of the strategies to be considered in avoiding adverse impacts. This speaks to MSHDA's request for the site to be relocated more north and west on the subject property, but may also be interpreted by HUD itself, as meaning alternate locations in and around the City of Ypsilanti that have fewer environmental issues.

The Environmental Justice portion of the NEPA report for federal funding, for Riverwalk Commons, will need to

Summary

MSHDA has a long history of successfully partnering on the redevelopment of brownfield properties and creating safe, affordable housing situations where none had existed prior. The Riverwalk Commons proposal is unique in the challenges presented because it is a development proposed as an island of developed land within a large tract of undeveloped, vacant brownfield with industrial contaminants, including PCBs, PNA's, chromium, and lead. For such a proposal to be successful and move forward, will require an active and invested approach from all parties, particularly the owner of the surrounding brownfield.

Without confidence in the characterization, it is difficult to approve the Riverwalk Development as planned. HMA's Health Risk Evaluation and our own review of the data do not support a conclusions that the city's draft DDCC is adequate. The report draws wide-ranging conclusions about risk from a dataset that was largely not designed for assessing exposure. The available historical dataset was, understandably, more geared toward answering questions of extent, fate, and transport, and so many samples are taken from quite deep below ground. With few actual shallow-soil samples, and a large part of the area not systematically sampled, questions regarding direct contact have been loosely surmised. MSHDA strongly recommends additional sampling using Incremental Sampling methodology of shallow soils be done to address this uncertainty.

Of greater complexity still is the potential for fugitive dust concerns. This would be a concern of not only contaminated shallow soils, but also deeper contaminated soils, which would be disturbed, tracked, transported, characterized, and removed during construction. The potential negative outcome of families complaining of dust and having that dust tested and shown positive for contamination

Options/Recommendations

- 1) **Relocate the proposed site as far north and west as possible.** This moves the site away from the areas of most (indicated) PCB and lead contamination, improve marketing, and increases the chances that Riverwalk Commons is upwind of any future development. The problem of fugitive dust is particularly intractable in the current location.
- 2) **Restrict access to off-site properties.** Insufficient data exists to reliably estimate the health risk to future residents. As a result, a fence to prevent easy access to the off-site property, particularly by smaller children, is required.
- 3) **Redraft the off-site DDCC** – The current draft of the city's DDCC does not adequately account for, or imagine, all the reasonably foreseeable actions by third parties.
- 4) **Fugitive Dust** – a rigorous soil management plan to address the issue of contaminated soils being disturbed by workers, tracked, and becoming airborne must be included. Compliance with the plan must be made a condition upon any future owners of property where redevelopment activities could potentially impact the eventual Riverwalk Commons site, anticipating the dispersive action of winds, machinery, and other actions involving the soil.

- 5) **Additional data**, employing Incremental Sampling methods, particularly of shallow soils, would provide much needed clarity and confidence, despite perhaps having to re-draw the contamination maps.
- 6) **A 1 to 2 acre park** with a clean soil cap, adjoining the Riverwalk Commons site at its eventual location would provide a safe play area for development children to play. The only city parks within easy walking distance of the WSRA appear to be to the north, across Michigan Avenue, or to the south, across the Huron River, neither of which appear from aerial photos to contain a play area or seem likely parent-approved destinations for small children.

I hope the enclosed information is helpful and defines both the concerns and opportunities for Riverwalk Commons. MSHDA is available to hear comments and have further discussions on how to move the proposal forward.

Daniel Lince
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Michigan State Housing Development Authority
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October 13, 2015

Mr. Daniel Lince
Michigan State Housing Development Authority
735 East Michigan Avenue
Lansing, Michigan 48912

**Re: Transmittal of Health Risk Evaluation for the Proposed 3.1-Acre Riverwalk Commons Residential Redevelopment Located South of East Michigan Avenue and East of South River Street in Ypsilanti, Michigan
PM Environmental, Inc. Project No. 01-06095-0**

Dear Mr. Lince:

PM Environmental, Inc. (PM) is transmitting a copy of the October 13, 2015 Health Risk Evaluation prepared by Hamp Matthews, & Associates, Inc. (HMA) for the above-referenced subject property.

The October 2015 Health Risk Evaluation was prepared based upon HMA's review of available site investigation reports through March 2015, which documented the presence of volatile organic compounds, polynuclear aromatic compounds, polychlorinated biphenyls (PCBs), and metals above Michigan's Part 201 Residential Generic Cleanup Criteria and/or the federal Toxic Substance Control Act (TSCA) criteria under 40 CFR 761. HMA concluded that insufficient documentation exists relative to the current extent of contamination at the subject property (most notably lead and PCBs in soil) and surrounding areas to derive a reliable estimate of future exposure risk to residents at the proposed Riverwalk Commons redevelopment. This includes those associated with onsite soil contamination and those associated with offsite soil contamination, which is not equipped with a uniform surface cover that would preclude potential dermal contact exposures or erosion/wind transport of offsite contaminated soils.

However, HMA also concluded that excluding PCB soil impacts (refer to below), future occupant exposures to contamination could be controlled by installing exposure controls and/or restricting access to contaminated surrounding areas. The Michigan State Housing Development Authority requested that a vapor mitigation system be installed at the proposed building structure to prevent potential vapor intrusion exposures.

Due to the applicability of TSCA to the PCB soil contamination at the subject property and surrounding areas, HMA recommended pursuit of Coordinated Approval relative to the preparation of sampling and response plans to address PCB soil contamination at the subject property and surrounding area that includes the City of Ypsilanti, the Michigan Department of Environmental Quality, and the United States Environmental Protection Agency.

PM concurs with the conclusions contained within the October 2015 Health Risk Evaluation.

***Transmittal of Health Risk Evaluation for the Proposed Riverwalk Commons Residential Redevelopment
Located South of East Michigan Avenue and East of South River Street in Ypsilanti, Michigan
PM Environmental, Inc. Project No. 01-06095-0; October 13, 2015***

If you have any questions regarding the information in this transmittal, please contact us at (800) 313-2966.

Sincerely,
PM ENVIRONMENTAL, INC.



J. Adam Patton, CHMM
Manager of Site Investigation Services

Attachments:

October 13, 2015 Health Risk Evaluation, HMA

Cc: Mr. Shawn Shadley, PM
Mr. Michael Vollick, MSHDA
Mr. Jeffrey Crum, HMA

HAMP, MATHEWS & ASSOCIATES, INC.

15266 Ann Drive, Bath, Michigan 48808
[517] 641-7333 Fax [517] 641-7337

[TECHNICAL MEMORANDUM]

TO: Mr. Daniel Lince
Michigan State Housing Development Authority (MSHDA)

FROM: Mr. Jeffrey A. Crum
Senior Toxicologist & Vapor Intrusion Specialist

DATE: October 13, 2015

SUBJECT: Riverwalk Commons and Right of Way, Ypsilanti, Michigan
Health Risk Evaluation for a Proposed 3.1 Acre Residential Housing
Development Located within a 38-acre Brownfield Site

At MSHDA's request, Hamp, Mathews and Associates, Inc. (HMA) is providing an analysis of potential health risks to future residents of a proposed 3.1 acre multi-family housing development located within a 38-acre Brownfield's site with known environmental impacts. The 3.1 acre development, referred to as Riverwalk Commons ("Property"), is to be centrally located in the 38-acre Brownfield Redevelopment Area known as Water Street, which has a long history (since 1874) of varied industrial uses including a lumber yard, foundry, coal storage, automotive factory, auto repair, printing, dry cleaning, bulk fuel storage, gasoline service station, metal scrapping and recycling, land filling, and at least four rail sidings. One source indicated that plastics manufacturing may also have been performed onsite. All past buildings have been removed from the Brownfield area, and the entire 38-acres are currently unoccupied. The owner of the Water Street Brownfield Redevelopment Area (City of Ypsilanti) plans to maintain the property as vacant, undeveloped land in preparation for selling portions of the area to developers for future redevelopment.

HMA has reviewed the historical and recent sample data, made available by MSHDA, which includes the analytical results from numerous samples collected from the Brownfield site, and data collected at the Property in 2014 and 2015 by ASTI Environmental. The collective data were evaluated for risk in the context of the future housing development to identify the pathways by which residents could be exposed to hazardous substances detected in the soil and groundwater at the Property, as well as exposure to substances potentially migrating to or being transported to the Property from the surrounding Brownfield site.

FUTURE RESIDENT RISK EVALUATION

Exposure Risk to Hazardous Substances in Off-Property Soil

Past environmental investigations at multiple parcels of the 38-acre Brownfield site have identified hazardous substance concentrations of arsenic, cadmium, chromium, lead, mercury, selenium, silver, zinc, polychlorinated biphenyls (PCBs), polynuclear aromatic hydrocarbons (PNAs), and volatile organic compounds (VOCs) in soil and/or groundwater above Part 201¹ generic residential cleanup criteria (GRCC). These investigations, which started in 1999, were performed at various

¹ Part 201 Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as Amended.

parcels of the Brownfield site that were considered most likely to contain contamination based on historical records of operations and observations of current site conditions. Many of the above noted substances were present in surface and subsurface soil at concentrations greater than the Part 201 generic residential soil direct contact criteria (DCC). Consequently, several soil excavation and removal activities have been reported to occur during 2003 and 2004 on the Brownfield site. These included separate removals of soil containing (areas are approximate):

1. Trichloroethylene (TCE) – one acre area to eight feet below ground surface (bgs);
2. Lead – three localized areas of lead totaling approximately three acres to four feet bgs;
3. PNAs – a localized area less than one acre;
4. PCBs – one six-acre area to four feet bgs; and,
5. BTEX (benzene, toluene, ethylbenzene and xylenes) – one 10 acre area to 10 feet bgs.

Notably, soil volumes and waste manifests are apparently not available for some of these reported soil removal activities. The absence of this information is particularly significant to the reported PCBs and lead removal areas because they adjoin and appear to partially underlie the subject Property. This raises uncertainty of the extent or accuracy of the depicted areas of the removals. Knowledge of the mass, magnitude, and area of disposition of PCBs and lead removed from the areas are needed to inform the “general level of health risk” for future residents on the Property. This information would facilitate evaluation of the exposure pathways of direct human contact with hazardous substances in off-Property soil, and/or inhalation exposure to substances in off-Property soil that may migrate onto the Property due to emission and dispersion of soil particulates (i.e., dust) from weather-related and/or man-induced activities.

Ideally, soil verification (of remediation) sample results would most directly facilitate a determination of the potential for unacceptable risk to future residents for the soil direct contact and particulate soil inhalation exposure pathways. Soil verification sample data would demonstrate whether the post-excavation concentrations of lead and PCBs are below their Part 201 generic residential soil DCC. The absence of soil verification data creates a significant data gap in the ability to derive a reliable estimate of the future risk to residents at Riverwalk Commons Property, and confounds identification and application of the appropriate Part 201 and federal regulatory requirements for addressing PCB contamination, which is discussed later in this memorandum.

The uncertainties of future resident risk from exposure to hazardous substance concentrations adjacent to the Property, particularly the former PCB and lead excavation area immediately west of the Property, could be addressed through 1) additional soil sampling of these areas, 2) installation of an exposure barrier/cover to prevent contact with, and prevent emission from off-Property soil, or 3) through reliably restricting access to the off-Property area of the Brownfield site.

Exposure Risk to Hazardous Substances in On-Property Soil

ASTI Environmental performed subsurface investigation activities at the Property (Riverwalk Commons) in 2014 and 2015, and identified the same hazardous substances of concern under a residential use scenario as reported in the past environmental investigations. The hazardous substances most elevated in soil are lead and PCBs; both are present at concentrations greater than their Part 201 residential soil DCC. However, the soil DCC pathway (or any other exposure

pathway) is not considered applicable for evaluation of resident risk at the Property, except for PCBs as noted in the next section, because soil on the Property will be covered with asphalt/concrete, and a new soil cover will be applied with associated vegetation and landscaping.

A demarcation barrier may be considered for application below the new soil cover to identify areas in the future where soil must be added to maintain prevention of contact with the underlying soil that contains hazardous substances at concentrations greater than the Part 201 residential soil DCC.

ASTI also installed three soil gas points at locations within the proposed building footprint to a depth of four feet below ground surface to evaluate potential future vapor intrusion pathway risk. All VOC soil gas concentrations from the only sampling event were below the Michigan Department of Environmental Quality (MDEQ) Residential Vapor Intrusion Shallow Soil Gas Screening Levels published in the MDEQ *"GUIDANCE DOCUMENT FOR THE VAPOR INTRUSION PATHWAY"*, May 2013. According to the MDEQ vapor intrusion guidance, additional soil gas sampling would be recommended in this case since benzene soil gas concentrations at two locations were greater than 10% of the MDEQ vapor intrusion screening level. HMA understands that MSHDA has requested installation of a vapor mitigation system as a presumptive remedy. Technical information on the proposed vapor mitigation system was not made available for HMA review.

PCBs: Part 201 Regulatory Compliance with the Toxics Substance Control Act of 1976

Part 201 Section 20a(12) states the following requirement to address compliance determinations at sites containing PCBs:

"In determining the adequacy of a land-use based response activity to address sites contaminated by polychlorinated biphenyls, the department shall not require response activity in addition to that which is subject to and complies with applicable federal regulations and policies that implement the toxic substances control act, 15 USC 2601 to 2692."

The MDEQ was consulted to obtain further guidance for applying the Toxics Substance Control Act of 1976 (TSCA) under Title 40 of the Code of Federal Regulations (CFR), Part 761. Guidance provided by the MDEQ titled, "Options for PCB Cleanup in Michigan for Compliance with Toxic Substance Control Act of 1976", is attached to this memorandum. Based on HMA's review of the attached MDEQ document, and our current understanding that the PCB release date and source material concentrations at the Property and Brownfield site are unknown, PCBs in soil are subject to TSCA regulation. The minimum requirements of TSCA need to be addressed assuming that businesses previously operating within the Brownfield site were not subject to corrective action orders that may require more aggressive actions to address PCBs under those orders.

Given TSCA applicability for the Property, Subpart N of TSCA titled, "Cleanup Site Characterization Sampling for PCB Remediation Waste in Accordance with § 761.61(a)(2)", should be followed to develop a sampling plan. The recent soil sampling performed at the Property is not consistent with the requirements of Subpart N. Subpart O of TSCA titled, "Sampling To Verify Completion of Self-Implementing Cleanup and On-Site Disposal of Bulk PCB Remediation Waste and Porous Surfaces in Accordance With § 761.61(a)(6)" is also an applicable consideration following future removal of soil containing PCBs at the Property. Given the U.S. Environmental Protection Agency (EPA) grant for the PCB removal adjacent and west of

the Property, Subpart O of TSCA would likely have been followed; however, documentation is not available to affirm this application.

The City of Ypsilanti's consultant also considers PCBs at the Brownfield site as subject to TSCA regulation. This is based on a draft due care document from AKT Peerless, provided by MSHDA, which contains text indicating TSCA applicability for PCBs detected in soil at the 38-acre Water Street Brownfield Redevelopment Area. Specifically, AKT compared PCB analytical results to the TSCA high occupancy area criterion of 1 ppm, and note that PCBs remaining on the Brownfield site are above the TSCA high occupancy criterion. It appears that AKT did not consider the applicability of TSCA Subpart N in proposing its response activity for soil PCBs exceeding 1 ppm. AKT's response activity plan for PCBs and other contaminants exceeding Part 201 residential soil DCC is that the existing vegetative cover will act as a direct contact barrier, as well as preventing erosion and potential wind transport. However, based on photographs and accounts provided by MSHDA from a recent site visit, the vegetative barrier throughout the 38-acre Brownfield area is not uniformly dense and several areas are relatively void of vegetation.

It is HMA's opinion that TSCA Part 761 is the applicable regulation for demonstrating compliance of PCBs in soil at the Property, as well as the Brownfield site. As such, HMA views the developer's consultant's sampling of the Property as inconsistent with the site characterization requirements of TSCA. PCB soil sample concentrations at three locations exceed the 1 ppm TSCA high occupancy criterion; one sample concentration of 42 ppm exceeds the TSCA high occupancy criterion with a cap. These data alone indicate that further characterization of PCBs in soil is needed at the Property to demonstrate compliance with TSCA. Nonetheless, evaluation of PCB concentrations is secondary to applying the requirements of TSCA.

Based on several discussions and e-mails with staff of MDEQ and the EPA, HMA recommends a "Coordinated approval" process, involving the City, MDEQ and EPA, that may be the most efficient means toward developing a sampling and response plan to address PCBs on the Property, as well as the previously mentioned six-acre PCB removal area adjacent to the Property.

SUMMARY

In summary, the health risk to future residents that would occupy the Property cannot be reliably estimated. This is due to the absence of a substantial amount of information (documentation verifying completion of the removals) and post-excavation soil verification sample data for large soil areas containing PCBs and lead located immediately adjacent (west) to the Property. These uncertainties are further validated given the 2014 and 2015 sample results from ASTI showing elevated concentrations of lead and PCBs along the western portion of the Property. As noted earlier, the uncertainty of future resident risk from exposures resulting from (unknown) off-Property contamination can be addressed through sampling, installation of exposure controls, or access restrictions to the Brownfield area surrounding the subject Property. At this time, the risk to residents from potential exposures to off-Property soil cannot be determined.

PCBs in the Riverwalk Commons Property soil are subject to TSCA regulation. The City of Ypsilanti appears to recognize this requirement based on their consultant's comparison of PCB concentrations to the TSCA high occupancy criterion of 1 ppm. TSCA applicability also requires that soil concentrations be characterized using a grid sampling approach. The sampling performed

Mr. Daniel Lince
Riverwalk Commons Risk Evaluation

October 13, 2015
Page 5

in 2014 and 2015 on the Property is not consistent with TSCA requirements. To resolve these concerns, HMA recommends a "Coordinated Approval" process, discussed in the attached MDEQ document, which engages the involved parties through a streamlined process toward compliance.

HMA appreciates the opportunity to provide this information to you. Please contact us with any questions.

cc: Mr. Michael Vollick, MSHDA

Enclosure

Options for PCB Cleanup in Michigan for Compliance with Toxic Substances Control Act of 1976

The following outlines the options for complying with the Toxic Substance Control Act of 1976 (TSCA) for the disposal and/or cleanup of polychlorinated biphenyl (PCB) waste subject to TSCA under Title 40 of the Code of Federal Regulations (CFR), Part 761, found at facilities conducting corrective action under Part 111, Hazardous Waste Management, and Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Michigan has been approved by the U.S. Environmental Protection Agency (EPA) as an authorized state for corrective action under the Resource Conservation and Recovery Act of 1976 (RCRA).

The TSCA PCB self-implementing cleanup provisions are not binding upon cleanups conducted under other federal authorities, including but not limited to, actions conducted under the RCRA or Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510 (CERCLA) program. TSCA is the regulatory authority for PCB disposal, however Part 111/RCRA, Part 201, and/or CERCLA are the regulatory authorities for PCB remediation when PCBs are mixed with hazardous wastes or other contaminants or hazardous substances. Therefore, even if PCB contamination is managed in full compliance with the self-implementing provisions, the facility's Part 111/RCRA and Part 201 obligations may require additional cleanup and/or remediation. Further, TSCA provides cleanup criteria for soils only. There may be other relevant and applicable exposure pathways related to the PCB contamination or other contaminants of concern in the area of PCB contamination that must be addressed as part of a facility's corrective action obligations. Therefore, **careful consideration of all applicable regulations is important when assessing PCB remediation options.**

Options for PCB Remediation

If the facility cannot demonstrate that they are not subject to TSCA (e.g., the release was prior to 1978 and concentrations are below 50 parts per million (ppm) or the release was after 1978 and the original source material concentration was less than 50 ppm) or if the facility cannot provide proof of the date of the spill and concentration in the original source material, then PCB contamination must be regulated under TSCA, under 40 CFR Part 761. There are four options under this part:

1. 761.61(a): Self-implementing on-site cleanup and disposal of PCB remediation waste.
2. 761.61(b): Performance-based disposal
3. 761.61(c): Risk-based disposal approval.
4. 761.77: Coordinated approval.

1. Self-Implementing

The self-implementing option requires cleanup to standards based upon occupancy. If the facility decides to use the self-implementing option, it must determine the occupancy of the impacted area(s). There are two types of occupancy defined in the TSCA regulations:

- a. High occupancy – defined as 335 hours or more of exposure per year or an average of 6.7 hours or more per week with no dermal or respiratory protection. (e.g., residential use or an occupational work station).

The High Occupancy designation is consistent with all Part 201 land use categories. The cleanup levels are as follows:

- i. <1 ppm total PCB without a cap
- ii. <10 ppm total PCB with a cap and deed restriction

- b. Low occupancy – defined as less than 335 hours of exposure per year or 6.7 hours/week with no dermal or respiratory protection. (e.g., an unoccupied area outside a building or a warehouse where worker's occupancy is transitory).

The Low Occupancy designation is consistent with Part 201 site-specific assumptions only. The cleanup levels are as follows:

- i. <25 ppm total PCB with a deed restriction
- ii. <50 ppm total PCB with a marker, fence, and deed restriction
- iii. <100 ppm with cap and deed restriction

Any person may conduct self-implementing cleanup and disposal of PCBs in accordance with the requirements listed in 40 CFR 761.61(a). Under the self-implementing option, regardless of occupancy status, the facility must do the following:

- a. Notify the EPA, State/Tribal, and county/local authorities at least 30 days prior to cleanup.
- b. Submit with the notifications a full site report, under 40 CFR 761.61(a)(3), including:
 - i. Nature of the contamination
 - ii. Summary of sampling procedures
 - iii. Table or map showing sample location and concentration.
 - iv. Cleanup plan including proposed cleanup levels, schedule and approach for cleanup/disposal, contingency plan, and verification sampling procedures (should be in compliance with TSCA Subpart O).

If the decision is made to conduct activities under the self-implementing option, the facility should begin the notification process with the EPA immediately. All information submitted to the EPA for review is required to also be submitted to the Michigan Department of Environmental Quality (MDEQ). Under the federal self-implementing

regulations, if the EPA does not respond within 30 calendar days of receiving the notice, the person submitting the notification may assume that it is complete and acceptable and proceed with the cleanup according to the information the person provided to the EPA.

2. Performance-Based Disposal

Any person disposing of PCB remediation waste may do so without notification to the EPA if the material is disposed of via a TSCA pre-approved method (incinerator, TSCA landfill, alternate disposal method approved under 40 CFR 761.60(a) or (c)). Cleanup standards are not provided in this part of the regulation, but there may be remaining ongoing TSCA obligations if PCB regulated materials (e.g., soils in excess of 1 ppm) remain at the site.

3. Risk-Based Disposal Approval

If the facility proposes to cleanup or remediate PCB contamination in any way other than that described under the Self-Implementing option or Performance-Based Disposal option, they must apply to the EPA Region 5 Administrator for a risk-based approval. The EPA will issue a written decision and may approve an application if it finds that the proposed method will not pose an unreasonable risk of injury to health or the environment. If the decision is made to conduct activities under the risk-based disposal option, the facility may not conduct cleanup activities prior to obtaining written approval from the EPA. Under this option, any action taken to remediate, remove, or prevent further releases or migration of PCBs into the environment prior to the EPA approval shall be considered interim measures only.

4. Coordinated Approval

The MDEQ has been actively pursuing a method to streamline the PCB review process; but following various conversations with the EPA regarding the option of deferment to the MDEQ for site-specific TSCA authority, it has been confirmed that, because TSCA is a nondelegable authority, site-specific MDEQ deferment is not an option. However, facilities may pursue the coordinated approval option under 40 CFR 761.77. Coordinated approval involves the MDEQ approval of PCB cleanup and disposal activities in the form of a permit or other enforceable document, with oversight and final approval from the EPA.

Under the coordinated approval option, the facility must submit a request for approval to the EPA Region 5 Administrator following the requirements of 40 CFR 761.77. The MDEQ must also be willing to issue a decision on the PCB activities at the site in the form of a permit or other decision and enforceable document. The EPA will then review the decision-making process and the MDEQ's final decision for completeness and compliance with applicable TSCA rules and to ensure that the activity poses no threat to human health or the environment. If the decision is made to pursue coordinated approval, the facility should submit the appropriate information on the PCB activity to the EPA and to the MDEQ simultaneously and, on the cover letter to the EPA, explain that they are planning to seek TSCA coordinated approval under 40 CFR 761.77. In doing so, the EPA will be notified early on of the facility's intention to pursue the

coordinated approval option and will handle the review as such (minimal review; looking for completeness and problem areas only).



Resolution No. 2017-207
September 18, 2017

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

That the City Council meeting be adjourned, on call, by the Mayor or two (2) members of Council.

OFFERED BY: _____

SUPPORTED BY: _____

YES: NO: ABSENT: VOTE: