



***de maximis, inc.***

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September 3, 2019

Ms. Diane Salkie  
Mr. Michael Sivak  
Emergency and Remedial Response Division  
USEPA Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007

***Re: Upper 9-Mile Source Control Interim Remedy (IR) Feasibility Study (FS),  
Lower Passaic River Study Area, Diamond Alkali Superfund Site,  
Administrative Settlement Agreement and Order on Consent for Remedial  
Investigation/Feasibility Study CERCLA Docket No. 02-2007-2009***

Dear Ms. Salkie and Mr. Sivak:

The Lower Passaic River Study Area Cooperating Parties Group (CPG) requests that the United States Environmental Protection Agency Region 2 (USEPA) suspend its review of the CPG's currently incomplete draft Upper 9-Mile IR FS until the CPG and USEPA can resolve significant differences that have arisen as a result of two recent documents received from USEPA and the New Jersey Department of Environmental Protection (NJDEP):

- USEPA's Post Remedy Sampling Approach (dated August 8, 2019).
- NJDEP's comments on the CPG's July 24, 2019 Adaptive Management presentation.

The CPG believes that the best path forward is to deliver the IR FS Section 9, and Appendices D and H (Adaptive Management and IR Completion, respectively) once these differences are discussed and resolved. To facilitate this, the CPG proposes the following process to develop consensus on IR completion and key principles of the overall Adaptive Management process for the upper 9 miles and expedite completion of the draft IR FS:

- CPG, USEPA and NJDEP representatives with decision-making authority, meet at the earliest possible time in September to identify and work toward agreement on the elements of IR Completion and the Adaptive Management Plan.

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- To support this effort, the CPG has attached detailed outlines of both the IR Completion and Adaptive Management appendices with specific technical points to be discussed and agreed upon.
- After agreement is reached, the CPG will rapidly revise and deliver to USEPA the outstanding section and appendices for review.

The CPG requests that USEPA schedule a meeting with all three parties the week of September 9.

As you are aware, the CPG has committed significant resources and has been working closely with USEPA to complete the 17-mile RI Report (which was approved on June 28, 2019), deliver the draft IR FS pursuant to the USEPA-approved schedule on August 12, 2019, and undertake an extensive current conditions sampling program to update surface water, bathymetric and tissue data in support of the Upper 9-Mile IR and the Adaptive Management program.

The CPG had planned to adopt the major elements of USEPA's July 24, 2019 IR Completion Decision Tree Narrative as part of the IR Completion FS Appendix H upon resolution of certain questions forwarded to USEPA on August 13, 2019. However, we were surprised and dismayed by the drastic change in approach expressed in USEPA's August 8, 2019 proposed Post Remedy Sampling Approach forwarded to the CPG on August 15, 2019. USEPA's Proposed Sampling Approach clearly and substantively departs from our prior discussions. The removal of specific details from the IR Completion framework allows uncertainty and incompatible views to propagate to remedial design. This unresolved risk is unacceptable to the CPG as it makes it impossible to calculate the probability of failure and associated costs with the Upper 9-Mile IR.

Finally, and most importantly, the CPG seeks to implement Adaptive Management, consistent with USEPA's July 3, 2018 memorandum (Superfund Task Force Recommendation #3: Broaden the Use of Adaptive Management). As presented to CSTAG, the use of an Adaptive Management process is the fundamental basis for addressing the upper 9 miles and one component of its implementation is the proposed IR. Both Adaptive Management and IR completion are significant issues that need to be resolved prior to moving forward on the IR FS.

The CPG requests that this letter be included in the Administrative Record for the 17-mile LPRSA operable unit (OU 4) of the Diamond Alkali Superfund Site.

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Please contact me with any questions.

Very Truly Yours,

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Robert Law, Ph.D.  
CPG Project Coordinator

Attachments:

Appendix D Outline – Adaptive Management Plan for the Upper 9 Miles of the LPRSA  
Appendix H Outline – Interim Remedy Completion Evaluation Framework

CC: Pat Evangelista, USEPA  
Frances Zizila, USEPA  
Jay Nickerson, NJDEP  
LPRSA Cooperating Parties Group  
CPG Coordinating Counsel

FILE: LPRS/2019 09 03 IR FS Ltr to EPA