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Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality
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RECEIVED ON:

SEP 16 2014

EPA Region 10
Office of the Regional Administrator

September 10, 2014

Dennis McLerran
EPA – Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Dennis

Dear Mr. McLerran,

We have spoken by phone over the past several months about the challenges with the Portland Harbor Superfund Project (PH). DEQ is taking this opportunity to provide clarity to EPA regarding our concerns, including how DEQ could work with EPA to do more to achieve environmental gains between now and when the Record of Decision (ROD) is issued.

A key concern is the pace of the project. A project with an original timeline of 8 years is now in its 14th year and is unlikely to achieve a ROD for several more years. Similarly, the scope of the project has gone from addressing sediment contamination in a 6 mile stretch of the Willamette River to contemplating sediment and overall surface water quality in a 10 mile stretch, with the possibility that EPA may include several more miles of upstream areas. Due to these expanded timelines, substantial re-sampling of sediment will likely be required after the ROD is issued to re-evaluate cleanup areas given the age of the data and the dynamics of the river system. As you are aware, several DEQ senior managers have been in discussions with your senior management on the project. We are hopeful those conversations can continue and produce tangible results in a shorter timeframe.

From DEQ's perspective, the turnover of multiple project managers has created confusion and frustration. We urge EPA to reexamine its current project team to determine whether a change would result in a more positive dynamic with all those engaged in the project. As many key project decisions are yet to be made, augmenting the current EPA team with staff that have worked on similar sites would critically aid the project, as the PH site is one of the more complex mega-sites in Region 10, if not the country. Ideally, the team's project manager would be stationed close to the Superfund site in the Oregon Ops office. DEQ is also willing to explore the possibility of an Intergovernmental Personnel Agreement with EPA where a DEQ staff person could serve in some formal capacity on the project.

We have proposed ideas to address known environmental issues now that can be accomplished without waiting for the ROD, in a way that will expedite cleanup post ROD. We have requested that EPA allow DEQ to work directly with willing Potentially Responsible Parties to cleanup in-water sediments under State authority. We understand that a similar approach was taken on Commencement Bay. The sites that we've suggested are relatively straightforward or are of great importance to many local communities. One of the sites presents significant risk to houseless people and poses environmental justice issues. Furthermore, many DEQ source

control sites are at or near the point where cleaning up contaminated banklines awaits in-water decisions. Such sites may make ideal candidates for DEQ to complete cleanup of the entire footprint of contamination (bankline and in-water).

DEQ has investigated and addressed the downtown Portland reach, bringing in new areas for cleanup under State authority, all of which are in the feasibility study stage, including the Zidell cleanup, which is substantially complete. DEQ remains willing to complete additional work up river that may be needed in advance of the downstream cleanup and looks forward to further discussing these potential needs with EPA.

Since signing the Memorandum of Understanding in 2001, DEQ has been an active partner in supporting EPA's work in the PH, and appreciates EPA's assistance and support of our source control work, which is nearing completion of many significant milestones. To assist EPA in finalizing the feasibility study, and to conserve our own internal resources, DEQ will be providing increasingly focused and clear comment and input on the project. Our input and decisions to EPA will primarily consider the importance of getting to cleanup and the effect on cleanup. We are committed to meeting EPA's turnaround times and want to make sure that our comments are fully considered.

We are at a critical juncture in the project where selective readjustments could dramatically affect both the quality of the outcomes and timeframes. DEQ has outlined several of our ideas in this letter and in meetings with EPA senior staff on the project. It is our sincere hope that EPA will consider our input and recommendations. We also recognize there may be areas where DEQ can make improvements and we are open to hearing from EPA about the best way to have a dialogue to determine how we can work most efficiently together.

I am committed to work with you towards a successful cleanup. Please feel free to contact me if you have any questions.

Sincerely,

Dick Pedersen
Director

Oregon

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I am committed to work with you towards a successful cleanup. Please feel free to contact me if you have any questions.

Sincerely,

Dick

Dick Pedersen
Director

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF THE
REGIONAL
ADMINISTRATOR

Mr. Dick Pedersen
Director
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, Oregon 97204-1390

Dear Mr. Pedersen:

I am writing to acknowledge your September 10, 2014, letter regarding the Portland Harbor Superfund site, and following up as well on your related discussion with Assistant Administrator Stanislaus. Your letter described concerns you had expressed to me in late August during a teleconference that the Oregon Department of Environmental Quality has about the status of work at the site.

During our discussion we affirmed our commitment to work together on this important project. We also agreed that it would be beneficial for our two agencies to enter into a facilitated dialogue to update our strategic direction and discuss whether changes were appropriate to our work sharing agreement, currently outlined in a Memorandum of Understanding signed in 2001. As you know, we have contracted with a facilitator for this effort and are beginning this dialogue. As we begin this process, I think it is important to share with you some of EPA's perspectives on topics you raised in your letter and in our discussion.

Portland Harbor is one of the largest Superfund sites in the nation, with contamination resulting from a long history of industrial activity and urban development, making for a very complex set of conditions in the Harbor. There is no easy answer or "silver bullet" solution to this type of megasite. EPA's Region 10 has experience with large sediment cleanup projects, such as Commencement Bay in Tacoma, Washington, Harbor Island in Seattle, Washington and the Coeur d'Alene Basin, in Idaho. We are bringing forward both successes and lessons learned from our work at those sites to our management of the Portland Harbor site. We will also continue to bring our Headquarters national expertise on sediment sites to bear here as well. One commitment in that regard has been to bring Jim Woolford, Director of the Office of Superfund Remediation and Technology Innovation, more directly into key discussions regarding Portland Harbor. That has included Jim's commitment to attend the Senior Executive meetings in person with the Lower Willamette Group in Portland. The EPA's Headquarters will also be involved in developing the cleanup proposal for the site as we move toward putting that in front of the National Remedy Review Board.

The EPA shares DEQ's interest in making cleanup plan decisions as quickly as possible. The critical path to making those decisions is to complete the Remedial Investigation/Feasibility Study, which will provide the scientific foundation for the remedy at the site. Unfortunately, the initial versions of the RI/FS prepared by a subset of potentially responsible parties, the Lower Willamette Group, did not meet EPA requirements. As a result, and in coordination with the Lower Willamette Group, agency and tribal

partners, the EPA is revising these documents to ensure they follow CERCLA and the National Contingency Plan and that they lay a sound scientific basis for a proposed plan.

The unique, chapter by chapter, review process we have established for the RI/FS revisions is time consuming given the many perspectives provided by stakeholders and the agency commitment to responding to their perspectives. In November 2013, the EPA proposed an expedited schedule to get to a Record of Decision faster, but heard from the LWG and our MOU partners that the proposed schedule didn't allow enough time to review documents, digest the proposed conceptual plan, or provide for adequate government to government consultation. We worked with the Lower Willamette Group, DEQ and our other MOU partners to develop a mutually agreeable schedule, which calls for presenting a cleanup proposal to EPA's National Remedy Review Board and Contaminated Sediments Advisory Group in 2015, followed by a proposed cleanup plan for public review and comment in 2016. The EPA is committed to continue to work closely with DEQ as we move forward.

It is essential to develop a cleanup proposal as soon as possible to begin to focus discussions on the remedy and move away from hypothetical concerns about whether the remedy will be reasonable. We fully intend the cleanup proposal to be grounded in the data in the RI/FS, sound science and consistency with our Superfund law and policies. While I know there will always be concerns about how the remedy will affect individual PRPs, I believe we need to focus on the actual proposal. I am hopeful that DEQ will play a constructive role in moving forward to develop a proposed plan, and Record of Decision that the state can concur on.

You raised questions about EPA's Portland Harbor project team, indicating that you felt staff turnover has created confusion. We did have a long-time project manager located in our Oregon Operations Office retire earlier this year; however, our remaining project managers have worked on this project for many years (one as early as 2001) along with other experienced engineers, scientists and managers from our regional and headquarters offices. I have confidence in our team's ability to move this project forward and working with DEQ to do so. We recognize the interest in having the EPA increase its presence in the Oregon Operations Office and we are considering options for doing so that are appropriate to upcoming work on the site. I look forward to addressing how your team and our team can work together more collaboratively as we work with the facilitator.

It is also important to acknowledge DEQ has been a regulatory partner throughout the process, using its authorities to make progress on controlling ongoing sources of contamination to the river. In November, DEQ is scheduled to send EPA a source control status report, which we will review to ensure both agencies agree on the conclusions as to which sources are adequately controlled and which sources need further attention. DEQ has focused its efforts to date on high priority sources, and at this phase of the project, we want to emphasize that the medium priority, and ultimately lower priority sites need appropriate attention as well. Further, we support DEQ source control efforts to move forward to implement the planned sediment cleanups at the Former Portland Gas Manufacturing Site and the PGE Willamette River Sediment site in the downtown reach.

We understand your interest in achieving additional environmental cleanup and restoration prior to the ROD, and would like to continue our discussions as to how DEQ could become more engaged with early in-water sediment cleanup work. There are some challenges in regard to scoping such early actions with potential long-term cleanup approaches being evaluated for the ROD, and our inability to grant

early release of liability for cleanup work in advance of the ROD. However, I look forward to our discussions regarding how we might make this a successful collaboration.

Finally, we are aware that DEQ is planning extensive outreach on its source control work, and would like to work with DEQ on those efforts. Again, we look forward to our facilitated process aimed at how we can best move forward in partnership to clean up the Portland Harbor Superfund site.

Sincerely,

Dennis J. McLerran
Regional Administrator

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Cohen, Lori

From: PARRETT Kevin <Parrett.Kevin@deq.state.or.us>
Sent: Friday, October 31, 2014 11:32 AM
To: Bill Ross; Cohen, Lori
Subject: PH - Potential DEQ In-water Sites

Hi Lori and Bill,

During our call yesterday I offered to provide information on the three in-water sites that meet at least some of DEQ's criteria for in-water site selection. These sites are River Mile 11 East (RM11E), Gunderson and Willamette Cove. Following is a brief summary of these sites.

RM11E: This site is located on the east bank between the Fremont and Broadway bridges. It is the most up-river site and poses a threat of downriver recontamination if not cleaned up early. Land use consists of active import/export facilities owned by Ross Island Sand & Gravel, CalPortland and Cargill. PCBs are the primary contaminant of concern. Current upland sources have been largely controlled and should not impede remedy implementation. Contamination is limited to near shore sediments with no significant impacts in the riverbank or upland areas. Groundwater is not significantly impacted. Extensive data have been collected to date and little, if any, additional data are needed to select a site-specific sediment remedy. Potential responsible parties include Westinghouse, City of Portland, PacifiCorp, CalPortland, Cargill and Dill Trust. These parties, except for Cargill and Dill, are working with EPA under an order on consent to collect supplemental data to better support a feasibility study. DEQ is supporting this effort with Dan Hafley as the project manager.

Gunderson: This site is located on the west side of the river across from Swan Island Lagoon. It is the second most up-river site. Similar to RM11E, this site poses significant risk for downstream recontamination if cleanup is not sequenced early. Land use consists of active barge construction (and launching) and is owned by Greenbrier Corp. Again, PCBs are the primary contaminant of concern with high concentrations of metals also present. Contaminants are limited to near shore sediment and the riverbank. Groundwater is not significantly impacted. DEQ has been working with Gunderson (Greenbrier) since the 1990s on addressing source control for the riverbank and stormwater. While we are completing final source control work under a recently negotiated consent order, our original voluntary agreement also includes sediment. Shawn Rapp is the DEQ project manager for source control. Moderately extensive data have been collected to date and some additional sediment data may be helpful in selecting a site-specific sediment remedy. Potential responsible parties include Greenbrier, Schnitzer and Department of Defense.

Willamette Cove: This site is located on the east side of the river adjacent to the McCormick and Baxter site. Metro, the property owner, has designated Willamette Cove for habitat restoration and open space and the Port intends to use this site to satisfy NRD liabilities. Although vacant, this site is frequented by houseless people living in makeshift structures and derelict vessels offshore. The Portland Harbor Community Advisory Group, Oregon Health Authority, Groundwork Portland, Right 2 Survive PDX and other local groups have expressed significant concerns with contaminant exposure to these transient groups. Dioxin/furans are the primary contaminant of concern and are present upland in significant concentrations. Metals and PAHs are also elevated. Contaminants are present in near shore sediment, the riverbank and upland soils. Groundwater is impacted but can be addressed as part of the bank and sediment remedies. Very little sediment data have been collected for dioxins/furans and extensive in-water sampling is needed in order to select a site-specific sediment remedy. Potential responsible parties include the Port of Portland which operated a dry dock in this area for many decades. The Port of Portland is currently planning a removal action this winter for upland hot spots. The DEQ project team consists of and Dan Hafley and Ken Thiessen.

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Cohen, Lori

From: Cohen, Lori
Sent: Friday, July 18, 2014 3:30 PM
To: Nina DeConcini; 'PARRETT Kevin'; 'johnson.keith@deq.state.or.us'
Cc: Yamamoto, Deb
Subject: Followup to 7/8/14 meeting

Greetings Nina, Kevin and Keith,

Thank you for meeting with Deb and I last week regarding the Portland Harbor Superfund Site. We covered a lot of ground in a short time, and I wanted to just a highlight and follow up to a few of the discussion points. Please note, Deb is on leave this week so she has not seen these notes and may have additional thoughts to add when she gets back but I wanted to get these notes out before this week is over.

Additional Work – We discussed DEQ's proposed assistance on in- water work. In response to concerns raised by the community members regarding potential exposures by people who reside there, DEQ explained it is working with the Port to address upland soil contamination over the next four months. EPA acknowledged the importance of this work in this EJ community; please keep us posted as this progresses.

In addition, we discussed the possibility that DEQ work with other parties (eg. Gunderson, 11E) to do sediment cleanup work in advance of the EPA's ROD for the site. EPA expressed some concerns over this proposal emphasizing that EPA cannot give any kind of release of liability for such cleanup work in advance of the ROD and a settlement with the companies performing the work. That being said, EPA is willing to discuss this further with DEQ as long as it is clear there is a risk that EPA would not ultimately be able to approve such a cleanup if it ends up not being consistent with the ROD. Note that even if a company does a cleanup on or adjacent to its property, the company may have other liability at the Portland Harbor Superfund site for other releases of hazardous waste (including downriver impacts).

Further, Lori Cora provided me with the specific language in CERCLA that I wanted to share with you. The provision is Section 122(e)(6) of CERCLA and it says: "When either the President or a [PRP] pursuant to an administrative Order or consent decree under this chapter, has initiated a remedial investigation and feasibility study for a particular facility under this chapter, no [PRP] may undertake any remedial action at the facility unless such remedial action has been authorized by the President." This essentially says that no PRP can do remedial action at a site unless EPA authorizes it. It does not prohibit removal actions and it does not prohibit DEQ from going out and do cleanup work. The language provides no PRP can do remedial work without EPA authorization and thus further supports that EPA will not give covenants for work PRPs may do with DEQ.

When we finished this part of the discussion, we understood that DEQ has some more thinking to do about this and we agreed to that before DEQ moves forward on any sediment work at the Site, we would discuss this further. I think you are aware that our preference is that DEQ use its resources to continue to address the challenging source control issues at the site rather than focus on the sediment cleanup work.

Downtown Reach – EPA brought up a question about ongoing source control work needed in the downtown reach to reduce the impacts that we see in the river. DEQ responded that a few years ago, it completed a study of the downtown reach and concluded that the downtown reach was not a source of contamination for sediments downriver. DEQ said that bringing up water quality concerns was a new issue – and asked that we

discuss this further as to what EPA's concerns are. We agreed to a meeting to follow up on this issue where DEQ could present its findings to date, and we could discuss data gaps.

I know that Rick Muza has already followed up with DEQ staff on this topic. With regards to DEQ's Downtown Reach study, Rich has provided some additional information that I wanted to highlight for you. Rich noted that DEQ's Phase II Report (September 2011) had a Table 8 which identified priority areas (ie., areas with elevated detections of COCs in sediment) for additional assessment and potential actions at various river miles within this reach. Rich said that he has asked several times for status updates on work that had been done by DEQ on these priority areas; sounds like Matt McClincy has agreed to pull this information together. This information will be provided to Rich and could be the basis of our next conversations about this topic. Rich indicated that DEQ has not evaluated the Downtown Reach for future recontamination potential to the Portland Harbor site.

Rich said he has also been in contact with DEQ and BES staff on a number of occasions regarding the fish tissue sampling results up near RM16 that Deb mentioned were of a concern to EPA at our last week's meeting. Rich said it is his understanding, since our meeting, that, DEQ is prepared to have DEQ look into this area further if we determine we need additional assessment/evaluation. We appreciate this and will discuss this with you further.

FS Revisions and Schedule –

DEQ said that overall things are going wells as far as opportunities for technical input on the RI and FS; but there are some points in the process where DEQ would expect more review time. As an example, DEQ pointed to Ch 1 of the FS, and Appendix A and said that some information was missing from Appendix A and DEQ therefore could not provide comments. We checked this out with Kristine, and while this is true, we would like to emphasize that this review process is intended to be collaborative and DEQ is getting information to review as quickly as we can get it to you. Further, DEQ will have until Aug to provide its comments on these portions of the FS (we just wanted to get it to you early to start the review.

EPA is committed to continue to work closely with DEQ on the RI and FS issues, and on the development of proposed alternatives for cleanup. At our meeting, we committed to starting to have more regular discussions with DEQ as we develop our proposed cleanup plan for presentation to the National Remedy Review Board and Contaminated Sediments Advisory Group. We recognize a unique role for the state in this process because ultimately, per CERCLA, EPA will be seeking the state's acceptance of the ROD. We would seek state acceptance from DEQ. We noted that in past conversations with now retired Jim Anderson, he believed there was a difference in state acceptance and state concurrence – EPA does not see a distinction in these terms and while the nine criteria analysis in CERCLA refers to state acceptance, both terms seemed to be used interchangeably in our guidance documents. One last note of our discussion was that we will have to determine how best to have discussions with DEQ on remedy selection given the fact that the state is a PRP at the site, and we will need to better understand how the state plans to address its dual role.

I hope this summary/update is helpful as we continue to work together on these issues.

Thank you,
Lori