INTERIM RESPONSIVENESS SUMMARY

for the

Earle M. Jorgensen Early Action Area Non-Time Critical Removal Action

Supplemental Engineering Evaluation and Cost Analysis

Lower Duwamish Waterway Superfund Site

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1 INTRODUCTION

This Responsiveness Summary provides an interim summary of public comments submitted to the U.S. Environmental Protection Agency during the public comment period for the Supplemental Engineering Evaluation and Cost Analysis (Supplemental EE/CA) for the Earle M. Jorgensen (EMJ) Early Action Area (EAA), part of the Lower Duwamish Waterway (LDW) Superfund Site. The comments have been paraphrased and presented according to topic and are followed by EPA's responses to the comments. Selected excerpts of comments have been provided to serve as examples of the larger category of comments within the same topic.

Providing the opportunity for public comment and responding to significant comments are part of the Superfund decision-making process under the National Oil and Hazardous Substances Pollution Contingency Plan, (NCP). 40 C.F.R §§ 300.415(n)(4), 300.820(a). EPA believes that these steps are important in the interest of transparency and public engagement.

EPA received a total of 59 comments, all submitted by email. Many comments included references to issues unrelated to the EMJ EAA. The interim Responsiveness Summary does not address comments related to the recently finalized Explanation of Significant Differences for the LDW Site or to the East Waterway Operable Unit of the Harbor Island Superfund Site.

Upon review of the public comments on the Supplemental EE/CA and having considered the Supplemental EE/CA alternatives, EPA has determined that an additional alternative that includes physical removal of all contaminated subsurface sediments exceeding the cleanup level for PCBs established by EPA in its 2011 Action Memorandum for the EMJ EE/CA must be included for consideration. As a result, EPA has instructed EMJ to provide a Revised Supplemental EE/CA which includes this additional alternative. EPA plans to conduct an additional public comment period on the Revised Supplemental EE/CA to further engage the community.

2 TRIBAL CONSULTATION AND COMMUNITY INVOLVEMENT

2.1 TRIBAL CONSULTATION

The Muckleshoot Indian Tribe, Suquamish Tribe, and Confederated Tribes and Bands of the Yakama Nation are federally recognized tribes with treaty protected fishing rights in the Duwamish River. The LDW is one of the locations of the Muckleshoot Tribe's commercial, ceremonial, and subsistence fishery for salmon.

On May 24, 2021, EPA offered formal government-to-government consultation to the three federally recognized tribes. None of the Tribes requested formal government-to-government consultation; however, the Muckleshoot Tribe requested and received an informal briefing on the Supplemental EE/CA for its technical staff. None of the federally recognized tribal representatives submitted comments to EPA on the Supplemental EE/CA either informally or during the public comment period.

2.2 COMMUNITY INVOLVEMENT

EPA has regularly sought community involvement for cleanup actions involving the EMJ EAA. EPA efforts began prior to the 2014 removal action and have continued to date.

Since 2014, EPA has provided the Duwamish River Cleanup Coalition (DRCC/TAG), the Community Advisory Group and Technical Advisory Grant (TAG) recipient for the LDW Site, the opportunity to review and comment on the EMJ data collection and data reporting efforts. This includes the development of work plans to fill data gaps and a Data Gaps Report summarizing all available EMJ EAA data. This Data Gaps Report formed the basis for the Supplemental EE/CA cleanup alternatives. After review of the Data Gaps Report, DRCC/TAG responded on May 15, 2020 with this comment:

> "After reviewing the 2020 Data Gaps DFAR Redline and Farallon Response to EPA Comments on 2020 Draft Data Gap Report dated January 6, 2020, DRCC/Tag has no further comments and would like to compliment EPA as well as ECY [Ecology] on doing a thorough job. It was important for us to review the work with a lens on community concerns. Thank you for the opportunity to review and for your good work."

Updates about the EMJ EAA were provided regularly at stakeholder and LDW Roundtable meetings including the November 18, 2020 Stakeholder/TTC meetings, the March 10, 2021 TTC meeting, the June 9, 2021 Stakeholder meeting, and the June 16, 2021 TTC meeting.

The Supplemental EE/CA and supporting documentation were made available to the public in the Administrative Record file, which was compiled for selection of the EMJ EAA removal action. EPA provided notice to the public that the Administrative Record file could be viewed online at https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.ars&id=1002020&doc=Y&colid=67008&region=10&type=AR.

The notice of availability of these documents was published in the South Seattle Emerald and the West Seattle Blog, local online news outlets, on June 29, 2021. In addition, EPA developed a fact sheet summarizing the Supplemental EE/CA and made it available online on June 23, 2021.

EPA released the Supplemental EE/CA for a 30-day public comment period on June 27, 2021. EPA extended the comment period an additional 60 days at the public's request. The extended public comment period closed on September 27, 2021.

During the comment period, EPA sent email announcements about the EMJ EE/CA to about 2,800 subscribers of the LDW distribution list on June 28, July 30, August 10, and September 14, 2021 and provided regular updates to the LDW website regarding the comment period, the comment period extensions, and information session.

On July 8, 2021 EPA met with DRCC/TAG to discuss the Supplemental EE/CA and answer questions regarding the document's content. This meeting led to additional dialogue with DRCC/TAG about the public comment period.

On August 25, 2021, EPA held a virtual public meeting which included a pre-recorded presentation about the Supplemental EE/CA in English, Spanish, Vietnamese, and Khmer. The

presentation was followed by a real-time question and answer session, with interpreters for the above-referenced languages. EPA also posted links to the slides and pre-recorded presentation on the LDW webpage, and a question-and-answer document in English was posted shortly after the meeting. Formal public comments were not taken at the information meeting.

On September 8, 2021, EPA also met with the Public Health - Seattle & King County Community Health Advocates (CHAs) and held a session similar to the information meeting described above. This session included interpretation for Spanish, Vietnamese, and Khmer speaking participants. Under a Cooperative Agreement with EPA, the CHAs educate their communities and promote safe seafood consumption, through the Fun to Catch, Toxic to Eat institutional control program for fishing communities near the LDW Site.

3 PUBLIC COMMENTS AND RESPONSES

EPA received a total of 59 comments, all submitted by email, with some requiring translation for inclusion in this interim Responsiveness Summary. One comment included a letter from the DRCC/TAG that was submitted on behalf of approximately 1,200 named individuals. ***EPA reviewed each comment received and determined that an additional alternative for removal of all contaminated subsurface sediments that exceed the cleanup levels for PCBs should be included in a Revised Supplemental EE/CA. EPA instructed EMJ to develop an additional cleanup alternative consistent with the 2011 Action Memorandum.***

This interim Responsiveness Summary only addresses comments related to contamination potentially being left in place, the adequacy of the proposed alternatives, public involvement, and environmental justice. EPA will address comments related to technical subject areas (that is, modeling, navigation channel, backfill/cap terminology, etc.) in a final Responsiveness Summary following an additional public comment period. The final Responsiveness Summary will incorporate the interim Responsiveness Summary and respond to any additional comments received during the upcoming comment period for the Revised Supplemental EE/CA.

This interim Responsiveness Summary focuses on responses to comments on the following topics:

- Contamination being left in place or the adequacy of the proposed alternatives,
- The adequacy of community engagement and outreach,
- Environmental justice concerns, and
- Concerns about maintaining prior cleanup commitments and holding EMJ accountable to those commitments.

Comments received regarding the LDW Explanation of Significant Differences and East Waterway Operable Unit are not included in this interim Responsiveness Summary, as they were not the subject of the comment period.

3.1 COMMENTS ON THE PROPOSED ALTERNATIVES AND CONTAMINATION BEING LEFT IN PLACE

Comment Summary

EPA received comments on the proposed alternatives and the potential for subsurface contamination being left in place. No commenters expressed direct support for Alternatives 1, 2, 3a, or 3b. Several commenters encouraged EPA to select Alternative 4.

> "I want to chose [*sic*] 4 because it is very helpful and effective."
>
> "Since cleanup option #4 is the most comprehensive, resulting in the best cleanup of the remaining contamination, we would urge you to consider this, instead of the weaker company proposed option."
>
> "My academic and professional background is in biology, ecology, and environmental education. I stand with the neighbors of the Duwamish River and with the entire Salish Sea community in asking that the EPA accept Option 4… I do not accept anything less than a comprehensive cleanup - including area 1 - with a rapid response action plan in place to respond to future contamination if detected during long term monitoring."
>
> "The DRAG group mentioned Option 4 with additional work. If that is the closest to a good solution then i [*sic*] would be forced to agree with them."
>
> "Option 4 is suitable because of all the factors, following steps such as dredging and cleaning up areas 1,3,5 and 6.
>
> "I suggest option 4…."
>
> "It is recommended to choose option 4 because the cleaning is more thorough, long-term safety effect."

Some commenters encouraged EPA to require an additional alternative that removes all subsurface contamination throughout the EMJ EAA. These comments are summarized below.

> "All of the parts of the river where PCBs are should be cleaned. Even the most comprehensive option 4 does not include 1 area where PCBs were found. Option 4 is not good enough."
>
> "Regarding the proposed cleanup options for the area, I support cleanup option 4, the most comprehensive option but it is not as thorough as it should be. Ideally, all of the parts of the river where PCBs were found should be cleaned. Even the most comprehensive option does not include one area where PCBs were found."
>
> "This is a quick message with this feedback on this project: Please clean ALL areas where PCB's [*sic*] were found. Option 4 is simply not sufficient."
>
> "While Alternative 4 is most protecteive [*sic*] of the alternatives offered, it still does not go as far as the original selected remedy, and the river must be fully

cleaned up, and all PCBs must be fully removed. None of the alternatives are good enough. The original remedy actions must be enforced. None of the information presented about the slightly lower toxicity levels affect the necessary cleanup levels. A full cleanup must be adhered to."

"I am writing in support of Jorgensen Forge sediment cleanup option #4. It is the most comprehensive option at the moment though I strongly support cleanup of all parts of the river where PCBs were found. It is unacceptable that any area should be left out of clean-up plans."

"EMJ did not develop and present a complete range of alternatives. DRCC/TAG believes that EMJ should develop an "Alternative 5" that would evaluate the removal of all the contamination that was left behind after the 2014 cleanup action. The community needs to understand how much it would cost to remove ALL the contamination left behind."

"Given the history of this particular cleanup area and EMJ's failure to properly execute EPA's original cleanup order, it is imperative that the most protective alternative be selected and implemented during this supplemental action. Of the Alternatives presented in the draft EE/CA, Alternative 4 is the most protective. However, the EE/CA fails to present an alternative equivalent to the original cleanup requirements for the EMJ EAA. This has resulted in an incomplete range of alternatives. I recommend that EPA consider adding an "Alternative 5" that evaluates removal of all of the PCB contamination that was included in the originally selected remedy."

EPA Response

EPA agrees that the proposed alternatives do not present a complete range of options because an alternative that removes all subsurface contamination with PCBs above the Removal Action Level of 12 ppm total organic carbon established in the 2011 Action Memorandum was not included in the Supplemental EE/CA. In a letter sent to EMJ on September 24, 2020, EPA wrote that the Supplemental EE/CA "must include an alternative or combination of alternatives that meets the requirements of the 2011 Action Memorandum." The 2011 Action Memorandum required, among other things, complete removal of contaminated subsurface sediments that exceeded the Removal Action Level. The proposed alternatives in the Draft Supplemental EE/CA will leave contaminated subsurface sediments in place that exceed this level in several locations within the EMJ EAA. EPA has instructed EMJ to resubmit a Revised Supplemental EE/CA that includes at least one additional alternative that meets the requirements of the 2011 Action Memorandum by physically removing all contaminated subsurface sediments exceeding the Removal Action Level.

Following submission of the Revised Supplemental EE/CA, EPA will provide an additional public comment period. Once that comment period is closed, EPA will consider all cleanup alternatives, all public comments, and other pertinent information before selecting the cleanup alternative. EPA will evaluate the options based on how well they:

- protect human health and the environment,

- comply with federal and state requirements,
- contribute to long-term protection by minimizing residual risk,
- reduce toxicity, mobility, or volume of hazardous material,
- minimize short-term effects,
- are feasible to implement, and
- consider the availability of required services and materials during implementation.

Additionally, cost may be considered with respect to the cleanup capital costs and the long-term operation and maintenance costs. The alternatives will also be assessed for consistency with the LDW ROD.

EPA will document its decision by selecting a cleanup option that properly addresses health and environmental risks from the contaminated subsurface sediments. This decision will also include a summary of, and EPA responses to, public comments.

3.2 COMMENTS ON PUBLIC INVOLVEMENT AND ENVIRONMENTAL JUSTICE ISSUES

EPA received comments related to public involvement and environmental justice issues. In general, these comments fell into the following categories:

- Inadequate community engagement and outreach,
- Environmental justice not being served, and
- Not maintaining prior commitments for the EMJ EAA cleanup.

3.2.1 EPA'S COMMUNITY CONSULTATION AND OUTREACH WAS INADEQUATE

Comment Summary

EPA received comments stating that the Supplemental EE/CA was developed without transparency or adequate public participation. The barriers caused by the pandemic were said to have left some community members out of the process.

> "We are extremely concerned that the process for developing the current Draft Supplemental EE/CA neglected to follow EPA's enhanced community engagement agreement with DRCC/TAG and the Duwamish communities and stakeholders….None of [the] meaningful engagement [that was done] in 2011 was done for our currently proposed Supplemental EMJ EE/CA. EPA has acknowledged this "oversight," yet continues to pursue the proposed remedy without meaningful community consultation in the midst of a pandemic."

> "I find it unacceptable that comment periods are allowed to occur with no real community engagement and outreach. The community needs to be given information before a comment period begins and engagement and events should occur early on in the process of a comment period, not after the comment period begins."

> "Stop making harmful decisions or opening comment periods during a pandemic for an environmental justice community already facing many challenges and inequities."

> "The EPA did not involve the community affected by the newest proposal in dialogue about it before it was released."

EPA Response

EPA has engaged in extensive outreach to the community regarding cleanup actions for the LDW Site, including EMJ EAA. Under the National Contingency Plan, for all non-time critical removal actions, EPA is required to provide a public comment period of not less than 30 days on the EE/CA and supporting documentation. EPA prepares a written response to comments and includes the responsiveness summary in the administrative record file. EPA may also conduct a public meeting and develop outreach material such as fact sheet. EPA has met those obligations for the EMJ EAA.

Please refer to Section 2.2 above for a summary of public outreach related to the EMJ EAA and Supplemental EE/CA. Throughout the entire EE/CA process, EPA has informed and involved the community. EPA has worked closely and openly with DRCC/TAG and other stakeholders to ensure they have the information they need to allow them to meet with and advise coalition members (organizations and individuals) and other community members. A variety of stakeholders including DRCC/TAG participated in the review of the EMJ Data Gaps Report (a precursor to the Supplemental EE/CA).

EPA will continue to provide opportunities for meaningful involvement with the community, stakeholders, and impacted parties on the planning, design, and implementation of the additional EMJ cleanup action through public meetings and outreach material such as fact sheets.

3.2.2 ENVIRONMENTAL JUSTICE IS NOT SERVED BY THE SUPPLEMENTAL EE/CA ALTERNATIVES

Comment Summary

Many commenters voiced environmental justice concerns about the Supplemental EE/CA, with a focus on whether the removal action for the EMJ EAA protects communities with environmental justice characteristics, and vulnerable populations.

> "As far as I know, it is not your fault that the Jorgensen Forge cleanup failed to meet the standards required in the ROD. However, there is no excuse for EPA to lower those standards and further burden the environmental justice communities who already suffer disproportionate costs from past pollution. This would transfer the punishment from those who have been derelict in their duties to those who are already experiencing health impacts from their exposure to contaminants in the Duwamish River."

> "…it is unconscionable that the EPA is suggesting changes that impact communities of Color during a pandemic! As if there are not enough stressors from the pandemic, then

this is added on. The Duwamish Valley communities deserve to have a voice in decisions regarding the cleanup of the river; it is a matter of equity and justice."

"In good conscience and in midst of a profound racial reckoning, how can the EPA fail to hold itself accountable for improving the lives and health of numerous Black Indigenouse [*sic*] People of Color and immigrant and refugees who live, work, play in the river and its basin? How can the EPA turn away from a a [*sic*] clean-up agreement that all parties had already negotiated and committed to?"

"I would also like the EPA to follow Environmental Justice principles and pursue a comprehensive approach to advancing equity and a systematic, anti-racist approach to embedding fairness in decision-making processes for the river."

EPA Response

EPA recognizes that commenters have environmental justice concerns. We acknowledge the communities' disproportionate impacts in the Lower Duwamish Waterway Community Involvement Plan (https://semspub.epa.gov/src/document/10/100134114), which includes an Environmental Justice Assessment. EPA's commitments regarding environmental justice concerns are provided in the LDW Record of Decision (ROD) (see Section 13.2.8) and are not changed by this Supplemental EE/CA. EPA will continue to provide meaningful involvement for affected community members as the cleanup of the LDW Site and EMJ EAA moves forward.

3.2.3 EPA IS NOT MAINTAINING PRIOR CLEANUP COMMITMENTS NOR HOLDING THE PRP ACCOUNTABLE TO THOSE COMMITMENTS

Comment Summary

Some commenters noted that EPA is not requiring EMJ to meet the requirements of the 2011 Action Memorandum that called for full removal of subsurface PCBs above 12 ppm. They contend that by allowing EMJ to not meet this requirement, EPA is enabling EMJ and other polluters to avoid their cleanup responsibilities.

"In the absence of the inability to meaningfully engage the community on the Supplemental EE/CA due to EPA's failure to follow its enhanced community engagement agreement and release of the Draft Supplemental EE/CA during the Covid-19 pandemic, EPA should again consider the comments it received on the original EE/CA in 2011…"

"My understanding is that with the Supplemental EE/CA, Jorgensen Forge has been given the opportunity to propose options for how the company should clean up polluted sediments that it did not deal with properly the first time it was required to complete this cleanup work. This does not seem right to me. At the very least, Jorgensen Forge should have to complete the cleanup to the standards that were previously agreed to (2011 EPA Action Memorandum). Arguably, the company should be made to complete additional cleanup activities and/or compensate the local community (such as the Duwamish River Cleanup Coalition) for their time and taxpayers for EPA resources that have been used to

complete this supplemental EE/CA process. This would encourage other companies in the Lower Duwamish and other Superfund sites to complete their cleanup work properly the first time."

"It is an abdication of this core responsibility for the EPA to do anything less than uphold and enforce the requirements of the 2013 Jorgensen Forge cleanup order…"

"Further, if you were to apply lower cleanup standards to the Jorgensen Forge, it would signal to other entities that the previously agreed upon standards can be lowered without properly engaging all the affected parties."

"I strongly urge the EPA to hold Jorgensen Forge accountable to the orders given by the 2013 EPA clean up order. We are a strong community that are not going to let corporate and government powers sacrifice our community health for dollars saved. Stick to the original clean up order and clean up the PCBs left behind during the original site cleanup – IMMEDIATELY…. If you violate your cleanup orders, you need to be reprimanded and need to recommit to your promise to a full, equitable, and health protective River clean up."

"I am appalled with the latest EPA proposal for the Jorgensen Forge site allowing the company to abandon PCBs in the river bottom that it left behind in violation of EPA orders, saving the company millions of dollars. Jorgensen Forge was cleaned up as an Early Action Area because it had some of the river's highest levels of contamination and posed an immediate threat to the environment and people's health. The company violated EPA's cleanup orders, leaving behind high levels of PCBs and burying them under backfill. The company was fined and a new cleanup order was prepared."

EPA Response

Since 2014, EPA has made continuous progress to ensure that contamination at the EMJ EAA is addressed and that EMJ is held accountable for its actions. Following the 2014 cleanup EPA imposed substantial penalties on EMJ for failure to adhere to the 2011 Action Memorandum. EMJ paid the penalties and promptly resumed working under EPA's oversight. EPA required EMJ to complete additional work at the site that included collecting additional contamination data that would be used to the develop the cleanup alternatives in the Supplemental EE/CA. In response, EMJ completed extensive sampling and data analysis, performed modelling, and developed supplemental cleanup alternatives. The newest EAA data was reported in a Data Gaps Report, which served as a precursor to the Supplemental EE/CA and helped form the basis for the Supplemental EE/CA cleanup options. EPA has now instructed EMJ to revise the Supplemental EE/CA so that it includes a cleanup option that meets the cleanup goals of the 2011 Action Memorandum. EPA's oversight of EMJ's activities will continue as further work is undertaken in the EAA.