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

OCT 25 2012

OFFICE OF
WATER AND WATERSHEDS

MEMORANDUM

SUBJECT Formal Dispute on the EPA Notice of Non-Compliance and Directed Revisions to the Portland Harbor Draft Final Baseline Human Health Risk Assessment and Request for Dispute Resolution; Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study, USEPA Docket No. CERCLA-10-2001-0240 – **Partial Resolution**

FROM: Daniel D. Opalski, Director
Office of Water & Watersheds

TO: File

This Partial Resolution addresses solely the third "Issue for Resolution" identified by the Lower Willamette Group in its September 21, 2012 "Opening Statement." That issue, as summarized on page 31 of the "Opening Statement," is as follows:

> EPA's unilateral June 2012 BHHRA revisions are neither consistent with the terms of the Consent Order nor with prior EPA-LWG practice and threaten a successful conclusion to both the Portland Harbor RI/FS and RD/RA process.

A plain reading of Section IX of the Administrative Settlement Agreement and Order on Consent (hereinafter "Agreement") indicates that EPA's actions were consistent with the Agreement. First, in Section IX, Paragraph 1, EPA reserved the right to comment on, modify, and direct changes for all deliverables. In this instance, the draft final BHHRA is a deliverable; EPA commented on this deliverable. Second, Section IX, Paragraph 1 requires that EPA meet with the Lower Willamette Group in an effort to resolve disputes. In this instance, in transmitting its comments, EPA offered the opportunity to discuss the comments. The Lower Willamette Group apparently did not avail itself of this offer at the time. After the Lower Willamette Group invoked dispute resolution, however, EPA did meet with the Lower Willamette Group in an effort to resolve disputed comments, agreeing to extend significantly the time period specified in Section XVIII for doing so.

With respect to the BHHRA, EPA took a different approach to conveying its comments than the practice that had been established on this project over the years, a practice that effectively allowed the Lower Willamette Group multiple opportunities for discussions and making proposals. EPA was clear that it was taking a different approach, believing that doing so would lead more efficiently and quickly to an approvable document. The Lower Willamette Group's displeasure with this approach is abundantly clear. Although EPA's approach differed from established practice, it was nonetheless consistent with the provisions of the Agreement. I find, therefore, that the remedy proposed by the Lower Willamette Group as part of dispute resolution under the Agreement is not required.

USEPA SF
1432316

It is, however, reasonable and appropriate for EPA and the Lower Willamette Group to seek to clarify expectations and/or protocols for communications between them going forward. The current Director of EPA Region 10's Office of Environmental Cleanup has confirmed his commitment that he, his Associate Director, and others will be available for discussions on this topic and that those discussions do not necessarily need to wait for resolution to the remaining elements of the dispute raised by the Lower Willamette Group.

Printed on Recycled Paper