KNIFE RIVER
AN MDU RESOURCES COMPANY

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OREGON OPERATIONS OFFICE
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EPA-REGION 10

EPA Region 10
Attention Harbor Comments
U.S.E.P.A
805 SW Broadway, Suite 500
Portland, OR 97205

Re: Comments of Knife River Corporation--Northwest (formerly known as Morse Bros. Inc.) (Knife River) on EPA's 2016 Proposed Plan for cleanup of the Portland Harbor Superfund site

In 1999 Morse Bros Inc. acquired a Willamette River frontage site in the Linnton neighborhood of Portland from its owner since 1972, Georgia Pacific West (GP-W). The agreement between MBI and GP-W contained an indemnity as to any contamination that existed at the site before the 1999 acquisition date (a copy of which is in the record and was provided to EPA as Exhibit 23 in MBI's 2008 104(e)). In 2000 the Portland Harbor became a Superfund site and the uplands fell under the jurisdiction of Oregon's Department of Environmental Quality (ODEQ). GP-W did extensive environmental studies and testing to show DEQ that its site was worthy of upland source control, which DEQ at one point confirmed. Notwithstanding this work, EPA Region 10 sent General Notice Letters to riverfront owners, including MBI, and as a result MBI was swept up into the process, now in its 16th year, of showing and trying to obtain understanding that it has and had no liability for any of the Superfund cleanup. EPA encouraged Potentially Responsible Parties to work together, as the Lower Willamette Group has done, but does not appear to have fully considered the work products of those groups. More than $110 million has been spent in doing studies as required by the agencies, developing plans, and paying for EPA and DEQ oversite. It is time for parties with no or *de minimis* or *de micromis* contaminant contributions be removed from this process and the associated financial threats to them, their operations, their employees and the public interest.

In its 2008 letter to EPA transmitting its responses to EPA's 104(e), MBI requested that EPA issue a consent decree specifying a non-exempt, *de micromis* exemption for MBI. As to its Linnton site, and MBI's involvement there, the law and guidance are both clear that MBI's request was well founded. In 2002 the President signed the Small Business Liability Relief Act, and it provided for the exemption (now at 42 USC §9607(o)). The EPA and U.S. Department of Justice Revised Settlement Policy of 2002 clearly provides CERCLA settlement authority and procedures for implementation of Congress's intent, even to the point of providing draft consent decrees providing covenants not to sue and contribution protection. In addition, EPA's OSWER Directive #9834.7-1C lays out the Methodology for such Early Settlements. However, EPA's Region 10, to our knowledge, has not yet implemented early settlement, *de minimis*, or *de micromis* settlement procedures.

EPA Guidance calls for early settlement discussions with affected entities as soon as sufficient information is available or can be inferred from other sites. MBI changed its name in 2009 to Knife River Corporation—Northwest. Knife River examined the EPA's Region 10 Proposed Plan and the EPA 2016 Feasibility Statement and believes both substantiate its position that it should be granted a zero-dollar settlement now based on the Proposed Plan. A zero-dollar settlement is appropriate because the Proposed Plan calls for nothing more than Monitored Natural Recovery (MNR) for the water and sediments area adjacent to the KRC site at RM 3.9W.

There are aspects of the Proposed Plan that if properly addressed would make early settlement clearer to all concerned.

First, apparently EPA has opted for dividing the cleanup responsibilities by Sediment Decision Unit (SDU). While a total estimated cost of $745 million is provided for Alternative I, EPA Region 10 has not provided technology design cost estimates

by SDU and sub-SDU. PRPs are expected after issuance of the Record of Decision (ROD) to commence "formal negotiations" with EPA, but without estimates of the per SDU costs, such negotiations are not likely to be productive. Information on the costs of earlier discussed alternatives is available but because EPA has created and chosen the new Alternative I, there are no parallel cost estimates by SDU or sediment management area (SMA). In short, Knife River urges EPA to make sure the ROD contains sufficient cost detail by SDU or SMA to allow meaningful settlement negotiations, even if EPA may prefer to have data updated.

Second, MNR is ubiquitous throughout the PHS site under Alternative I. Obviously EPA's concern for the success of MNR is on a site-wide basis. However, cases such as *Burlington Northern–Santa Fe* require site specific applications of design technology by discrete sub-area (that is, responsibility of present and legacy PRPs is on the basis of time, space and toxicity). To have effective negotiations, Knife River urges EPA to consider and identify necessary cleanups by both area such as SDUs and sub-areas within each area. This has not been done in either the EPA 2016 Feasibility Study or the Proposed Plan. This identification should be completed before the Remedial Design/Remedial action stage and in the ROD.

Third, EPA should provide expectations as to when PRGs are to be obtained, it should predict a cut-off of site-wide MNR, and these expectations should be applied on an SDU by SDU basis. Even in a world of institutional controls and marine restrictions (such as CC&Rs against specific sites or properties), as generations of owners and enforcers progress, there should be expectations of duration, plans for review, termination and automatic cut-offs, unless expressly reviewed and reauthorized.

Fourth, Knife River requests Region 10 of EPA cease insisting that that ODEQ require additional groundwater studies in order to receive upland source control. A prime example is Knife River's Linnton site. DEQ sat one point found the work done at the site by Georgia Pacific satisfactory for upland source control, but EPA has insisted on additional groundwater studies. If there are groundwater problems then they are the responsibility of ACF, which steam-cleaned, repaired and painted rail cars using for the waste water a settlement pond located upslope from Knife River's site and to which upland source control has been acknowledged, or the adjacent Oil Fire Training Grounds or PGE's Harborton site. Finally, the EPA 2016 Feasibility Study, Figure 4.2-28 shows no groundwater plumes in the vicinity of MBI's Linnton Site so the continued insistence for additional groundwater studies unnecessarily burdens this site.

Fifth, based on the Proposed Plan as finalized and the EPA 2016 Feasibility Study as supplemented, early settlement criteria and dates should be established in the ROD.

Knife River requests that each of these points be addressed in the upcoming ROD, that EPA implement an early settlement procedure, and that Knife River be granted a zero dollar sum consent decree that includes a covenant not to sue and contribution protection.

Yours very truly,

Knife River Corporation - Northwest

Brian R Gray

Brian Gray
President – NW Region

Cc:
Black Helterline LLC
Attn: Steven R. Schell