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**From:** Peter Saba [psaba@schn.com]  
**Sent:** 11/1/2017 11:18:31 PM  
**To:** Kelly, Albert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08576e43795149e5a3f9669726dd044c-Kelly, Albe]  
**CC:** rich.gold@hklaw.com  
**Subject:** Portland Harbor - Revised Documents

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO Rule 408, FRE

Kell,

We received EPA's comments on the Portland Harbor documents from Region 10 yesterday afternoon. While we are still in the process of reviewing those documents, I did want to bring to your attention one major concern which is the addition of language that seeks to limit the use of the data.

We have noted places in the detailed tasks where there were changes to what the data could be used for or where EPA stated that it would not use the data evaluation in a particular manner, which specific changes we will address in our meeting. However, in advance of the meeting, I wanted to point out in particular language that was added to Section 1.3, the Data Use Objectives section that we worked so hard to reach agreement on at our last meeting. A new paragraph was added to that section (copied below), and the language at the end of that paragraph (highlighted) is particularly problematic.

We view this language as inconsistent with the principle that we thought we had all agreed to: the data will be used for such purposes as the data and science will support and that there would not be any predetermined limitations on the use of the data or advance conclusions as to where the data may lead. Moreover, we believe this language is inconsistent with the EPA Task Force recommendations and objectives to promote Adaptive Management and to achieve remedy optimization based on enhanced understanding of the changing site complexities and conditions. Finally, each time the Pre-RD Group receives comments that seek to limit the data use, it raises significant concerns about whether the data from this extensive sampling effort will be appropriately considered or whether the Region has already predetermined to disregard the data and analysis (and is focused solely on obtaining baseline data for future long-term monitoring and remedy effectiveness evaluation) and therefore raises questions as to whether it is appropriate for these companies to invest their time and resources in this effort.

I am available to discuss this concern in advance of the Monday meeting.

Peter

EPA Addition to Section 1.3 of the Draft Work Plan (New Paragraph)

EPA's specific objectives, consistent with ROD, are to use sediment contaminant data from the SMA delineation effort to delineate SMAs, and use updated bathymetric data from this effort to support remedial design using the ROD's decision trees. The stratified random sediment sampling effort, in conjunction with water, sediment trap, and fish data will be used to update the current conditions and provide a baseline for long-term monitoring and remedy effectiveness evaluations. The specific uses of particular data sets may vary between the Pre-RD Group and EPA. Where objectives and analyses presented by Pre-RD Group expand beyond EPA's specific objectives, EPA will review and consider related materials. EPA will determine whether any such additional analyses are incorporated into EPA's risk management decisions. EPA's intent is to implement the ROD by moving to design with this effort and not to change the ROD's decision-making framework, including selected RALs, the process for delineating SMAs, or determining the rate of natural recovery.

**Peter B. Saba**

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