Oregon

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October 5, 2017

Ms. Michelle Pirzadeh, Acting Regional Administrator
U.S. Environmental Protection Agency, Region 10
Office of the Administrator
1200 Sixth Avenue
Seattle, WA 98101

By email

RE: Pre-Remedial Design Investigation
Portland Harbor Superfund Site

Acting Regional Administrator Pirzadeh:

Thank you for our telephone conversations on October 2nd and again today regarding the draft Administrative Order on Consent (AOC) that the U.S. Environmental Protection Agency (EPA) has been negotiating with the group of Potential Responsible Parties (PRPs) known as the Portland Harbor Pre-RD Group. We have been working under the understanding that the purpose of this AOC is for the Pre-RD Group to conduct a Pre-Remedial Design Investigation (PDI) in conformance with the sampling plan for baseline and long-term monitoring developed by the EPA earlier this year. The Oregon Department of Quality (DEQ), as well as the other Tribal, Federal and state parties to the 2001 Portland Harbor Memorandum of Understanding (Portland Harbor MOU), have provided substantial input on EPA's sampling plan, and DEQ is supportive of the approach for baseline and long-term performance monitoring reflected in that plan.

However, as the designated CERCLA support agency for the in-water remedy, and as a party to the Portland Harbor MOU, DEQ has significant concerns regarding both the process for development of this AOC, and the substance of the draft AOC provided to us on October 2nd.

Process Issues

The draft AOC sent to DEQ on October 2nd, three days ago, is unusual in that it includes a detailed technical work plan for the PDI. Normally, such details would be developed following the execution of an AOC that sets the objectives to be accomplished by the work, providing the MOU parties the opportunity for coordination and consultation required by the Portland Harbor MOU. The Portland Harbor MOU anticipates that this technical coordination and

communication will occur through the Technical Coordination Team (TCT). EPA is required to ensure that the Portland Harbor MOU parties are provided with key documents in a time frame that supports effective coordination. The transmittal by EPA on Monday of a draft AOC and work plan to DEQ, without clear indication of whether this is an EPA draft or a draft of the Pre-RD Group, without any indication of whether EPA is seeking comments from DEQ or other MOU parties, and without any information concerning by when EPA is seeking comments, is not consistent with either the terms of the Portland Harbor MOU or EPA's past practices. While we understand that EPA has discussed some form of deadline for finalizing the AOC with the Pre-RE Group, that deadline has not been clearly communicated to DEQ. The resulting confusion regarding what we may be commenting on, and by when comments might be due, is making timely and constructive feedback to EPA impossible.

Substantive Concerns

Assuming that the draft AOC provided to DEQ on Monday October 2nd is the draft AOC currently under consideration (including its work plan), DEQ has the following substantive concerns:

- Some objectives identified in the draft work plan (e.g., updating the baseline human health risk, refining the Food Web Model, and refining the conceptual site model) are at odds with implementation of the ROD. Instead, they indicate the draft work plan is designed to question the RI/FS underpinning the ROD, potentially leading to significant additional delays in the implementation of *any* remedy. As an example, one stated specific objective is to update fish consumption rates. Given that fish consumption in the harbor is suppressed because of public concerns with eating fish from a Superfund site, we question the utility of such an exercise other than to call the RI/FS and ROD into question.

- Another stated objective of the sampling called for in the draft work plan is to "reset achievable remedy targets/actions." Draft work plan at page 24. Remedial Action Levels have been established in EPA's ROD, and it is inappropriate to be assuming at this time (prior to the collection of baseline data) that EPA will be resetting these key aspects of the ROD. Developing a work plan with the stated purpose of reevaluating the ROD is simply planning for years of further delay at a site that has already been on EPA's NPL list for 17 years.

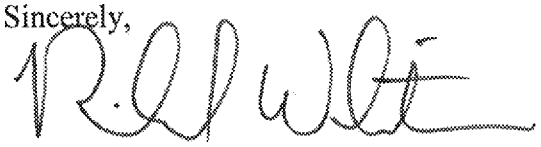
- Contrary to the stated central purpose of EPA's sampling plan, the locations of the proposed surface sediment samples do not appear to be appropriate for establishing the baseline for future data collection and comparison. A large element of the data collection effort is focused outside of the site, on the Downtown Reach and the Upstream Reach (draft work plan at page 2), leaving major gaps in data collection within the site itself.

These data gaps will limit EPA's ability to determine the performance of the remedy, when Remedial Action Objectives (RAOs) have been achieved, and our collective ability to determine the overall effectiveness of the upland and upriver source control work for which DEQ is the designated CERCLA lead agency.

- Finally, the draft AOC does not appear to provide for funding of DEQ's regulatory oversight of the PDI, as authorized by CERCLA and Oregon's Environmental Cleanup Law.

DEQ encourages EPA to continue moving quickly in implementing the Portland Harbor Record of Decision (ROD) issued earlier this year. However, DEQ's process and substantive concerns with the draft AOC and work plan are significant. DEQ requests that EPA formally convene the TCT for the purpose of coordinating input on these documents, including providing the parties adequate time to review draft documents prior to a meeting. In the event that EPA determines that it is proceeding without such consultation, DEQ will invoke the dispute resolution provisions of the MOU prior to finalization of the AOC. We value our close working relationship with EPA on this project, and trust that such an action will not be necessary.

Sincerely,



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Oregon Department of Environmental Quality

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Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of Siletz Indians
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