

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Dimitri.Karakitsos@hklaw.com
Sent: Fri 7/28/2017 3:31:06 AM
Subject: Portland Comments
Portland Harbor Process and Economic Impact.pdf
PH - Pre-RD Group Ltr to EPA.PDF

Ryan,

Sorry for the late email. Wanted to get you two documents that were prepared by a small group of PRPs - Schnitzer, Arkema, Gunderson) and recently shared with Kell and Nick. Also I gave Nick something earlier this week, hopefully he shared with you as well.

Please let me know if you have any questions or if there is anything we can provide to be helpful.

Thanks,

Dimitri

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July 18, 2017

Via Email Only

Stephanie Ebright, Assistant Regional Counsel
Sean Sheldrake, Portland Harbor Project Manager
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: Pre-Remedial Design Investigation Sampling – Portland Harbor Superfund Site, Portland, Oregon

Dear Stephanie and Sean:

The Pre-RD Group is writing to follow up on the series of meetings we have recently had with EPA to discuss our Proposed Scope for Pre-RD Investigation (set forth in detail in our June 6 Scoping Memorandum). The goal of our proposed Pre-RD sampling effort is to collect updated data that will be used, among other things, to further delineate and refine sediment management area (SMA) footprints and to facilitate the PCI allocation process.

During the past six months, the Pre-RD Group members have made significant investments of time and money and retained a joint technical consultant team to develop a specific plan to present to EPA with sufficient detail to support informed discussions with EPA on our proposed plan. We appreciate EPA taking the time to explain its draft Sampling Plan for Remedial Design, Baseline and Long-Term Monitoring for the Portland Harbor Superfund Site to our Pre-RD Group and the representatives for the State of Oregon, the City of Portland and Northwest Natural at the meeting on June 26. We are pleased that we have been able to move forward since that meeting to negotiate the details of our group's proposal. The members of our group are strongly committed to working with EPA in the next month to reach agreement on this next stage of work so that field work can commence this fall and all sampling called for in our proposed scope of work can be conducted and completed by Fall 2019.

We also wish to clarify that we have never made any request or demand that EPA not engage in discussions or negotiations with other PRPs who may wish to undertake and fund

July 18, 2017
Page 2

other work at the site, including components of EPA's draft sampling plan not included in our proposed scope of work. To the contrary, the Pre-RD Group welcomes all such efforts.

We look forward to working with EPA during the coming months on our collective goal of advancing the clean-up of the Site.

Sincerely yours,

Handwritten signatures of David C. Weber and Loren R. Dunn. The signature of David C. Weber is on the left, and the signature of Loren R. Dunn is on the right.

David C. Weber

Loren R. Dunn

cc: Lori Cora, ORC
Davis Zhen, ECL

10082465v1 BDFIRM 000SEA

**Portland Harbor
Key Considerations for Pre-Remedial Design Work**

Background

The Environmental Protection Agency (“EPA”) issued the Record of Decision (“ROD”) for Portland Harbor in January, 2017. Due to delays in the 16-year investigation, much of the data used in the ROD is so old that it does not reflect current conditions and must now be replaced through Site-wide resampling. Significant analytical work also remains unfinished.

Stale data, assumptions contradicted by current data, and a political imperative to issue the ROD before the change in administrations resulted in an overly broad ROD with a 13-year dredging remedy. The ROD acknowledges, however, that additional data and analysis are needed before work can start on the remedial designs. Region 10 has proposed that the potentially responsible parties (“PRPs”) conduct this work under a new administrative order on consent (“AOC”). On March 15, 2017, several of the industrial PRPs met with Region 10 staff to discuss the EPA’s proposal. An initial draft of the sampling framework circulated by Region 10 staff and subsequent discussions with staff have raised concerns about:

- The breadth, potential cost, and time required for the sampling work being proposed by Region 10 staff; and
- Region 10 staff’s focus on limiting use of this data to marginally refine the remedial action areas, to establish the baseline for long-term monitoring, and for allocation of costs of the existing ROD.

The PRPs recognize the importance of collaboration and appreciate the EPA’s renewed commitment to making cleanup efforts operate more effectively and efficiently, as Administrator Pruitt memorialized in his May 22, 2017 directive regarding the Superfund Program. A group of nine industrial PRPs have formed to consider performing additional Pre-Remedial Design sampling and analysis. This Pre-RD Group has engaged a common consultant, has prepared a scope of work which was provided to Region 10 staff on June 7, and will be meeting with Region 10 staff on the proposed scope on June 14. **EPA headquarters oversight is needed to achieve prompt agreement to move forward on the additional sampling and analysis and to ensure that fair processes exist that facilitate cleaning up the Harbor without unnecessarily burdening the local economy and U.S. workers.**

Process Requests

For PRPs to be willing to participate in an AOC, reasonable assurances are needed to prevent a repeat of prior experiences at the Site. This can be achieved by (1) defining the obligations of the parties; (2) establishing safeguards to ensure efficiency; and (3) placing no constraints on the use of data collected under the AOC.

1. The obligations of the parties should be well-defined, and the schedule should be followed by all parties.

- Work obligations should be described in an agreed-upon scope of work and schedule incorporated into the AOC.
- Data should be collected and analyzed under processes agreed-upon in advance.
- Any changes to the scope must be mutually-agreed upon by the parties.

- The parties should commit to meet the schedule (including time periods for agency review and comment), and EPA HQ should review any proposed extensions under criteria agreed-upon in advance.

2. Safeguards should be established to ensure efficiency.

- The AOC should include dispute resolution procedures that allow for quick, decisive action, including immediate appeals of agency decisions.
- A Peer Review Panel (the “Panel”) should be appointed to address technical questions and disputes between agency staff and performing parties.¹
- The EPA should designate an official in the Office of the Administrator as point person to facilitate EPA’s performance under the AOC and to resolve disputes of issues not delegated to the Panel.

3. No constraints should be placed on the use of data collected under the AOC, and the remedy must be based on good science.

- Given the substantial cost of the work requested by Region 10 and the significance of this project for the future of the Portland community, there can be no constraints on the use of data collected in this effort.
- EPA must agree that, if the new data indicates that decisions in the ROD should be revised, it will consider changes to the remedy including (if needed) the remedial action levels, background calculations and exposure scenarios.
- The Panel should advise on whether changes to the ROD are warranted given the new data.

Economic and Employment Considerations

Cleaning up Portland Harbor in a way that is protective and cost-effective is good for U.S. workers. The Harbor is home to approximately 30,000 high paid manufacturing jobs resulting in wages of \$1.5 billion annually.² An unnecessarily lengthy and expensive cleanup jeopardizes those jobs, as well as others throughout the region indirectly supported by business activity in the Harbor.

An Economic Impact Study commissioned by the Port of Portland found that businesses within the Harbor generate over \$12 billion in revenue a year, resulting in over \$400 million in state and local tax revenue.³ The report also found that neighboring industries benefit from Harbor business. Over 16,000 jobs are supported in the local economy as a result of business to business relationships, and an additional 19,000 jobs are supported by Harbor workers buying products and services in the region.⁴ The EPA should recognize the significant impact the Portland Harbor has on the local and state economy and the need to protect the industries that it supports.

The EPA and the PRPs should collaborate to find an equitable solution that is efficient and effective in cleaning up the Harbor and does not risk harming the economy. Specifically, the ROD should balance the extensive resources required to plan and implement the remedy with the needs of businesses working within and beyond Portland Harbor.

¹ The EPA has used this approach at sites including Hudson River, where a panel was established to operate in accordance with existing agency guidance documents.

² Economic Impact of Portland Working Harbor, January 2016
http://www.oregon4biz.com/Portland-Harbor/PH-Economic-Impact_PoP.pdf

³ *Id.*

⁴ *Id.*