

FOR SETTLEMENT PURPOSES ONLY – SUBJECT TO Rule 408, FRE  
Pre-RD Sampling – Key Issues: Agreement in Principle – 9-19-17<sup>1</sup>

Issue	Pre-RD Group Position (as reflected in document revisions 8-23/25 and 8-28-17 Presentation)	EPA Position (as of 8-31-17 Call)	Comprehensive Package Proposal	Agreement in Principle (9-19-17 Meeting)
<b>TECHNICAL</b>				
<b>COC's</b>	Focused COC's only	Full ROD lists (Table 17) of COC's by media / biota – to be done by Pre-RD Group or through split samples	Willing to accept EPA's position to include full list of COC's by media/biota per Table 17 of ROD in Pre-RD Group scope as part of comprehensive package; PDI Report to evaluate data for purpose of limiting list of COC's for future monitoring rounds	Agreed as per Comprehensive Package Proposal (CPP)
<b>Surface Sediment Sample Numbers</b>	Keep SMA and baseline integration with 580 samples	EPA wants only randomized baseline sample locations (424 unbiased)	Willing to accept EPA's position on number of unbiased sample locations as part of comprehensive package	Agreed as per CPP
<b>Downtown/Upstream Reach</b>	40 sediment samples in combined background (upriver) areas (20 & 20); 25 SMB fish tissue samples	Not discussed on call; prior EPA Region 10 position is separate reaches; 60 sediment samples (30 & 30); 40 SMB fish tissue samples (20 in each segment)	Retain combined DTR/USR (one background dataset) with 40 samples. EPA can use them as 20 & 20 if they want to evaluate DTR and USR separately	Pre-RD Group has agreed to EPA Position to extent reasonably/technically practical <sup>1</sup> : 30 sediment samples and 20 SMB fish tissue samples in each segment (i.e., in each of Downtown Reach and Upstream Reach; for total of 60 sediment samples and 40 SMB fish tissue samples) * assumes sufficient sediment and fish present.

<sup>1</sup> Subject to finalization of definitive documentation and the internal approval process of each of the Pre-RD Group companies.

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<b>Subsurface Sediment Coring</b>	2 feet sample increments	Not discussed on call; prior EPA Region 10 position is 1 foot increments	Limit to 2 feet intervals; 1 foot intervals are unnecessary and will add time and cost	Two feet intervals
<b>AOC/LEGAL</b>				
<b>Work Takeover</b>	Delete	Needs to stay in AOC; Willing to modify so that subject to dispute resolution with Regional Administrator as final decision maker for this particular item	Agree to leave in AOC subject to dispute resolution, but final decision maker needs to be at EPA HQ (Administrator or Administrator's Designee); work takeover would constitute a termination of the AOC and parties would have no future obligation (including no obligation to fund work taken over by EPA going forward)	Work takeover in AOC subject to dispute resolution with final decision by Administrator or Administrator's Designee; in the event of a work takeover, the AOC parties would have no future obligation under the AOC with respect to work taken over by EPA going forward, including no obligation under the AOC (i) with respect to performance of work scope taken over, (ii) to fund work taken over going forward, or (iii) for stipulated penalties on or after the issuance of the work take over notice; work not subject to the takeover (if any) would continue under the AOC
<b>Costs</b>	No NRD Trustee/Tribal oversight costs; cap on EPA costs at \$1.5M; no past costs related to development of EPA's sampling plan (\$270K); need clarification on cooperative/technical assistance grants to Tribes	Agree on cap at \$2.5M; no direct payment for Tribal oversight costs, but could be included indirectly as assistance grants within the cap limit; did not address the past costs	Agree on \$2M cap (reduction in comparison to EPA proposal takes into account that Pre-RD Group is assuming significant increase in costs due to willingness to accept EPA position on threshold technical issues as described above); assistance grants and any past EPA costs are within the cap	\$2M cap on payment under the AOC of EPA response costs*; cooperative and technical assistance grants related to the Work under the AOC and past EPA response costs related to development of EPA's sampling plan and negotiation of AOC included subject to the cap; EPA costs for work taken over by EPA are excluded <u>*Note we understand that the State of Oregon wants to talk with the parties separately about their response costs.</u>

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<p><b>Dispute Resolution</b></p>	<p>Technical disputes submitted to impartial peer review panel selected by CSTAG Chair with recommendations by EPA and Respondents; any party can seek a reconsideration of the peer review panel's determination by the Administrator's Designee who will make the final decision</p>	<p>No peer review panel; third party review by CSTAG Chair.  Under the last EPA draft of the dispute resolution provision, all disputes were decided by the Director or Associate Director of the Region 10 Office of Environmental Cleanup with disputes on a narrow group of deliverables (Work Plan, QAPP, and Sampling Plan) subject to submission to CSTAG Chair for evaluation prior to final decision by such Director/Associate Director.</p>	<p>All disputes to be resolved by final decision maker at EPA HQ (Administrator or Administrator's Designee); process for technical disputes will include a review and evaluation by the CSTAG Chair who will submit a report and the Respondents shall have the opportunity to simultaneously provide an evaluation by an independent peer review panel that they establish, all within same, set timeframe; tolling of penalties and deliverables schedule during dispute resolution process</p>	<p>Dispute resolution process to provide for initial decision at regional level with right of appeal for final decision by Administrator or Administrator's Designee (no restriction on Administrator's choice of Designee); process for technical disputes will include a review and evaluation by the CSTAG Chair. <u>The Pre-RD group will not be limited as to how it seeks advice (e.g. a peer review panel that it convenes at its own expense) in formulating its dispute positions, so long as it does so within the designated timeframes, who will submit a report, and such process will provide the Pre-RD Group members with the opportunity to simultaneously submit an evaluation by an independent peer review panel that they establish, all within same, set timeframe; tolling of penalties and deliverables schedule during dispute resolution process</u></p>
<p><b>Work Plan</b></p>	<p>Needs to be agreed and attached to AOC/Statement of Work prior to signing</p>	<p>Deliverable post-signing; will agree to a 30-day review for completion</p>	<p>Agreement in principle reached on outstanding issues first week of September; Work Plan finalized within 25 days and needs to be agreed and attached to AOC/Statement of Work prior to signing</p>	<p>Work Plan will be agreed and attached to AOC/Statement of Work prior to signing; Pre-RD Group and EPA shall use their best efforts to finalize the AOC, Statement of Work, and Work Plan within 3 weeks of <u>submission (anticipated by October 10)</u></p>
<p><b>Termination of Order</b></p>	<p>Except for certain sections that survive termination, Work requirements</p>	<p>EPA must agree that Work has been completed; willing to subject that determination to dispute resolution</p>	<p>AOC terminates on completion of the Work; disagreement on whether Work has been completed is subject to the dispute resolution provisions</p>	<p>AOC terminates on completion of the Work; process for determining that Work has been completed to be addressed in AOC (e.g.,</p>

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	terminate when respondents submit PDI Report			notice/certification of completion by Respondents, subject to review by EPA); disagreement on whether Work has been completed is subject to the dispute resolution provisions
<b>Data Usage/Report</b>	Critical that included	Was not addressed on call	<p>Confirm agreement on data evaluation as set forth in the proposed Work Plan including:</p> <ul style="list-style-type: none"> <li>- Refinement of the CSM;</li> <li>- Refinement of sediment recovery curves;</li> <li>- Re-calculation of Site-wide and segment-wide surface sediment SWACs;</li> <li>- Assessment of fish home ranges used in the FWM;</li> <li>- Assessment of monitored natural recovery potential;</li> <li>- Evaluation of current (2017/2018) upstream background concentrations;</li> <li>- Update the active remedial footprint; and</li> <li>- Refine understanding of the FWM and update calculations of baseline fish consumption risks</li> </ul>	<p><u>Pre-remedial Design Investigation (PDI) Evaluation Report to be provided as set forth in proposed Work Plan (Section 3.3) and shall be subject to EPA review and approval or disapproval, in whole or in part, as provided in the Statement of Work (Section 5.6); disapproval of all or part of the PDI Evaluation Report is subject to the dispute resolution provisions; Work Plan will include language recognizing that data interpretation may not represent final design or remedy completion analysis. EPA will review the data and report to determine whether data are sufficient to support presented interpretations consistent with the NCP, CERCLA and EPA policy and guidance. data collected is not sufficient to draw conclusions as to the final design for any given SMA and that EPA may dispute whether the data is sufficient to draw specific conclusions for CERCLA purposes</u></p>
<b>Scope Increase</b>	Any change to scope must be mutually agreed; no EPA right to unilaterally require additional samples; split-samples limited to QA/QC	Was not addressed on call	Confirm that Pre-RD Group position as reflected in 8-23 AOC mark-up has been accepted	Change in scope requires mutual agreement; EPA does not have right under AOC to unilaterally require additional samples. <u>EPA may collect split samples, limited to QA/QC. In the event that EPA chooses to do additional work, such additional</u>

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				work will be done outside of the AOC and the costs will not be billed under the AOC
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