State of Oregon
Department of Environmental Quality — Memorandum

Date: June 11, 2010

To: Dick Pedersen (Director), Dick Pedersen
Wendy Wiles (Land Quality DA)
Nina DeConcini (Northwest Region DA)

From: Debbie Bailey (Project Manager)
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Subject: Port of St. Helens/Former Pope and Talbot EPA Referral Recommendation

The Cleanup Program has prepared this memorandum to provide information on the status of the Port of St. Helens/Former Pope and Talbot site located in St. Helens. The attached fact sheet provides a summary of the history of the site. DEQ has been working with the Port as the sole responsible party for the last two and a half years since the bankruptcy and liquidation of Pope and Talbot. Prior to that time Pope and Talbot performed almost all the work under the DEQ Order.

Very little work has been completed by the Port since the bankruptcy. The Port submitted documentation asserting that they were unable to pay for the cleanup work. DEQ reviewed the documentation and determined that the Port had funds to proceed with the investigation but that there may be issues with funding the entire cleanup given the apparent absence of any insurance coverage to address environmental liabilities. The Port disagreed with DEQ's conclusions on the level of funding available to the Port annually for ongoing investigation and cleanup. DEQ requested that the Port identify what funds were available and what work could be performed by the Port. The Port did contract with a consultant to prepare a scope of work to address the data gaps that DEQ has identified and contracted with a consultant to identify insurance policies that might apply to the property. However, the work continued to proceed slowly.

In January 2010, DEQ notified the Port that DEQ would refer the project to EPA due to the lack of progress and the concern regarding available funding and to the level of concern regarding the nature and extent of contamination at the property. The site clearly requires remedial action considering the presence of visible creosote contamination in surface sediment and the presence of creosote free product in the upland soils migrating with groundwater flow into surface water. Following notification, the Port reportedly identified an insurance policy and the insurer has indicated they will defend the Port under the policy terms. The Port has subsequently tentatively agreed to complete the additional investigation of the property DEQ believes is necessary to develop and evaluate protective cleanup alternatives for the site.

After DEQ's referral, EPA proceeded to compile the listing package for the property. The initial conclusion regarding the site is that it scores and is a candidate for the NPL. At this time EPA has requested that DEQ state its intention to proceed with the referral.

Although the funding for this project remains a concern and a challenge, we recommend requesting EPA suspend the NPL listing process until we can adequately gauge whether or not the parties can make available the funding to proceed with the investigation and cleanup. The search for insurance funds has

not been completed therefore it is unclear what funds are available for the project. If the Port is able to find adequate funding to complete the project, the referral may be unnecessary.

Potentially favorable outcomes if the NPL referral is postponed:

- The community will avoid the stigma of an NPL site.
- The Port has a tenant for a portion of the site, and is attempting to lease the remaining portion of the property, which would generate needed revenue for cleanup. Listing could compromise the Port's ability to retain the existing lessee or attract an additional lessee for the property.
- The site will be managed under DEQ's rules and regulations rather than federal rules and regulations.
- DEQ does not have to address the issue of matching funds for an NPL site, i.e., agreeing to matching funds in the future should Superfund funds be used for the project in the future.

Potentially unfavorable outcomes if the NPL listing referral is postponed:

- Available insurance coverage may be inadequate to complete the investigation and perform the cleanup.
- The Columbia River is designated as a waterway of national significance where expectations are high for reducing toxics present in the watershed. A decision to defer listing may be viewed negatively by local, state and federal stakeholders for the Columbia River watershed in light of the significance of the contamination on the site.

Based on the information presented above, the Cleanup Program recommends postponement of the listing referral for at least six months. We will continue to carefully assess the Port's performance in completing the work and are prepared to reissue a recommendation for your concurrence for EPA to reinitiate listing as circumstances warrant.