CBNSF 18.3.1 V1
5/31/00

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

May 31, 2000

Reply To
Attn Of: ECL-111

Potentially Responsible Parties
for the Hylebos Waterway
(see Addressee List)

Re: Notice of Cleanup and Negotiation Schedules--Hylebos Waterway Problem Areas
Commencement Bay Nearshore/Tideflats Superfund Site

Dear Sir or Madam:

In 1993, EPA notified you that you or your company/agency are potentially responsible for Superfund response costs that have been incurred or will be incurred cleaning up contaminated marine sediments in the Hylebos Waterway which is a part of the Commencement Bay Nearshore/Tideflats Superfund Site in Tacoma, Washington. Along with our PRP notice, we sought agreement from potentially responsible parties (PRPs) to perform remedial design work on the Waterway. In November of 1993 we entered into an Administrative Order on Consent (AOC) with six parties, known as the Hylebos Cleanup Committee (HCC),[1] to conduct pre-remedial design studies that would define the areas in the Waterway that required cleanup through capping, dredging, or natural recovery and to identify disposal sites for dredged material. The work under the AOC is almost complete. EPA proposed a cleanup plan for the Waterway in November 1999.

I have replaced Allison Hiltner as the Remedial Project Manager for the Hylebos Waterway. I am writing this letter to inform you of the next steps in the cleanup process; provide you with EPA's anticipated schedule for negotiating a cleanup agreement with potentially responsible parties (PRPs); and encourage you to begin coordinating with the other PRPs at the Hylebos Waterway to develop an offer to perform and finance the cleanup.

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[1] Kaiser Aluminum, Elf Atochem North America, Inc., Occidental Chemical Corporation, Port of Tacoma, General Metals of Tacoma, ASARCO, Inc.

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THE CLEANUP PROCESS -- NEXT STEPS

As mentioned above, EPA proposed a cleanup plan for the Hylebos Waterway based on studies and analysis conducted by the HCC. In November of 1999 EPA issued a draft Explanation of Significant Difference (ESD) that covered the cleanup plans for both the Hylebos Waterway and Thea Foss Waterway and identified three disposal sites for all contaminated sediments dredged from the Waterways. A public comment on the draft ESD was held from late November through February 2, 2000. You were sent a fact sheet in November, but for your convenience another copy is enclosed.

For the Hylebos Waterway, EPA has proposed that 940,000 cubic yards of contaminated sediments need to be dredged and confined in two disposal sites, the Blair Slip 1 site and a confined aquatic disposal at the mouth of the Hylebos Waterway. The plan assumes approximately 11 acres (primarily along the banks) will be capped with a minimum of three (3) feet of clean sediment and an additional twenty (20) acres were identified as natural recovery areas. The estimated cost for the proposed cleanup plan is $39,063,000 (which does not include land acquisition costs for disposal sites).

Significant public opposition to the proposed disposal site at the mouth of the Hylebos Waterway has lead certain members of the HCC to hire a facilitation firm to conduct additional public outreach, in which EPA is participating. The outreach program is expected to conclude its efforts in June. In parallel to this effort, EPA has been completing its review of formal comments received on the draft ESD during the public comment period. **At this time, it is anticipated that a final ESD will be issued in June 2000.**

The Port of Tacoma has informed EPA that it wants Blair Slip 1 filled by **2002** to accommodate a tenant's needs for terminal space that would be constructed on the top of the fill site. EPA intends to support the Port in achieving this schedule to the maximum extent possible, assuming that Blair Slip 1 is retained in the final ESD.

CLEANUP AGREEMENT NEGOTIATION SCHEDULE

EPA expects to begin negotiations of a cleanup agreement, called a Remedial Design/Remedial Action Consent Decree (RD/RA Consent Decree), soon after the final ESD is issued. **EPA's estimated schedule for beginning the negotiation period is July/August of 2000.** EPA typically initiates negotiations on a RD/RA Consent Decree by sending a "Special Notice Letter." The Special Notice Letter establishes a sixty-day moratorium on use of Superfund money for remedial work to allow PRPs an opportunity to provide a good faith offer to perform the work. PRPs are given a draft RD/RA Consent Decree, including a Scope of Work that EPA wants performed, and PRPs have sixty days to provide an offer to conduct the work and settle their liability. If a good faith offer is not received within sixty days, EPA may order PRPs to do the work, or perform the work itself and seek reimbursement later.

In 1993 along with the notice letter, EPA issued a demand for costs it had incurred to date. EPA has not been reimbursed for all of its costs. EPA's current outstanding costs are approximately $5,043,000, including prejudgement interest that has accrued since the demand was made. **Reimbursement of all EPA's pasts costs in addition to the cleanup of the Waterway will be the subject of the upcoming negotiations.** EPA will provide a certified summary of actual costs at the time of negotiations.

PRP COORDINATION SHOULD BEGIN NOW

This letter notifies you of the critical next steps in the cleanup and negotiation process for the Hylebos Waterway cleanup. If cleanup is to begin by the end of this year, it is critical that the negotiation process be efficient and timely and, for a site as complicated as Commencement Bay, the PRPs must be organized in advance of negotiations with EPA. A list of all recipients of this letter is enclosed. Legal counsel contacts, if known, have received a copy of this letter. We cannot guarantee that this information is up to date. The next step for the PRPs is to meet and decide how to proceed with internal deliberations on performing and financing the cleanup.

Each party should pay particular attention to how the proposed cleanup plan may impact your operations at the Hylebos Waterway during and after the cleanup. You should begin planning now what involvement you want to have during the design of the cleanup to ensure your interests and concerns are reflected. In addition, you should consider the long-term impacts of the cleanup actions, which may restrict uses of intertidal property (e.g., in areas where capping may occur and contaminated sediments are left in place near your property). These and other issues should be considered by you as you begin coordinating your interest and level of participation in upcoming negotiations.

Approximately 35 parties undertook an allocation process which used a neutral, third-party allocator to assess all Hylebos PRPs' shares of liability. EPA was not a party to the allocation. If you did not participate in the process, you can contact R. Paul Beveridge, counsel for Kaiser Aluminum and ASARCO, at (206) 447-0900 or Robert Bakemeier, counsel for Occidental Chemical Corporation, at (206) 264-6367 to discuss ways that you may be able to join the process or settle with other parties based on the allocation results. EPA has not reviewed or approved the final allocation and does not have a position on it at this time.

The Port of Tacoma and Occidental Chemical Corporation have made a proposal to EPA that they will dredge the mouth of the Hylebos Waterway, construct Blair Slip 1, and allow other PRPs to pay to place contaminated sediments from other parts of the Waterway into the Slip if it can be done on their construction schedule. EPA is discussing this proposal with the Port and Occidental and it is also being also discussed in an outreach process initiated by some of the PRPs. EPA's goals are to have a comprehensive cleanup conducted, which includes, but is not limited to, dredging, capping and long-term monitoring of all areas that exceed the cleanup levels (Sediment Quality Objectives), both subtidal and intertidal (bank) areas. The Port and

Occidental's proposal is a significant step forward in meeting EPA's goal, but other PRPs' participation is needed to accomplish it.

EPA believes the allocation process coupled with the Port/Occidental proposal has laid a significant foundation for all PRPs to begin internal discussions. **This letter does not require a response to EPA.** If you have questions about the proposed cleanup plan or the negotiation schedule, please contact me at (206) 553-6708, or have your attorney contact, Lori Houck Cora, Assistant Regional Counsel, at (206) 553-1115.

Sincerely,

Peter Contreras
Remedial Project Manager

Enclosures
Addressee List
Fact Sheet

cc: w/enclosure
(Attorney contact)

cc: w/o enclosure
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Bob Taylor, NOAA
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