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August 2, 2016

National Freedom of Information Officer
United States Environmental Protection Agency
Office of Environmental Information
Records, FOIA, and Privacy Branch
1200 Pennsylvania Avenue NW (2822T)
Washington, D.C. 20460

Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 10
Office of Ecosystems, Tribal and Public Affairs
1200 6th Avenue ETPA-124
Seattle, WA 98101

Re: Portland Harbor PCI Group
Freedom of Information Act Request
Portland Harbor Superfund Site

To Whom It May Concern:

This is a request for agency records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. This supplements an earlier FOIA request from the undersigned, originally submitted on March 16, 2016 and revised on April 15, 2016 (together the "Original Request"). This request, like the Original Request, is submitted on behalf of the Portland Harbor PCI Group, which is carrying out the Portland Harbor Superfund Site Allocation Process, and the individual members of the Portland Harbor PCI Group.[1] Specifically, this request concerns United States Environmental Protection Agency (EPA) records related to the Portland Harbor Superfund Site (Site) in Oregon either (1) that describe, contain, or pertain to communications concerning the 2016 Presidential election, or (2) that were developed between the time of the Original Request and the issuance of the Proposed Plan and draft Feasibility Study on June 8, 2016.

[1] This request, like the Original Request, is submitted on behalf of each individual Portland Harbor PCI Group member except for the following parties, none of whom are participating in this FOIA request: City of Portland, Port of Portland, Oregon Department of State Lands, Oregon Department of Transportation, and all Federal PRPs, including the Bonneville Power Administration, Defense Plant Corporation, Reconstruction Finance Corporation, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of the Navy, U.S. General Services Administration, and U.S. Maritime Administration.

Throughout this request, the term "agency records" is intended to have the broadest and most inclusive meaning possible under the FOIA. As such, the term "agency records" includes, but is not limited to, all documents, agreements, contracts, reports, analyses, memoranda, emails, including email on personal accounts, transcripts, minutes, notes, bulletins, worksheets, schedules, calendars, drawings, photographs, renderings, figures, diaries, workpapers, presentations, data compilations, spreadsheets, databases, and communications created or obtained by EPA and under EPA's control at the time of this request. *See U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-46 (1989).

Specifically, the term "agency records" includes, but is not limited to, all agency records in electronic, hard copy, or any other tangible or graphic format, however produced or reproduced, including audio or video recordings. "Communications" means any and all recorded communications within, to, or from EPA (and to, from, or among EPA's consultants and contractors working on the Site), including letters, electronic forms and submissions, emails, and text messages, including any attachment or enclosure included with the communication. "Communications" includes those communications generated by or contained on email accounts, computers, tablets, phones, and other electronic communication devices used to communicate information responsive to this request. This request is for agency records of EPA as a whole, and it is therefore not limited to agency records of EPA Region 10. In addition, the phrase "pertaining to" is intended to have its ordinary meaning, under which the phrase generally means "relating to, pertinent to, referencing, connected to, or relevant to."

On behalf of the Portland Harbor PCI Group, and also on behalf of each individual PCI Group member (excluding the parties listed in footnote 1), we request copies of the following agency records:

1. All agency records containing or pertaining to communications within EPA, or between EPA, the Portland City Council, any Potentially Responsible Party, the Portland Harbor Community Advisory Group, or any other person or entity, that discuss, mention, or pertain to the relationship between the 2016 United States Presidential Election and the timing or substance of EPA's Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

2. From April 15, 2016 to June 8, 2016, all agency records pertaining to EPA's November 18, 2015 presentations to the Contaminated Sediments Technical Advisory Group (CSTAG) and National Remedy Review Board (NRRB) regarding the preparation, development, revision, or issuance of a Remedial Investigation, Feasibility Study, Proposed Plan, and Record of Decision for the Site, and to comments received by EPA in response to EPA's presentations. This request includes all agency records and comments sent to or received from the CSTAG, NRRB, any other public entity, and any private entity or person, including EPA's contractors, counsel, consultants, or other agents. This request also includes, but is not limited to, any correspondence within, to, or from EPA regarding such comments.

3. From April 15, 2016 to June 8, 2016, all agency records containing or pertaining to communications among EPA Region 10 staff or between EPA Region 10 staff and the CSTAG, NRRB, CDM, or other EPA offices (including the individual staff members, consultants, and other representatives of those entities) regarding the Site, including but not limited to agency records pertaining to the preparation, development, revision, or issuance of the Site Remedial Investigation, human health and ecological risk assessments, the Site Feasibility Study, or the Proposed Plan.

4. From April 15, 2016 to June 8, 2016, all agency records containing or pertaining to communications between EPA and the United States Fish & Wildlife Service or United States Department of Interior, including the individual staff members, consultants, and other representatives of those entities, regarding the preparation, development, revision, or issuance of the Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

5. From April 15, 2016 to June 8, 2016, all agency records containing or pertaining to communications between EPA and the Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, the State of Oregon, and any employee, consultant, official, or other representative of the Oregon entities identified in this paragraph, regarding the preparation, development, revision, or issuance of the Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

6. From April 15, 2016 to June 8, 2016, all agency records containing or pertaining to communications between EPA and the Portland Harbor Community Advisory Group (CAG), Willamette Riverkeeper, the Portland Harbor Community Coalition, and Portland Audubon, or other citizen or interest groups (including the individual staff members, consultants, and other representatives of those entities), or individual members of the public, regarding preparation, development, revision, or issuance of the Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

7. From April 15, 2016 to June 8, 2016, all agency records containing or pertaining to communications between EPA and the Portland Harbor Natural Resource Trustee Council (Trustees) regarding the Site, including any separate communications between EPA and the individual staff members, counsel, consultants, and other representatives of any one or more members of the Trustees regarding the preparation, development, revision, or issuance of the Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

8. From April 15, 2016 to June 8, 2016, all agency records containing or pertaining to communications between EPA and the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and Nez Perce Tribe (including the staff, counsel, consultants, and other representatives

of these entities) regarding the preparation, development, revision, or issuance of the Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

9. From April 15, 2016 to June 8, 2016, all agency records containing or pertaining to, or otherwise reflecting, breakdowns of the estimated cost of proposed remedial alternatives for the Site. Specifically, the PCI Group is seeking records that contain, pertain to, discuss, or otherwise reflect cost estimates for each sediment management area under each of the proposed remedial alternatives under consideration by EPA prior to release of the Proposed Plan and actually presented or discussed in the Proposed Plan (i.e., proposed remedial alternatives B, C, D, E, F, G, H, and I).

10. From April 15, 2016 to June 8, 2016, all agency records containing or pertaining to communications between EPA and any Potentially Responsible Party at the Site (including the staff, counsel, consultants, and other representatives of those parties) regarding the preparation, development, revision, or issuance of the Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

11. From March 9, 2016 to June 8, 2016, all agency records containing or pertaining to communications between EPA and any member or representative of the media either (1) regarding FOIA requests for records related to the Site, or (2) regarding the preparation, development, revision, or issuance of the Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

12. From March 9, 2016 to June 8, 2016, all agency records containing or pertaining to communications between EPA and any local, state, or national public or political officeholder (including the staff, counsel, consultants, and other representatives of those parties) either (1) regarding FOIA requests for records related to the Site, or (2) regarding the preparation, development, revision, or issuance of the Remedial Investigation, human health and ecological risk assessments, Feasibility Study, Proposed Plan, or Record of Decision for the Site.

If a given agency record is responsive to more than one individual request or is found in more than one location, EPA need not provide multiple copies or duplicates of the same record. Likewise, EPA need not produce records that are responsive to this request if those records have already been given to the PCI Group or are otherwise readily available (i.e., online) or in the administrative record, so long as EPA identifies when the records were provided and to whom, or where they can be obtained. All responsive records that have <u>not</u> been provided, or that are <u>not</u> readily available, must still be provided in response to this request.

We will accept responsibility for the reasonable and necessary costs associated with EPA's response to this request, including reasonable standard charges for document searching and duplication, up to a maximum amount of $10,000.00. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(III); 40 C.F.R. § 2.102(d). If EPA determines that the reasonable and necessary costs of responding to

this request will exceed $10,000.00, please contact us as soon as possible to discuss payment. If for some reason copies of certain agency records cannot be made or provided, we request an opportunity to view and inspect those agency records.

If it is EPA's position that any of the agency records requested in this letter are exempt from disclosure under the FOIA, EPA must nonetheless provide any reasonably segregable portions of those agency records after deleting or redacting the purportedly exempt portions. 5 U.S.C. § 552(b); *Pebble Ltd. P'ship v. U.S. Envtl. Prot. Agency*, No. 3:14-cv-0199-HRH, 2016 WL 128088, at *3 (D. Alaska Jan. 16, 2016); *see also* Attorney General Eric L. Holder, Memorandum for Heads of Executive Departments and Agencies (Holder Memorandum), 74 Fed. Reg. 49892-01 (Sept. 29, 2009), 74 Fed. Reg. 51878-02 (Oct. 8, 2009) ("Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information.").

If EPA withholds all or any portion of a record requested in this letter, EPA must indicate in the response the amount of information that is withheld, deleted, or redacted, as well as the basis for each withholding, deletion, or redaction. 5 U.S.C. § 552(b); 40 C.F.R. § 2.104(h). Please provide an index or catalogue of responsive agency records that EPA intends to withhold in full or in part, as well as an individual explanation for each full or partial withholding, consistent with the holding in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

If EPA chooses to withhold segregable portions of any agency record that is responsive to this request, please use blackout redactions rather than deletions or whiteout redactions. If agency records that would otherwise be responsive to this request have been destroyed or are no longer in EPA's control, please identify each record, the date of destruction, and the person(s) who destroyed the record.

The President has observed that "[a] democracy requires accountability, and accountability requires transparency." Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Presidential Memorandum), 74 Fed. Reg. 4683 (Jan. 21, 2009). In light of those principles, the President has instructed all federal agencies, including EPA, to "adopt a presumption in favor of disclosure" when making decisions involving FOIA. *Id.* That instruction is consistent with the underlying legislative purpose of the FOIA, a statute whose basic purpose is to instill "a general policy of full agency disclosure . . . ." *Dep't of Air Force v. Rose*, 425 U.S. 352, 360 (1976), quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965).

The President has further instructed federal agencies to "act promptly and in a spirit of cooperation" when responding to FOIA requests, "recognizing that such agencies are servants of the public." Presidential Memorandum, 74 Fed. Reg. at 4,683. Similarly, the FOIA guidelines issued by then-Attorney General Eric L. Holder in 2009 "strongly encourage agencies to make discretionary releases of information," and they explain that "an agency should not withhold information simply because it may do so legally." Holder Memorandum, 74 Fed. Reg. at 51878-02.

We trust that EPA will take seriously its obligations under the FOIA, the Administrative Procedures Act, and the above-referenced Executive directives for implementing these statutes when responding to this request for agency records. We invite you to contact us as soon as possible to arrange for delivery of the agency records requested. In the meantime, we appreciate your prompt attention to this request, and look forward to your response.

Sincerely,

Bruce White
Allocation Team Coordinating Counsel

Request made on behalf of the Portland Harbor PCI Group and each individual member of the Portland Harbor PCI Group (excluding the parties listed in footnote 1).

cc: Lori Cora