UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL
CLEANUP

FEB 04 2016

Mr. Bob Wyatt
Chairman, Lower Willamette Group
c/o Northwest Natural
220 Northwest Second Avenue
Portland, Oregon 97209

Re: Portland Harbor Superfund Site, Administrative Order on Consent for Remedial Investigation and Feasibility Study; Docket No. CERCLA-10-2001-0240;
Completion of the Portland Harbor Superfund Site Feasibility Study

Dear Mr. Wyatt:

I am writing to document the agreements reached between the U.S. Environmental Protection Agency Region 10 ("the EPA" or "the Region") and the Lower Willamette Group ("LWG") to resolve the January 19, 2016 dispute raised by the LWG regarding finalizing Feasibility Study ("FS"). This letter supersedes the EPA's January 4, 2016 letter.

By letter dated, December 18, 2012, the EPA notified the LWG that we did not approve its March 2012 draft FS. After the notice, we agreed to coordinate our proposed modifications section by section with the LWG, as documented in the Portland Harbor Superfund Site Revision Process for Feasibility Study modified December 15, 2014. In accordance with the agreed process, the EPA shared Sections 1 and 2 on July 8, 2014, and February 23, 2015, and both the LWG and EPA discussed the LWG's comments on those sections. We provided Section 3 on July 29, 2015 and Section 4 on August 7, 2015. Since release of those sections, the LWG has met to talk through the Decision Trees on November 2, 2015, and December 3, 2015, and the LWG has provided extensive comments on those sections. The EPA is considering the LWG's comments and will make appropriate changes in the revised final FS. The LWG provided the National Remedy Review Board and Contaminated Sediments Technical Advisory Group (collectively "the Boards") with comments and concerns on the FS and direction of the cleanup for Portland Harbor. The Region is also considering those comments in revising the FS.

To keep the remedy selection process moving forward and publish a Proposed Plan by March 2016, the EPA and LWG mutually agree that the EPA will finalize the FS because the EPA can more effectively and efficiently incorporate changes to the FS to address stakeholder comments, the Boards' recommendations, and any issues raised during government-to-government consultations with Tribal governments. The EPA and the LWG acknowledge that work remains to be done under the Administrative Settlement Agreement and Order on Consent ("AOC"). The LWG must finalize the Remedial Investigation Report ("RI"). The EPA too may seek the LWG's assistance in providing information for the administrative record.

Additionally, although the EPA will finalize the FS and prepare the Proposed Plan for public comment, we will not know that we have "all appropriate necessary information for the RI/FS for a CERCLA Record of Decision" until we issue the Record of Decision. See AOC Section IV, Paragraph 2. If new information is raised by public comments that the EPA decides requires supplemental RI or FS work, we may ask the LWG to conduct that work. Although the EPA doesn't expect this to happen, the AOC will remain open and effective in order to cover that possibility. See generally, AOC Section XXXVIII, Termination and Satisfaction. Additionally, not all of EPA's response costs have been billed and reimbursed under the AOC.

To resolve the January 19, 2016 dispute the EPA and the LWG further agree to the following:

The EPA won't require the LWG to reimburse the EPA's costs in finalizing the FS under Section XXII of the AOC. The EPA will reduce its response costs bill for Fiscal Year 2015 that ends as of September 30, 2015 by $2,952,958 which are the estimated costs spent on revising the FS in FY 2015, and we will not seek reimbursement of costs under the AOC for finalizing the FS incurred after October 1, 2015.[1]

The EPA will allow the LWG AOC signatories to dispute the final FS that the EPA produces and publishes along with the Proposed Plan. In making this agreement, if any LWG AOC signatories decide to dispute the final FS under Section XVIII of the AOC, the LWG signatories must submit their Dispute Statement within 14 days of the publication of the Proposed Plan. The Dispute Process under the AOC would be streamlined by proceeding directly to the formal determination phase wherein the Director's decision is anticipated to be made simultaneously with the agency's remedy decision after considering all public comments along with the disputed issues. In accepting this agreement, the LWG agrees that, because the dispute process will be conducted during the public comment period, the LWG's Dispute Statement will be placed in the administrative record and the dispute process will be conducted consistent with requirements for public participation for the proposed remedy decisions under CERCLA the NCP, and federal law.

[1] The EPA is not compromising its claim for recovery of FS response costs. The EPA reserves its right to seek its FS response costs along with any other response costs the EPA has or will incur in relation to the Portland Harbor Superfund Site from any member of the LWG and any other identified potentially responsible party in future negotiations or response cost litigation. The EPA's agreement to defer reimbursement of its FS response costs under the AOC does not apply to any other response costs incurred by EPA and reimbursable by the LWG under Section XXII of the AOC.

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Upon receipt of this letter, the LWG agrees it will:

1. withdraw its January 19, 2016 dispute within 24 hours; and
2. withdraw its January 28, 2016 request for ADR within 24 hours; and
3. not pursue any other legal claims or process related to EPA's production of the final FS.

Sincerely,

Cami Grandinetti

ti
am Manager
nmental Cleanup

ACCEPTED AND AGREED:

[Print Name] Bob Wyatt
Authorized Representative of the Respondents to the
Administrative Order on Consent for Remedial Investigation and Feasibility Study; Docket No. CERCLA-10-2001-0240

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