**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

BY EMAIL AND REGULAR MAIL

June 28, 2016

Robert Law, Ph.D.
demaximis, inc.
186 Center Street, Suite 290
Clinton, New Jersey 08809

Re: Diamond Alkali, Lower Passaic River Study Area (LPRSA)
Dispute Resolution – EPA Decision Pursuant to Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study (RI/FS Settlement Agreement), U.S. EPA Region 2 CERCLA Docket No. 02-2007-2009

Dear Dr. Law:

This letter sets forth my decision on behalf of the U.S. Environmental Protection Agency ("EPA") Region 2, with respect to the issue in the dispute resolution proceeding initiated by the Lower Passaic River Study Area Cooperating Parties Group ("CPG") by letter dated June 12, 2015. The decision is issued pursuant to Paragraph 65 of the Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, U.S. EPA Region 2 CERCLA Docket No. 02-2007-2009.

This dispute concerns the position set forth in EPA's June 1, 2015 letter, in which EPA concluded that the CPG should use the existing RI data from the top 15 centimeters (cm) (approximately six inches) of sediment and model concentration simulation results for this depth interval. These data will represent contaminant concentrations applicable to biological exposure depth in the bioaccumulation model being developed for the 17-Mile RI/FS to predict future contaminant concentrations in biota post-remediation.

As a follow up to the June 12, 2015 letter initiating the dispute, the CPG submitted on November 13, 2015, their Statement of Position, which identified two areas of disagreement between Region 2 and the CPG: 1) the depth at which the majority of benthic invertebrates feed and reside in the sediment bed of the LPRSA, and 2) the reliability and certainty of sediment chemistry concentration predictions for depth intervals of less than 15 cm. EPA, in the Region's Staff Position Statement dated June 7, 2016, clarified that the issue raised and disputed by the CPG in their June 12, 2015 letter is limited to the proposal to use 2 cm as the benthic community exposure depth. The Region supported this by referencing the RI/FS Settlement Agreement, which explicitly states that the modeling work will not be subject to challenge under the dispute resolution provisions of the RI/FS Settlement Agreement, or in any other forum.

I have completed my review of the CPG's November 13, 2015 Statement of Position, the CPG's January 28, 2016 letter transmitting an EPA technical document dated October 2015, the Region's Staff Position Statement dated June 7, 2016, the letter dated June 23, 2016 submitted by the CPG in response to the Region's Staff Position Statement, and the addendum to the Staff Position paper dated June 27, 2016, that addresses the CPG's June 23, 2016 letter. I am persuaded by the position set forth in the Region's Staff Position Statement and addendum. I fully support the direction EPA has provided the CPG, to use the existing RI data from the top 15 cm sediment to represent contaminant concentrations applicable to the biological exposure depth.

Though the CPG's letter dated June 23, 2016 requested a meeting, in my view the issues have been clearly articulated in the written exchanges. Further, the topic of the proposed meeting would be an additional field work program. I understand that the CPG proposed additional sampling last year as a means of resolving the dispute, and EPA and the CPG then discussed the proposed effort over a period of several months. However, a compromise that was agreeable to both parties could not be reached, which resulted in an end to the informal negotiation process and referral of the dispute to me for a decision. Since no new information has been presented by the CPG that would suggest a different outcome from further discussions, I have concluded that my decision on this dispute stands.

In addition, while the focus of my decision is the issue originally identified for dispute, I have also reviewed the discussion of the reliability and certainty of sediment chemistry concentration predictions for depth intervals of less than 15 cm, as predicted by the CPG's sediment transport and contaminant fate and transport models, and I am fully in agreement with Region 2 staff's determinations with respect to that issue as well.

**Conclusion**

The CPG is directed to proceed with using the existing RI data from the top 15 cm sediment to represent contaminant concentrations applicable to the biological exposure depth, and for this information to be used in the bioaccumulation modeling in accordance with EPA directions previously provided, and as explained in detail to the CPG during the course of the dispute.

Sincerely yours,

Walter Mugdan
Director, Emergency and Remedial Response Division

cc: R. Basso, EPA
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