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January 15, 2016 ***VIA ELECTRONIC & US MAIL***

Ms. Jennifer LaPoma
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, New York 10007

Re: Monthly Progress Report No. 104 – December 2015
Lower Passaic River Study Area (LPRSA) Remedial Investigation/Feasibility Study (RI/FS)
CERCLA Docket No. 02-2007-2009

Dear Ms. LaPoma:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on the behalf of the RI/FS Agreement Settling Parties (Cooperative Parties Group or CPG) pursuant to the Administrative Settlement Agreement and Order on Consent (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 42 of said Settlement Agreement. The CPG has revised this Progress Report to address the Region's direction in its September 1, 2015 letter about Section (d).

(a) Actions which have been taken to comply with this Settlement Agreement during the previous month.

Meetings/Conference Calls

- None.

Correspondence

- On December 1, CPG requested a status update from EPA Region 2 (Region 2) regarding Region 2's response to the draft 17-mile Baseline Ecological Risk Assessment (BERA), proposed meeting dates regarding Contaminants of Potential Concern (COPC) mapping, and proposed language review of the revised draft 17-mile Baseline Human Health Risk Assessment (BHHRA). Region 2 responded to CPG's request the same day.
- On December 3, Region 2 provided CPG a letter regarding projected 2016 funding requirements for the RI/FS Trust Fund.
- On December 4, Region 2 provided responses to the CPG's November 11, 2015 letter regarding EPG comments on the draft 17-mile BHHRA.

- On December 10, CPG proposed the week of January 25 to meet and discuss COPC mapping with Region 2 and requested Steve Ells with EPA Headquarters and CSTAG participation in the meeting.
- On December 10, CPG and Region 2 exchanged emails regarding risk calculations in the revised draft 17-mile BHHRA.
- On December 14, Region 2 notified CPG that the CPG should submit the revised draft 17-mile BHHRA in the current form for review.
- On December 15, CPG submitted the November Monthly Progress Report to Region 2.
- On December 16, CPG and Region 2 exchanged emails regarding potential starting times for the COPC mapping meeting scheduled for January 27, 2016.
- On December 18, Region 2 emailed CPG requesting the CPG post the revised draft 17-mile BHHRA to the Region 2 LPR SharePoint site.
- On December 18, the CPG posted the revised draft 17-mile BHHRA to the Region 2 LPR SharePoint site.
- On December 22, Region 2 provided responses to the CPG's September 10 and September 15, 2015 responses to Region 2's comments submitted on May 1, 2015 on the draft 17-mile BERA.
- On December 22, CPG requested clarification regarding attachments to the Region 2's email of December 22 regarding responses to comments on the draft 17-mile BERA and acknowledged receipt of the responses and associated documents provided in the email.
- On December 23, Region 2 provided the technical memorandum and associated spreadsheet referenced in the December 22, 2015 email with response to comments on the draft 17-mile BERA.
- On December 31, CPG notified Region 2 that two tables identified in the December 22, 2015 email regarding responses to comments on the draft 17-mile BERA were not included in the email and suggested a telephone conference call on January 7 or 8 to discuss clarifications to the Region's responses.

Work

- CPG Modeling Team continued work on refinement of the Newark Bay component of the LPRSA Model.
- CPG completed revisions to the draft 17-mile BHHRA.
- CPG continued revisions to the draft 17-mile BERA.

(b) Results of Sampling and Tests

- None.

(c) Work planned for the next two months with schedules relating to the overall project schedule for RI/FS completion

- CPG is awaiting a response from Region 2 on its Exposure Depth/Zone Dispute Resolution position paper arising from the Region's June 2015 letter rejecting the CPG's use of a site-specific exposure zone for benthic invertebrates and bottom feeding fish.
- CPG and Region 2 will conduct a meeting regarding COPC mapping.
- CPG will continue revisions to the draft 17-mile BERA.
- CPG will respond to additional Region 2 comments on the draft BHHRA.
- CPG Modeling Team will continue work on refinement of the Newark Bay component of the LPRSA Model.

(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays.

The CPG has agreed to retain only near-term problems and concerns in the monthly reports moving forward pursuant to the direction in Region 2's September 1 letter; however, previous Progress Reports through July 2015 document in Section (d) significant issues and matters largely the result of actions and decisions by the Region and its Partner Agencies that have significantly delayed and complicated the completion of the 17-mile RI/FS. The removal of this previous information does not in any way lessen its impact on the completion of the 17-mile RI/FS.

- **Remedial Investigation (RI) Report –** The CPG submitted the Draft 17-mile RI Report nearly 11 months ago on February 18, 2015. Region 2 has not provided a definitive date to deliver comments on the draft report. Extended delay in providing the comments will further delay the completion of the 17-mi RI/FS.

- **Feasibility Study (FS)** – The CPG submitted the Draft FS over 8 months ago on April 30, 2015. The Region has not provided a definitive date to deliver comments on the Draft FS. In addition, Region 2 has not provided comments on the RAO/PRG Memorandum (submitted on March 27, 2015), Alternatives Screening Memorandum (submitted on April 16 and 21, 2015) and the Alternatives Evaluation Memorandum (submitted on April 26, 2015). Extended delay in providing the comments will further delay the completion of the 17-mi RI/FS.

- **Baseline Human Health Risk Assessment (BHHRA)** – The CPG submitted the 17-mile BHHRA on June 6, 2014 and the Region provided comments on June 5, 2015. The CPG and the Region conducted several teleconferences and exchanged correspondence throughout June and August 2015. The CPG provided responses to comments (RTC) on August 21, 2015. In addition, the CPG prepared responses to the Region's July 15, 2015 additional comments, which were submitted to the Region on September 1, 2015. As documented in the CPG's RTCs, many of the Region's

comments direct the CPG to make changes to the BHHRA that are inconsistent with the Region 2-approved Problem Formulation Document and the CPG's October 2013 Risk Assessment and Risk Characteristic Plan and the associated Region 2's January 31, 2014 comments and USEPA risk assessment guidance. The Region failed to meet the 30-day turnaround on responding to the CPG's response to comments that it proposed in its July 20, 2015 letter to the CPG; the failure to provide a timely response caused further delay to the delivery of a revised 17-mile BHHRA and ultimately further delay the completion of the 17-mile RI/FS. The CPG received the Region's responses on October 16 and October 30. The CPG informed Region 2 that it would submit a revised 17-mile BHHRA by December 18, 2015 during an October 22, 2015 conference call. The Region did not provide additional clarification on several remaining issues until December 4 which did not delay delivery of the revised 17-mile BHHRA by the CPG. The CPG submitted a revised 17-mile BHHRA on December 18. Finally, the CPG questions and strongly disagrees with the Region's need to provide the revised 17-mile BHHRA to its Partner Agencies for a complete review.

- **Baseline Ecological Risk Assessment (BERA) -** The CPG submitted the 17-mile BHHRA on June 13, 2014 and the Region provided comments on May 1, 2015. The CPG and the Region conducted several teleconferences and exchanged correspondence throughout May and July 2015. The last teleconference was conducted on July 29, 2015, during which the Region requested the CPG provide a list of action items. The action items were provided on July 30 and included three items for Region 2 and one item for the CPG that required the Region's input. The Region provided its response to these two of these action items on December 22. The CPG provided 17-mile Draft BERA responses to comments (RTCs) on September 11, 2015 and additional material on September 15; the Region stated in its July 20 letter that it would provide its responses in 30 days – Region 2's responses were received on December 22 – more than two months later than promised. As documented in the CPG's RTCs, many of the Region's comments direct the CPG to make changes to the BERA that are inconsistent with the Region 2-approved Problem Formulation Document, the CPG's October 2013 Risk Analysis and Risk Characterization Plan and the associated Region 2's January 31, 2014 comments, and USEPA risk assessment guidance. Specifically, the Region after an extended delay introduced during June and July 2015 a Sediment Quality Triad and Reference Methodology that is wholly inconsistent with USEPA guidance. Furthermore, the CPG questions and strongly disagrees with the Region's need to provide the revised 17-mile BERA to its Partner Agencies for a complete review.

- **COPC Mapping -**.The CPG began discussions with the Region regarding COPC mapping in May 2013 with the submission of the "Lower Passaic River Surface Sediment Concentration Mapping Technical Memorandum". The CPG has attempted, but was unable to conduct significant and meaningful dialogue with the Region on COPC mapping between that time and early 2015. COPC Mapping is an

integral part of the 17-mile RI/FS including the chemical fate and transport modeling and the identification and evaluation of remedial alternatives. Both the mapping approach and data density are consistent with mapping and data density at other large sediment sites such as the Hudson River, Fox River, and the Lower Duwamish. The Region and CPG representatives met on March 18, 2015 to discuss the CPG's mapping and agreed to follow-on discussions. The Region and the CPG agreed to meet on June 16, 2015 and the Region stated that it would provide its portion for the CPG's review in advance of the meeting. The Region provided its position paper on June 10, 2015. Due to the short-time frame and the complexity of the Region's responses, the CPG postponed the meeting. In a June 12 email, the CPG requested that the Region provide the underlying documentation for its June 10 position paper. The Region provided this material on July 20. The CPG submitted a response to the Region's positon paper which was delivered in November and documents several significant shortcomings in the Region's analysis. The CPG has requested a meeting with the Region 2 and USEPA Headquarters to discuss this matter which has been scheduled for January 27.

- **Exposure Depth/Zone(s) –** The CPG initiated discussions with the Region in early 2014 on the matter of an appropriate site-specific exposure depth/zone for benthic invertebrates. EPA HQ, Region 2 and CPG representatives conducted a teleconference and web-meeting on February 13, 2014 to discuss this matter. The CPG provided additional material to the Region on February 19, 2014. The CPG was unable to engage the Region on this matter for the remainder of 2014. In January 2015, the Region and CPG agreed to meet to discuss the exposure depth/zone and in advance of this meeting the Region and CPG exchanged information including a May 2014 paper on burrowing depth prepared by Region 2 contractors. EPA HQ, Region 2 and CPG representatives met on February 6, 2015. As a result of the meeting, it was agreed to have follow-on meetings and/or teleconferences later in February 2015; however, these meetings/teleconferences were subsequently cancelled by Region 2. On June 1, 2015, the Region provided a brief letter summarizing its rejection of the CPG's shallow exposure depth/zone. The CPG invoked dispute resolution on June 12, 2015 and began preparation of a position paper. On June 25, the Region acknowledged the CPG's invocation of dispute resolution. On July 2, the CPG requested that the Region provide the additional information mentioned in its June 25 letter that it relied upon. The Region responded on July 9 to the CPG's request. On August 18, 2015, the CPG contacted the Region and proposed to table dispute resolution and develop a sampling plan to determine LPR site-specific exposure zone(s). In advance of the August 26 teleconference, the CPG provided a brief presentation outlining data quality objectives and proposed sampling. As a result of the teleconference, the CPG provided draft QAPP worksheets on September 17 for further discussion with Region 2. The CPG submitted its dispute resolution statement on November 13; the Region responded on November 19 stating that the Region would inform the CPG its intention on how to proceed in early December. Region 2 informally contacted the

CPG on December 15 that the Region has not made a decision on how to proceed on this matter

- **Other Documents -** There are number of reports and technical memos (both original and revised submissions) that have been submitted to Region since 2011 that the CPG is awaiting either approval or Region 2's comments. These reports include:

  1. Lower Passaic River Surface Sediment Concentration Mapping Technical Memorandum – submitted May 2013
  2. Upstream Reference Benthic Data Report – submitted August 2013
  3. Background Sediment Data Report – submitted October 2013

  The CPG has received the Region's comments on a number of previously submitted reports and revised and re-submitted them in November. Please advise the CPG of the Region 2's schedule for action on these remaining documents.

- **17-mile RI/FS Schedule –** Region 2 representatives stated at the July 2015 CAG Meeting that it intended to complete the 17-mile RI/FS and issue a Proposed Plan in CY 2016. The CPG is concerned that the current backlog of reports held by Region make such a goal unlikely.

If you have any questions, please contact Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.

Willard Potter
CPG Project Coordinator

cc: Stephanie Vaughn, EPA Region 2
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