de maximis, inc.

186 Center Street
Suite 290
Clinton, NJ 08809
(908) 735-9315
(908) 735-2132 FAX

October 16, 2015

Stephanie Vaughn
Ray Basso
17-mile LPRSA RI/FS Remedial Project Manager
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

Via Electronic Delivery

Re: Lower Passaic River Study Area (LPRSA) Exposure Zone Dispute Resolution – Proposed Sampling Program – May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study – CERCLA Docket No. 02-2007-2009 (AOC)

Dear Ms. Vaughn and Mr. Basso:

The Lower Passiac River Cooperating Parties Group (CPG) wanted to provide a follow-up to the telephone conversation between CPG and Region 2 representatives on Thursday, October 8, 2015 concerning several issues, including the CPG proposal for additional exposure zone sampling and the Region's BHHRA and BERA RTC responses. This response is specific to the additional exposure zone sampling proposal.

As you know, the CPG and Region 2 are currently engaged in formal dispute resolution concerning the bioactive exposure zone since it is an important subject which will impact completion of several essential elements to the 17-mile RI/FS of the Lower Passaic River. As a part of our discussions in this regard, Region 2 was the party that first suggested in its June 1, 2015 letter that the CPG develop a plan to collect additional data to help resolve disputed issues concerning the bioactive exposure zone and the location of benthic organisms that are potential food sources for fish. The CPG spent considerable time throughout the summer developing a responsive sampling program to obtain additional data. The CPG and Region conducted a call on August 26, 2015 to discuss the sampling program. The CPG delivered key QAPP worksheets for Region 2's review and further discussions on September 17, 2015. One of the purposes for October 8 call was to determine when Region 2 comments would be received such that CPG contractors could immediately finalize the Exposure Zone QAPP Addendum, begin to undertake the fieldwork and gather the data and samples before weather conditions make it impossible to initiate the sampling this year. It should be noted that similar data on benthic organisms were originally collected in the Fall of 2009.

Based upon our conversation on October 8, the CPG understands that Region 2 expects to provide a high level summary of concerns and issues by letter sometime within 2 weeks of the call. However, the Region was not able to elaborate or provide any specific details on potential concerns or comments of the Region or their partner agencies during our call. The only details provided were that the Region's representatives thought it would take six months of planning and as much as three years to complete the sampling process without any scientific justification for that conclusion. Moreover, the CPG understands that the Region does not believe that it

can fully comment on the QAPP Addendum and associated data needs until it has completed its review of the CPG's bioaccumulation model which will not be completed for a number of months.

The CPG does not understand Region 2's response and current position. The Region proposed collecting additional data in its June 2015 letter, but did not identify its review of the bioaccumulation model as a major prerequisite or impediment to developing and implementing a sampling program. Only after the CPG provided details on a sampling program did the Region identify the need for a full review of the bioaccumulation model. The Region's June 1 letter did not identify the need for Partner Agency participation in developing a sampling program and the now the Region has decided to include them in the planning. The CPG has proposed a technically sound sampling and is prepared to submit a full QAPP Addendum, including the Region's specific recommendation to conduct a new sediment profile imaging survey. Although the CPG does not believe it is necessary to collect additional sediment chemistry as suggested by the Region since direct measurement of benthic invertebrate tissue chemical concentration is part of the CPG's proposed work. Nonetheless, CPG representatives stated on August 26 that they would discuss the possibility of including some sediment chemistry sampling. The CPG has worked quickly and efficiently to develop a sampling program to gather additional data that will help address the issues raised by Region 2 and presumably the partner agencies.

There is no justification for Region's inability to provide a timely and complete technical response and the implication that this needs to be a long drawn out, multi-year process calls into question Region 2's sincerity in attempting to resolve the dispute and more importantly its commitment to allowing the CPG to complete its mandated RI/FS which should govern any remedial options on the river. This is another in many recent instances of lack of or a delay in a technical response from the Region. It is apparent from the response that Region 2 will make it impossible for the CPG to conduct the sampling this fall, creating a lengthy set back in addressing this important issue. It is also apparent that Region 2 has little interest in developing key information that will help resolve the disputed issues.

The CPG ask that the Region expedite the response to our proposal so that CPG can evaluate it in connection with our efforts to quickly and appropriately finalize the RI/FS.

The CPG requests that Region 2 include this letter into the Administrative Records for the 17-mile LPRSA operable unit of the Diamond Alkali Superfund Site and the Region's 8-mile FFS and Proposed Plan.

Please contact Bill Potter or me with any questions or comments.

Very truly yours,

de maximis, inc.

Robert H. Law, PhD
CPG Project Coordinator

cc: Walter Mugdan, EPA Region 2
Sarah Flanagan, EPA Region 2
CPG Members
William Hyatt, CPG Coordinating Counsel
Willard Potter, CPG Project Coordinator