de maximis, inc.

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

July 7, 2015

Stephanie Vaughn
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) Draft 17-Mile Baseline Ecological Risk Assessment (BERA) – Revision – May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study – CERCLA Docket No. 02-2007-2009 (AOC)***

Dear Ms. Vaughn:

This letter is in response to USEPA Region 2's (Region 2) June 19, 2015 letter (June 19 Letter) sent to the Lower Passaic River Cooperating Parties Group (CPG). The June 19 Letter related to Region 2's comments to both the 17-mile LPRSA BERA and Baseline Human Health Risk Assessment. This letter responds regarding the delivery of the revised draft 17-mile LPRSA BERA and the issues associated with the revisions.

The CPG has conducted discussions with and received responses from Region 2 regarding the CPG's numerous concerns related to the Region's BERA comments during telephone conferences on May 7, 14, 21, June 1, 15, 24 and July 6 2015. The Region has provided certain additional information related to the BERA in its May 21, 2015 e-mail, and the June 19 letter including Attachment 1. The CPG provides the enclosed attachment with its preliminary responses to this additional information. In addition, pursuant to Comment 64 of the Region's May 1, 2015 comments, the CPG has requested Region 2 provide the UOP Mullica River reference and background data including QAPP, report and an electronic data deliverable; the Region has acknowledged this request, but not provided a delivery date.

Although the CPG agrees that a number of comments related to the BERA have been discussed and some comments (e.g., data usability) have been resolved, the CPG cannot agree to the Region's most recent proposed deadline of August 5, 2015 for the delivery of the revised BERA. Rather than Region 2 directing, then subsequently changing, revision periods and the corresponding delivery dates, such as it did in its

May 1 transmittal email and June 19 letter, the delivery date for the revised BERA should be determined after the resolution of the BERA response to comments (RTCs).

The CPG provided a set of proposed milestones in its May 29 letter for addressing the BERA comments. However, it is unclear whether the Region has agreed to these milestones. The CPG has revised the milestones as follows with goal of reaching a clear agreement on the path forward on delivering a revised BERA:

- The CPG is drafting RTCs as directed by Region 2; the CPG has begun the process of developing and revising the data sets.
- The CPG is evaluating the supplemental materials related to Comments 6 and 71 and has begun and will continue discussions on these matters with the Region during our July 6 and upcoming telephone conferences. Following discussion of Comments 6 and 71 and receipt of the UOP Mullica River reference and background data (Comment 64), the CPG will provide a proposed date to deliver the RTC's for the Region's review.
- As soon as possible following receipt of the RTCs, the CPG requests that Region 2 provide a proposed date to respond to and/or discuss the RTCs; and,
- Once Region 2 and the CPG reach a resolution on the RTCs, the CPG will provide a proposed date for delivering a revised 17-mile BERA.

As stated previously, the CPG cannot agree to a delivery date of August 5 or any delivery date, until the RTCs are submitted by the CPG, reviewed by the Region and resolved.

As such, the CPG continues to reserve its right to take other steps, such as invoking dispute resolution under Section XV of the LPRSA AOC, to protect its interests, after Region 2 provides its review, responses and/or resolution to the CPG's BERA RTCs.

The CPG requests that Region 2 include this letter into the Administrative Record for the 17-mile LPRSA operable unit of the Diamond Alkali Superfund Site.

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: Ray Basso, EPA Region 2
Walter Mugdan, EPA Region 2
Sarah Flanagan, EPA Region 2
James Woolford, EPA HQ
Steve Ells, EPA HQ
CPG Members
William Hyatt, CPG Coordinating Counsel
Willard Potter, CPG Project Coordinator

Attachment

Attachment
CPG Preliminary Responses to USEPA Region 2's May 21, 2015 e-mail and June 19 letter and its Attachment 1

- Region 2's May 21, 2015 email
  - CPG Response: The Region's responses provided in this email will be addressed in the CPG's RTCs. Nevertheless, the CPG reserves all of its rights on these matters.
- Region 2's June 19, 2015 Letter and Attachment 1 (the CPG's responses follow the respective Region 2's June 19 Response number references):
  - Response 1 - The CPG is developing an exposure area table that will be provided to the Region with the RTCs. Depending upon the results of Region 2's review, the CPG reserves all of its rights on this matter.
  - Response 2 – The CPG will review the Region's response and discuss a proposed resolution of using the available carp data to characterize risk for benthic omnivores in the RTCs; however, the CPG reserves all of its rights on this matter.
  - Response 3 – The additional information related to background, reference and the sediment quality triad, which had been promised by Region 2 since its May 1 BERA comments, was provided with the Region's June 19 letter. The CPG will review the information that was provided and discuss it with Region 2, including with the Region's Ecological Risk Assessor, at the earliest opportunity; however, the CPG reserves all of its rights on this matter.
  - Responses 4 and 5 – The CPG agrees that these issues are resolved and the CPG will include additional discussion in the revised BERA; however, the CPG does not agree with the Region's contention that the discussions in the 17-mile Draft BERA were either unclear or lacked transparency.
  - Response 6 – The CPG agrees no changes are required.
  - Response 7 - The CPG would like to discuss the specifics of the Region's determination(s) that the LPRSA and NBSA are significantly different waterbodies and support the use of different data treatment.
  - Response 8 – The CPG agrees that this has not been discussed during the recent telephone conferences and will be addressed in the RTCs.

PAPER

- Responses 9 and 10 – The CPG will address these responses in the RTCs; however, the CPG reserves all of its rights on these matters.
- Response 11 – The CPG will disregard Comment 219.
- Response 12 - The CPG will provide RTCs and a transmittal letter.
- Response 13 – See the CPG's response to Region 2's Response 4 above.
- Response 14 – The CPG will provide the requested information, but does not agree that there was any lack of clarity or transparency in the presentation of this information. Section 4 of the BERA, Data Evaluation and Reduction, describes the process for calculating Total TEQs, which are the sum of all TEF-weighted PCDD/PCDF congeners and dioxin-like PCB congeners on a sample basis, consistent with the methods presented in Table 4-1 and Section 4.1 of the Data Usability Plan. Moreover, the TEQ summation approach used in the BERA is consistent with EPA's 2013 guidance, *Use of Dioxin TEFs in Calculating Dioxin TEQs at CERCLA and RCRA Sites*.
- Response 15 – Please see the CPG's response to Region 2 Response 5.
- Response 16 - The rules used by the CPG in the BERA for determining which values to use when multiple values are available are consistent with those outlined in the May 2014 Data Usability Plan. The CPG will include additional discussion in the revised BERA. The CPG considers this comment resolved.
- Response 17 - The rules used by the CPG in the BERA for evaluating field duplicates and laboratory replicates are consistent with those outlined in the May 2014 Data Usability Plan. The CPG will include additional discussion in the revised BERA. The CPG considers this comment resolved.
- Response 18 – See the proposed milestones discussed in the main body of the letter.