**To:** Donohue, Brian (ENRD)[Brian.Donohue@usdoj.gov]
**Cc:** Mehran, Reyhan (NOAA)[Reyhan.Mehran@noaa.gov]; Clay Stern[clay_stern@fws.gov]; mark.barash@sol.doi.gov[mark.barash@sol.doi.gov]; Rowley, Laura (ENRD)[Laura.Rowley@usdoj.gov]; Engel, Bethany (ENRD)[Bethany.Engel@usdoj.gov]; Hurley, Joseph (ENRD)[Joseph.Hurley@usdoj.gov]; 'kate.barfield@noaa.gov'[kate.barfield@noaa.gov]; otto@demaximis.com[otto@demaximis.com]; rlaw@demaximis.com[rlaw@demaximis.com]; Flanagan, Sarah[Flanagan.Sarah@epa.gov]
**From:** Erickson, Dave (SHB)
**Sent:** Fri 5/29/2015 4:58:33 PM
**Subject:** RE: Sample Disposal

Brian et al,

There has been no delay on our part and we want to get this matter resolved as quickly and efficiently as possible. We also want to maintain a schedule with specific dates.

After we spoke last Thursday May 21 and you and Reyhan requested the sample analysis information with locations, I immediately contacted our consultants and provided you and the trustees with the spreadsheets on Friday May 22. I think it is reasonable to expect EPA and the federal trustees to review the spreadsheet and let us know what samples they want to take custody of within two weeks of receiving the spreadsheet, which would be June 5. That being said, in order to accommodate the request for additional time to consider the unanalyzed samples, we will agree to extend the schedule until June 15, for the federal trustees to notify us which of the unanalyzed samples they want.

At this point, I understand that the federal trustees have no objection to us disposing of the sediment samples and the fish tissue samples that have already been analyzed. You and Sarah Flanagan have indicated that EPA will let us know their position separately. However, unless we hear that EPA or the federal trustees want to assume custody, control, and the expense associated with the sediment samples or the fish tissue samples that have already been analyzed, we will plan to discard them pursuant to the original schedule that we previously outlined.

As mentioned above, pursuant to your request, we will agree to an extension of our prior schedule and provide everyone with an additional 10 days to review the consider the spreadsheet that I circulated last Friday. Based on our conversation last Thursday, it sounded like only the un-analyzed fish tissue samples were potentially of interest to anyone. Since I sent out the spreadsheet listing the locations and identifying which tissue samples had been analyzed on Friday, May 22, I think it is reasonable for everyone, including the trustees and EPA, to let us know which samples you want by June 15, which will be 10 days past the original disposal deadline and over 3 weeks after I circulated the spreadsheet.

Assuming that this new extended schedule is acceptable and EPA the federal trustees are only potentially interested in fish tissue samples which have not already been analyzed, we can then begin disposing of sediment samples and the analyzed fish tissue samples pursuant to the original schedule that I previously outlined and as included in the original notification. However, we are extending the schedule and will wait until June 15 to begin disposing of the out dated unanalyzed fish tissue samples.

If EPA wants to take custody of analyzed fish tissue samples that the trustees have not requested, I assume that Sarah/EPA can let us know under our current schedule, which would be next Friday June 5. If we do not hear from EPA before June 5 on these samples, we will begin disposing of them and the sediment samples under the original schedule. On the unanalyzed samples, I assume that Sarah/EPA can identify which unanalyzed fish tissue samples she wants by June 15 under our extended schedule.

As you know, I will be on vacation and beyond the reach of phones or emails from June 6 until June 14. Therefore, if you or anyone has questions or comments about this extended schedule please call or email before June 6.

Thank you for your attention and consideration.

Best regards,

Dave

**From:** Donohue, Brian (ENRD) [mailto:Brian.Donohue@usdoj.gov]
**Sent:** Thursday, May 28, 2015 3:18 PM
**To:** Erickson, Dave (SHB)
**Cc:** Mehran, Reyhan (NOAA); Clay Stern; mark.barash@sol.doi.gov; Rowley, Laura (ENRD); Engel, Bethany (ENRD); Hurley, Joseph (ENRD); 'kate.barfield@noaa.gov'; Donohue, Brian (ENRD); otto@demaximis.com; rlaw@demaximis.com; 'Flanagan, Sarah'

**Subject:** Sample Disposal

Dave – I spoke with the federal NRD trustees about the sample disposal issue, and note that this is in response from NOAA and FWS only. EPA will respond independently.

As to the federal trustees, they have no problem with the disposal of sediment samples. However, it appears that the federal trustees will want to obtain some of the fish tissue samples. The problem is that due to the short amount of time within which they received the spreadsheets providing information about the fish tissue samples (a little over a week ago, I believe) and partially due to the fact that the reference to them in the CPG's Notice was in error, they have not had the opportunity to review the entire documentation provided. Bottom line, the trustees need more time to review those spreadsheets. With that – and keeping in mind that there will be cost savings associated with disposal of the sediment samples – we have no choice but to ask that the fish sediment samples be retained until the trustees have had a full opportunity to review the spreadsheets. The trustees want to be reasonable in this situation, as I'm sure the CPG does, so the additional time seems warranted under the Federal Rules. We will be in touch as soon as possible.

Thanks.

Mail Gate made the following annotations on Fri May 29 2015 11:58:34

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