**To:** Flanagan, Sarah[Flanagan.Sarah@epa.gov]; 'Donohue, Brian (ENRD)'[Brian.Donohue@usdoj.gov]; otto@demaximis.com[otto@demaximis.com]; rlaw@demaximis.com[rlaw@demaximis.com]
**Cc:** Maureen.ODeaBrill@klgates.com[Maureen.ODeaBrill@klgates.com]; 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]
**From:** Erickson, Dave (SHB)
**Sent:** Fri 5/22/2015 4:26:55 PM
**Subject:** RE: Sample Disposal

Sarah,

Thank you for your email.

As previously described in our notice of disposal, and as I discussed with Brian and Reyhan yesterday, the samples are 5-6 years old and the EPA- approved analytical method holding times for the samples have all long since expired. Because the samples are all so old, they could not be used for any kind of scientifically legitimate reason. Therefore, the CPG and its consultants are disposing of the samples in order to avoid continuing to unnecessarily waste money by paying to have the samples stored.

The CPG and its consultants intend to proceed with the disposal on the schedule outlined in our notice. If EPA or others want to take custody and control over the samples we need to make those arrangements in advance of the disposal date.

Best regards,

Dave

**David R. Erickson**
*Partner*
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.

Kansas City, Missouri 64108

Main 816.474.6550

Fax 816.421.5547

Mobile 816.520.4284

Direct 816.559.2487 | derickson@shb.com

SHOOK
HARDY & BACON

**From:** Flanagan, Sarah [mailto:Flanagan.Sarah@epa.gov]
**Sent:** Thursday, May 21, 2015 12:02 PM
**To:** Erickson, Dave (SHB); 'Donohue, Brian (ENRD)'; otto@demaximis.com; rlaw@demaximis.com
**Cc:** Maureen.ODeaBrill@klgates.com; Mehran, Reyhan (NOAA); Clay Stern; mark.barash@sol.doi.gov; Rowley, Laura (ENRD); Engel, Bethany (ENRD); Hurley, Joseph (ENRD); 'kate.barfield@noaa.gov'
**Subject:** RE: Sample Disposal

Dave,

Just weighing in for EPA, to let you know that the CPG will hear from EPA within the next two weeks, i.e., before the June 4, 2015 date that is in the notice regarding sample disposal.

-Sarah

Sarah P. Flanagan
Office of Regional Counsel, NJ Superfund Branch
USEPA, Region 2
290 Broadway, 17th Floor
New York, NY 10007
Tel: 212-637-3136

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review of, reliance on, or distribution by others or forwarding without the express permission of the sender is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

**From:** Erickson, Dave (SHB) [mailto:DERICKSON@shb.com]
**Sent:** Thursday, May 21, 2015 12:14 PM
**To:** 'Donohue, Brian (ENRD)'; otto@demaximis.com; rlaw@demaximis.com
**Cc:** Maureen.ODeaBrill@klgates.com; Mehran, Reyhan (NOAA); Clay Stern; mark.barash@sol.doi.gov; Flanagan, Sarah; Rowley, Laura (ENRD); Engel, Bethany (ENRD); Hurley, Joseph (ENRD); 'kate.barfield@noaa.gov'

**Subject:** RE: Sample Disposal

Brian and Reyhan,

Please take this email as follow up and conversation to the conversation that we had this morning.

I have advised our consultants that you probably do not want the sediment samples, but that you will provide written confirmation asap. We would like to maintain the schedule for disposal outlined in our previous notice letter. Therefore, please confirm what you want to do with the sediment samples as soon as possible.

With regard to the fish tissue samples, I can confirm that they are all frozen. I may have the latitude/longitude location information and the analyzed/not analyzed information for you as early as tomorrow. As I understand it, you are primarily interested in possibly taking possession of fish tissue that has not been analyzed, but you would like to see the location information before making a decision.

As I mentioned today, we can talk further about what you want after you see the location information. If it is relatively easy to find what you want, there should be no problem. However, because there are thousands of samples scattered in different labs around the country, it may be difficult to locate specific individual isolated samples of fish tissue. Going through the search process could prove to be difficult, time consuming, and expensive. Because the samples are all beyond holding times, the CPG and its consultants want to avoid spending huge sums of money on a search that will not contribute any usable information.

Therefore, we may need to discuss this issue further before agreeing to conduct such a search. In any event, I will let you know as soon as I have the information promised and we can dsicuss this further at that time.

Best regards,

Dave

**David R. Erickson**
*Partner*
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.

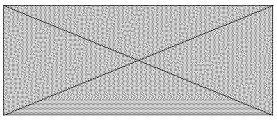
Kansas City, Missouri 64108

Main 816.474.6550

Fax 816.421.5547

Mobile 816.520.4284

Direct 816.559.2487 | derickson@shb.com



**From:** Erickson, Dave (SHB)
**Sent:** Thursday, May 21, 2015 10:05 AM
**To:** 'Donohue, Brian (ENRD)'; otto@demaximis.com; rlaw@demaximis.com
**Cc:** Maureen.ODeaBrill@klgates.com; Reyhan Mehran - NOAA Federal; Clay Stern; mark.barash@sol.doi.gov; Flanagan, Sarah; Rowley, Laura (ENRD); Engel, Bethany (ENRD); Hurley, Joseph (ENRD); 'kate.barfield@noaa.gov'
**Subject:** RE: Sample Disposal

Brian,

I just tried to call you to discuss. Please call me or email and let me know a good time for us to talk today or tomorrow.

Thanks,

Dave

**David R. Erickson**
*Partner*
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.

Kansas City, Missouri 64108

Main 816.474.6550

Fax 816.421.5547

Mobile 816.520.4284

Direct 816.559.2487 | derickson@shb.com

**From:** Donohue, Brian (ENRD) [mailto:Brian.Donohue@usdoj.gov]
**Sent:** Tuesday, May 19, 2015 12:31 PM
**To:** Erickson, Dave (SHB); otto@demaximis.com; rlaw@demaximis.com
**Cc:** Maureen.ODeaBrill@klgates.com; Reyhan Mehran - NOAA Federal; Clay Stern; Kate Barfield; mark.barash@sol.doi.gov; Flanagan, Sarah; Rowley, Laura (ENRD); Engel, Bethany (ENRD); Hurley, Joseph (ENRD)
**Subject:** RE: Sample Disposal

Dave – Just wondering where things stand regarding the sample disposal questions the trustees have as noted below, especially in view of when the notice suggests samples will be destroyed. The trustees need the information to make an informed decision on whether to agree to the sample disposal. Thanks.

**From:** Erickson, Dave (SHB) [mailto:DERICKSON@shb.com]
**Sent:** Wednesday, May 13, 2015 9:50 AM
**To:** Donohue, Brian (ENRD); otto@demaximis.com; rlaw@demaximis.com
**Cc:** Maureen.ODeaBrill@klgates.com; Reyhan Mehran - NOAA Federal; Clay Stern; Kate Barfield; mark.barash@sol.doi.gov
**Subject:** RE: Sample Disposal

Brian,

Rob Law and I are tied up in meetings most of today. We will catch up with each other and get in touch with you about your questions later this week or the beginning of next week.

Best regards,

Dave

**David R. Erickson**
*Partner*
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.

Kansas City, Missouri 64108

Main 816.474.6550

Fax 816.421.5547

Mobile 816.520.4284

Direct 816.559.2487 | derickson@shb.com

SHOOK
HARDY & BACON

**From:** Donohue, Brian (ENRD) [mailto:Brian.Donohue@usdoj.gov]
**Sent:** Wednesday, May 13, 2015 8:30 AM
**To:** Erickson, Dave (SHB); otto@demaximis.com; rlaw@demaximis.com
**Cc:** Maureen.ODeaBrill@klgates.com; Reyhan Mehran - NOAA Federal; Clay Stern; Kate Barfield; mark.barash@sol.doi.gov
**Subject:** FW: Sample Disposal

Dave, Rob and Bill – Please see the e-mail string below. It would be appreciated if you could address the request for information noted below, namely:

- Sample collection location (latitude/longitude)

- Whether the sample has been analyzed (analyzed or unanalyzed)
- Storage (frozen or refrigerated)
- Container size
- Remaining sample volume

Thank you for your assistance.

Brian Donohue

Senior Attorney

U.S. Department of Justice

202-514-5413

**From:** O'Dea Brill, Maureen [mailto:Maureen.ODeaBrill@klgates.com]
**Sent:** Tuesday, May 12, 2015 5:29 PM
**To:** Donohue, Brian (ENRD); Erickson, Dave (SHB); Robert Law; otto@demaximis.com
**Cc:** Hyatt, Jr., William; Reyhan Mehran - NOAA Federal; Clay Stern; Barash, Mark; Kate Barfield - NOAA Federal; Monsen, Dawn M.
**Subject:** RE: Sample Disposal

Dear Brian,

Thank you for your email. In order to most efficiently provide the information requested, I am connecting you with Dave Erickson of Shook, Hardy & Bacon, as well as Rob Law and Bill Potter of de maximis, inc. by way of this email. Dave, Rob, and Bill are the best people to work with you on the fulfillment of this request. For your convenience, I have included their contact information below.

Please do not hesitate to contact me with any other requests or follow-up inquiries.

Best regards,

Maureen

**David R. Erickson**
*Partner*
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.

Kansas City, Missouri 64108

Main 816.474.6550

Fax 816.421.5547

Direct 816.559.2487 | derickson@shb.com

**Robert Law, Ph.D.**
*de maximis, inc.*
rlaw@demaximis.com
Voice: 908-735-9315
Fax: 908-735-2132

**From:** Donohue, Brian (ENRD) [mailto:Brian.Donohue@usdoj.gov]
**Sent:** Tuesday, May 12, 2015 2:54 PM
**To:** O'Dea Brill, Maureen
**Cc:** Hyatt, Jr., William; Reyhan Mehran - NOAA Federal; Clay Stern; Barash, Mark; Kate Barfield - NOAA Federal
**Subject:** RE: Sample Disposal

Dear Maureen – Thank you for your quick response. To aid the federal trustees in determining which samples to request, however, we will need the following information:

- Sample collection location (latitude/longitude)
- Whether the sample has been analyzed (analyzed or unanalyzed)
- Storage (frozen or refrigerated)
- Container size
- Remaining sample volume

We appreciate your attention to this matter. Thank you.

Regards,

Brian Donohue

Senior Attorney

U.S. Department of Justice

(202) 514-5413

**From:** O'Dea Brill, Maureen [mailto:Maureen.ODeaBrill@klgates.com]
**Sent:** Wednesday, May 06, 2015 2:43 PM
**To:** Donohue, Brian (ENRD)
**Subject:** RE: Sample Disposal

Dear Mr. Donohue,

Thank you for calling our attention to the sample list on the CPG's website. That list was posted in error. The correct list, which will replace the incorrect list on the website, is attached to this email.

Please let me know if you have any further questions.

Best regards,

Maureen

K&L GATES

**Maureen O'Dea Brill**

K&L Gates LLP
Market Square Plaza
17 North Second Street, 18th Floor
Harrisburg, Pennsylvania 17101
Phone: 717.231.5832
Fax: 717.231.4501

Maureen.O'DeaBrill@klgates.com

www.klgates.com

**From:** Donohue, Brian (ENRD) [mailto:Brian.Donohue@usdoj.gov]
**Sent:** Tuesday, May 05, 2015 1:58 PM
**To:** Hyatt, Jr., William
**Cc:** Reyhan Mehran - NOAA Federal; Clay Stern; Barash, Mark; Kate barfield
**Subject:** Sample Disposal
**Importance:** High

Bill – Re the Notice of Sample Disposal on the CPG website, there is reference to sediment and tissue samples. However, the lists on the website, and those provided in the Notice, don't seem to deal with sediment and tissue samples which are also the subject of the Notice. Would you direct us to/provide us the list of those samples that identifies the individual samples, medium, remaining volume, container size, and method of storage (e.g., temperature)? The federal

trustees need that information in order to make an informed decision on the CPG's proposed disposal, including whether the destruction/disposal of the sediment and tissue samples comports with the Federal Rules. Thanks for your assistance.

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Maureen.ODeaBrill@klgates.com.

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at Maureen.ODeaBrill@klgates.com.

Mail Gate made the following annotations on Wed May 13 2015 08:50:10

CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

Mail Gate made the following annotations on Thu May 21 2015 11:14:03

CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.

Mail Gate made the following annotations on Fri May 22 2015 11:26:56

CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.