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April 15, 2014 ***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, 20th Floor
New York, New York 10007

Re: Monthly Progress Report No. 19 – March 2014
Lower Passaic River Study Area (LPRSA)
River Mile 10.9 Removal Action
CERCLA Docket No. 02-2012-2015

Dear Ms. LaPoma:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement.

(a) Actions which have been taken to comply with this Settlement Agreement during the month of March, 2014.

Meetings/Conference Calls

- On March 5, EPA and CPG held a teleconference to review progress in capping.
- On March 12, EPA and CPG held a teleconference to review progress in capping.
- On March 13, EPA and CPG held a teleconference during which CPG's responses to EPA's comments on the draft WS 9 for long-term chemical monitoring of the RM 10.9 Removal Action cap were discussed.
- On March 19, EPA and CPG held a teleconference to review progress in capping.
- On March 26, EPA and CPG held a teleconference to review progress in capping.

Correspondence

- On March 3 and 4, EPA reviewed and approved wording in the CPG's draft minutes of a February 26 teleconference regarding the New Jersey Department of Environmental Protection (NJDEP) waiver of fish window restrictions for the remainder of this project so that cap armoring activities in the Removal Area can be completed.
- On March 4, EPA informed the CPG that NJDEP had canceled their planned visit to view the capping activities at RM 10.9.
- On March 4, 5, 15 and 28, CPG informed the counties and all bridge operators of its requests (and modifications to those requests) for bridge openings.

- On March 4, 5, 11, 18, and 25, CPG forwarded to EPA summaries of the prior week's teleconferences, status reports of the prior weeks' field operations and draft agendas for the weekly teleconferences.
- On March 7, EPA approved a statement for the www.rm109.com website regarding the resumption of in-river work.
- On March 11, CPG requested that Bergen County approve a request to allow the placement of heavy equipment in the park along the shoreline to act as anchors for winch lines. Bergen County provided its approval on March 14.
- On March 11, CPG discussed with NJDEP whether there was a need to extend the Tidelands Dredging License for the RM 10.9 Removal Action, set to expire on May 1, 2014. On March 17, NJDEP responded that because all dredging had been completed, there was no need to request an extension of the Tidelands instrument even if protective capping activities extended into May, 2014. On March 19, CPG forwarded documentation received from NJDEP on this matter to EPA.
- On March 20 and 26, EPA approved posting of weekly status reports for the www.rm109.com website.
- On March 22, CPG began notifying local rowing clubs to avoid the RM 10.9 Removal Area especially during a 3 hour period on each side of the daytime high tides, because of the placement of winch lines from shore to shore for controlling the placement of fabric and stone. On March 25, CPG requested the US Coast Guard update the navigation restrictions posted on its Local Notice to Mariners with these additional details.
- On March 24, EPA forwarded to the CPG a request for information from NJDEP concerning the chemical concentrations in shoreline sand and sediment that was not included as part of the Removal Area. The CPG is evaluating this request.
- On March 31, EPA requested to review interim survey data showing the thickness of armoring stone in areas that have already been capped north of the No Dredge Zone.
- On March 31, CPG provided its comments on EPA's long-term proposed chemical monitoring approach that were discussed with EPA during a March 13 teleconference.
- Throughout March, CPG kept EPA's On-Scene Coordinator and the CDM field oversight personnel informed of daily progress and daily modifications to the field placement schedule.

Work

- On March 4, OSHA conducted interviews with Great Lakes Dredge and Dock (GLDD) staff regarding the January 2014 incident leading to an injured GLDD worker.
- From March 1 through March 25, there were occasional problems with the turbidity monitoring buoys leading to a need to take some buoys out of service for repairs; the problems were eventually corrected after replacing some faulty hardware, getting software updates, and replacing calibration standards that had degraded.

- Several inches of rain on March 29-30 led to high flows on the Passaic River which prevented the placement of geotextile, and suspension of armoring operations until the flow over Dundee Dam reduced below ~3000 cfs.
- The impact of tidal currents on geotextile placement led CPG to design and begin construction of a new shroud to encase and hold fabric rigid while it is being deployed in the hope that this would prevent the fabric from being lifted up and displaced by strong tidal currents.
- The Health and Safety Plan was modified and approved to allow the use of divers to assist with cap placement or repair should the need arise in the future.

(b) Results of Sampling and Tests

- No data packages associated with the RM 10.9 Removal Action were submitted in March.

(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction

- CPG will complete the removal of stone from previous unsuccessful armoring efforts on the RM 10.9 Removal Area.
- CPG will continue installing geotextile and armoring stone in accordance with a revised Capping Plan, and when it is available, with the newly designed shroud.
- CPG will examine the cause for geotextile and armoring stone loss that occurred on February 27, will confirm active layer thickness in that area, and will complete the cap in that area after steps are taken to ensure similar loss of material does not occur again.
- CPG will install a habitat layer on top of the armoring stone.
- CPG will continue to monitor turbidity during cap placement as long as required by EPA.
- CPG will implement sampling of water and/or air quality if community complaints or turbidity monitoring indicate that capping is a possible cause for environmental impacts.
- CPG will continue to provide regular and as-needed updates to river users about barge movements, safety concerns, and other important project milestones.
- CPG will continue to monitor bridge operability issues.
- When capping operations are completed, CPG will demobilize from the RM 10.9 Removal Area.
- CPG will draft a Final Report.

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

- There is still no resolution concerning the Tierra/Maxus/Occidental (TMO) UAO and their participation in the RM 10.9 Removal Action. As documented in the CPG's

correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action.

- The inoperability of the Bridge Street Bridge (BSB) due to Hurricane Sandy damage delayed the start of the RM 10.9 Removal Action because equipment could not be mobilized up river until that bridge was operational. CPG informed EPA of a Force Majeure condition by phone on June 24 and in writing on June 29 as required by the AOC. CPG and its contractors worked with the Counties to resolve the BSB operational issues and agreed to provide funds to the three counties to support operator overtime.
- The CPG strongly disagrees with the EPA's July 15 letter denying the Force Majeure condition outlined in CPG's June 29, 2013. EPA's rationale for denial is inconsistent with terms and definitions in the AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled - have been and continue to be clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties have failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. Finally, the CPG has voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so. As noted above it is the Counties' obligation to ensure that their bridges are operating and ready to open upon notice. CPG has addressed this issue in its July 31 letter to EPA.
- A significant mechanical failure that occurred on August 31 at BSB resulted in a second Force Majeure condition that prevented any barge movement from August 31 through September 18. The CPG provided initial notice to EPA's oversight contractor on August 31 and provided additional information on September 1 to the EPA. On September 5, the CPG submitted a Force Majeure letter regarding the possible impact of this bridge failure on Removal Action schedules, which was then updated on September 17. On September 3, the CPG notified the US Coast Guard of the situation and requested that the USCG use its authority to direct that the bridge be opened so that marine traffic can resume; the USCG would not compel the Counties to operate the BSB based on the Counties' initial concern about damage to the BSB. However, the Counties subsequently determined that the BSB could be opened without damage but demanded monetary compensation for bridge openings that they are required to provide upon receipt of proper and timely notice (without compensation) pursuant to federal regulations. The CPG reluctantly agreed to provide the compensation in order to complete the Removal Action. EPA and USCG have been reluctant and unwilling to utilize their enforcement and regulatory authority to compel the Counties to fulfill their obligation. The re-opening of BSB on September 18 allowed dredging to resume.
- Hudson County has notified the CPG that BSB will need to be taken out of service, for what they now indicate is a 10 - 15 day period as soon as schedules allow, to replace a second shaft which the County's mechanical contractor indicates is now showing signs of being stressed. The CPG will continue to monitor this situation and notify Hudson County of its schedule so that repairs can be scheduled at a time that has minimum disruption on the capping schedule. However, if the second shaft suffers damage before

that time, capping operations may be delayed if BSB is again taken out of service and the repair schedule prevents it from even being opened with winches.

- Both tidal and river flow continue to complicate the placement of geotextile and armoring stone on top of the Active Layer. The anticipated completion date for field work is now May 12, 2014. If conditions warrant, alternative methods may be identified and implemented in order to avoid further push back in the schedule.
- Heavy rains at the end of March increased river flows to a level at which it was not possible to control the placement of fabric before it could be stabilized with stone. After flows dropped below 3000 cfs at Dundee Dam, armoring operations were able to be continued. However, additional periods of heavy rain could result in additional delays in completing the Removal Action.
- The CPG believes that only physical monitoring is sufficient and required to monitor the effectiveness and integrity of the cap. If the RM 10.9 cap is similar and consistent to that implemented as any final remedy for the LPRSA, then the need for long-term chemical monitoring for the cap should be determined as part of the overall LPRSA long-term monitoring plan and regular 5 year reviews. This appears to be the rationale developed for the Hudson River and Onondaga Lake and should apply to the RM 10.9 Removal Action as well.

  The RM 10.9 Removal Action was implemented to reduce the risk associated with the direct contact exposure to sediments by people due to elevated concentrations of COPCs in RM 10.9 surface sediments. The cap physically prevents direct contact to underlying sediment by river users. As an added benefit an active layer was included to further enhance the protectiveness of the cap. In the near term, the surface of the cap is likely to be recontaminated by sediment deposition which is likely to be in the low 100s of ppt of TCDD – two orders of magnitude less than the pre-dredge surface of the RM 10.9 Removal Area. The CPG does not agree with Region 2's rationale for an aggressive short-term chemical monitoring program of the RM 10.9 cap. It is unnecessary to evaluate the short-term effectiveness of the cap to chemically isolate COPCs when the primary goal of the Removal Action and the construction of the cap were to remove and reduce the direct contact risk due to the presence of elevated concentrations in the surface sediment.

  On the Hudson River, Region 2 requires monitoring of the Phase 2 engineered caps for physical integrity and chemical isolation effectiveness. The chemical isolation effectiveness monitoring will occur in designated sentinel areas 10 years after completion of cap construction in those areas and then at 10-year intervals, or as soon as practical after a flood event exceeding the design recurrence interval for those caps.. For Onondaga Lake long-term monitoring of the cap includes routine physical and chemical monitoring which is anticipated to occur 5, 10, 20, and 30 years after construction begins. For the Lower Passaic River Study Area, EPA has required no chemical monitoring at the Lister Avenue Phase 1 Removal Action site. Region 2's requirements for the RM 10.9 Removal Area are completely inconsistent with the chemical monitoring requirements for frequency and schedule established at other Region 2 capping sites such as the Hudson River and Onondaga Lake.

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

Very truly yours,

de maximis, inc.

Stan Kaczmarek, PE
RM 10.9 Removal Action Project Coordinator

cc: Pat Hick, EPA Office of Regional Counsel
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