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Via Overnight Mail

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
Mail Code: 5101T
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Lower Passaic River Study Area

Dear Assistant Administrator Stanislaus:

We understand that EPA Headquarters is currently in the process of reviewing Region 2's Focused Feasibility Study (FFS) for the Lower Passaic River (LPR). I am writing to provide you with additional perspective on the CPG's interaction with Region 2, and to reiterate our request that EPA allow the Remedial Investigation/Feasibility Study (RI/FS) process to be completed without issuance of the FFS.

Since our meeting on January 31, 2014, we have continued our discussions and meetings with Region 2, and have further meetings scheduled. These meetings allow us to share our interpretation of the LPR data that have been collected by the CPG over the past seven years and receive guidance from Region 2 and the Partner Agencies. This interactive program of sharing data and interpretation is fully consistent with the usual CERCLA RI/FS process, and will culminate in submittal of the RI/FS, including the Human Health and Ecological Risk Assessment reports, by the end of 2014.

The CPG appreciates the willingness of Region 2 and the Partner Agencies to engage in these discussions with us. What has become apparent to the CPG is that, as we discuss with Region 2 the results of the RI, we are able to replace the default assumptions that formed the basis for the FFS with site-specific information, thereby greatly improving our understanding of the River. A good example of this is our bioaccumulation modeling effort. Our bioaccumulation model is the same as that used on the Duwamish River and Portland Harbor, and we have incorporated into this model the empirical data from the LPRSA RI. It is the subject of a recent letter, dated February 19, 2014, from the CPG to Region 2 that in part responds to the question of why the CPG and Region 2 project different human health risks. Moreover, the work of the RI is for the entire 17 miles of the Lower Passaic, not just the lower 8 miles of the FFS.

Unfortunately, the timing of these discussions is such that the CPG has been attempting to answer the detailed and legitimate questions that Region 2 has been raising without the

benefit of having completed the RI/FS. Therefore, the CPG has not been able to demonstrate the depth and breadth of our data collection, modeling, risk assessment, and risk management proposals. It is clear that Region 2 and the CPG are close on many issues and, if we were to work through the NCP-consistent RI/FS process in a collaborative manner, we would be able to reach consensus on how best to accomplish our mutual goals.

We are approaching a point in the RI/FS process where both EPA and CPG will only gain limited additional insight into the River through quantitative modeling or further data evaluation. For example, we are currently discussing how to estimate potential future impacts on human health associated with 10's of parts per trillion (ppt) of dioxin. These impacts will be controlled by a complex interaction of chemical partitioning, contaminant fate and transport, feeding patterns of benthic organisms, complex benthic and aquatic food web interactions, and human consumption of fish after removal of hundreds of thousands of tons of contaminated sediments in a tidal river system that flows through a very urbanized watershed.

As we approach a decision on the remedy, the project moves from the risk evaluation phase to one of risk management, and we believe that the risk management process at the LPR is best addressed through an adaptive approach. EPA's Sediment Guidance states that "Project Managers are encouraged to use an adaptive approach, especially at complex sediment sites to provide additional certainty of information to support decisions." The CPG believes that only through adaptive management can the uncertainties inherent in a complex site like the Passaic River be appropriately addressed. The CPG understands that an adaptively managed remedy at the LPR must be protective of human health and the environment, and we are confident that the Sustainable Remedy will meet this goal, based on our understanding of the site-specific sedimentology, hydrology, fate and transport of the contaminants of concern, ecology, biology, impact of the urbanized watershed, and human use of the River. In contrast, the analysis supporting the FFS addresses the uncertainties inherent to a system as complex as the Passaic River through the use of numerous conservative default assumptions, including the thickness of the bioactive zone, how contaminants found in the sediment relate to the concentration found in the fish, and what will happen during and after remediation that are better addressed with actual data and site-specific approaches being utilized by the CPG for the entire 17 mile study area.

We understand that the fundamental reason why Region 2 continues to advocate a final remedy for the lower eight miles that will call for "bank-to-bank" dredging is that it has concluded that an average TCDD concentration of 10 ppt in the top 15 cm must be achieved and maintained in order for the remedy to be protective. Key assumptions in the Region's analysis are that dredging can remove all the contaminated sediment in the top two feet in the lower River, and there will be no recontamination once the remediation is complete. Our technical analysis, based on our seven years of experience in the River, tells

us that these assumptions are not valid. The numerous utility crossings, nearly 16 miles of bulkheads and numerous bridge abutments can be expected to prevent dredging in at least 10% of the River bottom. In addition, we know that elevated TCDD levels are present in both Newark Bay and above RM 8, and it is well understood that this material, as well as dredge residuals from the recently managed areas, will be mobilized, transported and deposited on the capped areas, thereby reducing the effectiveness of the remedy. More realistic assumptions regarding dredging effectiveness and recontamination lead to the conclusion that Region 2's bank to bank alternatives will not achieve the predicted levels of protectiveness.

Part of the CPG's confidence in the Sustainable Remedy is its commitment to getting the remediation right. We have made a concerted effort to incorporate adaptive management principles into our engineering analysis, as recommended in the 2007 National Research Council's "Dredging at Superfund Megasites, Assessing the Effectiveness". Furthermore, we believe that our approach is entirely consistent with EPA's recently issued Superfund Remedial Program Review Action Plan (November 2013), which provides strong recommendations for adopting adaptive management approaches at complex superfund sites. Our approach provides a large upfront remedial response action (dredging to two foot depth and capping target areas totaling approximately 140 acres), coupled with a robust monitoring effort to ensure efficient and effective remediation. As stated in the Action Plan, such an approach "focuses resources on the information and decisions needed for overall protection of human health and the environment, allows for adjustments to the RA (response action) with the framework of the NCP".

The CPG's adaptive management approach stands in stark contrast to the one shot approach of the FFS bank to bank alternatives; the value of adaptive management is that we will use the River as the tool to prove that the remediation is complete. Only by pushing the uncertainties to the extremes assumed by Region 2, and making remedy decisions outside of an adaptive management framework, can EPA possibly attempt to justify addressing the entire River bed through bank to bank dredging. However, this approach does not comply with EPA Guidance or the NCP, as set forth in my prior correspondence. Moreover, given the inherent uncertainty discussed herein, it is not clear that such an approach is necessary, wise, or likely to achieve the promised levels of protectiveness. What is clear is that the risks posed by the River will be significantly reduced by the Sustainable Remedy much more rapidly than either of the FFS bank to bank alternatives. Under the Sustainable Remedy, the impact of the remediation will be monitored and the results will provide a clear path forward, which could possibly include further remediation, should the monitoring program indicate that the River is not responding as predicted.

During our discussions at EPA headquarters, your experts established the following threshold for an adaptive management remediation plan such as the Sustainable Remedy;

in order for this remedy to be seriously considered, there must be a reasonable expectation that the initial remediation will meet the goal of being protective of human health and the environment. Based on our exhaustive efforts, the CPG strongly believes that our RI and FS reports, which will be delivered to EPA within nine months, will demonstrate that the Sustainable Remedy has met this threshold.

In summary, we truly hope that EPA provides us with the opportunity to complete the RI/FS absent the distraction of the FFS, which is duplicative of and at odds with the NCP-compliant RI/FS. We believe that it is in all parties' interest to have the CPG and EPA collaboratively evaluate and agree on the interpretation and remediation of the River. The CPG believes that the only reasonable path forward must be based on an adaptively managed approach that takes advantage of what can be learned as the remediation progresses. The Sustainable Remedy will quickly eliminate all direct contact risks and will dramatically reduce the risk associated with the consumption of fish. This remedy will be adaptively managed, and long term monitoring will be used as a tool to assure the Sustainable Remedy achieves remedial objectives.

Very truly yours,

William H. Hyatt, Jr.
Coordinating Counsel for the CPG

cc: Lisa Feldt, Associate Deputy Administrator
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