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Via Overnight Mail

The Honorable Robert Perciasepe
Deputy Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Lower Passaic River Study Area

Dear Deputy Administrator Perciasepe:

I am pleased to continue our correspondence related to the Lower Passaic River Study Area. The goal of the Cooperating Parties Group (CPG) remains the successful remediation of the Passaic River. We share the EPA's definition of a successful remedy as one that is protective of human health and the environment. The CPG also believes that bringing value to the communities along the river is a key element of a successful program. In order to meet all of these goals, the CPG has developed a comprehensive remedial plan for the entire 17 miles of the Study Area: the Sustainable Remedy.

The EPA is at a critical juncture in its decision-making regarding how to manage large, complex sediment sites, and its remedy decisions here will have long-term implications, not only for the Lower Passaic River, but for the entire region, as well as nationally at other sites. The Focused Feasibility Study (FFS) approach advocated by Region 2 addresses uncertainties associated with sediment transport, how dioxin will behave in the food web, and how people will catch and consume fish from the river by concluding that bank-to-bank dredging and capping is the only protective remedy. The other alternative, the CPG's Sustainable Remedy, which the CPG is convinced will be protective, addresses the uncertainties and complexities through the EPA-recommended Adaptive Management Process (Superfund Remedial Program Review Action Plan, November 2013) (the "Plan"). The Plan anticipates issuance of an OSWER directive in 2014 "to aggressively, but prudently encourage adaptive management approaches for efficient and effective characterization and cleanup of Superfund sites." *See* Plan at Page 9.

EPA's selection of a bank-to-bank dredging remedy for the lower eight miles of the Passaic River has the potential to set an unintended and, the CPG believes, unnecessary precedent for sediment projects throughout the entire New York/New Jersey Harbor. The area of focus of the FFS is one small segment of a very large complex system of rivers, creeks, canals, bays, and

kills. These Harbor waterways are located in a highly-urbanized and densely-populated setting. Even if the FFS bank-to-bank alternative is limited to this stretch of the Passaic River, it will result in a multibillion dollar remedy that will lead to litigation and take decades to complete and which will be complicated by significant and severe impediments to implementation that make its ultimate success uncertain.

If the approach to managing uncertainty proposed in the FFS is applied throughout the region, the actual scale of the remedial programs may be an order of magnitude, or more, than the estimated cost of implementing the FFS bank-to-bank remedy. Therefore, it is critical that the remediation of the Lower Passaic River be approached in a way where we can collectively learn, though Adaptive Management, how to best address remediation of contaminated sediments throughout the Newark Bay complex.

Implementation of the FFS remedy will add nothing to our understanding of the behavior of dioxin in the ecosystem and will provide no new information about the factors that have created the uncertainties driving EPA's approach. Therefore, when EPA's focus moves to the upper nine miles of the river or into Newark Bay, the same uncertainties that currently confound EPA will still exist, and the same calculus that has led Region 2 to select the FFS remedy for the lower eight miles will drive the remedy selection process. A far worse result would be to have the bank-to-bank dredging program fail to achieve its remedial goals. Then, the failure to acquire knowledge of the factors controlling remedy effectiveness would be catastrophic. Having spent billions on a failed remediation approach, with no understanding of what went wrong, the EPA would be at a complete loss as to how to proceed. The ramifications go beyond the cost of the remediation and could adversely affect the economy and the future of development and expansion in the region. By contrast, the Sustainable Remedy is designed to systematically evaluate progress towards EPA's remediation goals and address any shortcomings that develop along the way. As such, implementation of the Sustainable Remedy would greatly reduce the risk of remedy failure.

EPA guidance and the OSWER directive to be issued this year provide instruction on how to get the "right" answer: Adaptive Management. The Sustainable Remedy is the only alternative under consideration that incorporates Adaptive Management principles. It has been carefully crafted to address the uncertainties that currently drive the FFS, which relate to the ability of predictive models to determine the fate of miniscule quantities of dioxin in eight miles of surface sediment over a 40 to 50 year time horizon, and it would serve as a model for the remediation of the remainder of the estuary system. The Sustainable Remedy is designed to reduce risk to protective levels in approximately five years, contains innovative features, such as carp management and fish exchange programs, designed to manage human health risk during remedy implementation, and the CPG's program will confirm the success of its alternative by monitoring the impacts of the remediation on the river, the ecosystem, and the people that use the river. As such, the Sustainable Remedy will reduce risk and resolve remedy uncertainties at

the same time. It will get to the "right" answer and return benefits to the community, support economic development, and advance the science of remediation in this vital estuary.

Very truly yours,

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

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