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121 NW Everett, Portland OR 97209
Box 3529, Portland OR 97208
503 944 7000

August 22, 2007

Ms. Deborah Yamamoto
US Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

Subject: Administrative Order on Consent for Removal Action (AOC), Port of Portland Terminal 4, Docket No. 10-2004-0009

Dear Ms. Yamamoto:

The Port of Portland (Port) is submitting this letter to reconfirm our commitment to address contaminated sediments at our Terminal 4 (T4) facility in a protective, timely, and fiscally responsible manner. To that end, we are writing to request consideration of a new schedule. We believe it is prudent at this time to realign the T4 Removal Action project schedule with the harbor-wide Remedial Investigation/Feasibility Study (RI/FS) before completing the design.

The Port has demonstrated a strong commitment to furthering both the harbor-wide RI/FS and the T4 Removal Action by investing a significant amount of energy, people, and money. To date, we have invested approximately $10.9 million on the T4 Removal Action Project, $3.3 million on T4 uplands work, $26.7 million on the harbor-wide project, and $4.8 million on other upland facilities. We do not take project schedule changes lightly. However, as a public entity, the Port has a fiduciary duty to ensure that our efforts are protective of the environment, cost-effective, and consistent with the overall cleanup of the Portland Harbor Superfund Site. As you know, the harbor-wide schedule has been extended by two years. We are concerned that, because the timing of the Terminal 4 Removal Action is no longer aligned with the Portland Harbor RI/FS, building a Confined Disposal Facility (CDF) in 2008 will not meet these goals.

This letter provides our rationale for the schedule change. We welcome your questions and will work collaboratively with you to find the best path forward, including consideration of interim steps that may be necessary to reduce risk to the public and the environment.

Introduction

The Environmental Protection Agency (EPA), in consultation with its federal, state and tribal partners, evaluated and selected a removal action for the Port's Terminal 4 that included a combination of monitored natural recovery, capping, and dredging with disposal in a CDF. The Port submitted the 60% Design in January 2007 and, since that time, the Port and the EPA team have been working through technical questions and issues in a collaborative

fashion. Based on our discussions, the Port and EPA determined that it made sense to forgo the 2007 construction schedule to provide an opportunity to fully and thoroughly address the design questions and concerns before moving to the 100% design phase. It has been a positive and productive use of the parties' resources, and we believe we have made great progress. This additional time has also provided the Port an opportunity to evaluate the T4 Removal Action project as a whole.

Based on this evaluation, we believe that it is prudent to realign the two schedules so that (1) timing of completion of the CDF can be coordinated with timing for other Portland Harbor cleanup actions, as originally intended; (2) we have more refined information about the types and volumes of sediments to be placed in the CDF and the level of protection necessary for its design; and (3) we have enough certainty to ensure a cost-effective remedy.

Timing with Other Portland Harbor Cleanup Actions

The T4 Removal Action is designated as non-time critical in the Administrative Order on Consent (AOC). EPA guidance provides that non-time critical removal actions must be considered in the context of the harbor-wide cleanup. During the alternatives evaluation, EPA and the Port concluded that construction of the CDF would contribute "to the efficient, cost-effective performance of the long-term remedial action of the overall Portland Harbor Superfund Site." (Engineering Evaluation/Cost Analysis (EE/CA), at Q-3.) This makes the T4 Removal Action unique because the CDF provides a final remedy for the T4 sediments as well as a disposal option for other sediments within the harbor.

The CDF is designed for enough excess capacity to accommodate approximately 750,000 to 850,000 cubic yards of other Portland Harbor sediments, with the goal of providing a cost-effective, efficient disposal option for the Portland Harbor Superfund Site as a whole. (EE/CA, at Q-13-14; 60% Design Analysis Report, at 62-64.) When EPA and the Port started this action, it was assumed that the Portland Harbor RI/FS would be further along by the time the CDF was built. The EE/CA estimated that the CDF would be built in Year 1, the Terminal 4 materials would be placed in the CDF in Year 2, and the remaining excess capacity would be filled over the next few construction seasons, closing the CDF after a total of six years. At that time, the RI/FS was scheduled to be completed by 2007 and the Record of Decision (ROD) was scheduled for 2008, about the same time the CDF would be ready to accept additional materials. Since then, incremental changes in the RI/FS have resulted in the extension of the harbor-wide schedule such that the T4 Removal Action and the harbor-wide schedules are out of sync.

The RI/FS schedule has now been extended by at least two years, with completion of the RI/FS in 2009, and EPA managing toward a ROD in late 2010. This change in schedule impacts the T4 Removal Action and the assumptions made in the EE/CA. EPA's current estimate indicates that the T4 CDF may be open for 10 years, with potential long periods of inactivity. (EPA Position Paper for T4, at C-8.) The likelihood that sediments will be placed in the CDF shortly following the T4 sediments has significantly decreased since the EE/CA, and it is unknown at this time if or when additional sediments will be placed in the CDF. EPA has indicated that if placement of other Portland Harbor sediments in the CDF does not occur, EPA might require additional permitting or possibly even removal of the T4 sediments

for disposal at another location. (Action Memo, at 21; EPA Position Paper for T4, at B-2.) The timing of completion of the CDF no longer meshes with the timing of the harbor-wide cleanup, creating uncertainties and risks that are simply too great for the Port to feel comfortable investing considerable public funds at this time.

Additional Information for 100% Design

The schedule changes also impact the design of the CDF. We find ourselves in a difficult position of trying to design a CDF without knowing the full picture and plan for the broader Portland Harbor cleanup.

First, as EPA has pointed out, "designing a [CDF] is complex * * *. [E]ach project must evaluate the individual characteristics of the sediment to be dredged, characteristics of the mix of contaminants associated with the sediment, and the characteristics of the disposal site and the water body." (EPA Position Paper on T4, at 2-5.) For the T4 CDF, approximately 15% of the capacity will be filled with T4 material, and the remaining 85% excess capacity will be filled with sediments from undetermined areas in Portland Harbor. Therefore, we must ensure the CDF is designed for Portland Harbor sediments, but we do not have representative harbor-wide data on which to base the design. EPA technical staff have expressed similar concerns over the course of more detailed design. As an alternative approach, we averaged the bulk chemistry data from the initial Areas of Potential Concern (iAOPCs), and then tried to look outside Portland Harbor and use other sites as surrogates to make assumptions and estimate partitioning coefficients for the excess capacity. However, the Port has learned that designing a CDF based on assumptions, rather than representative harbor-wide data, may lead to a design that is more expensive than necessary to ensure protectiveness.

Second, the Port agrees that design of the CDF should be protective of human health and the environment (including water quality standards), and the monitoring of the CDF should be tied back to this goal. (E-mail from Krista Koehl, Port, to Lori Cora, EPA, March 19, 2007.) The difficulty we face is that the harbor-wide human health and ecological risk assessments (RIAs) are not complete. Originally, EPA determined that a detailed risk analysis was not necessary for the T4 Removal Action area because it would be assessed in the Portland Harbor RI/FS. (Action Memo, at 9.) At that time, however, the RiAs were scheduled to be completed at about the same time as the design and construction of the CDF. Because of the new harbor-wide schedule, the T4 Removal Action is moving forward without the benefit of the RiAs that could otherwise be factored into the CDF design. For example, resolution of spatial and temporal averaging in the RiAs is a pending harbor-wide RI issue. (EPA Position Paper on T4, at 2-9.)

In summary, the RI/FS will provide important information for the T4 design. Through the EPA-approved RiAs and the FS, the iAOPCs will become better refined and more certain (i.e., iAOPCs will become Areas of Concern), resulting in tighter ranges for bulk chemistry concentrations for the CDF excess capacity. The programmatic FS will include an evaluation of disposal options for the overall Portland Harbor Site, as well as more certain estimates of the volumes and types of sediments that may be suitable for placement in the CDF. In addition, the EPA-approved RiAs should provide more certainty on pending issues related to

bioaccumulation, points of exposure, and exposure point concentrations. Resolution of these issues will confirm the appropriate design to ensure that the public's health is protected and its resources are invested wisely.

Cost-Effectiveness

As discussed above, the lack of key RI/FS information affects the design of the CDF, which in turn can significantly impact the cost. This, combined with the cost increases identified during design, leads us to the conclusion that it would not be prudent to design and construct a CDF in 2008.

As we have shared with you, the cost estimates to construct the T4 Removal Action, including dredging, capping and the CDF, have increased by approximately 60% since the time of the EE/CA. The EE/CA cost-estimate for the EPA-selected Alternative C, Dredging Emphasis with Disposal in a CDF, was $32.4 million. Today the current estimate is $51.8 million for the same items. The increase is due to many factors, including increased material costs, increased time for design, and increases due to more robust design detail. The $51.8 million estimate does not incorporate potential design changes the Port and EPA have been discussing since January 2007. Additionally, none of these estimates include past costs, internal Port costs, or agency oversight costs (for participation and oversight by EPA, its partners, and contractors).

As a public entity, we have a responsibility to the public to work toward the most cost-effective, protective course of action. We believe the most prudent course is to allow the RI/FS process to catch up so that it can inform the design of the CDF, thereby reducing uncertainty and risk. Then, the Port and EPA will be in a much better position to ensure an environmentally sound and fiscally responsible action.

Interim Work

As you know, source control actions are incorporated into the Removal Action and included in the 60% Design. We believe that these source control actions should continue to proceed as soon as possible. Additionally, we will work with you to evaluate what other interim work may need to occur to reduce risk to the public and the environment. We also need to determine what additional data will be necessary before completing the project. This will need to be closely coordinated with the schedule and information needed for the harbor-wide FS.

Conclusion

We are invested in the cleanup at T4 and fully committed to fulfilling our responsibility. We believe that it is environmentally sound and fiscally responsible to realign the T4 Removal Action schedule with the harbor-wide schedule before completing the design. The harbor-wide information should inform the design of the T4 Removal Action to ensure that the CDF is environmentally protective, cost-effective, and consistent with the overall cleanup plans.

We look forward to working collaboratively with you to find the best path forward. Please feel free to contact me at (503) 944-7236 if you have any questions.

Sincerely,

Cheryl R. Koshuta
Chief Environmental Officer

c: Dan Opalski, EPA
Sean Sheldrake, EPA
Lori Cora, EPA
Tom Imeson, Port
Anne Summers, Port
Krista Koehl, Port