



To:

U.S. EPA Administrator Gina McCarthy
U.S. Regional Administrator, Region 10 Dennis McLerran

CC:

U.S. EPA Director of the Office of Environmental Justice Matthew Tejada
OR Senator Jeff Merkley
OR Senator Ron Wyden
OR Representative Earl Blumenauer
OR Representative Suzanne Bonamici
OR Representative Peter DeFazio
OR Representative Kurt Schrader
OR Representative Greg Walden
OR Governor Kate Brown
OR Attorney General Ellen Rosenblum
OR House Speaker Tina Kotek
OR Representative Tawna Sanchez (incoming)
OR Representative Alissa Keny Guyer
OR Health Authority Director Lynne Saxton
City of Portland Mayor Charlie Hales
City of Portland Commissioner Nick Fish
City of Portland Commissioner Amanda Fritz
City of Portland Commissioner Steve Novick
City of Portland Commissioner Dan Saltzman
City of Portland Auditor Mary Hull Caballero
City of Portland Bureau of Environmental Services Director Michael Jordan

Subject: Portland Harbor Community Coalition (PHCC) Public Comment on the Portland Harbor Superfund Site Proposed Cleanup Plan

September 6, 2016

Dear Ms. McCarthy and Mr. McLerran:

We are the Portland Harbor Community Coalition (PHCC), an alliance of over a dozen member organizations and supporting groups. We represent those most impacted by contamination in the Portland Harbor Superfund site: Native people, Blacks/African Americans, immigrants and refugees, people experiencing houselessness/homelessness, and working-class Portlanders of all races and ethnicities.

The ways that our people have been impacted by Portland harbor pollution are varied and complex, but must be understood by EPA in order to make an informed decision that fulfills its ethical and legal responsibilities. Some of these groups and the impacts they suffer include (but are not limited to):

- Native Americans & Federally Recognized Indian Tribes: Northwest Native peoples have inhabited lands along the Willamette River since time immemorial, subsisting off of the fish, water, and land. Native people were able to sustain their villages and trade with other tribes in large part due to the salmon, lamprey, camas, wapato, and other foods that lived in abundance in and around the Portland Harbor. Today, industrial pollution in the Portland Harbor has disrupted those food sources, and severely compromises the health, livelihood, and culture of Native people who live and travel throughout the Columbia River Basin. Thousands of Native people from the Columbia River Basin Tribes still consume fish from the Portland Harbor and nearby waterways - and they do so with far greater frequency than non-Native people (58.7 grams per day, versus an estimated national average of 6.5 grams per day). In other words, Native adults of this area consume approximately nine times more fish than the national average. As noted by the Columbia River Intertribal Fish Commission, this “seriously calls into question the applicability and adequacy of using a national fish consumption rate to protect tribal members’ health” (Columbia River Inter-Tribal Fish Commission (1994) *A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin*). In recognition of this reality, as well as the fundamental right of tribal members to eat healthy fish, the states of both Washington and Oregon have adopted the more realistic fish consumption rate of 175 grams per day. As both states move into compliance with these new water quality rules to protect the fishing public (both native and non-native), EPA must ensure that its approach to harbor pollution is in alignment with those goals, and does not create backsliding. The PHCC believes that treaty rights extend to all tribal members, including those in the urban environment, who have been particularly impacted by harbor pollution. For instance, among the 12,000 member Turtle Mountain Tribe of North Dakota, fully half joined the war effort during World War II and went to work in Portland at Kaiser Industries near Vanport. Kaiser’s current status as a Potentially Responsible Party underscores the importance of EPA’s engagement with urban Native Americans, both to fully understand historic sources of contamination and to provide better remedies for groups who have suffered from multiple, inter-generational impacts from harbor

pollution, whether that came from air, water, river food, or on-the-job exposure. Substantial reductions to toxic off-loading on traditional foods like salmon, wapato and lamprey must be prioritized in any local clean-up plan if EPA expects to win community approval. Without such a focus, Native Americans will continue to suffer an unfair toxic burden from Portland Harbor pollution, as well as disproportionate health impacts that accompany the loss of their traditional foods.

- **Black/African Americans:** Black/African Americans first arrived in Portland in large numbers to work in the shipyards during WWII. Chipping paint off ships exposed people to toxic substances including (but not limited to) lead, and other job duties have put people in contact with PCBs and other poisonous substances. Black/African Americans were excluded from workplace protections afforded by the Boilermakers Union for many years, and shipyard workers, their families, and descendants were forced to live in segregated neighborhoods for decades where they suffered disproportionately from harbor-related air pollution -- including pollution from PRP Oregon Steel Mills (now Evraz). Black/African American Portlanders have since suffered (and continue to suffer) from the impacts of serial displacement - often to areas near brownfields - as the city has grown and changed under a model of development that has failed to provide for them. Moreover, many people in these communities fed their families with fish from the Portland Harbor, and continue to fish there for both subsistence and as a continuation of cultural tradition. Eating contaminated fish, including carp and catfish, exposes people to health risks that are compounded by the other harbor pollution-related factors mentioned above. We are recommending several measures to ensure that the Portland Harbor cleanup does not contribute to the displacement and continued health disparities of Black/African Americans, and instead contributes to this group's prosperity.
- **Immigrants and Refugees:** Many people, especially Eastern European, Asian, and Latino immigrants and refugees subsist on resident fish from the Portland Harbor and are exposed to health risks from the contaminants in these fish. Families often depend on fish for protein, and view fishing as a continuation of their cultural traditions. Many people lack information about the dangers of consuming fish from the river, and others are aware of risks but are food insecure and have few other options. Some people even travel forty miles from Woodburn, OR to catch fish to feed entire families, including small children and pregnant or nursing mothers. In 2011, out of a telephone survey of licensed anglers, it was estimated that about 7,800 people consume resident fish (catfish, bass, carp, etc.) from the Portland Harbor (and that 142,000 consume any fish - including non-resident fish). It was also estimated that 1,789 children consume resident fish. Those approximately 800 people who reported consuming the most resident fish eat about a serving a week - far more than the recommended amount. Licensed anglers with the most people reporting resident fish consumption were Eastern Europeans; 38% reported resident fish consumption. This survey does NOT account for NON-licensed anglers. It is estimated that about 13.5% of those fishing in the Portland Harbor do not have licenses. Many of those fishing without licenses are likely part of immigrant and refugee groups who fish for subsistence and cultural reasons (Sundling, D. and Buck, S. (2012)

Fish Consumption in the Portland Harbor). These communities are dependent on fishing, and deserve to eat fish free of toxic substances.

- People Experiencing Houselessness: Hundreds of houseless people call the Portland Harbor home, particularly in the wake of the current housing crisis that has left many Portlanders without permanent and affordable shelter. Ongoing sweeps of homeless camps in inner Portland neighborhoods, including along Johnson Creek, also push people toward the waterfront, and onto contaminated beaches. People survive by fishing in the river, which continues to expose them to dangerous contaminants and serious health risks. People who live along the river are also exposed to toxic substances such as lead, PCBs, and dioxins in the soil. And as the cleanup begins, they are at risk of being displaced again. Moreover, without substantial anti-displacement provisions (e.g. community benefits agreements, affordable housing construction, etc.), the cleanup and redevelopment of the waterfront will place low and moderate income residents in adjacent neighborhoods at further risk of displacement, and perhaps even exclude them from living near the river. EPA must provide strong anti-displacement measures to prevent disproportionate impacts on both the housed and houseless population; the latter is a population that is already experiencing significant psychological trauma, and that bears a disproportionate impact of river pollution due to its unavoidable reliance on both resident fish and basic human shelter along the waterfront. Anti-displacement provisions are now legally required in Portland's new Comprehensive Plan, which will take effect January 1, 2018; it is therefore very important that the EPA align its Record of Decision (ROD) with these laws.

Many people fall into more than one of these groups. Many members of these groups have also endured exploitation, oppression, and health disparities from living in other geographic areas, and for reasons that do not originate with Portland Harbor pollution. In other words, many of our people face cumulative and intergenerational impacts from Portland Harbor pollution, and some of these harms are compounding pre-existing harms. Decades and centuries of displacement away from the harbor area also means that impacted communities cannot be easily mapped and tracked - which means that not all impacts can be measured. According to the 2010 census, between 2000 and 2010 nearly 10,000 people of color were forced out of the city's core -- most of them African Americans. EPA should also be aware that the city is actively moving displaced African Americans back into the city's core; EPA should strongly consider joining this effort. Furthermore, for reasons outlined above - including economic necessity and cultural tradition - signs warning people of the dangers of eating contaminated fish do little to prevent people from consuming fish. Posting signs warning of fishing and fish consumption risks has proven *not* to be an effective solution to protect the health of people at risk of exposure to PCBs and other contaminants in the fish. They also do nothing to redress the damage that has been caused by over a century of pollution in the harbor.

This is why we are calling on the EPA to craft a Record of Decision that does far more to protect our communities than the current Proposed Cleanup Plan. The current Plan relies on monitored natural recovery and capping to remediate the vast majority of contaminants in the harbor. This Plan will do very little to alleviate the need for ongoing health advisories in the Portland Harbor, and therefore

fails the communities who are most harmed by harbor pollution. For this reason, we absolutely cannot support EPA's proposed plan. It is also our position that EPA's Proposed Plan violates several of its own evaluation criteria, including but not limited to: #1 - Overall protection of human health and the environment, #3 - Long-term effectiveness and permanence, #4 - Reduction of toxicity, mobility, or volume through treatment, and especially #5 - Short-term effectiveness (the plan relies excessively on Monitored Natural Recovery - a long-term game of 'wait and see') and #8 - Community acceptance. This final criteria is addressed in the following section.

Impacted Communities Do Not Accept the Proposed Plan

We are not aware of any environmental, social justice, or grassroots organization that is in support of the EPA's proposed plan. We are not aware of any Treaty Tribe that is in support of the EPA's proposed plan. We are not aware of any entity supporting EPA's plan that is not itself a Potentially Responsible Party.

When evaluating community acceptance, EPA must do more than invoke the concept of the community, or 'the public'. It must acknowledge that the community most affected by toxic contamination is the most important voice when judging the adequacy of a remedy, as it has suffered the most serious harm. This harm is not at all comparable to the financial cost that is properly borne by PRPs; this recognition was part of the original understanding of CERCLA, and is embodied in the very name "Superfund", which presumed polluters would pay in advance, and would pay the full cost of their pollution to maintain a healthy environment.

It is in this light that we must condemn the extremely short, highly inadequate, and improperly managed public process surrounding this Proposed Plan. After nearly 16 years of intense negotiations between the EPA and the PRPs, the public has been rushed through a very hasty process that has included failure by EPA to translate key documents, failure to maintain a functioning email account to receive public comments, poorly publicized hearings that convey information in an overly technical manner, and are therefore not accessible to average attendees (let alone those most impacted, some examples of which are listed above), and refusal to grant reasonable extensions to the comment period. Between the winter of 2015 and the release of the Proposed Plan this summer, EPA also made a very sudden shift from preferring Alternative G to preferring Alternative I. This change was made without adequate consultation with the groups most affected by harbor pollution, and EPA's reasoning for this shift in priorities has still not been articulated. All of the issues just listed have been informed by an unrealistic timeline for a ROD. Peter deFur, the technical Superfund Advisor retained by the Community Advisory Group, told the public that for the EPA to reach a ROD by the end of the year, they will have to work in record time once the comment period ends, and that, more likely than not, *the ROD has already been written*.

This ROD timeline and its technical requirements, combined with the procedural failures outlined above, create serious doubt that what we have witnessed over the last few months was a meaningful public process. On July 19th, we requested that the EPA add an additional 30 days to the comment period so that our coalition partners would be afforded more time to work within their communities

in light of these challenges, and in light of the complexity and size of the site. Due to many factors, including those listed above, and due in part to EPA's refusal to meet our prior request for a reasonable extension to the public comment period, we now believe that EPA's handling of this public comment period may violate Title VI of the Civil Rights Act, and are hereby requesting an additional 120 days to the present comment period, so that at the very least, the EPA can investigate its own Title VI compliance on the Portland Harbor Superfund Site. EPA should also be aware that PHCC will likely submit a formal Title VI complaint with the City of Portland for reasons that relate specifically to the city.

We are now standing together to call on the EPA to uphold our constitutional rights, our civil rights, and our fundamental human right to a clean environment. We also implore the EPA to honor the federal government's treaties with tribal nations. The current proposed plan violates all of the above. This plan violates our civil rights by outright ignoring the needs and perspectives of those who have suffered most from environmental injustices, including, but not limited to, exposure to contaminants through fish consumption. This plan violates treaty rights by removing very little contaminated sediment, and by effectively relying on a perpetual health advisory for Portland Harbor fish. This means that fish are unsafe for Tribal members and others to consume, especially women of childbearing age, as well as pregnant women and nursing mothers, whose babies will experience neurological and developmental damage if they consume fish affected by harbor pollution.

Executive Order 12898 mandates that all federally funded projects overtly address environmental justice issues. This plan does not do that. We also note that the baseline studies of the Portland Harbor did not include an Environmental Justice analysis, unlike the Duwamish Superfund cleanup plan. This is an unacceptable oversight.

Instead of the current proposed plan - Alternative I - we call on the EPA to craft a ROD that will lift all fish consumption advisories in the Portland Harbor, in alignment with a modified, enhanced variation on Option G. We make this request in solidarity with the Yakama Nation, the Portland Harbor Community Advisory Group, and other concerned groups, and insist that this outcome must be guaranteed in the EPA's ROD. We also call on the EPA to require the most effective cleanup technologies available, regardless of cost, and to fully clean up the Portland Harbor in a way that does no harm to, and provides maximum recovery for, the Pacific lamprey.

Scientific evidence suggests that Pacific lamprey, which have been in existence for over 500 million years, are one of the foundational species of the Columbia basin, and that the potential loss of Pacific lamprey in the Columbia basin threatens the basin's ecological integrity. Already functionally extinct in much of their former range, one of the only places one can still find lamprey in significant numbers is at Willamette Falls. To live there, however, lamprey must run a chemical gauntlet through Portland Harbor to get to the ocean. In their early life Pacific lamprey live in the river sediment for up to seven years, where they are likely ingesting significant amounts of toxic chemicals.

Lamprey is an incredibly important cultural food for Native Americans, and have traditionally provided an incredibly important source of nutrition, as they are exceptionally rich in fats (much more so than

salmon). Due to the loss of lamprey throughout the Columbia Basin, many young tribal members today have never even seen a lamprey, and are losing historically important stories and ceremonies that are associated with them. We feel this not only presents a disparate impact on their health, but also violates their freedom of religious practice. And because of accumulated levels of toxic pollution in the Portland Harbor -- which EPA's current proposed plan (Option I) would fundamentally fail to address, lamprey are likely absorbing significant levels of contaminants in the Portland Harbor, which are likely being passed on to tribal fishing people -- some of whom say they can literally taste the chemicals in the lamprey. Willamette Falls remains an important tribal harvesting area for lamprey, and we feel that EPA's proposed plan does not do enough to protect and restore their abundance, nor does it protect the tribal members who rely on them for cultural, subsistence, and religious purposes. Given the critical significance of lamprey as a food source for endangered salmon, and the urgency of providing for their recovery, we find it non-negotiable that EPA's ROD provide the strongest possible protection for lamprey. We are also particularly concerned that long-term capping will contribute to the extinction of lamprey, and feel that EPA did not adequately consider the impact of both Monitored Natural Recovery and capping on their habitat.

Finally, as people living in the Portland harbor vicinity, whose lives and livelihoods will be impacted by the cleanup *as well as the redevelopment that occurs following remediation*, we call upon the EPA to ensure that the final ROD includes provisions that guarantee the following outcomes:

- **Land:** Work with impacted communities (see above) to set aside land on or near the river for community use. This could support community-controlled habitat restoration, housing, gardens, environmental education, and other community-identified and community-controlled activities.
- **Healthy Fish:** Remove ALL highly and moderately contaminated sediments from the river, regardless of cost, so that fish are safe for EVERYONE to eat.
- **Housing Justice:** Give 6 months notice before beginning the cleanup in areas where houseless people are living. Provide funds for permanent, affordable housing for anyone displaced by cleanup (whether housed or houseless). Institute robust anti-displacement provisions (i.e., as outlined in the City of Portland's Comprehensive Plan) to ensure that low- and middle-income residents have access to permanently affordable housing in nearby neighborhoods.
- **Jobs:** Train and hire local residents from impacted communities, women, and minority-owned firms for long-term, family-wage cleanup jobs. Sign Community Benefit Agreements to ensure that benefits accrue to the local community, and to those who have been most impacted by river pollution. Pursue a meaningful partnership with local tribal governments.
- **Pollution Controls:** Include ongoing pollution controls in the final cleanup plan, including from upriver sources. Do not allow re-contamination from upland sources. Use EPA enforcement authority to clean up major hot spots like Arkema, shut off upland pollution sources, and define an appropriate, diminished role for Oregon DEQ during the cleanup process.
- **Air Monitoring:** During the entire length of cleanup process, require the most effective fuel/emissions filters available and ongoing monitoring to minimize exposure for all cleanup-related activities, including but not limited to freight, dredging, barges, and other

equipment. If air toxins are found to exceed acceptable levels, immediately take measures to intervene.

- **Water Monitoring:** During the entire length of the cleanup process, provide rigorous water monitoring, and make data available through a public database so that the public is aware of pollution levels at various locations, particularly those that are important for recreation and fishing access.
- **Public Access:** Increase access to public lands along the river. Prioritize impacted communities – including youth – in the design, cleanup, restoration, and development of new sites.
- **Transport & Disposal:** Ensure the health and safety of people and the environment in the transport and disposal of toxic substances. Do NOT store contaminated sediment next to the river. Do NOT dispose of contaminated sediment in a way that will negatively impact the health of people living or working near the disposal site. Use known best practices to avoid off-gassing and volatilization of toxic substances, and ensure that all workers are trained in these practices.
- **Community Support:** Establish a fund to assist communities impacted by historic and ongoing contamination, as well as cleanup impacts, until fish advisories are lifted. This fund should support community health resources for families who have been harmed by harbor pollution, and help diagnose and prevent health problems that may be related to the absorption of pollutants via fish, riverside food plants, exposure from pollutants from Portland Harbor jobs, or use of contaminated beaches.
- **Polluters Pay:** Ensure that impacted communities (see above) are not burdened by the cost of cleanup. Require performance bonds from PRPs to cover these cleanup costs.

While we acknowledge EPA's position that they have met the minimum legal requirements for public outreach, we do not believe EPA has conducted an outreach process that is adequate to address the needs of those most impacted. We strongly urge the EPA to take a different approach in crafting the ROD, and prioritize environmental justice communities that have been most impacted by the river's pollution, and which have the most to gain, or lose, as the EPA continues to make decisions on our behalf.

Please see Appendix A for a set of links to PHCC videos that provide additional testimony on our position relating to the Portland Harbor Superfund. As multicultural people who have lived and worked around the Harbor for many years, we were not able to reduce all of our positions on harbor pollution to written comments. Please see Appendix B for a Health Impact Assessment pertaining to the Portland Harbor Superfund Site. Please see Appendix C for over 150 additional hand-written comments and typed letters in support of this letter.

Please note that several of those signed on below will also be submitting their own letters and comment cards, under separate cover.

Thank you.

Portland Harbor Community Coalition Member Groups and Supporting Organizations:

American Indian Movement - Portland Chapter
Ancient World Crafts
Asian Pacific American Network of Oregon
Audubon Society of Portland
Collective Care Services
Columbia Riverkeeper
East European Coalition
Groundwork Portland
Iraqi Society of Oregon
Jamaican Homestyle Cuisine
Jose Gaustellum Painting
Líderes Verdes
Madinah Cafe
Mattie Khan's Kitchen
MBZW Muzak
Muhammad Study Group of Portland
Native American Youth and Family Center
Neighbors for Clean Air
Oregon Physicians for Social Responsibility
PDX Bubble Boys
Portland Center for Self Improvement
Portland Harbor Community Advisory Group
Portland Jobs with Justice
Portland Youth and Elders Council
Raging Grannies
ReBuilding Center
Right 2 Survive
Right 2 Dream Too
Screwloose Studios
SEIU 503, OPEU
Sierra Club - Oregon Chapter
Strawberry Pizza Parlor
The S.O.F.
Unite Oregon
Willamette Riverkeeper
Wisdom of the Elders

Individual Supporters:

Aaron Adams, Co-owner, Farm Spirit
Muwafaq Alkattan
Abdul Baki
Abdulahdi Benizuraik
Margot Black, Co-founder, Portland Tenants United

Betsy Breyer
Baher Butti, Founder and Director, Iraqi Society of Oregon
Kelly Campbell, Executive Director, Oregon Physicians for Social Responsibility
Chris Chapman, Co-owner, Floyd's Coffee Shop
Cassie Cohen, MSW, Founder and Advisor, Portland Harbor Community Coalition (PHCC)
Mike Crenshaw
Christina Gonzalez
Erin Goodling, PhD Candidate, Urban Studies, Portland State University
Heidi Guenin, AICP & MPH
Edward Hill, MUP - C4C
Alan Horton, USDA Forest Service (retired)
Joseph Horton, HTL (ASCP)
Sharon Horton, USDA Forest Service (retired)
Sarah Iannarone, PhD, Portland State University
Jack Inglis, Co-owner, Floyd's Coffee Shop
Noah Jenkins
Laquida Landford,
Khanh Le, Executive Director Mainstreet Alliance of Oregon
Anthony Levenda, PhD Candidate, Urban Studies, Portland State University
Erica Martin
Melanie Malone, PhD Student, Environmental Science and Resources, Portland State University
Art McConville
Rahsaan Muhammad, Organizer, Portland Harbor Community Coalition (PHCC)
Pam Phan, MURP
Monte Powers
Stephen Quirke, Coordinator, Portland Harbor Community Coalition (PHCC)
Andrew Riley
Mary Ann Rozance, MS
Liwaah Sahib
Tawna Sanchez, Representative-elect, House District 43
Kaia Sand
David Schor, Assistant Attorney General, Oregon Department of Justice, 2016 mayoral candidate
Vi Swiftcloud
Jay Thiemeyer, KBOO Radio
Mary Ann Warner, Organizer, Portland Harbor Community Coalition (PHCC)
Cary Watters, MURP
Patti Westhusing
Marisa Zapata, PhD & MURP

Contact: pdxharborcommunitycoalition@gmail.com

Website: www.ourfutereriver.org

Appendix A

Please see films at the following URLs. These videos provide additional testimony on our position relating to the Portland Harbor Superfund.

A People's View of the Portland Harbor - www.ourfutureriver.org
Right 2 Survive: Willamette Cove - <http://ourfutureriver.org/stories/>
The Time is Now - <http://ourfutureriver.org/stories/>
Art - Somebody Needs to Be Accountable - <http://ourfutureriver.org/stories/>
Josh - We Need Our Fish to be Healthy - <http://ourfutureriver.org/stories/>
Monte - Good Things Will Come - <http://ourfutureriver.org/stories/>
Mike - Worrying About Toxics - <http://ourfutureriver.org/stories/>
Adrian - We Can Make a Change - <http://ourfutureriver.org/stories/>
Jill - I Won't Bring My Kids Down Here - <http://ourfutureriver.org/stories/>
Allen - It Shouldn't Be About the Buck - <http://ourfutureriver.org/stories/>
Rafael - Stop Polluting the River - <http://ourfutureriver.org/stories/>
Groundwork Portland Green Team - <http://ourfutureriver.org/stories/>
Erik Thorsgard - A Cultural Necessity - <http://ourfutureriver.org/stories/>
Erik Thorsgard - An Opportunity to Go Eeling - <http://ourfutureriver.org/stories/>
Erik Thorsgard - We Want a Manipulated - <http://ourfutureriver.org/stories/>

Appendix B

Please see the Health Impact Assessment (HIA) pertaining to the Portland Harbor Superfund Site below.