



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

October 6, 2017

TRANSMITTED VIA ELECTRONIC MAIL

Michelle Pirzadeh, Acting Regional Administrator
Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

**RE: REQUEST FOR DISPUTE RESOLUTION
Portland Harbor NPL Site – ASAO SOW for Pre-Remedial Design and Baseline Sampling**

Dear Ms. Michelle Pirzadeh:

Pursuant to Section V.B.1 of the 2001 Memorandum of Understanding for the Portland Harbor Superfund Site, the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) is hereby invoking **dispute resolution** regarding the pending Administrative Settlement and Agreement Order on Consent (ASAO) and its Scope of Work (SOW) for Pre-Remedial Design and Baseline Sampling for the Portland Harbor National Priorities List (NPL) Site, which we have learned could be signed by your office as early as October 9, 2017. There are serious technical problems with the ASAO/SOW which must not be ignored in your agency's apparent rush to get this agreement finalized. In the process EPA has apparently decided to usurp its regulatory authority in favor of a path that will lead to a remedial action that ultimately fails to protect human health and the environment, in direct violation of CERCLA's statutory and regulatory mandates.

We have had limited time to review these documents. PRP revisions have major technical problems that jeopardize the purpose of the work, and more time is needed for a more deliberate process for review and comment. Such a compact time period is not consistent with EPA's commitment to allow reasonable time for review and comment by the Yakama Nation. The draft agreement was pushed through the process way too quickly, which did not allow for adequate review on the part of EPA and largely excluded the Technical Communications Team (TCT); it does not appear to be considering the technical input or priorities of Region 10. As a result the process appears manipulative and frankly raises substantial suspicions of bad faith on EPA's part. Execution of this particular ASAO should be postponed indefinitely until proper and deliberative discussion of its technical shortcomings, which we shall describe briefly in turn.

First, the Scope of Work (SOW) is not based in sound science or statistically valid use of data, and does not intend to evaluate remedy effectiveness in conformance with the Record of Decision (ROD) issued by EPA in January 2017. The document deviates significantly from the minimum baseline and pre-Remedial Design sampling requirements carefully drafted by EPA, in collaboration with the TCT. In effect it appears to have the intent of reopening the Remedial Investigation/Feasibility Study and amending the ROD, which will cause significant delays, likely years.

Second, the extraordinary step of attaching the SOW to the ASAOC is extremely troubling. Baseline sampling is an extremely important foundation for future monitoring and cleanup effectiveness evaluations. Without a valid baseline data set with clear and defensible objectives, EPA cannot move forward with the remedial action. However, EPA compromises the sufficiency of the SOW by incorporating it into the ASAOC, effectively setting it in stone. These SOWs by nature are documents that are usually drafted iteratively to allow for necessary technical review and to ensure defensible data will be collected. Attaching the SOW to the ASAOC will require amendment of the ASAOC if changes are needed, a lengthy and cumbersome process that will undoubtedly be discouraged. This issue is not a trivial one, but rather a core problem that will likely put substantial obstacles in the way of Region 10's execution of its regulatory responsibilities in this cleanup.

Please contact Laura Shira at (509) 985-3561 to set up a meeting as soon as possible to resolve this dispute.

Sincerely,



6 Phil Rigdon
Superintendent
Yakama Nation Department of Natural Resources

cc: Jim Woolford, Director, EPA OSRTI
Sheryl Bilbrey, Director, EPA Office of Environmental Cleanup
Cyndy Mackey, Director, EPA Office of Site Remediation Enforcement
Davis Zhen, Manager, EPA Region 10 Site Cleanup Unit 2
Richard Whitman, ODEQ Northwest Region Cleanup Program