

APPENDIX B

**AGREEMENT
BETWEEN THE
PORTLAND HARBOR GROUP
AND THE
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
FOR PREPARATION OF THE
PORTLAND HARBOR SEDIMENT MANAGEMENT PLAN**

This Agreement for the Preparation of a Portland Harbor Sediment Management Plan (Agreement) is entered between the Oregon Department of Environmental Quality (DEQ) and the Portland Harbor Group.

1. Parties

- A.** The Portland Harbor Group is a coalition comprised of private and public entities owning or conducting business on property in the Portland Harbor area, specifically those entities executing this Agreement by signatures in Section 11.
- B.** The Oregon Department of Environmental Quality (DEQ) is a state agency, authorized to enter this Agreement by ORS 465.210 and 465.381.

2. Purpose

The purpose of this Agreement is to develop the Portland Harbor Sediment Management Plan (Management Plan). This work is necessary to protect human health and the environment in the Portland Harbor.

The purpose of the Management Plan is to develop and implement an effective, cooperative, and efficient process for evaluation and, if necessary, remediation of contaminated sediments in the Portland Harbor.

The work performed under this Agreement will lay the foundation for identifying actionable levels of contamination in Portland Harbor sediments. It also will provide a tool for guiding the evaluation of sediments at individual sites in the Portland Harbor.

It is anticipated that this Agreement will be a cornerstone for effectively addressing contaminated sediments in the harbor such that further action by the United States Environmental Protection Agency (EPA) will not be necessary.

This Agreement covers development of the Management Plan. Future phases, and agreements to accomplish them, will be shaped by information and data generated by the

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Management Plan.

3. Background

- A. The portion of Portland Harbor subject to this Agreement is an approximately 5.5-mile stretch of the Willamette River located between Swan Island and the southern end of Sauvie Island (see attached map). Properties along and within the Portland Harbor are used for manufacturing and shipping. This stretch of the Willamette River also provides wildlife habitat and a critical migratory pathway for anadromous fish. It is used for recreation such as fishing, swimming, and water sports. Portland Harbor is integral to the environmental and economic wellbeing of Portland, the State of Oregon, and the region.
- B. DEQ and EPA undertook sampling of sediments in Portland Harbor in 1997. Data from the sampling show that sediments in discrete areas of Portland Harbor contain elevated levels of hazardous substances such as polychlorinated biphenyls, pesticides, herbicides, chlorinated dibenzo dioxins and furans, tributyl tin, and polynuclear aromatic hydrocarbons. The highest concentrations of these substances are generally found near facilities subject to ongoing or pending cleanup efforts being undertaken pursuant to DEQ oversight through various agreements.
- C. EPA is considering the evaluation of Portland Harbor for potential inclusion on the NPL under the federal Comprehensive Environmental Compensation Response and Liability Act.
- D. It is DEQ's position that the state can and should lead both the assessment of sediment contamination and the implementation of any actions necessary to protect human health and the environment in Portland Harbor, and that EPA should be included in ongoing state-lead efforts in lieu of further EPA steps toward NPL listing.
- E. The Portland Harbor Group agrees to facilitate development of the Management Plan by providing: (1) cooperation in the form of information sharing, site access, and technical support as needed; and (2) funding sufficient to develop the items identified in Section 4 of this Agreement, as described in Section 6 hereof.
- F. For purposes of consistency and information sharing, DEQ will coordinate the work under this Agreement with sediment-related investigation and cleanup activities occurring at existing cleanup sites under DEQ oversight.

4. Elements of the Management Plan

- A. Upon funding being provided as set forth in Section 6, DEQ will develop a

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Management Plan for evaluating sediments that will have uniform application to characterization of sediment contamination at or near specific facilities within the Portland Harbor, and in Portland Harbor generally, including:

- (1) Protocols for sampling and analysis to provide for consistent characterization of sediments at or near specific facilities and within Portland Harbor generally;
- (2) A plan for development of consistent sediment screening levels to be applied at or near specific facilities and within Portland Harbor generally;
- (3) A risk assessment methodology for uniform application to assessment of risk posed to humans and ecological receptors at or near specific facilities and within Portland Harbor generally;
- (4) Development of a database for exchange of data and other information relating to the Portland Harbor between DEQ and members of the Portland Harbor Group, EPA, and other interested parties;
- (5) A public involvement plan regarding Portland Harbor sediments;
- (6) A plan for consultation among local, state, and federal agencies;
- (7) A plan or framework for coordinating sediment dredging and disposal decisions with sediment assessment and remediation in the Portland Harbor; and
- (8) A plan or framework for integrating site discovery activities into the evaluation of sediments.

B. DEQ will prepare the Management Plan as the end product for purposes of this Agreement. DEQ estimates that it will take six months to complete the work described in Subsection 4.A. This work will be developed in accordance with the following guidelines:

- (1) DEQ will establish a mechanism for the public and other interested parties to participate in the development of the work to be performed under this Agreement (e.g., establish a technical workgroup, advisory committee, or similar body that works with DEQ, holds regular public working meetings, etc.).
- (2) DEQ will consult with EPA, natural resource trustees, and other affected state, local, and federal agencies in the development of the Management

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Plan. This consultation will include intragency coordination between DEQ's Waste Management and Cleanup and Water Quality Divisions.

- (3) The Management Plan will incorporate, or require incorporation into specific plans or tasks, existing sediment-related data (sediment chemistry data, bioassay test results, and bioaccumulation test results) to the extent such data are readily available and of an acceptable QA/QC level.
- (4) The Management Plan will incorporate, or require incorporation into specific plans or tasks, the objective of consistency with applicable federal, state, and local laws, regulations, and guidance.
- (5) The Management Plan will provide for incorporation of information from other work being performed in Portland Harbor as may facilitate the development of components of the Management Plan.
- (6) The Management Plan will take into account the timing of scheduled maintenance dredging as it pertains to development of the framework for evaluating sediments in Portland Harbor.
- (7) The Management Plan will include a schedule and milestones for use in demonstrating progress in addressing contaminated sediments in Portland Harbor.

5. Participation by the Portland Harbor Group

The Portland Harbor Group will be regarded and treated by DEQ, for the purposes of implementing this Agreement and developing the Management Plan, as a full partner in the work, including but not limited to: participation with DEQ in meetings with the public and/or other agencies regarding Portland Harbor sediments; and having an adequate opportunity to receive, review, provide comments, and have DEQ consider such comments, on draft documents, budgets, and decisions to hire consultants. The Portland Harbor Group will identify to DEQ representatives of the Portland Harbor Group for all purposes under this Agreement.

6. Financial Assistance

- A. The Portland Harbor Group will provide financial assistance in an amount not to exceed \$500,000 to fund the DEQ work described in Section 4. Actual implementation of the Management Plan and other work products that are developed through this Agreement, and of future phases of sediment evaluation or remediation in Portland Harbor, are not funded by the financial assistance provided under this Agreement.

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- B. DEQ will use the financial assistance only for the work described in Section 4. These expenditures will include the funding of DEQ staff and expert consultants to perform, oversee, or coordinate the work to be conducted under this Agreement (including DEQ staff within the Water Quality Division as necessary to intragency coordination). DEQ will consult with and, to the extent allowed by public contracting law, obtain concurrence from the Portland Harbor Group in the selection and hiring of expert consultants. DEQ further will consult with the Portland Harbor Group in development of the work in Section 4 and related budgets, and in oversight of work by expert consultants. The Portland Harbor Group will designate and make available personnel to work with DEQ and the expert consultants. The financial assistance monies shall not be spent by DEQ in any manner or for any purpose inconsistent with this Agreement and budgets developed pursuant to this Agreement.
- C. The financial assistance of \$500,000 will be paid to “State of Oregon, Department of Environmental Quality,” within ten (10) days of the Effective Date of this Agreement. DEQ shall deposit the funds into an interest bearing account within the Hazardous Substance Remedial Action Fund, dedicated exclusively to the work set out in Section 4 of this Agreement (the “Dedicated HSRAF Account”). The interest and the principal shall be accounted for separately within the Dedicated HSRAF Account. DEQ may expend funds from the Dedicated HSRAF Account only after providing the Portland Harbor Group’s identified representative at least ten (10) working days before the expenditure: (i) a written certification that the expenditure is necessary for tasks specifically identified in the budget developed pursuant to this Agreement; (ii) a report tracking expenditures against the task percentage of project completion; and (iii) documentation necessary to support the expenditures. Payments to DEQ shall be made first from the principal, and then from the interest. All interest income, dividend income, accretion, gain and increase in principal from the Dedicated HSRAF Account shall be payable to DEQ and shall be accounted for separately as interest within the Dedicated HSRAF Account. Neither the State of Oregon nor DEQ shall receive fees or be reimbursed for the expenses of managing this Dedicated HSRAF Account. DEQ shall allow examination of the contents of the Dedicated HSRAF Account by the parties hereto at any reasonable time during regular business hours. Upon termination of this Agreement, DEQ shall disburse to the Portland Harbor Group any residual of remaining principal and to DEQ any interest remaining in the Dedicated HSRAF Account.
- D. As stated above, financial assistance provided under this Agreement does not apply to implementation of the Management Plan and other plans created under this Agreement, or future phases of sediment evaluation or remediation in Portland Harbor, and no member of the Portland Harbor Group makes any commitment regarding such future work by virtue of entering this Agreement. However, the Portland Harbor Group and DEQ commit to work together to

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facilitate implementation of the Management Plan and plans developed under this Agreement by jointly exploring funding that might be available through federal or state legislative programs. DEQ further commits, when evaluating performance or funding of future work, to give consideration to the specific financial assistance provided under this Agreement by respective signatories to this Agreement, and to request or pursue funding from non-signatory entities as appropriate.

7. Postponement of NPL Actions

Obligations of the Portland Harbor Group under this Agreement, including but not limited to all financial obligations, are contingent upon EPA's written commitment to delay by at least six months, further action on ranking the Portland Harbor under the NPL ranking or scoring system, including any meeting of a regional decision team (RDT), as set out in EPA's October 13, 1998 letter to DEQ. EPA has committed to being involved in the state-lead development of the Management Plan in coordination with natural resource trustees.

This Agreement is terminable at the election of either DEQ or the Portland Harbor Group if EPA schedules the RDT in advance of the completion of the Management Plan, or if EPA proposes to or includes the Portland Harbor on the NPL.

8. Reservations and Disclaimers

A. No member of the Portland Harbor Group admits any liability or violation of law by virtue of the Portland Harbor Group executing this Agreement or providing cooperation and funding pursuant to this Agreement. Nothing in this Agreement affects any right of contribution, indemnification, or cost recovery any member of the Portland Harbor Group might have regarding Portland Harbor sediments; however, this Agreement does not constitute an order making any member of the Portland Harbor Group eligible to petition for reimbursement of costs under ORS 465.260(7).

B. DEQ reserves all claims, causes of action, and remedial authorities regarding Portland Harbor sediments.

9. Modification of Agreement

DEQ and Portland Harbor Group may modify this Agreement only by written agreement.

10. Effective Date

This Agreement shall become effective and shall bind DEQ and all members of the Portland Harbor Group at such time as counterparts of this Agreement have been executed by the DEQ Director and all current Portland Harbor Group members [the

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“Effective Date”]. Additional members of the Portland Harbor Group may sign this Agreement after the Effective Date, and will be bound by its terms as if they had signed before the Effective Date.

11. Signatures

PORTLAND HARBOR GROUP:

Cascade General; Chevron Products Co.; City of Portland; Elf Atochem of North America; GATX; Gunderson Marine, Inc.; NW Natural; Port of Portland; Time Oil; and Tosco.

Sandra Hart, Chair
Portland Harbor Group

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Langdon Marsh
Director

Date: _____