

Executive Summary
Port of Portland Comments on Proposed Plan for Portland Harbor
(Environmental Protection Agency, June 8, 2016)

The Port of Portland (the “Port”) welcomes the opportunity to comment on the Environmental Protection Agency’s (EPA’s) Proposed Plan (the “Proposed Plan”) for the Portland Harbor Superfund Site (the “Harbor”). The Port is committed to a cleanup that protects the health of Portlanders and the environment and to finding the most cost-effective way to achieve it. The Port’s comments offer constructive adjustments to EPA’s Harbor-wide framework that will reach the same risk reduction as EPA’s Proposed Plan but will reduce risks sooner and at much lower cost.

The Port has been engaged with the Superfund process in the Lower Willamette River for more than 15 years, dedicating significant resources to understanding the problem and taking early cleanup action. The Port’s recommended adjustments are motivated by its deep history on the project and its commitment to finding an efficient path forward to cleanup. A successful cleanup requires a cooperative partnership between EPA, the affected community, and the potentially responsible parties (PRPs) who must carry forward this complex effort.

The Port’s comments focus on how improved risk management and flexibility would affect two areas in the Harbor—Swan Island and Terminal 4—and would create a more streamlined path for the Port and other PRPs to secure the resources necessary to negotiate agreements with EPA and begin to work toward cleanup. The Port demonstrates that equally protective, less costly solutions are available; that a flexible, site-specific approach to remedy selection, design, and action will achieve EPA’s goals; and that without making adjustments to the Proposed Plan, EPA risks issuing a Record of Decision (ROD) that cannot be implemented in a timely fashion because of major technical and legal deficiencies in EPA’s site investigation, risk assessment, alternatives evaluation, and remedy selection.

Economic Significance of Successful Cleanup

Portland’s “Working Harbor” is a vital economic driver for the region.¹ There are 30,000 direct jobs with an average salary of \$51,000 created by firms located within the working harbor and an additional 35,000 induced and indirect jobs. These are important jobs with lower barriers to entry. Further, a total of \$413 million in state and local tax revenue was generated by activity in the working harbor in FY 2015. These are significant contributions to the Portland and regional economy and the Port must be mindful of the impact of cleanup on the operating businesses in the Harbor.

The Port strives to promote economic development opportunities that benefit the economy and work for its neighbors and community. Listening to the community is one reason why the Port will not sponsor a confined disposal facility at Terminal 4.

The Harbor also represents an important economic opportunity for this region, presenting new prospects for investment, additional industrial land development, and potential new job creation. Many of these opportunities can be realized only if a cost-effective cleanup gets underway.

¹ The Port defines Portland’s “Working Harbor” as the public and private marine terminals, industrial parks, and other commercial and warehousing businesses located along the Lower Willamette.

At a time when Portland and the region are facing many critical affordability issues, the costs of EPA's proposed cleanup plan are significant. EPA estimates its proposed cleanup will cost \$746 to \$811 million. Evaluation by the Lower Willamette Group (LWG) puts the cost of EPA's proposed cleanup closer to \$1.8 billion.² More importantly, it does not appear that the risk reduction benefits of the selected cleanup plan are proportional to its high costs.

Finding the most cost-effective way to achieve a protective cleanup is critical to the Port. Federal law prohibits the Port from using airport-related revenues to pay for non-airport expenses, such as Harbor cleanup. The Port therefore must rely on its marine and industrial revenues for cleanup, and its marine and industrial "general fund" faces significant challenges. To remain consistent with our public economic development mission, the Port cannot support a more costly cleanup when an alternative approach will be equally protective of human health and the environment.

The Port urges EPA to provide sufficient flexibility, accurate risk assessment, and risk management in its ROD to enable equally protective, less costly cleanup solutions to emerge during remedial design at locations across the Harbor.

Equally Protective, Less Costly Remedies—Swan Island, Terminal 4, and Harbor-wide

EPA's Proposed Plan lays out a uniform set of rules for Harbor-wide application. The Port's recommended adjustments recognize that the Harbor is very large, with distinct areas of contamination concentrated near the shore. Conditions vary at many individual locations within the 10-mile stretch of river, and the Harbor is dynamic. Any remedy should incorporate the flexibility needed to accommodate location-specific conditions and activities, including adjustments to remedial technologies.

1. Swan Island

Swan Island is a unique area within the Harbor, as EPA recognizes in its Proposed Plan. Swan Island's unique challenges and opportunities have prompted the Port to develop and advocate for an alternative, site-specific cleanup proposal.

The Swan Island proposal works within EPA's basic framework, but incorporates decision-making tools that allow for in-depth analysis of site-specific conditions and a mix of cleanup technologies that is tailored to those conditions. The proposal recognizes that the Swan Island Lagoon is uniquely suited to use of in-place technologies like capping, enhanced natural recovery, and treatment amendments such as activated carbon, as well as dredging. The alternative remedial approach can reduce the cost of cleanup at Swan Island by more than \$100 million while achieving equivalent risk reduction, maintaining compatibility with water-dependent uses of the Lagoon, and creating fewer short-term impacts to the community and the environment. By adopting this optimized alternative remedy, EPA can create the circumstances to bring a critical mass of PRPs to the table in a cooperative approach to cleanup in this area.

2. Terminal 4

At Terminal 4, the Port conducted substantial environmental cleanup in the 1990s and 2000s, including an "early action" in-water cleanup in 2008, which included significant dredging and

² LWG, EPA Cost Evaluation Memorandum (Aug. 29, 2016).

capping of contaminated sediment. The Port proposes additional cleanup to build on the early action and address the risks actually present at Terminal 4.

EPA's proposed remedy at Terminal 4 underscores the problems with a uniform, inflexible approach at a site as large and diverse as Portland Harbor. EPA's remedy here is designed to address a perceived Harbor-wide risk of contact with underwater sediment by fishing from a boat on a very frequent basis—260 days per year for 70 years. The reality of operations and lack of public access at Terminal 4 makes it nearly impossible to imagine someone fishing or using a beach at levels that could pose unacceptable risk. Access to the property is limited to such a degree that the risk EPA seeks to remedy does not exist.

An equally protective, less costly alternative would apply risk management principles and rely on the Port's site management and security protocols to prevent health risks related to human contact with contaminated sediment. Instead of focusing on a risk to human health that does not exist, the remedy would be designed to accurately characterize and address remaining risk to ecological health. This remedy approach could save tens of millions of dollars and achieve the same level of reduction in actual risks present at the site as the approach prescribed in the Proposed Plan.

3. Harbor-wide

The Port recommends that the ROD for all areas of the Harbor, including Swan Island and Terminal 4, be crafted in a way that remedy elements can be modified as location-specific conditions are examined and new data emerge. This approach is consistent with the Superfund law and EPA's own guidance. Among other things, EPA has said: "An iterative approach to site investigation and remedy implementation that provides the opportunity to respond to new information and conditions throughout the lifecycle of a site," is necessary "in remedy selection and implementation at large, complex [sites]."³ Additional data gathering and analysis of conditions at individual locations during the remedial design phase may reveal that strictly adhering to EPA's prescriptive approaches, such as inflexible technology assignment flowcharts and Harbor-wide risk assumptions, is not necessary to reach the cleanup objectives.

The ROD should incorporate significantly more flexibility into its approach so that cleanup can move forward in a protective, efficient manner in defined areas of the Harbor, based on location-specific conditions. To enable this, the ROD must describe an implementation framework that divides the site into operable units or uses another approach that is equally effective to allow cleanup to proceed to closure in some areas independent of others.

Overcoming Challenges to Implementation

The Port continues to highlight significant technical and legal deficiencies in EPA's approach to site investigation, risk assessment, alternatives evaluation, and remedy selection, both in its comments and those of the LWG. Continuing an overly uniform, prescriptive approach in the ROD will force EPA to confront the implementation challenges created by the Proposed Plan's deficiencies. The Port offers its recommendations as a way to help EPA move past these implementation challenges and increase the potential for a successful, timely cleanup in Portland Harbor.

³ U.S. Evtl. Prot. Agency, *Superfund Remedial Program Review Action Plan* at 8 (Nov. 2013).