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Via Email

SETTLEMENT CONFIDENTIAL: SUBJECT TO FRE 408

February 24, 2020

Austin Saylor
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20004

Re: Portland Harbor Superfund Site

Dear Austin,

Thank you for your February 20, 2020 proposal to NW Natural. It should come as no surprise that, having waited more than seven months for the United States to offer funding for remedial design work at the portion of the EPA B1 area that includes the U.S. Army Corps of Engineers U.S. Moorings facility, NW Natural is extremely disappointed in the United States' proposed terms of settlement.

NW Natural disagrees with essentially every factual and legal statement in your proposal. Without limitation, we disagree that PAHs and other petroleum-related contamination in the vicinity of the US Moorings facility are "primarily" sourced from the Gasco facility.¹ EPA's October 23, 2007 RCRA Section 3013 Unilateral Administrative Order to the Corps of Engineers specifically found releases of PAHs from the U.S. Moorings facility, including benzo(a)pyrene and benzo(a)anthracene. PAHs were detected in virtually all upland soil samples collected during the Corps of Engineers' 2010 remedial investigation of the US Moorings property. We are fully prepared to demonstrate the United States' liability for PAHs and other B1 area sediment contamination.

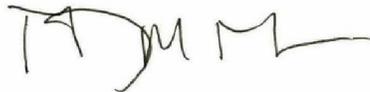
Further, the United States' proposal, by demanding a final settlement with both EPA and NW Natural for remedial design work within the B1 area, ignores the joint and several nature of CERCLA liability. Your letter states that upstream areas, such as the Arkema/Willbridge Terminal area, are more likely sources of PCBs, pesticides and dioxin/furans than US Moorings. These assertions ignore the findings of the Corps of Engineers' own investigations, which document a 1993 cleanup of PCB-containing hydraulic oil as well as the current presence of PCBs and pesticides in upland and riverbank soils at the US Moorings site. Even if US Moorings

¹ NW Natural specifically objects to the United States' allegation that NW Natural "intentional[ly] released petrogenic wastes from the Manufactured Gas Plant." No evidence supports this allegation.

were not a likely source of these hazardous substances in B1 area sediments, however, the only difference between our clients in this regard would be that EPA has threatened enforcement action against NW Natural that it is apparently unwilling to take against another federal agency.

Because of the limited time remaining before EPA's February 28, 2020 deadline for NW Natural to avoid enforcement and take advantage of remedial design funding offered by the State of Oregon and City of Portland, NW Natural is not at this time offering a counterproposal. Instead, NW Natural will proceed with remedial design work in the B1 area and seek contribution from the United States in the ongoing Portland Harbor allocation or, as necessary, in litigation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Dost', with a long horizontal flourish extending to the right.

Patricia Dost

cc: Laura Brown, USDOJ ENRD
Mardilyn Saathoff, NW Natural
Kathryn Williams, NW Natural
Bob Wyatt, NW Natural