



TRANSMITTAL VIA ELECTRONIC MAIL

February 24, 2021

Jane Nishida, Acting Administrator
Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

RE: Bradford Island CERCLA Project, NWP-13-0002

Dear Ms. Nishida:

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation), the Oregon Department of Environmental Quality (ODEQ), and the Washington Department of Ecology (Ecology) are taking the opportunity to express their concern that EPA's notice of a proposed rulemaking dated September 3, 2020 (86 FR 54970) did not propose to include Bradford Island, Oregon, on the National Priorities List (NPL) pursuant to the National Contingency Plan (NCP), 40 CFR Part 300. In a letter dated October 10, 2019, the Yakama Nation, ODEQ, and Ecology jointly requested that U.S. EPA add the Bradford Island site to the NPL, and we renew that request today.

Given the substantial exposure risks and other reasons outlined in our 2019 letter, we had hoped that EPA would prioritize this site for a potential listing in 2020. Those risks continue unabated today, and this site poses a significant and substantial risk to people and the environment. The U.S. Army Corps of Engineers (USACE) has advanced very few and limited meaningful measures to remedy these risks after 22 years of on again off again attention.

People consuming fish caught at, or near the Site, will likely be exposed to contaminants significantly above regulatory standards established for protection of human health. Fish advisories remain in effect, and impair and restrict the use of the area for both tribal fishers and

recreational users alike. Nevertheless, because this is a heavily used area, both tribal and recreational fishers continue to use it in spite of the fish advisories, and known exposures are ongoing, particularly of tribal site users who rely on fish in the area as an important and traditional food source.

We understand, based on communication from EPA that a final decision to propose the site for the NPL is still under consideration for rulemaking in 2021. Since the interagency letter requesting listing was submitted, the situation at the site has not improved. In fact, several developments over the past year strongly suggest that USACE will continue to be unable to advance any meaningful progress to remediate the contamination.

For the past three years the Yakama Nation, ODEQ and Ecology have been attempting to secure an interagency Memorandum of Understanding (MOU) with the USACE to govern the Bradford Island cleanup process, with its stated purpose “to provide a framework for coordination and cooperation to assist the USACE, as the lead agency, in ensuring the protection of human health and the environment.” This agreement would facilitate interagency relationships and provide guidance for site managers and staffs regarding appropriate protocols for communications, technical coordination, and dispute resolution. This proposed MOU was an attempt to address ongoing concerns, including site characterization and transparently resolving agency comments. At the time of the NPL request a year ago, the USACE was still indicating to us that it supported signing the MOU (which was then almost in final draft). We recently learned that the USACE is no longer interested in signing any such agreement.

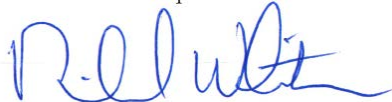
USACE’s approach to the site is further highlighted by its letter to ODEQ Director, Richard Whitman, dated July 21, 2020. In that letter, the USACE Portland District withdrew from an agreement with ODEQ to reimburse ODEQ oversight costs related to the site. USACE further demanded recoupment from ODEQ of over \$769,000 in previously reimbursed oversight costs from over two decades of work at the site. ODEQ’s cleanup program is a “polluter pays” program. Absent the payment of oversight costs by USACE, ODEQ would be unable to participate in the cleanup over the long run. USACE’s position on payment of ODEQ costs resulted in litigation filed by the State of Oregon in U.S. District Court to recover ODEQ’s recent and future response costs pursuant to CERCLA Section 107(a) and applicable state law, and to stop the USACE from taking threatened action to recoup response costs already paid to Oregon.

We are confident that the EPA will properly and prudently investigate and consider these facts when conducting its rulemaking process for listing of the Bradford Island Site on the National Priorities List in the coming year. Further, we remain confident that NPL listing and direct EPA engagement at the Site are both warranted and necessary for successful communication, agency and public involvement, and ultimately, remediation of the legacy contaminants now threatening the Columbia River, its valuable resources, and people. If you would like further input on this issue, we certainly would be willing to accommodate any request to provide more information to inform your proposed NCP rule before it is published in the National Register.

Sincerely,



Phil Rigdon, Superintendent
Yakama Nation Department of Natural Resources



Richard Whitman
Director
Oregon Department of Environmental Quality



Laura Watson
Director
Washington Department of Ecology

cc: Congressman Earl Blumenauer
Senator Jeff Merkley
Senator Ron Wyden
Senator Maria Cantwell
Senator Patty Murray
Congresswoman Jaime Herrera Beutler
Michelle Pirzadeh, U.S. EPA
Ken Marcy, U.S. EPA
Col. Michael D. Helton, USACE
Jeffrey Matson, USACE