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**COMMENTS ON BEHALF OF CLEAN WATER ACTION, NEW JERSEY, ON U.S. EPA'S
RECOMMENDATION OF A REMEDIAL ACTION PLAN FOR THE LOWER EIGHT
MILES OF THE PASSAIC RIVER**

Summary

On behalf of Clean Water Action, we submit the following comments in strong support (with conditions) of U.S. EPA's proposed alternative 3 remedy of bank-to-bank dredging of approximately 4.3 million cubic yards of the lower 8.3 miles of the Lower Passaic River which runs through Newark Bay and the City of Newark.

Clean Water Action is a one million member organization of diverse people and groups from across the US joined together to protect our environment, health, economic well-being and community quality of life. Our goals include clean, safe and affordable water; prevention of health threatening pollution; creation of environmentally safe jobs and businesses; and empowerment of people to make democracy work. Clean Water Action (in NJ formerly aka/dba NJ Environmental Federation, the state chapter of Clean Water Action) has over 100,000 members in New Jersey and is also dedicated to promoting environmental justice.

Newark is a majority minority city, one of New Jersey's poorest, and it's largest. Its per capita income is approximately \$17,367; 53% less than the New Jersey average, and 32.7% less than the national average.

The Lower Passaic River runs through downtown Newark; along side it is one of the first designated Superfund sites in the country, the Diamond Alkali site. Newark residents also face assaults of living along side the Essex County garbage incinerator, Passaic Valley sewage treatment plant, Newark Airport, and Newark-Elizabeth container sea port (and the ensuing heavy truck traffic), all of which are among the nation's largest.

No other community would have to wait the years and years it has taken for the government to propose a final remedy for this contaminated stretch of river especially when the responsible parties are well known and extant. Studies of the sediment date back some twenty years now. The time for action is long past.

The proposed alternative 3 remedy is the product of many years of high-caliber, peer-reviewed and intensive study dating back to the mid 1990's, which include data from a series of studies of the lower 17 miles of the river. The proposed alternative 3 remedy of the bank-to-bank dredging and off-site disposal of 4.3 million cubic yards of the lower 8 miles, based on data finding it to be the most contaminated stretch of the river, should be adopted and implemented without delay in the strongest fashion. This would be consistent with the agency's stated goal of treating all people fairly, and reducing the disproportionate burden of environmental harm long endured by Newark residents.

Background

The City of Newark has a long industrial past, dating back to the 1800's. As the EPA proposed plan points out, by the end of the 19th century, many industrial operations, from manufactured gas plants, paper manufacturing and recycling facilities, petroleum refineries, chemical manufacturers and others were located along the river's banks. Industries and municipalities often discharged wastewater directly into the river.

More recently, between 1948 and 1969, Diamond Alkali, also known as Diamond Shamrock Corp, and its successor corporations, Maxus, Inc. and Occidental Chemical, produced approximately 800 tons of 2,4,5-T, a major component of Agent Orange, at the 80 Lister Avenue facility. This production comprised roughly fifteen percent of the total output of 2,4,5-T in the United States. Diamond Alkali's policies were noteworthy for their disregard of workers' health at the time, even by the standards of the 1950's and 60's. With apparent full knowledge of the negative health effects of Agent Orange on their workers, Diamond nonetheless directed them to dump tons of Agent Orange waste material, the 2,4,5-T, into the Passaic River. The dumping was so prolonged that "(e)mployees were directed to surreptitiously wade into the river at low tide and 'chop up' the deposits so that they would not be seen by passing boats." Diamond Shamrock Chemical Co. v. Aetna, 258 N.J. Super. 167, 183-184 (App. Div. 1992).

The Lower Passaic River is part of the Diamond Alkali Superfund Site, which was placed on the National Priorities List in 1984; Occidental Chemical (a successor corporation which had purchased Diamond Alkali) at EPA's request undertook an

early investigation of the river in 1994. In the years that followed, EPA also identified approximately seventy companies that also contributed to the contamination issues on the river. The leading hazardous substances found in the Study Area sediments, which pose the greatest potential risks to human health and the environment include 1. Dioxins and furans; 2. PCB's; 3. Mercury; 4. DDT; 5. Copper; 6. Dieldrin; 7. PAH'S and 8. Lead.

EPA's Proposed Remedy Is the Most Cost-Effective Remedy Designed to Insure Long-Term Restoration of the River and Protection of Human and Ecological Health

The Focused Feasibility Study Area is the lower eight miles of the Lower Passaic River in northeastern New Jersey, from the river's confluence with Newark Bay at River Mile (RM) 0 to RM 8.3 near the border between the City of Newark and Belleville Township. A primary requirement of CERCLA, the Superfund statute, is that the selected remedial action be protective of human health and the environment. The study shows convincingly that the concentrations of contaminants of concern (COC's), like dioxins and furans, PCB's and mercury, have not declined over the past fifteen years. The proposed bank-to-bank dredging is required to address the ongoing and persistent contamination in the sediment by removing it from the lower eight miles of the river.

The goals of the remedial action objectives set forth in the study document are: 1. To reduce cancer risks and non-cancer health hazards for people eating fish and shellfish by reducing the concentration of COCs in the sediments of the FFS

study area; 2. To reduce the risks to ecological receptors by reducing the concentrations of COC's in the sediments of the FFS Study Area; and 3. To reduce the migration of COC-contaminated sediments from FFS Study Area to upstream portions of the Lower Passaic River and to Newark Bay and the New York-New Jersey Harbor Estuary. Each of these goals can only be attained by the proactive remedy of extensive dredging of the highly contaminated site. Removing these sediments will reduce COC concentrations in biota including fish and crab tissue, thereby significantly reducing potential human health and ecological risks. The remedy includes the placing of an engineered cap to sequester the extensive inventory of contaminants that would remain after the dredging is completed.

Two other alternatives studied by EPA—a no-action alternative or “hot spot” dredging of some of the most contaminated spots—will not address the persistent contamination which characterizes the river. Clean Water Action opposes these alternatives in the strongest of terms.

A fourth alternative, a more extensive dredging program -- the 9.7 million cubic yard proposal contained in alternative 2 --- has merit and is supported by the Sierra Club, et al. Clean Water Action generally supports and in this case would like to support more permanent cleanups like alternative 2. However, Clean Water Action is supporting alternative 3 over 2 given unfortunate realities -- alternative 2 would be of unprecedented scope due to the negligence and continued recalcitrance of the extant responsible parties, the clean-ups already been delayed too long, and federal officials in all 3 branches of government lack the political will to do more.

Accordingly, it is imperative that implementation of alternative 3, which calls for the removal of 4.3 million cubic yards, be expedited rigorously. Clean Water Action strongly supports the comments of the Passaic River Community Advisory Group (CAG) and Ironbound Community Corp. (ICC) including (most importantly) but not limited to 1) offsite disposal with no CAD in Newark Bay as well as no onsite or near sight thermal treatment facilities or CDF's, 2) including future use and natural resource restoration in remedial design and implementation, 3) expanding the monitoring and maintenance plan beyond 30 years, 4) being incredibly vigilant in monitoring and maintaining the cap, and 5) revisiting the record of decision including but not limited to the final remedy and the RP's financial contributions if/when the cap fails and/or more resources are needed.
