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William K. Barquin  
Christopher Lundberg  
Danica Hibpsman  
Matt Malmshemer  
James L. Francesconi  
Of Counsel

January 3, 2008

Dear Interested Party:

On behalf of the Portland Harbor Natural Resource Trustee Council (Trustees), I am forwarding you the attached notice of intent to perform an Injury Assessment for the Portland Harbor Superfund site. More information about the Injury Assessment Process under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), can be found in U.S. Department of the Interior Natural Resource Damage Assessment Regulations, 43 CFR part 11 (1995), as amended at 61 Fed. Reg. 20609, May 7, 1996. An unofficial copy of the regulations is posted at [http://www.doi.gov/oepec/wp\\_docs/43cfr11.html](http://www.doi.gov/oepec/wp_docs/43cfr11.html).

This notice is to invite you to participate in funding and implementing this assessment. The notice requests that you respond in writing within 30 days of this letter to express your preliminary interest in participating. You may send responses to the address listed above.

More information about the Trustees' interests will be provided at an informational meeting on March 11, 2008.

Sincerely,



Billy Barquin, Chairman  
Portland Harbor Natural Resource Trustee Council

Enclosures

cc: Portland Harbor Natural Resource Trustee Council Members

**RESOLUTION OF THE  
PORTLAND HARBOR NATURAL RESOURCE TRUSTEE COUNCIL**

**Determination and Notice of Intent to Perform Injury Assessment**

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***Trustees:***

Confederated Tribes and Bands of the Yakama Nation  
Confederated Tribes of the Grand Ronde Community of Oregon  
Confederated Tribes of Siletz Indians of Oregon  
Confederated Tribes of the Umatilla Indian Reservation  
Confederated Tribes of the Warm Springs Reservation of Oregon  
Nez Perce Tribe  
Oregon Department of Fish and Wildlife  
United States Department of the Interior  
National Oceanic and Atmospheric Administration

Pursuant to the Natural Resource Trustee Memorandum of Agreement for the Portland Harbor Superfund Site, the Natural Resource Trustees (Trustees) for the Portland Harbor Superfund Site (Site) established a Trustee Council with the authority to conduct activities associated with a natural resource damage assessment (NRDA) for the Site. The Trustee Council consists of one representative from each of the Trustees listed above

Under the direction of the Trustee Council, the attached Determination and Notice of Intent to Perform Injury Assessment has been prepared for the Site. This Determination and Notice of Intent was developed for consideration by the trustee Authorized Officials. The Trustee Council has determined that proceeding with an Injury Determination is appropriate at this time to acquire the information necessary to facilitate early settlement opportunities which, if fully successful, could 1) eliminate the need for subsequent damage assessment and litigation costs; 2) preserve restoration options which might be lost through land development or other habitat modifications; and 3) implement early restoration projects that could minimize potential future lost uses.

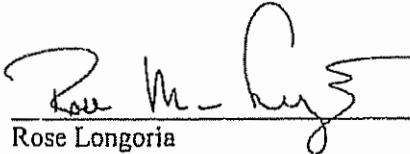
Upon adoption by the Authorized Officials, the Trustee Council, through its Chairman, will provide the attached Determination and Notice of Intent to the potentially responsible parties for the Site.

RESOLUTION NUMBER: 2007-04

DATE: August 2007

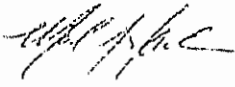
*Portland Harbor Natural Resource Trustee Council*

*Resolution Approval*



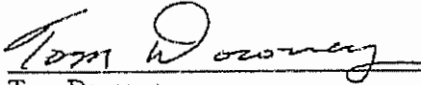
Rose Longoria  
Confederated Tribes and Bands of the Yakama Nation

\_\_\_\_\_  
Date



\_\_\_\_\_  
Michael Karnosh  
Confederated Tribes of the Grand Ronde Community of Oregon

\_\_\_\_\_  
Date



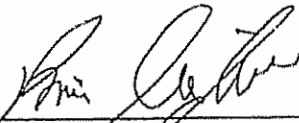
Tom Downey  
Confederated Tribes of Siletz Indians of Oregon

\_\_\_\_\_  
Date



Audie Huber  
Confederated Tribes of the Umatilla Indian Reservation

\_\_\_\_\_  
Date



Brian Cunningham  
Confederated Tribes of the Warm Springs Reservation of Oregon

\_\_\_\_\_  
Date

RESOLUTION NUMBER: 2007-04

DATE: August 2007

*Portland Harbor Natural Resource Trustee Council*

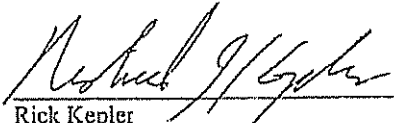
*Resolution Approval*



Erin Madden  
Nez Perce Tribe

8/15/07

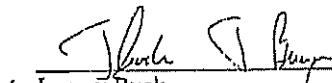
Date



Rick Kepler  
Oregon Department of Fish and Wildlife

8/16/07

Date



for Jeremy Buck  
Fish and Wildlife Service  
United States Department of the Interior

8/16/07

Date



Katherine Pease  
National Oceanic and Atmospheric Administration

16 August 2007

Date

## Determination and Notice of Intent to Perform Injury Assessment – Portland Harbor

**Notice is hereby given** that the Portland Harbor Natural Resource Trustee (Trustee's), based on the Trustee Council's Pre-Assessment Screen (PAS) regarding potential natural resource injury and damage potentially caused by hazardous substances released from the Portland Harbor facilities of the Potential Responsible Parties (PRPs) noticed herein, have made the following determinations:

- 1) **A discharge of oil or release of hazardous substance has occurred.** Release of appreciable quantities of petroleum compounds, organochlorine pesticides, PCBs, volatile and semi-volatile organic compounds, solvents, metals, and other materials listed in the PAS are documented for the Portland Harbor Superfund site, and have been released over a long period of time.
- 2) **Natural resources for which a State or Federal agency or Indian Tribe may assert trusteeship under CERCLA have been or are likely to have been adversely affected by the discharge or release.** Natural resources over which the State and Federal agencies and Indian Tribes may assert trusteeship with respect to the Portland Harbor site have been and are likely to continue to be adversely impacted. Existing field data indicate that hazardous substance concentrations in sediment and tissue spatially coincide or are elevated near areas with known releases from industrial facilities or other documented sources.
- 3) **The quantity and concentration of the discharged oil or released hazardous substances is sufficient to potentially cause injury to those natural resources.** Tissue samples from Portland Harbor contain hazardous materials at concentrations that exceed concentrations associated with injury in sediment, water, fish, bird eggs, and other natural resources.
- 4) **Data sufficient to pursue an assessment are readily available or likely to be obtained at reasonable cost.** Data currently exist from the Portland Harbor site that will be helpful and cost effective to use to further assess injury of natural resources at the site. Additional studies will be needed to better quantify injury and service losses for some resources, but these data can be obtained at reasonable costs.
- 5) **Response actions from Superfund remedial activities carried out or planned do not or will not sufficiently remedy the injury to natural resources without further action.** The trustees expect the remedial actions at the Portland Harbor site will, to a certain extent, minimize or

eliminate exposure to hazardous substances. The full extent of such impact cannot be assessed until the remedial action is selected by EPA. However, even at this stage it is evident that the direction of the remedial investigation/feasibility study is not toward full restoration of likely injuries, and will not address lost services of resources which have been ongoing since the enactment of CERCLA. Thus, additional restoration, replacement, and rehabilitation of natural resources will ultimately be necessary.

**Notice is further given** that the Trustees intend to implement a phased approach to natural resource damage assessment by first assessing natural resource injuries caused by hazardous substances released at Portland Harbor. You and the other PRPs are invited to fully fund this assessment, and to participate in the development of the type and scope of the assessment, and in the performance of the assessment as agreed to by the Trustee Council.

Your written response regarding the role you wish to take in the funding and resulting participation in this assessment is requested within 30 days of this Notice. The Trustee Council will not proceed with development of the Injury Assessment Plan until after expiration of this 30-day period. Written responses should be provided to the following:

*DETERMINATION AND NOTICE OF INTENT TO PERFORM INJURY ASSESSMENT*

*PORTLAND HARBOR*

Lavina Washines  
Lavina Washines, Tribal Council Chairwoman  
Confederated Tribes and Bands of the Yakama Nation

Oct 5-07  
Date

\_\_\_\_\_  
Tribal Council Chairperson  
Confederated Tribes of the Grand Ronde Community of Oregon

\_\_\_\_\_  
Date

\_\_\_\_\_  
Delores Pigsley, Chairman  
Confederated Tribes of Siletz Indians of Oregon

\_\_\_\_\_  
Date

\_\_\_\_\_  
Antone Mighorn, Board of Trustees Chairman  
Confederated Tribes of the Umatilla Indian Reservation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert A. Brunoe, Natural Resources General Manager  
Confederated Tribes of the Warm Springs Reservation of Oregon

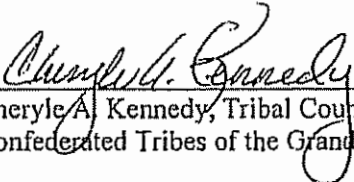
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Date

***DETERMINATION AND NOTICE OF INTENT TO PERFORM INJURY ASSESSMENT***

***PORTLAND HARBOR***

\_\_\_\_\_  
Lavina Washines, Tribal Council Chairwoman  
Confederated Tribes and Bands of the Yakama Nation

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Cheryl A. Kennedy, Tribal Council Chairwoman  
Confederated Tribes of the Grand Ronde Community of Oregon

\_\_\_\_\_  
*11-5-07*  
Date

\_\_\_\_\_  
Delores Pigsley, Chairman  
Confederated Tribes of Siletz Indians of Oregon

\_\_\_\_\_  
Date

\_\_\_\_\_  
Antone Minthorn, Board of Trustees Chairman  
Confederated Tribes of the Umatilla Indian Reservation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert A. Brunoe, Natural Resources General Manager  
Confederated Tribes of the Warm Springs Reservation of Oregon

\_\_\_\_\_  
Date



***DETERMINATION AND NOTICE OF INTENT TO PERFORM INJURY ASSESSMENT***

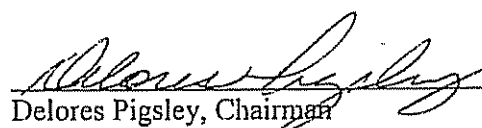
***PORTLAND HARBOR***

\_\_\_\_\_  
Confederated Tribes and Bands of the Yakama Nation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Confederated Tribes of the Grand Ronde Community of Oregon

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Delores Pigsley, Chairman  
Confederated Tribes of Siletz Indians of Oregon

8/17/07  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Confederated Tribes of the Umatilla Indian Reservation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Confederated Tribes of the Warm Springs Reservation of Oregon

\_\_\_\_\_  
Date

***DETERMINATION AND NOTICE OF INTENT TO PERFORM INJURY ASSESSMENT***

***PORTLAND HARBOR***

\_\_\_\_\_  
Lavina Washines, Tribal Council Chairwoman  
Confederated Tribes and Bands of the Yakama Nation

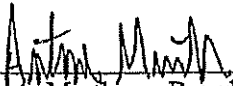
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Date

\_\_\_\_\_, Tribal Council Chairperson  
Confederated Tribes of the Grand Ronde Community of Oregon

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Date

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Delores Pigsley, Chairman  
Confederated Tribes of Siletz Indians of Oregon

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Date

  
\_\_\_\_\_  
Antone Minthorn, Board of Trustees Chairman  
Confederated Tribes of the Umatilla Indian Reservation

10/23/07  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert A. Brunoe, Natural Resources General Manager  
Confederated Tribes of the Warm Springs Reservation of Oregon

\_\_\_\_\_  
Date

***DETERMINATION AND NOTICE OF INTENT TO PERFORM INJURY ASSESSMENT***

***PORTLAND HARBOR***

\_\_\_\_\_  
Lavina Washines, Tribal Council Chairwoman  
Confederated Tribes and Bands of the Yakama Nation

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryle Kennedy, Tribal Council Chairperson  
Confederated Tribes of the Grand Ronde Community of Oregon


\_\_\_\_\_  
Date

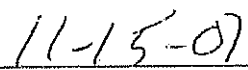
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Confederated Tribes of Siletz Indians of Oregon

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Date

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Confederated Tribes of the Umatilla Indian Reservation

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert A. Brunoe, Natural Resources General Manager  
Confederated Tribes of the Warm Springs Reservation of Oregon

  
\_\_\_\_\_  
Date

*DETERMINATION AND NOTICE OF INTENT TO PERFORM INJURY ASSESSMENT*

*PORTLAND HARBOR*

*Samuel N. Penney*  
Sam Penney, Chairman  
Nez Perce Tribal Executive Committee

9-14-07  
Date

\_\_\_\_\_  
Roy Elicker, Director  
Oregon Department of Fish and Wildlife

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ren Lohofener, Regional Director  
Fish and Wildlife Service, Region 1  
United States Department of the Interior

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Date

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Capt. Kenneth Barton, Acting Director  
Office of Response and Restoration  
NOAA/National Ocean Service

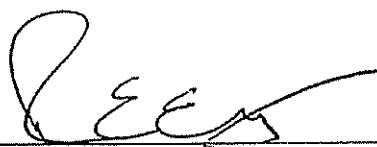
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*DETERMINATION AND NOTICE OF INTENT TO PERFORM INJURY ASSESSMENT*

*PORTLAND HARBOR*

\_\_\_\_\_  
Sam Penney, Chairman  
Nez Perce Tribal Executive Committee

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Roy Elicker, Director  
Oregon Department of Fish and Wildlife

\_\_\_\_\_  
Date 10/10/97

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Ren Lohofener, Regional Director  
Fish and Wildlife Service, Region 1  
United States Department of the Interior

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Date

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Capt Kenneth Barton, Acting Director  
Office of Response and Restoration  
NOAA/National Ocean Service

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Date

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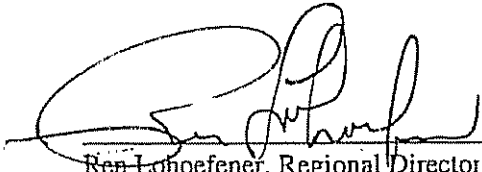
*PORTLAND HARBOR*

\_\_\_\_\_  
Sam Penney, Chairman  
Nez Perce Tribal Executive Committee

\_\_\_\_\_  
Date

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Roy Elicker, Director  
Oregon Department of Fish and Wildlife

\_\_\_\_\_  
Date

  
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Ren Lohoefer, Regional Director  
Fish and Wildlife Service, Region 1  
United States Department of the Interior

Oct 5, 2007  
\_\_\_\_\_  
Date

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Capt. Kenneth Barton, Acting Director  
Office of Response and Restoration  
NOAA/National Ocean Service

\_\_\_\_\_  
Date

***DETERMINATION AND NOTICE OF INTENT TO PERFORM INJURY ASSESSMENT***

***PORTLAND HARBOR***

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Sam Penney, Chairman  
Nez Perce Tribal Executive Committee


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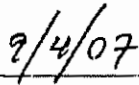
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Fish and Wildlife Service, Region 1  
United States Department of the Interior

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NOAA/National Ocean Service

  
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Date