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VIA ONLINE DOCKET TO: WWW.EPA.GOV/TX/FORMS/SJRWP-COMMENTS

VIA EMAIL TO: R6_San_Jacinto_Waste_Pits_Comments@epa.gov

VIA U.S. MAIL TO:
REMEDIAL PROJECT MANAGER
U.S, EPA REGION 6 (6SF-RA)
1445 ROSS AVENUE
DALLAS, TEXAS 75202-2733

Re: Comments on Proposed Plan for
San Jacinto River Waste Pits Site, Harris County, Texas (September 2016)

Dear Sir or Madam:

On behalf of the Superfund Settlements Project ("SSP"), I submit these comments on the United States Environmental Protection Agency's ("EPA's") Proposed Plan for the San Jacinto River Waste Pits Site, located in Harris County, Texas (the "Site"). For the reasons set forth below, SSP believes that EPA has misapplied its guidance and, in contrast, relied on speculative and arbitrary conclusions to define media at the Site as Principal Threat Waste ("PTW") and justify an extensive removal remedy. *See* EPA, *A Guide to Principal and Low Level Threat Wastes*, Superfund Publication 9380.3-06FS (Nov. 1991) (hereinafter "Principal Threat Guidance"). Because the general use of the Principal Threat Waste designation raises significant policy concerns and because the proposed use of it here appears to be part of a disturbing recent trend in addressing sediment sites, SSP is offering the following comments. We urge EPA to reconsider its determination of PTW at the Site as part of insuring consistent adherence to the Principal Threat Guidance throughout the Agency.

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I. Background on the Superfund Settlements Project

The SSP is an association of major companies from many different sectors of American industry. It was organized in 1986 in order to help improve the effectiveness of the Superfund program by encouraging settlements, streamlining the settlement process, and reducing transaction costs for all concerned.

Since its formation, the SSP has provided constructive input to EPA and other federal agencies on critical policy issues affecting the cleanup of contaminated sites, SSP representatives have also testified before Congress on many of these issues. The SSP also has played an active leadership role in the national policy debate over many Superfund issues, and has been a strong supporter of EPA's Superfund Administrative Reforms since they were announced in 1995.

The members of the SSP have extensive experience in addressing the problems presented by contaminated sites. These companies have been involved at hundreds of Superfund sites across the country over the last 30 years. As just one indicator of the scope of their experience, the members of the SSP have spent well over $6 billion to investigate and remediate contaminated sites since the federal cleanup programs began.

II. Comments on Proposed Plan

The concept of PTW was developed by EPA "to help streamline and focus the remedy selection process, *not* as a mandatory classification requirement." Principal Threat Guidance at 2 (emphasis added). The remedy selected is "determined *solely* through the remedy selection process outlined in the NCP (i.e., all remedy selection decisions are site-specific and must be based on a comparative analysis of the alternatives using the nine criteria in accordance with the NCP)." Principal Threat Guidance at 2-3 (emphasis added). In the Proposed Plan, however, EPA misapplies the Principal Threat Guidance to find PTW and then uses the concept of PTW improperly to drive the remedy decision to a removal remedy.

The Principal Threat Guidance states that principal threat wastes are "those source materials considered to be highly toxic or highly mobile that generally cannot be reliably contained or would present a significant risk to human health or the environment should exposure occur." Principal Threat Guidance at 2. The Guidance states that these wastes include (1) liquids and other highly mobile materials or (2) materials having high concentration of toxic compounds. *Id.* In the Proposed Plan, EPA relies on speculative and inaccurate characterization of the mobility of the sediments and uses an arbitrary toxicity threshold that was developed using exposure to material that is not "source material" to conclude reach its PTW determination. We address each point below.

First, EPA relies on conjecture and a general discussion of regional weather, that rivers are dynamic systems, and that flooding "may" increase in the future to conclude the materials are highly mobile. Using such a generic approach, it is hard to imagine how PTW would not apply to any and all sediments sites because of hypothetical future storms, because flooding "may" increase and because of future morphological changes. In taking this generalized approach, EPA fails to make any detailed demonstration that the waste is or will actually become mobile and, moreover, ignores the actual conditions at the Site. For example, disposal of the waste occurred approximately 50 years ago. Storms since, including Hurricane Ike and the 1994 flooding, both of which occurred before the installation of the armor cap, did not result in the "catastrophic" impacts EPA now is capriciously speculating will occur.

In addition, EPA fails to support that the wastes cannot reliably be contained. EPA summarily dismisses the Army Corps of Engineers' modeling as having inherent uncertainty. Putting aside that all models have some inherent uncertainty and that EPA routinely relies on such models, EPA, here, relies on a doomsday discussion of potential future weather patterns rather than the Corps' specific and detailed analysis as EPA's basis to dismiss any containment remedy. Again, as another example, EPA importantly fails to adequately consider the Corps' conclusion from its modeling that the cap could be reinforced to greatly reduce impacts during an extreme weather event.

Second, EPA incorrectly applies its guidance to find that the waste has a high concentration of toxic compounds. Similar to its discussion of mobility, EPA focuses on the general, ignoring that the issue is not the inherent toxicity of a substance but the toxicity given the very particular characteristics of the relevant substance at the specific Site.

While there are no established threshold toxicity levels that qualify source materials as PTW, the Principal Threat Guidance indicates that where toxicity and mobility of source material would combine to pose a potential risk of $1x10^{-3}$ or greater, treatment alternatives should be evaluated. Principal Threat Guidance at 2. In the Proposed Plan, EPA arbitrarily selects a PTW threshold of ten times the sediment Preliminary Remediation Goal. It is our understanding that this selection results in a PTW threshold risk being identified as present at what is at least an order of magnitude less than what the Guidance contemplates. Moreover, in relying on risk to justify its classification of the sediments as PTW, EPA inappropriately considers risk from fish tissue, which provides an indirect risk pathway and, therefore, does not meet the definition of source material in the Principal Threat Guidance. *See* Principal Threat Guidance at 1. Furthermore, fish tissue bioaccumulates substances that originate from sediment, surface water and diet. The Proposed Plan itself recognizes the Site is only one of many inputs of such contaminants in the system. Proposed Plan at 20.

Even if EPA's unsupported finding of PTW at the Site was appropriate, EPA nevertheless then fails to follow the National Contingency Plan ("NCP") and the Principal Threat Guidance to use the nine criteria, not the finding of PTW, to determine the remedy selection. Principal Threat Guidance at 3. EPA's Principal Threat Guidance explicitly states that the classification of source material as PTW only serves as an indication that a treatment remedy should be considered. Here, however, EPA does not actually consider a treatment remedy but, instead, leans heavily on the PTW finding to justify an extensive and costly removal, but not treatment, remedy.

The NCP preamble recognizes there may be situations where wastes that constitute a principal threat should be contained rather than treated. Principal Threat Guidance at 3 (citing 44 F.R. at 8703, March 8, 1990). EPA Guidance provides for the presumption of a containment remedy where treatment is impracticable. Principal Threat Guidance at 1. Consistent with the Principal Threat Guidance, the *Contaminated Sediment Remediation Guidance for Hazardous Waste Sites*, USEPA-540-R-05-012, OSWER 9355.0-85 (December 2005) states, regarding PTW at sediment sites, that "the practicability of treatment, and whether a treatment alternative should be selected, should be evaluated against the NCP's nine remedy selection criteria. Based on available technology, treatment is not considered practicable at most sediment sites." EPA further states, "It should be recognized that in-situ containment can also be effective for principal threat wastes, where that approach represents the best balance of the NCP nine remedy selection criteria."

In the Proposed Plan, EPA's comparative evaluation of the alternatives seems driven toward a preordained remedy. EPA continues its reliance on speculative weather events and changes in morphology, ignores actual site conditions, and discounts cap maintenance outright. There are uncertainties associated with any remedy but, here, EPA doesn't balance the uncertainties with the costs and benefits, as the NCP requires. In fact, EPA breezes over issues associated with dealing with such a large volume of material, and does not discuss in detail what is behind the vast differences in costs in its evaluation, only listing the range. In particular, EPA does not justify the need to incur the cost of its proposed remedy as compared to that favored by the Army Corps, a difference of over $60 million.

With the exception of recent outliers, the approach here contrasts with the EPA's previous evaluation of large sediment sites. At these sites, EPA focuses its remedy evaluation on the nine criteria and recognizes, because of the complexity and volume of material, the concept of PTW is unlikely to help "streamline and focus" the remedy selection and, even when classified as PTW, those sediment site evaluations recognize treatment would be impracticable. *See, e.g.,* EPA Response to National Remedy Review Board/Contaminated Sediment Technical Advisory Team, Lower Passaic River (2014) (PTW concept does not help streamline and focus the remedy selection); Lower Duwamish Waterway Superfund

Site Proposed Plan (EPA 2013) (no finding of PTW); Grasse River Superfund Site Record of Decision (EPA 2013) (treatment of PTW is not practicable or cost effective given the widespread nature of the sediment contamination and the high volume of sediment); Regional Response to the National Remedy Review Board Comments on the Site Information Package for the General Electric (GE)-Pittsfield/Housatonic River Project (EPA 2012) (treatment infrequently selected for sediment sites due to, among other things, high costs and uncertain effectiveness; in-situ containment can be effective for PTW where that reflects the best balance of the nine criteria); Onondaga Lake Bottom Subsite of the Onondaga Lake Superfund Site (EPA, NYSDEC 2005) (given volume of PTW, treatment of all PTW is impracticable even where PTW includes NAPL); Fox River and Green Bay Site Record of Decision for Operable Units (OUs) 1 and 2 (EPA, WDNR 2002) (would be impracticable to closely identify, isolate and treat sediments with risk above 10^{-3}). At these sites, EPA properly evaluated the site using all of the relevant criteria and found that treatment of widespread and high volumes of contaminated sediments is not practical or cost-effective.

The Proposed Plan here, in contrast, summarily dismisses any containment remedy and inadequately evaluates the nine criteria. Instead, EPA is ignoring its Guidance while relying on the PTW classification to justify selection of a remedy in contradiction to the application of the NCP nine criteria and inconsistent with the entire purpose of PTW classification (*i.e.*, that a treatment remedy should be evaluated). SSP is concerned EPA has lost sight of the purpose of the PTW classification and guidance and, instead, is using it to justify impracticable and costly remedies where containment remedies are protective of human health and the environment. Accordingly, SSP encourages EPA to reconsider the proposed remedy and conduct an evaluation faithful to the full NCP criteria.

Sincerely,

Ronald J. Tenpas
Counsel to the Superfund Settlements Project