

# Duwamish River Cleanup Coalition

Community Coalition for Environmental Justice • The Duwamish Tribe • Georgetown Community Council  
Green-Duwamish Watershed Alliance • Environmental Coalition of South Seattle • People for Puget Sound  
Puget Soundkeeper Alliance • Washington Toxics Coalition • Waste Action Project

August 21, 2003

Ms. Allison Hiltner  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Ave, ECL-111  
Seattle, WA 98101

Re: REQUEST FOR REMOVAL ACTION FOR DISPOSAL OF DREDGED SEDIMENT FROM THE LOWER DUWAMISH WATERWAY SUPERFUND SITE, SEATTLE, KING COUNTY, WA INTO THE BLAIR SLIP 1 NEARSHORE CONFINED DISPOSAL FACILITY AT THE COMMENCEMENT BAY/NEARSHORE TIDEFLATS SUPERFUND SITE.

Dear Ms. Hiltner:

The Duwamish River Cleanup Coalition has reviewed the requested designation of the Duwamish/Diagonal Early Action Area 1 sediments as candidates for “Time Critical” Removal Action (“Request”). While we have no objections to the merits of designating this removal as time critical based on the environmental and human health threats, we are concerned with the precedent EPA is setting in singling out this site and the potential compromise of credibility the agency invites in taking this action.

We have previously requested EPA oversight of removal actions at this site, in order to promote more protective environmental endpoints and enhance public involvement. EPA has declined to exercise authority over activities being undertaken by King County and the Elliott Bay/Duwamish Restoration Panel (EBDRP), despite the site’s inclusion in the Lower Duwamish Waterway Superfund Site. We have also previously requested from King County any evidence or information in their possession that demonstrates that these sediments must be removed during this fall and winter season in order to avoid imminent harm to the environment and human health. While we are aware that King County has provided numerous documents, we are not familiar with the report providing the assessment summarized on page 5 of the Request, identifying PCBs and arsenic contamination in Duwamish/Diagonal CSO sediments as posing excess carcinogenic risks to people. No reference for this assessment is cited in the report. Please reference the appropriate document so we can determine if it has been produced to us by King County.

We also request information on EPA policy that permits oversight authority to be cleaved at a single site: e.g., designation of the disposal, but not the removal, portion of a cleanup action as “Time Critical” and under EPA authority. Based on the justification provided – Threats to Public Health and Welfare and Threats to the Environment – it appears to make little sense to argue that the disposal of the wastes

requires time critical designation while the material's removal does not. It is the presence of the material in the river that poses the threats described. Further, there appears to be little doubt that an appropriate disposal location exists and that the material will be able to be disposed of in a timely manner once the material is removed, whether that site is nearshore or upland. We request a clearer explanation of the circumstances that require the Time Critical designation and exactly what distinguishes the disposal portion of the action alone as time critical. In the absence of this, the designation does not appear to be driven by environmental or public health and welfare concerns, but by the desire to facilitate disposal in the Commencement Bay Nearshore/Tideflats Blair Slip 1 site, which requires both sources of sediment to be governed by CERCLA and under EPA authority. If this decision is bureaucratic rather than environmental or health based, EPA should provide a clear explanation and argument for need on this basis, rather than risk public perception of the environmental and human health risk justification as a "smokescreen."

Our concern for the public perception and erosion of trust in EPA is further heightened by comparing the Duwamish/Diagonal site to other Early Action Areas on the river. EPA has identified seven early action areas. Several of these have similar or higher levels of PCBs and arsenic than Duwamish/Diagonal. It is logical to conclude that the environmental and human health threats posed by these sites are at least as great as that at Duwamish/Diagonal. If this is the case, what steps is EPA taking to expedite removal of sediments at these locations? What other "Time Critical" removals will be requested and within what time frame? Time Critical Removals are typically designated when the source of the risk must be removed within six (6) months in order to protect the environment and human health. Our understanding is that these other areas are being given a period of years, rather than months, for contaminated material removal. Is there an immediate environmental and human health threat at these other sites? Please provide a comparison of PCB and arsenic levels that demonstrates the need for designation of Duwamish/Diagonal as Time Critical while allowing greater delay at the other sites. We are not necessarily seeking Time Critical designation of all Early Action Areas, but need to be able to understand and communicate EPA's decision in a manner that promotes public understanding and trust.

The Request states on page 9 that EPA's guidance urges Superfund decision-makers to use CERCLA removal authority "to achieve quick, protective results at Superfund Sites, consistent with all legal requirements, including public participation." What are the public participation requirements referred to? (Please provide text and reference). Finally, the document closes with the statement, "If elements of the D/D P project that are under EBD RP Panel oversight change, EPA may reevaluate its oversight role under this action memorandum." What circumstances would cause EPA to reevaluate its role?

Thank you for the opportunity to comment on the Request for Time Critical designation of the Duwamish/Diagonal sediments. We look forward to your response and final decision.

Sincerely,

BJ Cummings