



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, Ca. 94105

March 22, 1991

OFFICE OF THE CHANCELLOR		
NAME	DATE	INITIALS
Boggan	3/27/91	

*3/27/91 cc:
Fapes Stone
Barbara
For acct
2-18-91
FUES*

Mr. Daniel Boggan
Vice Chancellor
Business and Administrative Services
University of California, Berkeley
2020 Milvia, 5th Floor
Berkeley, California 94720

Dear Mr. Boggan:

The purpose of this letter is to bring closure to several issues which have arisen in connection with the proposed location of the EPA Region 9 Laboratory at the University of California's Richmond Field Station in Richmond, California.

At our meeting on October 12, 1990, we discussed the problem of hazardous waste contamination at the Richmond Field Station, and the potential impact that such contamination could have on the location of the EPA Laboratory at that site. Following our meeting, the University agreed to continue its site evaluation of the entire Field Station property in consultation with EPA staff, in order to determine the extent of contamination from hazardous substances, contaminants, or pollutants throughout the Field Station. The University also agreed to complete its site evaluation, and make the results of that evaluation available to EPA, prior to the time that EPA and Wareham Development would sign a lease for the rental of the Laboratory site by EPA.

At the October 12 meeting, EPA also expressed concern regarding the mercury contamination that has been identified, and may be identified in the future, on the Field Station property, particularly in the area which has historically been referred to as the "mercury fulminate production area." The mercury fulminate production area is located approximately 400 feet south-east of the proposed site for the EPA Laboratory.

Following our meeting, the University agreed that, as a condition precedent to the execution of a lease for the Laboratory site by EPA and Wareham Development, the University would execute a written commitment to EPA with regard to the mercury contamination at and nearby the proposed Laboratory site. The University agreed that such a document would commit the University to appropriately remediate any and all mercury contamination on or adjacent to the mercury fulminate production area, including the proposed site for the EPA Laboratory, prior to the time that EPA would occupy the Laboratory site, and prior to the time

that any of EPA's obligations under the lease would mature. The remediation to be performed by the University was to result in a condition that would ensure that there would be no significant environmental impacts, including health and safety risks to EPA employees and other users of the site, which would be associated with the development, use, or occupancy of the Laboratory site.

In subsequent communications with both the University and Wareham Development, EPA had indicated that in lieu of a contractual commitment from the University to remediate mercury contamination in the vicinity of the proposed Laboratory site, EPA would instead issue an administrative removal order to the University for the cleanup of the Laboratory site and the nearby mercury fulminate production area prior to the execution of a lease for the Laboratory site. Such a removal order would require the University to take necessary response actions, as specified in the order, to contain and prevent the release or threatened release of hazardous substances, pollutants, or contaminants from the proposed Laboratory site and the property in the vicinity of the site, including the mercury fulminate production area. Pursuant to Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. Section 9606, EPA may issue such an administrative removal order where a release or threatened release of a hazardous substance from a facility presents an "imminent and substantial endangerment" to the public health, welfare or the environment.

In the intervening months, the University has completed the additional site evaluation work which EPA asked it to perform in October 1990. The results of the site characterization work were transmitted to EPA with a letter from Associate Vice Chancellor Barclay dated December 21, 1990. In addition, on March 8, 1991, we received a preliminary risk assessment dated February 22, 1991, which was prepared for the University by OHM Corporation and Jonas and Associates, based on the data obtained in the site characterization process mentioned above.

The risk assessment indicates that daily employee exposure to mercury, lead, and other hazardous substances at and nearby the Laboratory site will be at levels well below the respective reference doses established for those substances. Reference doses, which consider non-cancer toxicity potential, are the daily intake levels deemed by EPA to be without appreciable risk of adverse effects during a lifetime of exposure. Therefore, the risk assessment indicates that the hazardous substances detected on the Field Station property, and in the immediate vicinity of the proposed Laboratory site, will not present a significant toxicity risk to future employees or other individuals who may occupy or use that property in connection with Laboratory activities. In this regard, however, it should be noted that the risk assessment evaluated the Field Station property and the

proposed Laboratory site solely in terms of workplace exposure (at the proposed Laboratory site), and did not consider the potential for exposure due to residential or other uses of that property.

Based on the site characterization data, and the analysis of that data in the risk assessment, EPA has concluded that while some mercury, lead and other hazardous substances are present in the soil at and nearby the proposed EPA Laboratory site, the concentrations which have been reported for those substances, both in the immediate vicinity of the Laboratory site, and elsewhere on the Field Station property, do not present an imminent and substantial endangerment to the employees and other individuals who may occupy or otherwise use the proposed Laboratory site. Since the presence, and actual or threatened release, of these constituents in the vicinity of the proposed Laboratory site do not present an imminent and substantial endangerment to the health or welfare of the individuals who will be present on-site (the population at risk), the issuance of an administrative removal order to compel the University to take further response action at this time is not appropriate under CERCLA. Therefore, EPA will not require the University to undertake such response actions at the present time.

However, the University should be aware that EPA will continue to evaluate the Richmond Field Station property to determine if the site is eligible for inclusion on the National Priorities List of Superfund sites (NPL), and EPA may list the site on the NPL in the future. As the owner of the Field Station property, the University may, in the future, be found to be a "potentially responsible party" under Section 107(a) of CERCLA, and may therefore be required to perform or pay for necessary response actions on, or in the vicinity of, the Field Station in order to protect public health, welfare, or the environment. The University should also be aware that the signing of a lease agreement between EPA and Wareham Development, a lessee of the University, will not in any way affect potential enforcement actions which EPA may take in the future in connection with the Field Station property or portions of that property.

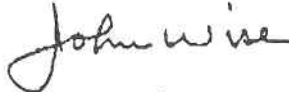
As a final matter, EPA issued a Finding of No Significant Impact (FONSI) on November 16, 1990, in connection with the proposed lease of the Field Station property and the construction of the Region IX Laboratory on that site. Since the FONSI was issued, EPA has allowed for sufficient public review and comment of that document. As required by 40 C.F.R. Section 6.400(d), EPA will fully consider all such comments before it takes final action on the project in question. By taking these steps prior to the execution of a lease, EPA will have satisfied all of its legal obligations under the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, et seq. Therefore, assuming that the University or its lessee will expeditiously complete all of

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the mitigation measures identified in Appendix A of the FONSI, EPA believes that it will be legally empowered to enter into a sublease agreement with the University's lessee, Wareham Development, for rental of the proposed Laboratory site. Wareham was previously notified of EPA's intention to sign a lease for this parcel in a letter from Rich Lemley of EPA Headquarters to Richard Robbins, dated December 5, 1990.

If you have any questions regarding this matter, please do not hesitate to call me at (415) 744-1001, or David Mowday of my staff at (415) 744-1647.

Sincerely,



John Wise
Deputy Regional Administrator

cc: Rich Lemley

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