

**ENCINAL 14TH STREET, LLC,
a California limited liability company**

July 23, 2010

Alameda County Department of Environmental Health
1311 Harbor Bay Parkway
Alameda, CA 94502-6577
Attn: Mr. Jerry Wickham, Senior Hazardous Materials Specialist

Re: Former Carnation Property – 1310 14th Street, Oakland, CA
SLIC Case No. RO0000018 and Geotracker Global ID T0600100262

Dear Mr. Wickham:

This letter addresses the Alameda County Environmental Health Services (ACEH) letter dated June 9, 2010. We appreciate the work the County and Nestlé have invested in this matter. We are optimistic that a conclusion is near.

To expedite the process involved in the preparation of the deliverables requested in the June 9th letter, this letter transmits a few requests for clarity. We believe it is in the interest of all parties to have the obligations and expectations clearly stated and completely understood. Your response to the suggestions conveyed here will inform the document completion process. Thank you in advance for your assistance.

General Observation and Foundation for Questions:

The ACEH letter does not explicitly record concurrence with the recommendations presented in the CAP, though it appears as if the agency has acknowledged the CAP addresses comments and concerns associated with the prior (May 2009) version of the report. With their letter the ACEH also sends an example of a Deed Restriction they ask be utilized to record an institutional control; by so doing the ACEH clarifies that the restriction recorded in 2000 with the City of Oakland as signatory is not applicable and must be replaced by an instrument that utilizes the format and satisfies the requirements of the provided example (with the ACEH as the signing regulatory authority). The ACEH notes that a Risk Management Plan (RMP) is required and that this RMP be submitted as an attachment to the proposed Deed Restriction.

It appears as if many of the historic County concerns have been satisfied and the file has consequently made significant progress. The process of writing and recording the County Deed Restriction and the RMP will enable clarity and agreement with respect to near and longer term environmental condition-related expectations, restrictions and obligations. Gaining this clarity will prevent future surprises and benefit all parties.

The importance of clarity recognized, there are several important issues we believe must be defined carefully and unambiguously in the Deed Restriction and RMP. We have identified these issues and offered suggestions for definitive language. We understand there are alternate ways to describe what we've included below – the language provided is intended to convey concepts and concerns, not necessarily offer a final suggestion for verbiage.

Issues Requiring Clarification and Certainty

1. How exactly the Deed Restriction affects (limits) the nature of future commercial or industrial site uses.

The June 9 ACEH letter states:

Based on the sub-slab soil vapor data collected in January 2010, the CAP concludes that the concentrations of volatile chemicals beneath the existing unoccupied commercial/industrial building are below concentrations of concern for potential vapor intrusion into the building. The CAP reviews five alternatives and recommends Alternative 5, which consists of institutional controls, as the preferred alternative. Alternative 5 would restrict use of the site to the current unoccupied commercial/industrial building (emphasis added).

The County makes no other explicit mention of uses or site configurations that would be acceptable under the Deed Restriction. This noted, the model restriction they sent as an attachment to the June letter contains generic language presumably relied upon in other cases that permit redevelopment and reuse under certain circumstances with certain approvals. Whether the County implies that this language describes a circumstance that would be acceptable at the subject property is not clear.

Recommendation – in order to maximize its utility, the Deed Restriction can contain no ambiguity with respect to acceptable uses and what, if anything, the County will require in the future in the way of additional site restoration. We believe the Deed Restriction should state:

- A. So long as an impervious surface is constructed and maintained over the area of the site containing residual contamination the County will consider any commercial, industrial or other Deed Restriction-allowed use acceptable.
 - B. In the event the existing structure is demolished and the existing slab removed as part of site redevelopment, the County will not require the removal of contaminants or remediation of soil or groundwater so long as an impervious surface is constructed as a component of the redeveloped use.
 - C. As testing has shown the levels of residual contamination to not pose a risk to indoor air quality, no additional evaluative testing will be required in association with or as a precursor to site redevelopment.
 - D. Additional site remediation will be required by the agency *only* if a change in acceptable use is sought (redevelopment as property for residential uses, for example).
2. Continuing obligations.

Neither the ACEH letter nor the language in the model Deed Restriction suggests the position of the agency with respect to longer-term environmental management. It appears as if the ACEH invites the author of the RMP to propose what they believe to be appropriate.

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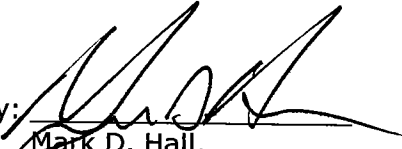
Recommendation – in order to afford maximum clarity, the RMP or its transmittal letter should state:

The extensive testing completed to date has generated a data set that affords complete site understanding. No additional testing is required. The monitoring wells installed during the investigative process are no longer needed and will be properly abandoned.

This concludes our comments with regard to process and issues requiring clarification. Thank you again for all your help.

Very truly yours,

Encinal 14th Street, LLC

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