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ENVIRONMENTAL PROTECTION

March 17, 2009

Greg Lovato, P.E.
Supervisor, Remediation Branch
Bureau of Corrective Actions
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Department of Conservation & Natural Resources
901 South Stewart Street, Suite 4001
Carson City, NV 89701

Re: PETER J. VOGGENTHALER, et al. v. MARYLAND SQUARE
NDEP ID No. : H-000086
Our File No.: 5062.0000

Dear Greg:

As you know, in addition to the class action we have filed in *PETER J. VOGGENTHALER, et al. v. AL PHILLIPS THE CLEANER, INC., et al.*, Clark County District Case No. A553784, we have also filed a RCRA action in United States District Court, District of Nevada, entitled *PETER J. VOGGENTHALER, et al. v. MARYLAND SQUARE, LLC, et al.*, Case No. 2:08-cv-1618. Attached hereto for your reference is a copy of our Complaint filed in the RCRA action.

In your letter dated July 1, 2008, you stated, "EPA does not select concentrations for carcinogens at the 10^{-6} risk level as an initial point of departure for developing final clean up levels (See 40 SFR 300.430(e)(2)(i)(A)(2))."

I assume that you are aware of the U.S. EPA's January 15, 2009 publication entitled "Interim Recommended Trichlorethylene (TCE) Toxicity Values to Assess Human Health Risk and Recommendations for the Vapor Intrusion Pathway Analysis" (copy

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attached for your reference). In this document, EPA's Office of Solid Waste and Emergency Response ("OSWER") states:

"Consistent with the National Contingency Plan (NCP) (40 CFR § 300.430(a)(2)(i)(A)(2)), OSWER recommends using a concentration of 1.2 ug/m³, corresponding to the 10⁻⁶ cancer risk level using the Cal EPA IUR, as the point of departure for determining remediation goals."

While the above-referenced publication deals specifically with TCE, it also confirms that the U.S. EPA in fact uses 10⁻⁶ risk level as an initial point of departure for developing final clean up levels for carcinogens.

We reiterate our position that NDEP's interim action level of 32 ug/m³ is inappropriate for the Maryland Square site. Our position is supported by the attached recent publication by the U.S. EPA. Using this risk level, virtually all of the 97 homes sampled by NDEP for indoor air concentrations of PCE would require mitigation measures, not just the 15 homes NDEP has selected. We hope that NDEP will reconsider its "health-protected level of 32 ug/m³" based upon the EPA's most recent recommendations.

Of course, should you have any questions, please feel free to contact me at your earliest convenience.

Very truly yours,

ROBERTSON & VICK, LLP


ALEXANDER ROBERTSON, IV

ATR:ams
Enclosure
cc: Jan Greben, Esq.