

# STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Jim Gibbons, Governor

Allen Biaggi, Director

Leo M. Drozdoff, P.E., Administrator

March 24, 2009

Mr. Alexander Robertson, IV  
Robertson Vick LLP  
880 Hampshire Road, Suite B  
Westlake Village, CA 91361

Subject: Responses to March 17, 2009 Letter from the Offices of Robertson Vick, LLP

Facility: Al Phillips the Cleaner (former)  
3661 S. Maryland Pkwy  
Las Vegas, NV  
NDEP ID: **H-000086**

Dear Mr. Robertson:

This letter is provided by the Nevada Division of Environmental Protection (NDEP) in response to your letter dated March 17, 2009. Your letter states that NDEP's letter of July 1, 2008 said "*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)).*"

Unfortunately you apparently misread NDEP's letter of July 1, 2008, because you have incorrectly quoted that letter. The NDEP's July 1, 2008 letter is available on the NDEP's website, and clearly states that:

*"EPA **does** select concentrations for carcinogens at the  $10^{-6}$  risk level as an initial point of departure for developing final cleanup levels (see 40 CFR 300.430(e)(2)(i)(A)(2)). However, final cleanup levels selected by USEPA are eventually determined in a site-specific (or operable unit) Record of Decision, may vary from the  $10^{-6}$  risk level after consideration of all other criteria and site specific situation, and higher risk levels may be accepted."*

You have incorrectly inserted "not" into the NDEP's sentence, and you have misidentified the Code of Federal Regulations (CFR) as "SFR" in your letter of March 17, 2009. Please visit our website, which contains the entire administrative record for the case, and review page 5 of NDEP's July 1, 2008 letter. The website is available at: <http://www.ndep.nv.gov/pce/foia.htm>

Moreover, page 3 of the Attachment to NDEP's July 1, 2008 letter provided support for NDEP's selection of  $32 \mu\text{g}/\text{m}^3$  as an interim action level. NDEP noted that:

*"NDEP also notes that selection of a  $10^{-4}$  risk level for short-term mitigation is consistent with: 1) the evaluation criteria that warrant time-critical and non-time critical removal*

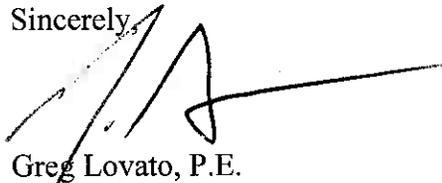


Mr. Robertson  
March 24, 2009  
Page 2

*actions as provided for in the National Contingency Plan (see 40 CFR 300.415, which contains a set of narrative factors and not a specific risk level); 2) the decision made by EPA Region 8 at the Billings, MT PCE site (see attached Action Memo prepared by Region 8 Superfund removal program) to determine whether the vapor intrusion pathway is complete; and 3) the guidance provided on pg. 29 of the Cal/EPA Department of Toxic Substances Control 2005 Interim Final Vapor Intrusion Guidance, among other states listed in Section 2.3.1 below.”*

If you have any technical questions regarding this letter, please contact the undersigned at 775-687-9373 or [glovato@ndep.nv.gov](mailto:glovato@ndep.nv.gov). Please address any legal questions to William Frey at 775-684-1229.

Sincerely,



Greg Lovato, P.E.  
Supervisor, Remediation and Certification Branch  
Bureau of Corrective Actions

cc: Jim Najima, Chief, NDEP Bureau of Corrective Actions  
William Frey, State of Nevada, Office of the Attorney General, 100 N. Carson Street, Carson City, NV 89701  
Mary Siders, Environmental Scientist, Remediation Branch, NDEP  
Jan Greben, Greben & Associates, 1332 Anacapa St., Suite 110, Santa Barbara, CA 93101