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Re: Urgent intervention requested to adequately test Irvine's Portola High School site for VOCs

Dear Chief Lofstrom:

I performed all the original research in support of the letter that former Mayor and Councilmember Larry Agran wrote to Governor Brown regarding the site (Site A) of the now-named Portola High School (formerly Irvine High School #5), to which you responded with your letter of October 26, 2015. As such, Larry asked that I respond on his behalf and with his full concurrence.

I need your personal help and intervention to support the factual information I present with supporting evidence *[documents attached to emailed letter]* in order to counter the misinformation and misleading information written by the DTSC in the past, and also contained in your letter, claiming or implying that the entire Portola High School site was tested for VOCs when it was not, and the misrepresentation that the site historically had an exclusively agricultural use, which it did not.

Ms. Yolanda Garza: More than a year ago, Ms. Garza responded to questions from Mr. Gideon Kracov, an environmental attorney who has been working with members of the "Test for Toxics" committee, a group of residents whose sole mission is to have Site A thoroughly and appropriately tested for VOCs. Immediately below is a brief excerpt from Ms. Garza's response on April 8, 2014.

From: Garza, Yolanda@DTSC [mailto:Yolanda.Garza@dtsc.ca.gov]
Sent: Tuesday, April 08, 2014 2:07 PM
To: gk@gideonlaw.net
Cc: Cota, Thomas@DTSC
Subject: Reply to your inquiry to Thomas Cota on the Site A Proposed School Site

"Soil and soil gas samples were collected throughout he [sic] site and analyzed for a variety of chemicals. Special consideration was given to the northern boundary of the proposed school site due to its proximity to the former base landfill (IRP Site 3), where a full suite of metals, petroleum hydrocarbons, polycyclic hydrocarbons, PCBs, dioxins, volatile organic compounds and methane were sampled for."

Her first sentence, above (**bolding** added) is factually wrong and misleading. Regarding soil-gas samples, they were *not* collected throughout the site. Soil-gas samples were only collected along

the northern boundary with IRP Site 3, along a pair of fuel pipelines that cross Site A, plus two interior wells in which soil-gas was only tested for methane. [Ref 1]

After the Preliminary Environmental Assessment (PEA) submittal by the IUSD to the DTSC, 11 additional soil-gas wells were drilled on the perimeter of the school site on a narrow piece of property that resulted from a subsequent land swap. A lab report was prepared with the results of those soil-gas wells [Ref 2]

51 Soil Samples: Regarding soil samples, Ms. Garza was obviously referring to the soil samples taken at 51 locations to which your letter refers. Soil samples were, indeed, collected throughout the site; however, none of those taken in the interior of the site was tested for anything other than agricultural contaminants, such as pesticides. The samples were not tested for VOCs. [Ref 1&3] Hence, virtually the entire interior of the school site remains untested for the VOCs that were dumped during WWII and the Korean War, before farming activities began, and that have been discovered at the perimeter and nearby, offsite. [Ref 4] The remainder of Ms. Garza's email was replete with similarly misleading or incorrect statements easily refuted with the same evidence referenced in this letter (and attached to the email version).

On Page 2, 5th paragraph, it is stated: "During the PEA, soil samples were collected from 51 locations throughout the site and analyzed for organochlorine pesticides associated with agricultural use. Samples were also analyzed for metals, polyaromatic hydrocarbons, total petroleum hydrocarbons, and PCBs." If the letter means that some samples were analyzed for hydrocarbons, etc., then it is correct; however, testing for hydrocarbons (VOCs) was only performed at 5 of the 51 locations, near the perimeter of the site and along a pair of fuel pipelines that crossed the site. The vast interior of the school site was NOT tested for VOCs or hydrocarbons or anything remotely related to those compounds, which are precisely the factually incorrect statements upon which all other agencies and businesses have relied on for their opinions and decisions.

The lab report [Ref 1] lists exactly what was tested for and what was found in those 51 locations. This report was submitted as Appendix E of the PEA, which is still available on the IUSD website. Unfortunately, it's 200-pages long. To make this easier, I have prepared an Excel spreadsheet [Ref 3], that indicates in a compact form exactly what has been tested at each of those 51 locations as well as in the soil-gas wells.

Harvey Liss: Regarding my own background, I have been working on the Site A contamination issue for the past two years. I was introduced to the problem by then-Irvine City Councilmember Larry Agran, who appointed me to serve on the Irvine Planning Commission. I am a licensed California civil engineer (PE), and likely the only person who has reviewed virtually every Department of the Navy (DoN) document relating to IRP Site 3, the DoN's cleanup efforts on the rest of the former MCAS El Toro, as well as all documents relating to the siting of the now under-construction Portola High School. I have reviewed over 10,000 pages of documents. I have even attended Restoration Advisory Board (RAB) meetings for some time, so I'm well aware of the admirable efforts of the DoN, as well as the details of the IRP Site 3 remediation that has been performed. I am also aware of what testing has *not* been performed.

All the facts I state are supported by various public documents submitted to the DTSC or contracted by the DoN or prepared for the IUSD or by the City of Irvine's environmental consultant. In fact, it is the very misstatements or misleading statements that the school site has been exclusively agricultural and has been thoroughly tested, similar to the one(s) from Ms. Garza, that need to be corrected for the good of the Portola High School population.

Since the IUSD, the Irvine City Council, and various businesses rely upon the opinion of the DTSC, without a factually correct opinion by the DTSC, the future population of the Portola High School faces significant environmental risks.

Agua Chinon Wash: On page 2 of your letter, 3rd paragraph, you discuss the Agua Chinon Wash contamination that was encountered in the fall of 2013. That discovery should have been unexpected and surprising, since there was no official record of that contamination. Although it was *not* on the school site, it was only about 250 feet from Site A. Though it was described as a "stain," it ended up as a stockpile of 500 cubic yards of VOC-contaminated soil that was eventually removed. [Ref 5]

Illegal Dumping: On page 2, 4th paragraph, it is stated that "File and records searches found no evidence of illegal dumping or disposal within the boundaries of the 40.5 acre site." That agrees with my own research of all related DoN documents, as well.

However, to clarify what "illegal dumping" actually means, according to Larry Agran, who served as Legal Counsel to the California State Senate Committee on Health and Welfare in the 1970s, and was also a former director of UCLA's History of Cancer Control Project, the term "illegal" is inappropriate. Dumping anywhere was standard operating procedure in the 1940s through 1960s. And, as Larry Agran points out, the phrase "environmental protection" wasn't even in the American lexicon in the 1940s and 1950s.

Larry Agran, in his letter, wrote: "Two years ago, a former Orange County school facilities official stated that the Portola High School site, because of its location at the end of the runways, was the 'worst possible location' for a new Irvine high school. He predicted that if IUSD went ahead with the selection of Site A, serious problems would surely arise." It was actually I who interviewed this official and captured his statement. Other former military personnel with whom I have spoken since, all concurred with his statement.

IRP Site 3 is located near the end of a pair of runways, and Site A is directly off the end of those runways. This can be dramatically seen in the aerial photo included as part of The Planning Center's High School No. 5 Initial Study. [Ref 6]

Also, regarding your mention of "no evidence of illegal dumping," on page 40 of the Final Historical Radiological Assessment (HRA), MCAS, El Toro, May 2000, there is stated a parallel observation: "Although there are no official records or direct knowledge of radioactive materials being dumped at Landfills #3 or #5, during employee interviews conducted in 1994, some interviewees indicated that; [sic] 'Since the landfills were not under 24 hour surveillance, it is possible that equipment

painted with radium paint could have been disposed of into the landfills by the Marines.'" *[In fact, 230 radioactive items were recovered from the landfills surrounding the main landfill (Area A) during the landfill consolidation performed within IRP Site A.]* [Ref 7]

Although those Navy personnel interviews concerned only radioactive materials, it would seem imprudent to risk the safety of generations of students and staff by assuming that during wartime no toxic waste was dumped outside of official records, especially when enormous quantities of such contamination have already been discovered in areas that have no references in any official records and were entirely unexpected.

Agricultural Use: Further, on page 2, 4th paragraph your letter states: "The records instead indicated that the site was used for agricultural purposes throughout and after the base's operation." This is contradicted by the very PEA submitted to the DTSC for Site A (Portola High School site), as follows:

PEA Report for Proposed Irvine Unified School District High School #5 - Site A, January 2014
Page 9

3.1.3 Years of Operation

"Based on a review of historical aerial photographs and base closure documents, **portions of the site historically have been used for agricultural purposes since the 1950s.**" *[emphasis added]*

This is clearly a false statement. First, note that, as your own letter states: "This landfill, known as IRP Site 3, was used by the military from about 1943 until the mid-1950's [sic]..." Clearly, if the landfill was active then the airbase was active. In any case, the MCAS was active during the remainder of WW II, the Korean War (1950-53) and the Vietnam War (1955-1973).

I do not have any information that indicates precisely when farming on Site A began. However, an aerial photo, attached, shows that there was no farming in 1952 and another photo shows the beginning of farming in 1968 on the southeast portion of Site A.

Characterizing Site A as "historically agricultural" is factually inconsistent with it not being farmed during at least two wars and probably part of a third. The next paragraph confirms that VOCs were, indeed, deposited on Site A. The discovery of massive quantities of VOC-contaminated soil is incompatible with only a farming history. The statement that Site A is historically agricultural is unsupportable.

Major onsite contamination: On Page 3, 2nd paragraph, states: "stained soil occurred during the construction of a storm drain in November 2014. This contamination was found outside the school boundary and along Irvine Boulevard." This statement is correct; however, it is incomplete and thus extremely misleading. It turned out that the "stained soil" extended *onto* the school site 29 feet, and involved the removal of more than 900 cubic yards of contaminated soil!

In fact, after all contaminated soil was claimed to have been removed, I visited the trench by standing outside the chain-link fence that was immediately adjacent to the trench, before it was backfilled, and smelled the obvious, pungent petrochemical aroma that I could not otherwise identify. Obviously, it had not all been removed. More importantly, the findings are logically

incompatible with the position of the DTSC that the land was exclusively used, historically, for agricultural purposes.

When I went back a week later to try to figure out how to capture the VOCs, the trench had been backfilled. Hence, the contamination I smelled remains, buried, until an earthquake or other soil disturbance, or even burrowing animals release it by a new pathway to the surface.

Memo from the City of Irvine Environmental Consultant: I only discovered a startling memo [Ref 9] from the City's own environmental consultant, David Richter, Principal Environmental Scientist at Ninyo & Moore, as a result of my California Public Records Act request that I made to the City of Irvine on January 28, 2015. Mr. Richter wrote in his memo to City staff that he expected that this "changed condition" would impel the DTSC to withdraw its site approval and require new testing to ensure public safety.

Unfortunately, David Richter's memo, emailed to Mr. Gregg Gipe, employee in the Department of Public Works, City of Irvine, was not passed on. It was, however, copied to Ms. Jacki Scott, Manager of Engineering, who left the City about the same time as the memo was transmitted, so it's unknown if she even received it. Is the DTSC aware of this memo and is it publically available now?

My Public Comment—withheld: On Page 3, 1st paragraph, it is stated: "Following a 30-day public comment period and public hearing, DTSC approved the PEA on April 4, 2014." I properly submitted timely to the IUSD my 30-page Comment on the PEA on which I spent weeks preparing after a year of research, detailed with references to source documents. I discovered much later through my CA Public Records Act request to the DTSC that my document was never submitted to the DTSC by Denise Clendening, the environmental consultant to the IUSD who prepared the PEA. What she submitted to the DTSC were a few questions extracted from my document and proceeded to answer them as being irrelevant, ignoring the rest of my many pages of technical comment as if they didn't exist.

I don't understand the purpose of a public comment period for a PEA if the public comments are censored by the very person who prepared the PEA if she doesn't like the comment. If there was a length limitation on a comment I wasn't informed. When I noticed that my comment was not posted along with the others on the IUSD website, I complained to the IUSD, and was told that this was an oversight. It was posted some time later; however, I was unaware at the time that it had never been submitted to the DTSC. This seemed like a conspiracy to exclude my participation from the PEA process since I had already voiced my concerns in public, previously. In short, this public comment period was a deception, and did not serve the public interest.

On Page 3, 3rd paragraph, it is stated: "and ongoing monitoring of the IRP Site 3 landfill," [occurs]. This is a diversion; but, I will address it, because it is emblematic of misplaced trust in the Engineering Controls (EC) intended to protect the public. The cap on the landfill within IRP Site 3, according to the ECs imposed (along with the Institutional Controls), is supposed to have its integrity inspected within 7 days after every earthquake of magnitude 4 or greater within 100 miles. I compared the DoN's report with the online records of the Southern California Earthquake

Center at Caltech. In fact, for one of the six-month time periods I checked, that inspection activity, when it was required nine times, was not performed at all. The monitoring report lists "no significant events occurred." In a different 6-month period that was reviewed, required inspections were reported. [Ref 10]

On January 29, 2014, I requested [Ref 10] such an inspection report for the IRP Site 3 capped landfill from the DoN, 15 days after the widely felt 4.5 Richter scale Fontana earthquake. Eventually, I received the inspection report dated one day before my email request, and reportedly performed on the 7th day after such an earthquake, the last day permitted by the DoN. This calls into question the reliability of monitoring and how seriously it is being taken.

10 of 11 perimeter soil-gas test wells revealed measureable concentrations of VOCs: As you mentioned, those soil-gas wells drilled around the southerly perimeter of the school site *[that resulted from a land swap to accommodate the box storm drain and some street realignments]* showed measureable concentrations of VOCs in 10 of 11 wells. Yes, they were below the State screening level; but, why were there any VOCs found there if the land were strictly a farm? Besides, State screening levels for many toxins have been discredited. Effects are cumulative, and neurotoxicants, such as toluene, are especially onerous for the young. With such an extensive field of VOCs, at whatever concentration, how do we know that 100 feet away from those wells, towards the interior of the school site, the levels won't be considerably higher?

Why were those 11 soil-gas wells testing for VOCs drilled intensively only along that narrow strip of property around the southerly perimeter? Why was not a similar matrix of soil-gas wells also testing for VOCs drilled in the interior of the school site? Because of the findings of the VOCs at the site's perimeter it is important to complete the testing for VOCs on the entirety of the site to ensure that it is, indeed, benign and free of VOCs.

Request: What is being asked of the DTSC is to require IUSD to have an independent firm test the entire site for VOCs according to a sensible protocol, performed with the intention of finding VOCs—if they are there—rather than with the intention of not finding VOCs, which has clearly been the case, to date. Surely, new information has accumulated since the original approval of the site that would provide the rationale for the DTSC to now require the IUSD to perform that soil-gas testing over the entire interior of the site. Anything less is unconscionable, irresponsible, a dereliction of duty, and poses grave risks to generations of students, faculty and staff at the Portola High School beginning when the new high school is scheduled to open, in September, 2016.

Sincerely,



Harvey H. Liss

REFERENCES:

Ref 1: Attached to email - PEA_Appendix E_Lab_Reports_200-pages. *Available on envirostor.com*

Ref 2: Attached to email - Supplemental Site Investigation Report, High School #5 – Site A for IUSD, July 2014 (227 pages)] *Available on envirostor.com*

Ref 3: Attached to email - Excel spreadsheet of VOC testing results of 51 soil-sample locations and soil-gas wells, prepared by H. Liss.

Ref 4: Attached to email - Map of Site A Areas Untested for VOCs. Prepared by Liss from Ref 1 & 3

Ref 5: Attached to email - DTSC email from Murchison to Rana Georges, Mar 6, 2014, re: naphthalene in Agua Chinon and 500 cubic yard stockpile.

Ref 6: Attached to email - Aerial Photo of runways and Site A, from "Draft Phase I Environmental Site Assessment for IUSD High School Great Park" Figure 2. *Available on envirostor.com*

Ref 7: Final Status Survey Report, OU 2C, IRP Site 3, Former MCAS El Toro, CA, April 2013, submitted to DoN, BRAC, San Diego. *Available on envirostor.com*

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2.4.2.10 Radiological Items, Anomalies, and Discrete Debris Discovered

A total of 236 RAD items, anomalies, or discrete debris were discovered and removed from Area A1, Area A3, Waste Area C, and Waste Area E; all areas that contained incinerator waste/debris.

Ref 8: Attached to email - Aerial Photos of Site A, 1946, 1952, 1968 are located in the II Phase I IUSD GP HS Appendix A.pdf. *Available on envirostor.com*

Ref 9: Attached to email = David Richter (City of Irvine environmental consultant) email report to Gregg Gipe. From CA PRA request to the City of Irvine.

Ref 10: Attached to email - Earthquake records and lack of required reporting, with extract from the DoN's 2013 Operation and Maintenance and Long-Term Monitoring Program, Semiannual Data Summary Report. DoN report *available on envirostor.com*

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