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7 Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

8 SAUSALITO/MARIN COUNTY CHAPTER)
9 OF THE CALIFORNIA HOMELESS UNION)
10 on behalf of itself and those it represents;)
11 ROBBI POWELSON; SHERI I.McGREGOR;)
12 MICHAEL ARNOLD; ARTHUR BRUCE;)
13 MELANIE MUASOU; SUNNY JEAN YOW;)
14 NAOMI MONTEMAYOR; MIKE NORTH)
15 and JACKIE CUTLER on behalf of)
16 themselves and similarly situated homeless)
17 persons,)

18 Plaintiffs

19 vs.

20 CITY OF SAUSALITO; MAYOR JILL)
21 JAMES HOFFMAN; POLICE CHIEF JOHN)
22 ROHRBACHER; CITY MANAGER)
23 MARCIA RAINES; DEPT. OF PUBLIC)
24 WORKS SUPERVISOR KENT BASSO,)
25 individually and in their respective official)
26 capacities,)

27 Defendants.

Case No.: 3:21-cv-01143-EMC

**SECOND SUPPLEMENTAL
DECLARATION OF ANTHONY PRINCE
RE DOCUMENTS FOR EVIDENTIARY
HEARING AND REQUEST FOR
CONSIDERATION OF ONE-DAY LATE-
FILED REBUTTAL OF DEFENDANTS'
EXPERT'S DECLARATION BY
PLAINTIFFS' EXPERT**

Hearing Date: May 14, 2021
Time: 1:30 pm
Courtroom: 5-17th Floor (Zoom)

Judge: Hon. Edward M. Chen

SECOND SUPPLEMENTAL DECLARATION OF ANTHONY PRINCE

I, Anthony D. Prince, hereby swear and affirm that the following is a true and correct statement:

1. I am counsel of record for Plaintiffs in the above-captioned case.
2. As noted in the Supplemental Declaration of Anthony Prince regarding Plaintiffs' evidence for the upcoming Evidentiary Hearing, several technical documents previously provided to Defendant's

1 counsel are very lengthy. In order to facilitate the ability of the Court and Defense counsel to more
2 easily access the most pertinent portions of said documents, I spent the majority of last night and this
3 morning reviewing of pages – including much of the 400-page EPA report on the infamous Libby,
4 Montana asbestos tragedy -- of said documents so that I might identify the pages and highlight the
5 portions on which the most relevant evidence appears.

- 6 3. Attached hereto as Exhibit A is a true and correct copy of a rebuttal letter from Plaintiffs' expert
7 witness Robyn Ray received today, May 11, 2021. As explained in my Supplemental Declaration
8 filed yesterday, it was impossible for Ms. Ray in Houston, Texas to review Mr. Deignan's third
9 declaration --which I sent to her as soon as I received it at approximately 5:30 pm -- and respond
10 before today. Plaintiffs urge the Court to accept Ms. Ray's letter as well as the Documents attached
11 hereto and the excerpts therefrom. Plaintiffs' counsel apologizes for the unavoidable delay of less
12 than a day, in providing and filing the excerpts from the complete, full-length documents previously
13 and timely provided to Counsel yesterday, May 10, 2021 as well as Ms. Ray's rebuttal letter but
14 points out that even if considered late-filed, it has caused no prejudice to Defendant's ability to
15 prepare for Friday's Evidentiary Hearing.
- 16 4. Attached hereto as Exhibit B are the pages and excerpts which are most pertinent and on which
17 Plaintiffs will likely examine the expert witnesses and some of which also appears in Ms. Ray's
18 letter.

19 I hereby swear and affirm that the foregoing is a true and correct statement under
20
21 penalty of perjury under the laws of the United States and the State of California.

22
23 Dated: May 11, 2021

/s/ Anthony Prince

24 Executed at Berkeley, CA
25
26
27
28

Exhibit A



EMSL ANALYTICAL, INC.
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11 May, 2021

Anthony Prince, Esquire
 Law Offices of Anthony D. Prince
 2425 Prince St Ste 100,
 Berkeley, CA 94705-2005

Project: Response to Declaration of Monte Deignan dated 05.10.2021

Mr. Prince-

Please find below my response to the declaration filed by Monte Deignan dated 05.10.2021.

On Page 4, lines 3-6, Mr. Deignan states that the demolition of the fiberglass sailboat was sufficient for the environmental analysis and demonstrate that crushing of fiberglass vessels at the USACE Facility does not pose a toxic risk to Marinship Park. I do not think the data that was produced supports this statement, for the reasons outlined below:

1. Humidity and Dust suppression. Sampling conditions for fibers outside are different than sampling indoors, as wind, humidity and precipitation all vary and can influence the sampling and therefore the results. Fibers travel downstream with prevailing wind until they settle out. By wetting the particles (whether actively or through wet/humid conditions) the weight of each dust particle is increased so they are less likely to become or stay airborne. Each individual water droplet can absorb dust particles and fibers from the air, gradually both encasing the dust and allowing it to fall to the ground – effectively removing the dust from the air. In fact, dust suppression is common industry practice in mitigating and controlling hazardous dusts as seen at the Calaveras Dam site in California, where wet spraying was used to control the dust.

When gathering data for risk assessment the US EPA operating at Libby, MT (a asbestos superfund site) they looked to maximize the exposure potential and would not sample during significant precipitation events. As discussed in section 10.1.5 Uncertainty Due to Field Collection Methods of the Site-Wide Human Health Risk Assessment Libby Asbestos Superfund Site Libby, Montana, "Because airborne releases of LA are expected to depend upon environmental conditions, in order to maximize potential releases during disturbance activities, sampling was usually conducted in the dry, summer months. Additionally, activities were not performed if significant precipitation events occurred in the preceding day or if there was standing water present"

This is consistent practice in the EPA, as cited from the document, PUBLIC HEALTH ASSESSMENT BoRit Asbestos National Priorities List Site Ambler, Montgomery County, Pennsylvania the US EPA BoRit site in Ambler, PA - "Ambient air samples were not collected during a rain event. If rainfall exceeded 0.25 inches, EPA waited at least 24 hours to collect ambient air samples. If rainfall exceeded 0.5 inches, EPA waited at least 48 hours to collect





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ambient samples. This was done to capture a 'worst case scenario' based on dry conditions that could cause release or disturb asbestos in soil (EPA, 2012a)."

In the paper, Influence of Air Humidity on Dust Control Using Ultrasound Atomization, it shows a model of how humidity can restrict dust dispersion. The higher the humidity, the higher its capacity to suppress the dust dispersion. Figure 6. This figure shows the range in dust dispersion at different humidity levels from 60% to 80%.

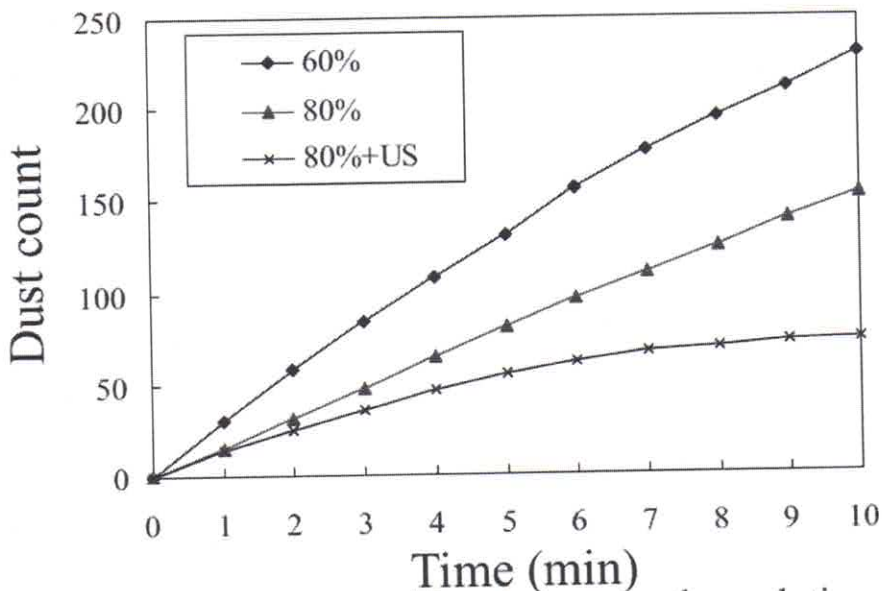


Fig.6 Relationships between the relative humidity and the dust dispersion.

On page 3, Line 19 of the declaration dated 05.10.21, the fiber glass boat was demolished between 9:30 AM and 11:00 AM on March 11, 2021. There is also mention in the environmental report that rain event had happened that morning. According to time and date.com, a website that records historic meteorologic conditions, (screen shot below) on March 11th, 2021, the humidity started out at 77% near 9 am, was 60% around noon and was about 60%, during the time the fiberglass boat was being crushed. These high humid conditions would have suppressed and limited dust dispersion into the park. Therefore, one would expect samples collected would have reduced fiber counts.





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Sausalito Town Square Weather History for March 11, 2021

Show weather for: March 11, 2021

Time	Conditions	Temp		Weather	Comfort		Barometer	Visibility
		Temp	Weather		Wind	Humidity		
12:56 am Thu, Mar 11		46 °F	Passing clouds	5 mph	↙	79%	30.02 °Hg	10 mi
1:56 am		45 °F	Passing clouds	6 mph	↑	82%	30.02 °Hg	10 mi
2:56 am		44 °F	Passing clouds	3 mph	↙	82%	30.01 °Hg	10 mi
3:56 am		44 °F	Partly cloudy	3 mph	↘	82%	30.01 °Hg	10 mi
4:56 am		46 °F	Partly cloudy	3 mph	↘	83%	30.03 °Hg	10 mi
5:56 am		45 °F	Light rain. Mostly cloudy	3 mph	↗	86%	30.04 °Hg	8 mi
6:56 am		47 °F	More clouds than sun	9 mph	↙	80%	30.05 °Hg	7 mi
7:06 am		47 °F	Light rain. Cloudy	6 mph	↙	80%	30.07 °Hg	5 mi
7:56 am		48 °F	Cloudy	12 mph	↙	77%	30.08 °Hg	7 mi
8:11 am		48 °F	Overcast	15 mph	↙	77%	30.09 °Hg	7 mi
8:20 am		48 °F	Overcast	16 mph	↙	77%	30.10 °Hg	8 mi
8:56 am		48 °F	Overcast	15 mph	↙	77%	30.10 °Hg	9 mi
9:56 am		50 °F	Overcast	14 mph	↙	71%	30.11 °Hg	10 mi
10:56 am		51 °F	More clouds than sun	8 mph	↙	66%	30.12 °Hg	10 mi
11:56 am		54 °F	Overcast	9 mph	↙	59%	30.13 °Hg	10 mi
12:56 pm		53 °F	Partly sunny	6 mph	↘	59%	30.11 °Hg	10 mi

(<https://www.timeanddate.com/weather/@5393605/historic?month=3&year=2021>)

2. Collection of samples orientation and sample height. As discussed above, particulates suspended in the air travel with the direction of the prevailing wind. When looking at wind, we need to consider, wind breaks, wind direction, and wind speed. In looking at the wind flow, wind breaks such as fences, trees, etc. need to be considered. Wind travels up and over the fence and if the fence isn't completely solid, some will through the fence. If a sample was placed low and blocked by the fence it would underestimate the fiber concentration.

In another scenario, if the sample monitor was placed upwind of the fiber generating source, fibers would not have been collected on sample, as they would have been blown away from it. Thus when the sample was submitted to the lab and analyzed it would show a low fiber count.





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Typically, in outdoor perimeter air monitoring, as seen at the Calaveras Dam site or the Ambler site already discussed, multiple monitors are set up around the perimeter of the source, usually upwind and downwind. At Calaveras Dam replacement project their perimeter monitoring was done around the perimeter of the main excavating area of the dam replacement. The stations were determined by prevailing wind direction, as well as proximity to residences. Per the DTSC, in section 8.84 Community Fenceline Monitoring of the Interim Guidance NOA at school sites, specifies when monitoring for dust going off the property, that the contractor should use a smoke tube or windsock to verify the wind direction at the site to determine where the monitors should be placed. It also stipulates that monitors should be moved if the wind direction changed. The previous declaration states, in line 25 page 3 that wind shifts were occurring yet, does not state if the monitor was moved during the wind shift.

Furthermore, both EPA and DTSC state that adult monitoring is height is 5 ft. The DTSC further states that fence line monitoring samples should be taken at 5 feet above the ground. Mr. Deignan stated his sample height was at 42 inches. While at times when sampling to determine mean exposures, EPA has taken samples at different heights. (5 ft for an adult and 3 feet for a child). to determine the difference in exposure of an adult vs. a child, they still collected a sample from the adult breathing zone.

3. The insufficient number of samples collected. Two samples were collected on one day. In reviewing the meteorologic data from that day, you that day represented the "best case" exposure scenario. The wet/humid conditions were not conducive to dust dispersion into the park. As described in Site Wide Human health documents, section 10.1 "Concentrations of LA in air (especially ABS air) are inherently variable, so estimates of mean exposure concentrations are subject to uncertainty arising from random variation between individual samples ("sampling uncertainty"). The magnitude of the uncertainty due to sampling variability depends on the number of samples collected and the variability between individual samples, with uncertainty tending to decrease as sample number increases, and increasing as between-sample variability increases." Two samples collected on one day, in one set of particular conditions, is not enough to overcome the uncertainty of sampling and is inadequate to produce a statistically valid estimate of fiber loading and mean exposure. Therefore, the data produced is inadequate to determine the potential risk to people living in a park under varying conditions.

Sincerely,

A handwritten signature in black ink that reads "Robyn Ray". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robyn Ray
 National Special Projects Manager





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Exhibit B

Document: Pg 3. Summary of SUMMARY OF OUTDOOR AMBIENT AIR MONITORING FOR ASBESTOS AT THE LIBBY ASBESTOS SITE
LIBBY, MONTANA (October 2006 to June 2008)

Document: Interim Guidance NOA at School Sites (DTSC) Section 8.8.4

8.8.4 Community Fenceline Monitoring

Community ambient air-monitoring stations should be used at school sites during soil removal and mitigation to measure dust and asbestos levels generated by onsite activities. The purpose of community monitoring is to ensure the effectiveness of the dust mitigation measures.

8.8.4.1 Asbestos Monitoring

8.8.4.1.1 Location and Number of Monitors

- Community reference monitor: one offsite non-directional monitor in a nearby location, such as a park or open space;
- Fenceline monitors: a minimum of two directional monitors should be placed on the property boundaries. The exact number of directional monitors, locations and air volumes should be determined by the DTSC project manager and Industrial Hygienist;
- Air samples should be collected in the breathing zone, approximately 5 feet above ground level.

Just before excavation or grading, the contractor should use a smoke tube or windsock to verify the wind direction at the site to determine where monitors should be placed. Monitoring stations may need to be moved if the wind direction changes. These methods should be used daily to best determine monitor locations.

8. Documents showing that best practice is to orient the collection device such that the filter is facing the source and not in the opposite direction.



Robyn Ray | *National Special Projects Manager*

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Document: (Page 27) PUBLIC HEALTH ASSESSMENT BoRit Asbestos National Priorities List Site Ambler, Montgomery County, Pennsylvania

Off-site Ambient Air samples (2010-2011)

Ambient air monitoring was conducted from November 2010 to October 2011, as part of the remedial investigation (Appendix B, Figure 11). Sampling was conducted at seven locations in the residential/commercial area surrounding the Site. One background location was used in Oreland, situated 3 miles southeast of the site, for each sampling event. In total, 14 sampling events were performed, with at least one event per month with a total of 98 samples. Each sampling event was 24 hours in duration and was analyzed via TEM and fiber sizes corresponding to PCM, AHERA, and Berman Crump protocol fibers were documented. PCME, TEM, AHERA and Berman Crump. Ambient air samples were not collected during a rain event. If rainfall exceeded 0.25 inches, EPA waited at least 24 hours to collect ambient air samples. If rainfall exceeded 0.5 inches, EPA waited at least 48 hours to collect ambient samples. This was done in an effort to capture a 'worst case scenario' based on dry conditions that could cause release or disturb asbestos in soil (EPA, 2012a).

Document: Site Wide Human Health Assessment Section 10. 1.5.1 pg. 10-7

Document FINAL Site-Wide Human Health Risk Assessment Libby Asbestos Superfund Site Libby, Montana

10.1.5 Uncertainty Due to Field Collection Methods

10.1.5.1 Air

There have been few changes to the basic air sampling methodology at the Site. A known volume of air is drawn through a filter that is inside an air sampling cassette which is either affixed to a stationary monitor, such as is done for the collection of ambient air samples, or to an individual, such as during the various ABS programs. While the sampling durations, pump flow rates, and ABS scripts varied depending upon the objectives of the investigation, the underlying air sample collection methods remain consistent. Even so, measurements of LA in air, especially under source disturbance conditions, are inherently variable. For example, measured outdoor ABS air concentrations during disturbances of yard soils ranked as Bin B1 (trace) span more than four orders of magnitude (EPA 2010d). This is not unexpected since the release of LA from soil to air can depend not only on LA concentration, but also upon multiple other factors, such as soil moisture content, vegetation coverage and condition, humidity, and intensity of the disturbance activity. This is not an inherent limitation of the ABS methodology; in fact, it is desirable for the collected data to span the range of air concentrations that may result during source disturbances under a variety of conditions, such that the resulting EPCs are representative of long-term exposures. **Recognizing the variability in asbestos air concentrations, the air sampling programs employed at the Site typically included multiple sampling events at each sampling location to better capture the range of sampling variability due to changing environmental and meteorological conditions.**

2. Why is it best practice calls for placing monitors around the compass rose points even if we are testing exposures in a particular location? Again, I need a document that shows this best practice.

Document: Interim Guidance NOA at School Sites (DTSC) Section 8.8.4

8.8.4 Community Fenceline Monitoring

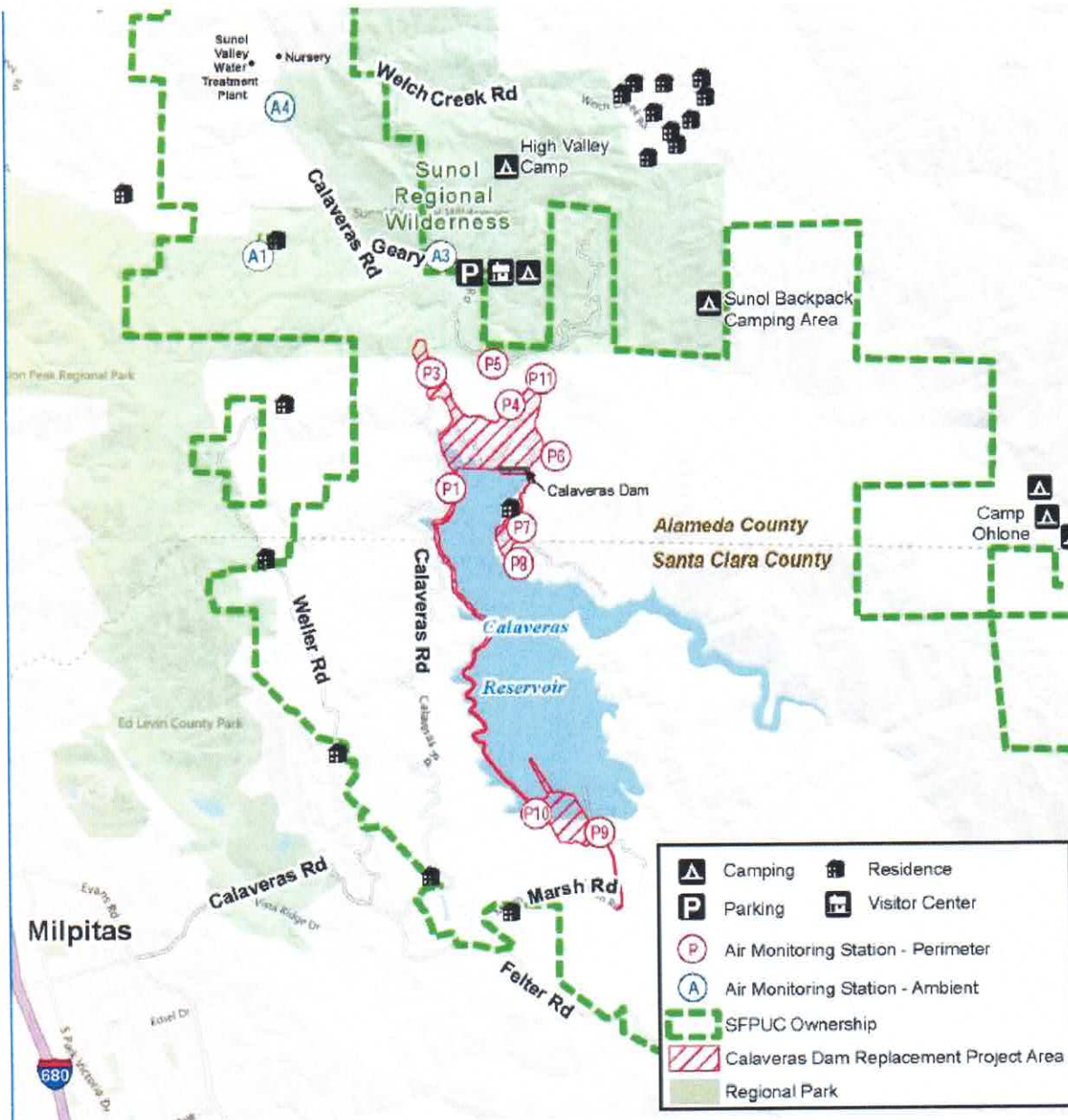
Community ambient air-monitoring stations should be used at school sites during soil removal and mitigation to measure dust and asbestos levels generated by onsite activities. The purpose of community monitoring is to ensure the effectiveness of the dust mitigation measures.

8.8.4.1 Asbestos Monitoring

8.8.4.1.1 Location and Number of Monitors

- Community reference monitor: one offsite non-directional monitor in a nearby location, such as a park or open space;
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- Air samples should be collected in the breathing zone, approximately 5 feet above ground level.

Just before excavation or grading, the contractor should use a smoke tube or windsock to verify the wind direction at the site to determine where monitors should be placed. Monitoring stations may need to be moved if the wind direction changes. These methods should be used daily to best determine monitor locations.



3. Is there a minimum fiberglass length or diameter below which neither PCM or TEM can detect? Documents on this and how fiberglass breaking/fragmenting is different from asbestos as regards creation of dust.

4. Documents showing how to set up and operate air sampling equip. I know EMSL has one; if you can give me the link, I can include it as evidence.

<https://www.emsl.tv/asbestossampling>

5. Can you send a photo of the air sampling equipment you have personally used to air test in the lab? Be ready to testify how long it takes to set up, what are and how long do the required steps take, and start and how frequently the equipment should be checked during an outdoor sampling period to make sure everything is operating correctly and how long such a check would take.

6. Importance of doing bulk sampling of possible source(s) of contamination before doing the air sampling.

7. Documents re breathing zone to rebut their contention that 3.5 feet high is within zone of someone either standing up or sitting down.

BoRit Asbestos NPL Site

Initial/Public Comment Release

PUBLIC HEALTH ASSESSMENT

BoRit Asbestos National Priorities List Site
Ambler, Montgomery County, Pennsylvania

Prepared by:

Pennsylvania Department of Health
Division of Environmental Health Epidemiology
Under a Cooperative Agreement with the
Agency for Toxic Substances and Disease Registry

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asbestos fibers are present, the fiber concentration was 0.0006 f/cc. Since the IRIS risk model is based on PCME data and with confirmed fibers by TEM analysis, PADOH cannot use the one detection from 2008-2009 ambient air results for a cancer risk analysis. However, overall, the ambient air sampling results, are similar and consistent with the air sampling results observed during the 2006-2007 air sampling events. In an evaluation of that air sampling event, PADOH concluded asbestos levels pose no apparent public health hazard to the community for cancer effects. Based on a review of the 2008-2009 air sampling data collected off-site, PADOH does not feel asbestos is migrating off-site at levels that would harm people's health.

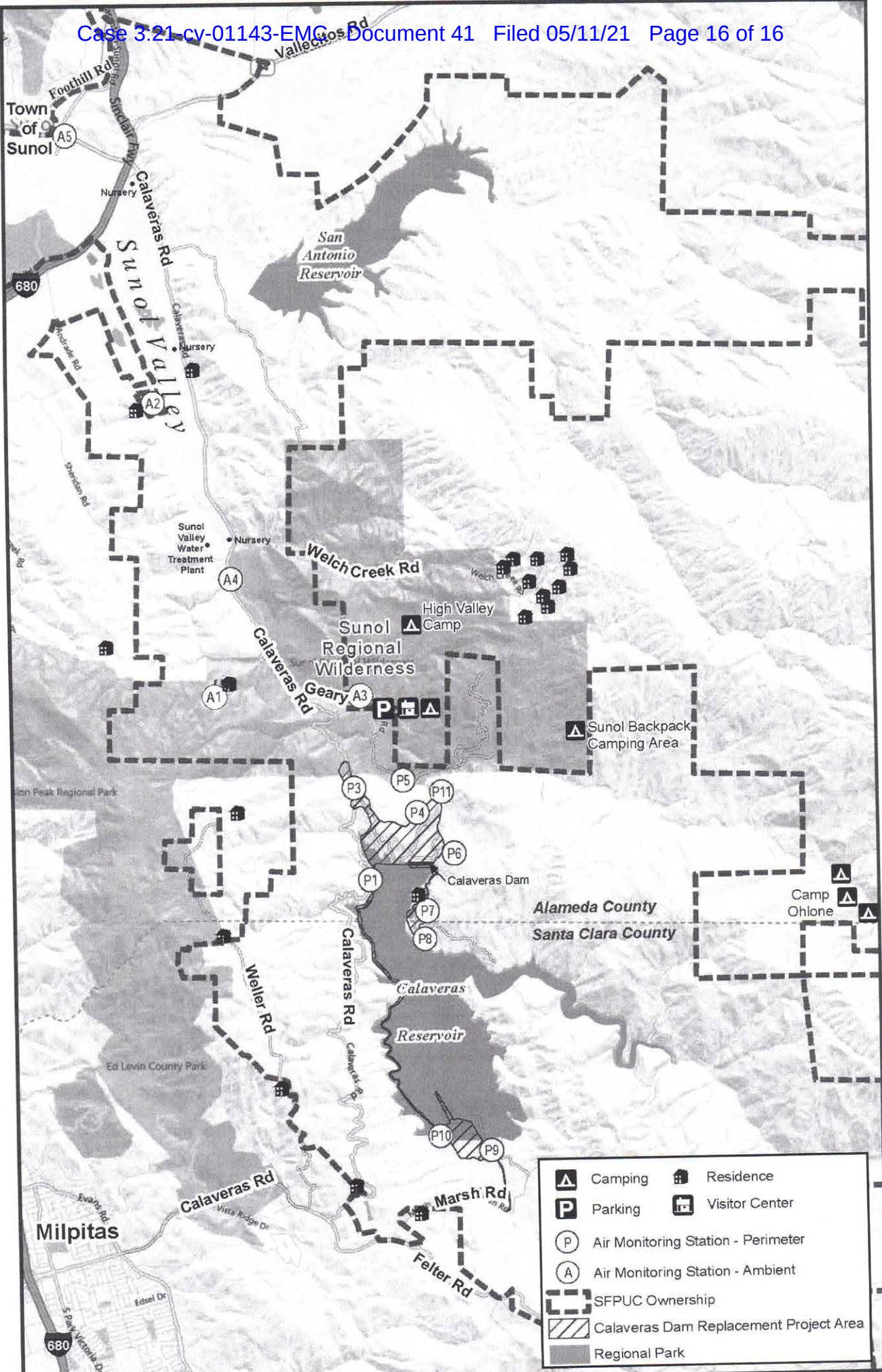
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Ambient air monitoring was conducted from November 2010 to October 2011, as part of the remedial investigation (Appendix B, Figure 11). Sampling was conducted at seven locations in the residential/commercial area surrounding the Site. One background location was used in Oreland, situated 3 miles southeast of the site, for each sampling event. In total, 14 sampling events were performed, with at least one event per month with a total of 98 samples. Each sampling event was 24 hours in duration and was analyzed via TEM and fiber sizes corresponding to PCM, AHERA, and Berman Crump protocol fibers were documented. PCME, TEM, AHERA and Berman Crump. Ambient air samples were not collected during a rain event. If rainfall exceeded 0.25 inches, EPA waited at least 24 hours to collect ambient air samples. If rainfall exceeded 0.5 inches, EPA waited at least 48 hours to collect ambient samples. This was done in an effort to capture a 'worst case scenario' based on dry conditions that could cause release or disturb asbestos in soil (EPA, 2012a).

PADOH evaluated the off-site air sampling data against a risk-based screening value of 0.001 f/cc. A summary of detections is presented in Appendix 4, Table 3. During the sampling event, asbestos PCME concentrations ranged from non-detect to 0.001 f/cc (Appendix C, Table 2). Asbestos fibers, via PCME analysis were detected in 3 samples (out of the 98 collected). These detections occurred at monitoring location 1 in September 2011 (0.001 f/cc), monitoring location 7B in August 2011 (0.00079 f/cc), and monitoring location 3 in August 2011 (0.00079 f/cc). No ambient results exceeded the screening value of 0.001 f/cc. Asbestos fibers were not detected at the background monitoring location.

Some off-site ambient air monitors did detect fibers, via the AHERA, TEM and Berman Crump methods as well. For example, the maximum concentrations of asbestos fibers were 0.0022 f/cc (location # 7B) for AHERA, 0.023 f/cc (location #7) for TEM, and 0.011 f/cc (location #7B) for Berman Crump method. In total, asbestos fibers were detected in 17 samples analyzed for AHERA and TEM and in 3 samples analyzed via Berman Crump. As stated previously, these counting methods are not currently used by EPA IRIS data, and cannot calculate a health risk. Based on the sampling data, PADOH do not believe asbestos is migrating off-site to the local community at levels that would harm their health. PADOH used the air sampling data to compute an estimated cancer risk for the community, as described further in the Public Health Implications Section.

PADOH plotted the maximum fiber concentration against the amount of rainfall in Ambler in the days and week prior to sampling (Appendix B, Figure). A summary of the rainfall data collected during the sampling event is presented in Appendix 3, Table 4. The PCME and AHERA counting methods were used, as this would show both the concentrations of asbestos for cancer risk and the potential presence of shorter fibers. Based on the sampling and precipitation data, the asbestos airborne levels do not appear to vary as a function of rainfall.



	Camping		Residence
	Parking		Visitor Center
	Air Monitoring Station - Perimeter		
	Air Monitoring Station - Ambient		
	SFPUC Ownership		
	Calaveras Dam Replacement Project Area		
	Regional Park		