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12 UNITED STATES DISTRICT COURT FOR THE  
13 EASTERN DISTRICT OF CALIFORNIA  
14 SACRAMENTO DIVISION

15 UNITED STATES OF AMERICA and  
16 THE CALIFORNIA DEPARTMENT OF  
17 TOXIC SUBSTANCES CONTROL,

Case No. 18-1536

18 Plaintiffs,

**COMPLAINT**

19 v.

20 REGENTS OF THE UNIVERSITY OF  
21 CALIFORNIA,

22 Defendant.

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of Toxic Substances Control*

1 The United States of America (“United States”), by the authority of the Attorney General  
2 of the United States and through the undersigned attorneys, and acting at the request of the  
3 Administrator of the United States Environmental Protection Agency (“EPA”), brings this  
4 Complaint together with the State of California Department of Toxic Substances Control  
5 (“DTSC”) (collectively referred to as “Plaintiffs”). Plaintiffs allege as follows:

6 **STATEMENT OF THE ACTION**

7 1. This is a civil action by the United States for injunctive relief and recovery of  
8 costs under Sections 106(a) and 107 of the Comprehensive Environmental Response,  
9 Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606 and 9607, related to the  
10 releases and threatened releases of hazardous substances contaminating soil, solid waste, and/or  
11 soil gas at Operable Unit 2 (“OU2”) or which have come to be located at OU2, a portion of the  
12 Laboratory for Energy-Related Health Research/Old Campus Landfill Superfund Site in Davis,  
13 Solano County, California (“Site”).

14 2. This is also a civil action by DTSC for recovery of costs under Section 107 of  
15 CERCLA, 42 U.S.C. § 9607, and to seek injunctive relief pursuant to sections 25187 and  
16 25358.3(e) of the California Health and Safety Code, related to soil, solid waste, and/or soil gas  
17 at OU2.

18 3. Plaintiffs have incurred response costs and expect to continue to incur response  
19 costs in connection with actions taken in response to releases and/or threatened releases of  
20 hazardous substances related to soil, solid waste, and/or soil gas at OU2.

21 4. Plaintiffs also make a claim under Section 113(g)(2) of CERCLA, 42 U.S.C. §  
22 9613(g)(2), for a declaratory judgment that the named defendant in this action, the Regents of the  
23 University of California (“University” or “Defendant”), is liable to Plaintiffs for future response  
24 costs incurred by Plaintiffs in responding to releases and/or threatened releases of hazardous  
25 substances related to soil, solid waste, and/or soil gas at and/or from OU2.  
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1 **JURISDICTION AND VENUE**

2 5. This Court has jurisdiction over the subject matter of this action and over the  
3 University pursuant to 28 U.S.C. §§ 1331, 1367, and 1345; and Sections 106, 107, and 113(b) of  
4 CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613(b).

5 6. Venue is proper in this district under Sections 106(a) and 113(b) of CERCLA, 42  
6 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b), because the claims arose, and/or the  
7 threatened and actual releases of hazardous substances occurred, in and around Solano County,  
8 within the Sacramento Division of the Eastern District of California.

9 **PARTIES**

10 7. Plaintiff the United States is acting at the request of EPA, an agency of the United  
11 States.

12 8. Plaintiff DTSC is a public agency of the State of California existing under and  
13 pursuant to sections 58000-58018 of the California Health and Safety Code. DTSC is a state  
14 agency responsible under state law for determining whether there has been a release and/or  
15 threatened release of a hazardous substance into the environment, and for determining the actions  
16 to be taken in response thereto.

17 9. Defendant the University is the governing board of the University of California  
18 system.

19 **THE SITE AND ITS OPERABLE UNITS**

20 10. The Site covers approximately 25 acres and is part of the University of California-  
21 Davis South Campus in Solano County. The Site contains laboratory buildings and undeveloped  
22 land owned and maintained by the University.

23 11. The Site was used as the location of multiple landfills; the University operated  
24 three landfill disposal units at the Site and sent waste to those landfill units in the 1940s through  
25 1960s. The Site was also used in the 1950s through the 1980s for studies of the long-term health  
26 effects of low-level radiation of laboratory wastes. The laboratory wastes were disposed in the  
27 landfills described above, as well as waste burial trenches and other locations at the Site.  
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1 These hazardous substances include, but are not limited to, radiological contaminants, metals,  
2 and volatile and semi-volatile organic compounds.

3 18. There were and are “releases” and threatened “releases” of hazardous substances  
4 at and from the Site into the environment, within the meaning of Section 101(22) of CERCLA,  
5 42 U.S.C. § 9601(22), and the Site poses threats or potential threats to human health and the  
6 environment.

7 19. The United States has incurred response costs, as defined in Section 101(25) of  
8 CERCLA, 42 U.S.C. § 9601(25), by responding to the releases or threatened releases of  
9 hazardous substances related to soil, solid waste, and/or soil gas at OU2. DTSC has also  
10 incurred response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and  
11 California Health and Safety Code section 25323.3, by responding to the releases or threatened  
12 releases of hazardous substances related to soil, solid waste, and/or soil gas at OU2. Such costs  
13 were not inconsistent with the National Contingency Plan, which is codified at 40 C.F.R. Part  
14 300.

15 20. Defendant University is the current owner of the Site.

16 21. At the time of the releases or threatened releases of hazardous substances  
17 described in Paragraphs 14 and 18, the University was the owner of the Site and operator of OU2  
18 of the Site.

19 22. At all times relevant to this Complaint, the University is or was “the owner or  
20 operator of a vessel or a facility” and/or a “person who at the time of disposal of any hazardous  
21 substance owned or operated any facility at which such hazardous substances were disposed of,”  
22 within the meaning of Sections 107(a)(1) and/or 107(a)(2) of CERCLA, 42 U.S.C. §§  
23 9607(a)(1), (2).

24 **FIRST CLAIM FOR RELIEF**

25 23. Paragraphs 1-22 are realleged and incorporated herein by reference.

26 24. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in  
27 pertinent part:

28 In addition to any other action taken by a State or local government, when the  
President determines that there may be an imminent and substantial endangerment

1 to the public health or welfare or the environment because of an actual or  
2 threatened release of a hazardous substance from a facility, he may require the  
3 Attorney General of the United States to secure such relief as may be necessary to  
4 abate such danger or threat, and the district court of the United States in the  
5 district in which the threat occurs shall have jurisdiction to grant such relief as the  
6 public interest and the equities of the case may require.

7 25. By Executive Order 12580 of January 23, 1987, the President's functions under  
8 Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), were delegated to the Administrator of EPA.

9 26. EPA has determined that there is or may be an imminent and substantial  
10 endangerment to the public health or welfare or the environment because of the release and  
11 threatened release of hazardous substances related to soil, solid waste, and soil gas contamination  
12 at OU2.

13 27. Pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, Defendant is liable for  
14 the remedial injunctive relief selected by the United States for soil, solid waste, and soil gas  
15 contamination at OU2.

16 28. Defendant is also liable to DTSC, pursuant to Sections 25187 and 25358.3(e) of  
17 the California Health and Safety Code, to take such action as is necessary to abate the danger or  
18 threat to health or the environment.

19 **SECOND CLAIM FOR RELIEF**

20 29. Paragraphs 1-28 are realleged and incorporated herein by reference.

21 30. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

22 (1) the owner or operator of a vessel or a facility,

23 (2) any person who at the time of disposal of any hazardous substance owned  
24 or operated any facility at which such hazardous substances were disposed of...  
25 shall be liable for –

(A) all costs of removal or remedial action incurred by the United States  
26 Government or a State not inconsistent with the national contingency plan...

27 31. Defendant is liable under Sections 107(a)(1) and/or 107(a)(2) of CERCLA, 42  
28 U.S.C. §§ 9607(a)(1) and (a)(2), as a person who owns or operates, or at the time of disposal of  
hazardous substances owned or operated, a facility at which hazardous substances were disposed  
of.






3. An order pursuant to sections 25187 and 25358.3(e) of the California Health and Safety Code requiring Defendant to take such action as is necessary to abate the danger or threat to health or the environment;
4. A judgment for all costs incurred by DTSC related to soil, solid waste, and/or soil gas contamination at OU2 through December 30, 2017, plus interest;
5. A declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), of Defendant's liability, which will be binding in any subsequent action against Defendant seeking to recover further response costs incurred by Plaintiffs in connection with soil, solid waste, and/or soil gas contamination at OU2; and
6. An order granting such other relief as the Court deems appropriate.

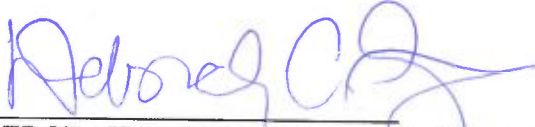
Respectfully submitted,

**FOR THE UNITED STATES OF AMERICA:**

Dated: 9/25/18

  
JEFFREY H. WOOD  
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Dated: 9/28/18

  
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**FOR PLAINTIFF THE STATE OF  
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TOXIC SUBSTANCES CONTROL:**

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Dated: September 28, 2018

/s/ Andrew Wiener (as authorized on 9/27/18)  
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