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February 24, 1984

Ralph A. Child  
Assistant U.S. Attorney  
U.S. Department of Justice  
District of Massachusetts  
1107 J.W. McCormack Post Office  
and Courthouse  
Boston, Massachusetts 02109

Re: Monetary Demand by the United States Under the  
Comprehensive Environmental Response, Compensation  
and Liability Act of 1980 Against Federal Pacific  
Electric Company

Dear Mr. Child:

This letter is in response to your letter of February 17, 1984 to Federal Pacific Electric Company ("FPE"), in which you presented a claim on behalf of the United States under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") with respect to hazardous substances that allegedly have been released into New Bedford Harbor from a facility owned and operated by Cornell-Dubilier Electronics Co. ("CDE"). The United States asserts that FPE is liable under CERCLA on the ground that CDE is a former corporate subsidiary of FPE.

The manner in which the United States has presented its claim against FPE does not comply with the procedural requirements of CERCLA. Section 112(a) of the Act, 42 U.S.C. §9612(a), mandates that all claims asserted pursuant to section 107 of CERCLA, 42 U.S.C. §9607, shall be presented to those persons allegedly liable, and specifies that only "where the claim has not been satisfied within sixty days of presentation" may the claimant elect to commence an action in federal court to recover the claim.

Your letter of February 17, 1984 stated that FPE should contact you no later than five days after the date of your letter if FPE desired to discuss with the United States its alleged liability of \$3.5 million, plus additional sums which may be expended in the future. You went on to state that FPE's failure to accept the liability asserted "is likely to result in the filing of an amended Complaint in the action now pending in the United States District

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Court for the District of Massachusetts...." I telephoned you on February 22, 1984 on behalf of FPE to request a meeting with the government to discuss its demand. You responded that the government had made a firm decision to file the amended Complaint by February 27, 1984, and that any meetings between the United States and FPE should be held thereafter.

The filing by the United States of the original Complaint in the action now pending against FPE and others in Massachusetts was not preceded by presentment to FPE of the government's claim as required by section 112(a). The government's initial failure to satisfy the presentment requirement of section 112 is now compounded by the government's failure to provide FPE with the required time in which to consider the government's claim for response costs. Your letter asserts that notice of the government's claim "was given to a representative of FPE on December 9, 1983." This reference can only refer to the mailing of the summons and Complaint in the pending action to a former official of FPE. \*/ The original Complaint, however, gives no notice of the demand now presented for response costs, as the claim asserted in that Complaint is limited to a claim for damages for alleged harm to natural resources.

Although it is beyond the scope of this letter to discuss the legal merits of the government's claims against FPE, FPE maintains that the United States, like any other claimant, must comply with the requirements of section 112 in presenting its claims under CERCLA. The time frame set forth in your letter deprived FPE of the period provided by statute in which to consider the government's demands and realistically precluded any meaningful discussions between FPE and the United States. Such a result clearly was not intended by Congress when it established the time frame in section 112, in order to promote opportunities for settlement and to avoid the burdens and delay of litigation.

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\*/ This mailing failed to satisfy the requirements of the Federal Rules of Civil Procedure for serving process. The United States subsequently served C.T. Corporation, a duly appointed agent of FPE, with another copy of the summons and Complaint in order to effectuate service of process.

MORGAN, LEWIS & BOCKIUS

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February 24, 1984

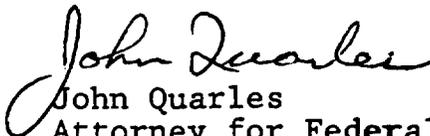
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In addition to the government's apparent disregard of the notice requirement of the statute as cited above, there is a serious question as to whether the governmental response actions to the New Bedford situation have been consistent with the National Contingency Plan or with the statutory requirements of CERCLA. It is contrary to basic equitable considerations for the government to seek liability under a statute without complying with its own obligations under that statute.

We are further surprised by the statement in your letter that costs incurred by the government "currently exceed \$3.5 million." In view of the fact that EPA has not yet issued a final Remedial Action Management Plan and that no meaningful opportunity has been afforded to the potentially responsible parties identified by the government to evaluate or comment upon specific proposals for studies or other actions, it seems extraordinary that costs of such magnitude could already have been incurred. It is wholly inappropriate for the government to undertake such costly actions if it intends to hold other parties responsible for those costs without discussing those actions with such parties and providing an opportunity to assure that the actions are cost effective as required by the National Contingency Plan.

We protest the actions of the government in disregarding the requirements of section 112(a). The government can satisfy the jurisdictional requirements of section 112(a) only by providing FPE with the mandatory sixty days in which to consider the government's claims, and only in the event that FPE does not satisfy those claims within sixty days is the United States authorized by statute to proceed against FPE by commencing suit.

Sincerely yours,



John Quarles  
Attorney for Federal Pacific  
Electric Co.

JQ/tlh