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March 21, 2012

Dear WTCHP STAC Members:

Let me begin by thanking each of you once again for your work on behalf of the World Trade Center Health Program (WTCHP) Scientific/Technical Advisory Committee (STAC). I know you have all been preparing for next week's Committee meeting in anticipation of sending me your recommendation on whether cancer or specific cancers should be added to the list of WTC-related health conditions eligible for treatment under the WTCHP.

I understand that in your efforts to prepare a scientific basis for your recommendation, committee members submitted language and materials to the committee chair for compiling in a draft document which you all will deliberate upon at your March 28, 2012 meeting and which will be made available to the public in advance of the March 28<sup>th</sup> meeting.

Given the timeline limitations imposed by the Zadroga Act (the Act allows a maximum of 180 days from the date of the WTC Program Administrator's request for the Committee to submit their recommendation on the addition of a condition to the Administrator, see 42 U.S.C. § 300mm-22(a)(6)(C)) and constraints on the Committee's time and available budget, this work of compiling a draft was completed through a series of emails.

These emails constituted preparatory work on the part of the committee in advance of the March 28<sup>th</sup> committee meeting. Although such email exchanges may represent a less than ideal process for gathering a working draft for the committee to debate and deliberate upon during its subsequent public meeting, regulations governing Federal Advisory Committee Management clearly allow for such work on the part of a Committee (or subset thereof) and exclude it from the procedural requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.

"Preparatory work" is specifically defined in 41 C.F.R. sec. 102-3.160 as "Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee," and is explicitly not subject to the notice and open meeting requirements of FACA.

It has come to my attention that there may be concern that this preparatory work, conducted via email, constitutes committee deliberation and that the committee could have reached a decision on various points or issues in the draft report without the benefit of the public meetings required by FACA. It is unfortunate that the email exchanges may have created the perception that any recommendation or sub-issue to the recommendation has been decided. An email string of discordant view points from individual committee members written in an effort to submit issues, materials, and concerns in preparation for a full committee meeting cannot be understood to foreclose any discussion or represent consensus action on the part of the whole committee.

I fully expect and anticipate that the Committee's meeting on March 28<sup>th</sup> will include a robust discussion of all issues and viewpoints of the committee members and that no final decision on the report or any part of that report has been decided upon by the full membership of the STAC in advance of its March 28<sup>th</sup> meeting.

I am committed to ensuring the Committee operates in accordance with the procedural requirements of FACA. I have directed the Designed Federal Official for the Committee to explore additional technologies which may assist in compiling preparatory work in the future and to respond to any inquiries about the committee's work in this matter.

I look forward to your public meeting on the 28th and your subsequent recommendation.

Sincerely,

[Signature on File]

John Howard, M.D.  
Administrator, World Trade Center Health Program