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CERCLA Cleanup: Comments to CDPH Parcel A Scanning Plan

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DATE: July 13, 2018

TO: California Department of Public Health Radiological Health Branch

RE: Greenaction for Health and Environmental Justice Comments on Work Plan for Parcel A, former Hunters Point Shipyard Superfund Site

Introduction

The Environmental Law and Justice Clinic of the Golden Gate University School of Law submits the following comments on behalf of Greenaction for Health and Environmental Justice, its members constituents in Bayview Hunters Point, San Francisco.

Greenaction calls on the California Department of Public Health to immediately stop its current plans for limited scanning at Parcel A of the former Hunters Point Shipyard where hundreds of residents now live. A plan for limited scanning, with no formal public comment period, is unacceptable and will only inflame the community's well-founded belief that the entire shipyard "cleanup" has lacked integrity and transparency.

The CDPH claim that they have provided public comment opportunities does not meet the basic definition of a meaningful public comment period. Merely speaking at a Parcel A homeowners meeting, while important, is not enough. There should have been a formal public comment period with adequate time to submit comments. In addition, Parcel A residents are not the only area residents impacted by the Parcel A testing issues and contamination concerns. The entire community has a vested interest in ensuring that testing at Parcel A be comprehensive and done properly, with independent community oversight.

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The CDPH plans to start work on Monday, July 16, 2018, conducting surface scanning for some radioactive contaminants only in publicly accessible areas. In the face of the massive fraud committed by Tetra Tech, and intense public pressure, City officials called on the state to conduct testing at Parcel A. Greenaction joins residents of Parcel A and the surrounding community in outrage that CDPH is refusing to conduct comprehensive soil sampling under the surface and under homes, a key demand of the community.

Comprehensive soil sampling should be conducted in all areas under and near Parcel A, and throughout the shipyard and adjacent areas. While scanning can play a role, merely scanning in publicly accessible areas is not only inadequate, but raises concerns that this approach will continue the cover-up of the fraud and botched cleanup that has cost taxpayers hundreds of millions of dollars and potentially endangered public health and the environment. As Greenaction, community groups, and residents have stated verbally and in writing for several years, there must be comprehensive core soil sampling going far below the surface. Sampling should be conducted for the wide range of radioactive and hazardous constituents that may be present. Sampling should be conducted with full community oversight, with funding provided to the environmental justice and community groups that have worked for years for a better cleanup so they can hire independent technical experts.

CDPH must carry out its mission to protect public health. That requires conducting comprehensive soil sampling for toxic and radioactive contamination throughout the site, not just in public accessible areas. The sampling plan needs to be publicly reviewed, with meaningful opportunities for public comment. Anything less will be a disaster and exacerbate community mistrust caused by the massive fraud that has plagued this project.

Parcel A Contamination

The Navy, regulators, the City and the developer have long assured the public there was never any evidence of radiological contamination at Hunter Point Shipyard,

Parcel A. Apparently, these assertions were based on a single van-based scan of the area which failed to find elevated radiation. We have recently obtained the report on the scanning van effort, *Radiological Scanner Van Survey, Hunters Point Naval Shipyard, California, September 9-12 2002*. To our shock and dismay, we have discovered the scanning van's "investigation" was an utter failure; it could not prove whether there was contamination or not. Citing the *Scanner Van Survey* as proof there was never any radiological contamination of Parcel A is misleading, at best.

First, the "van scanner" was an experimental technology in 2002. Despite that, the report fails to address, let alone prove, that the scanner van even worked. For example, no data is offered to authenticate the van's capacity to identify elevated levels of radiation; no data were reported showing the van could identify known sources of radiation in soil. Absent scientific proof the van was capable of performing its intended purpose, its "results" are mere speculation.

Second, in addition to finding no evidence of radiological contamination on Parcel A, the van scanner found there were no radiologically-impacted areas **anywhere** it scanned on the shipyard. As the report's cover letter states, in addition to Parcel A the van scanned "areas of Parcel B, Parcel C, and minor portions of Parcel D and E." It concludes, "Based on the scan results, **none of the areas which were scanned warrant further radiological investigation.**" And yet taxpayers have spent hundreds of millions of dollars and the Navy has spent more than a decade remediating those very parcels. Either the Navy spent all that time and all those millions without cause or the van scanning results were wrong.

Furthermore, there is eyewitness evidence the van scanner was useless. Bert Bowers, a highly-qualified health physicist, participated in the van scanning and told the Navy, et. al., the whole experiment was a fiasco.

In short, the van scanner offers no proof Parcel A escaped radiological impact. And yet, the Navy, regulators, the City and the developer have all insisted for years that it did.

Is there any wonder why the community has come to distrust the integrity of the cleanup?

In fact, the Navy et. al., now know that there was, indeed, radiological contamination of Parcel A. Mr. Bowers provided his recollection of sampling the two sewer systems' manholes and he also provided documentary evidence that the samples he took contained excessive levels of radiation requiring further investigation and potential remediation that was never done.

To the best of our knowledge, the two sewer systems he sampled were removed in preparation for the development of the residences that now exist on Parcel A. No radiological safety precautions were taken during their removal despite clear evidence of contamination. Furthermore, there are no "institutional restrictions" on digging or planting gardens including edibles on Parcel A, unlike the other Parcels which will all have such restrictions forever. As a result, residents of Parcel A who dig or plant gardens may unknowingly be exposed to excessive radiation or ingest it if they plant fruit trees or other vegetation intended to be eaten. The construction workers who have dug the foundations and installed the underground utilities on Parcel A may all have been exposed to radioactive contamination due to the failure of proper testing and remediation.

As indicated above, the Plan fails to address the evidence of underground contamination. Thus, at the conclusion of the scanning CDPH will not be able to opine on whether residents can be exposed to unsafe levels of radiation if they dig in the soil to plant gardens or ingest garden produce grown in that soil. Workers who continue to dig foundations and work in trenches continue to be at risk, as well as the residents who may be exposed to the soil brought to the surface by the excavation. Until the contaminated sewer systems and associated soils are accounted for, no one will be able to assure residents that they will be protected from potential future exposure if that soil is disturbed.

The contamination that existed on Parcel A must be fully investigated. CDPH's scanning plan utterly fails to do so. Confronted with evidence of possible soil

contamination, instead of soil sampling where there is evidence of prior contamination, CDPH's response is to do limited surface scanning in completely different locations. It's the radiological equivalent of a *non sequitur*.

Such an effort cannot be taken seriously.

A serious effort to investigate would require the following minimum steps:

- **Developed Areas**
 - Reconstruct the exact location of the manholes Bowers sampled:
 - Obtain historical maps showing the previously existing street grid and sewer systems;
 - Locate the manholes Bowers sampled;
 - Review records to determine where the sewer lines and associated soil were disposed;
 - Determine the current depth below ground surface of the prior sewer system and manholes;
 - Superimpose a current map of Parcel A's streets and residences over the historical maps showing the sewer systems and manhole Bowers sampled to identify appropriate core sampling locations and depths;
 - Write a sampling plan intended to fully and systematically characterize the radiological nature of the soil in Parcel A, including analysis of soil taken from an appropriate range of depths by core sampling.
 - Publish the sampling plan and provide at least 30 days for public comment.
 - Hold a public meeting within the comment period to take oral comments on the sampling plan.
 - Revise and publish the sampling plan specifically responding to each concern raised by any comment.
- **Investigate Anthony Smith's Parcel A sample**
 - Verify that the replanting project in the area did not extend to the location where Smith took the sample finding high levels of cesium.

- Write a sampling plan intended to fully and systematically characterize the hillside where Smith took the sample, including analysis of soil taken from an appropriate range of depths by core sampling.
- Publish the sampling plan and provide at least 30 days for public comment.
- Hold a public meeting within the comment period to take oral comments on the sampling plan.
- Revise and publish the sampling plan specifically responding to each concern raised by any comment.

If surface scanning was necessary, CDPH's plan is still woefully deficient.

- **Location:**

Although the historical record indicates that major portions of the hill that comprised Parcel A were bulldozed down the hill into neighboring ravines to level the area for development, CDPH is exempting these areas, claiming without evidence that steep slopes are "considered impassible." Considered by whom using what criteria? CDPH fails to even identify what areas of Parcel A have steep slopes that will not be scanned. It would be a simple matter to include such a map, but CDPH does not bother.

CDPH also lamely excuses itself from scanning undefined hilly areas because it "would require specialized equipment that CDPH Radiological Health Branch (RHB) does not own." Either CDPH should acquire or rent the proper equipment necessary to conduct a serious investigation or it should admit it is technically incapable of doing so.

- **Scope:**

The Plan states: "The CDHP is performing this health and safety survey to ensure that residents of Parcel A-1 are not expose to unsafe levels of radiation above background." (p.8) If that is the goal, why then is the notification Plan only triggered "[I]n the event that a radiation measurement greater than background

average plus three sigma is found...”? (p.9) CDPH should explain why it chose this trigger level.

The Plan also appears to leave the location for background sampling to be left to the discretion of the surveyor; there are no criteria for selecting one area over another. Considering the history of radiation contamination at the shipyard, determining an appropriate location for background sampling is no simple matter. Yet CDPH fails to address this complex question.

Incredibly, CDPH arbitrarily excludes investigation of alpha or beta radiation; it only intends to perform a gamma survey. CDPH provides no factual rationale for this decision. In particular it does not address, let alone refute that alpha and beta scans can be useful in identifying radionuclides of concern.

The Plan also excludes all areas where vegetation is greater than four inches in height (p.8), without explanation or rationale. The plan fails to provide for any weed cutting to allow for greater scanning.

The plan refuses to conduct any scanning, testing or evaluation of Parcel A-2, claiming the entire area is inaccessible. However, trucks regularly traverse Parcel A-2 and large sections of Parcel A-2 are walkable, with limited vegetation. A-2 must be included in a comprehensive testing program.

- **Equipment**

The survey equipment is not sufficient to engage in a surface scan. For surface scanning, two forms of equipment are minimally necessary and are not included in the equipment listed in the RHB disclosure. The Radiation Solutions Inc. has much more sensitive systems than the RS-700 system listed in the RHB disclosure. The radiation Solutions Inc. system that should be used is the RSX-3 detector with the RS-701 and RS-501 for gamma detection. The RSX-3 houses 12 thallium activated sodium iodide scintillator crystals 2”X4”X16”. Each RSX-3 unit contains 3 scintillators. The system RHB has proposed is not sufficiently robust for the scanning results proposed.

In addition, the failure to plan to use High-purity germanium (HPGe) gamma-ray spectrometers is fundamentally defective. HPGe detectors are significantly more sensitive than the detectors RHB has proposed. HPGe detectors were used at Hunters Point for scanning assurance. HPGe detectors should be used by individuals trained, experienced, and qualified on the instrument.

- **Notification Plan:**

As stated above, CDPH should explain the rationale for triggering the Notification Plan only if radiation is detected above background plus three sigma. It also is only triggered if an “anomalous measurement” has been confirmed. The Notification Plan should be triggered for all anomalous samples to enable oversight of the confirmation process by the Navy, EPA, other regulators and the public.

CDPH also skips all description of the timing or personnel required to respond to anomalous samples; the plan should require that all confirmatory steps be taken as close to the time of the anomalous reading as practicable on the same day as the anomalous reading is taken. Confirmation of any suspected anomalous sample should be done by personnel who were not involved in taking the anomalous sample so as to prevent the possibility of bias.

Finally, the Notification Plan should require that the public be notified of any anomalous samples in addition to the Navy and regulatory agencies. If the Navy performs any radiological characterization of Parcel A, or any part thereof, the Navy’s Plan must include regulatory approval and public participation.

- **Conclusion**

CDPH’s surface scanning plan is not a serious effort to investigate credible evidence of historical radiological contamination of Parcel A. Rather, CDPH’s plan is a public relations stunt to attempt to assuage the fears of residents and the community by *appearing* to do something.

No one should be under any illusions that a surface scan will suffice as a response to legitimate concerns raised by the evidence of contamination. When the surface

scanning is over, we will be no closer to properly investigating the possibility that sewers and associated soils may have been contaminated and it will still be incumbent on the Navy, regulatory agencies and the City to investigate soil contamination of Parcel A.

Respectfully submitted,

Date: July 13, 2018



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