

Hazardous Materials Commission

Draft Minutes **Operations Committee**

February 10, 2023

Members and Alternates

Present: Tim Bancroft, Marielle Boortz, Maureen Brennan, Fred Glueck, Steve Linsley,

Absent: Labor seat (vacant), City Seat (vacant)

Staff: Michael Kent

Members of the Public: Jan Warren, Shoshana Wechsler

1) Call to order, announcements:

Commissioner Glueck called the meeting to order at 10:03 am.

Michael Kent announced:

- The annual Commission meeting with Supervisor Andersen is on February 15th at 1:30.
- The Board of Supervisors had decided that all Commissions must start meeting in-person with a remote option in March. More details will follow.
- The next Board of Supervisors Sustainability committee is on February 17th at 10:00 am.
- The next Board of Supervisors Ad Hoc ISO/CWS meeting is on February 21st at 9:00 am

2) Approval of Minutes:

Approval of the minutes from the January 13, 2023 meeting were moved by Commissioner Brennan, seconded by Commissioner Linsley and approved with corrections by a vote of 5-0.

3) Public Comments: None

4) Old Business: None

5) New Business:

a) Presentation on the history and activities of the Richmond Southeast Shoreline Area Community Advisory Group.

Commissioner Steve Linsley, who represents the Richmond Southeast Shoreline Area Community Advisory Group on the Commission, gave the presentation. He started out by stating that the fact that Richmond is an Environmental Justice community is the context in which all the activity that has occurred around this site must be understood.

He further explained that when Zeneca closed its Richmond manufacturing facility (sulfuric acid, pesticides, etc.), in 2001/02, the Regional Water Quality Control Board issued a cleanup order to Zeneca and the adjacent UC facility. Zeneca's consultants declared the two properties a single unit, razed buildings, excavated soil, hauled off some contaminated soil and mixed the rest with stabilizing agents and UC's mercury-contaminated soil. A developer planned a 15-story residential complex with fans to blow away volatile organic compounds (VOCs). The community flew into action with protests and meetings and got the legislature to transfer the regulatory oversight from the Regional Water Quality Control Board to the Department of Toxic Substances Control (DTSC).

Community leaders Sherry Padgett & Ethel Dotson met with DTSC to form a Community Advisory Group (CAG), which was initially a great partnership. DTSC kept carrying out the original remediation plan while starting public meetings with 26 CAG members chosen with Ethel & Sherry. The CAG elected a chair and secretary and formed committees (by-laws, elections, toxics) but didn't incorporate as a nonprofit. The CAG insisted on advising DTSC on all of their sites on the southeast shoreline. DTSC met monthly in City buildings with the CAG and mailed out meeting announcements every time to the community.

This great relationship ended when DTSC retrenched and the top-notch community outreach team evaporated. After that, the positions at DTSC turned over a lot. At the CAG's urging, DTSC let the CAG use some of Zeneca's funds to hire CAG support (3 technical advisory firms and a note-taker), but after that pot of money ran out, DTSC didn't even send out meeting notices anymore.

Meanwhile, DTSC allowed the Making Waves school program to remain on the Zeneca property even though the land use restrictions forbid schools. When DTSC was taking the CAG on a site tour, we saw kids wrestling in the site's dirt outdoors. DTSC sprang into action and evicted the school from the contaminated property (finally very cooperative on the part of DTSC).

The Developer developed complications and pulled up stakes, leaving the property in limbo for years. The CAG soldiered on, meeting monthly with DTSC and writing critiques of the various Responsible Party's reports. DTSC rebutted these reports and failed to post those CAG comments on Envirostor to balance the polluters' opinions that are posted. DTSC levied fines on Zeneca and UC for creating an unlicensed hazardous waste landfill and other hazardous waste violations, but has never required a complete cleanup of that landfill as a remedy.

DTSC had told the CAG that the only way Zeneca would have to completely clean up their property, as opposed to meeting simply industrial or commercial standards, would be to have it zoned and planned for residential use. During 2 different city council terms from 2014 to 2017, the City Council and the City manager did just that. The City then began meeting regularly with DTSC in Sacramento. In 2019, however, a new City Council accepted a plan by a new developer to leave most contaminants on site, proposing blowers under homes to protect future residences from the remaining Volatile Organic Compounds (VOCs) in the soil.

During COVID, the CAG only met by Zoom, with DTSC attending just half the CAG meetings. However, DTSC staff gave the CAG's positions more support and is being more responsive to

the CAG's concerns. The Community Engagement Specialist, Asha Setty, is pulling together a mailing list to notify the community of CAG meetings again.

Commissioner Linsley reflected on what the community has gained from having the CAG in place. He felt that it was good that they helped remove the Regional Water Quality Control Board as lead agency, and now the CAG has a better relationship with DTSC. They got a safer location for the Making Waves school to be. And they were able to halt of development of the site without requiring complete removal of unsafe hazards first.

Commissioner Linsley also explain where things stand now. He said the community demands complete cleanup to residential standards before residences are built. Otherwise, future residents will be exposed to 80% of the contaminants at the site. He said elements within DTSC are open to the CAG's point of view and so are opposing the new developer's resistance to putting up financial assurance and to rewriting plans for sea level rise, VOC and arsenic standards.

He said that DTSC was supposed to ask for 50 million dollars assurance for the clean-up plan. The developer is opposing this and wants it to only be 13 million dollars. The Developer wants industrial and commercial clean-up levels (but still want to have residential use using blowers under the units as mitigation). DTSC wants tighter standards to address sea level rise and groundwater rise. During recent rains, part of the site was covered by water. Also, because of groundwater rise, DTSC is going to require new VOC and arsenic standards greater than what the Responsible Party wants.

DTSC and the responsibly party are in a stand-off. DTSC keeps setting new timelines for the Developer to submit their clean-up plan. It has been over a year and a half since the clean-up plan was due, so the CAG is asking DTSC to do an enforcement action to require the Responsible Party to comply. In sum, he feels this is still an Environmental Justice issue. This concluded his presentation.

Commissioner Glueck asked since the City approved the zoning for the site, and if the Developer cleans up the proper to the required standards for that zoning, why does the CAG challenge this? Commissioner Linsley said the current City Council want residential clean-up standards for the site because that is what the site is currently zoned for. DTSC understands this and wants to satisfy this zoning's clean-up requirements. But the Developer only wants to clean up the site to commercial standards. Commissioner Glueck then asked why DTSC would allow this? Commissioner Linsley said that if the City Council supports residential zoning at the site then this is the clean-up standard that should be required. The CAG is taking this position because they want to protect the health of future residents.

Commissioner Glueck then asked if the Developer got the clean-up standards they want, wouldn't that expose them to lawsuits? Commissioner Bancroft interjected that they could propose mitigations and negotiate a clean-up level. Commissioner Linsely added that the City and the Developer have a site Development agreement which puts pressure on the City to agree to the clean-up standards negotiated by the Developer with DTSC.

Commissioner Boortz asked if the CAG has any funds to operate. Commissioner Linsley said they tried to get a grant recently with a UC Berkeley Professor to look at the sea level rise impacts issue, but they didn't get it. There is no process for getting more funds.

Commissioner Linsley was asked what happened to the membership of the CAG over the years. He said that originally there were 26 members, but there are only 12 left. He said they have gotten some new members over the years. He said people have either burned out or have passed away. He said there are currently some vacancies on the CAG. There are some seats for specific neighborhoods and some for various sectors. They are currently trying to recruit residents to apply.

Jan Warren asked who the responsible party is for the site. Commissioner Linsley said that the responsible party is AstraZeneca, and the developer is HRP. The Southern Pacific Railroad is the responsible party for the Blair Landfill next to the site which contains material from Zeneca. The University of California has the responsibility for the UC Berkeley field station next door, which contains mercury contamination from a previous owner and has some material from Zeneca on it.

Commissioner Brennan said that if the site still contains VOCs and Vinyl Chloride then it needs to be cleaned up to residential standards. She wanted to know what are the elements of the new clean-up plan being proposed by the developer. Commissioner Linsley said that most of the contaminated soil has been dug up. They want to suck up remaining soil vapors with fans. Now they are proposing to add organic chemicals to the coil to convert chlorinated solvents to less toxic compounds, and to do more later if needed.

Commissioner Glueck said that he has been aware of the site for many years and his grandfather even met Mr. Stouffer. But what really interests him are how best to do the community engagement process and from the community perspective, how to combine what is required from a legal perspective with the community's interests.

Shoshana Wechsler commented that the bottom line is that real remediation is really costly. Two and one half years ago, DTSC advocated for a moderate remediation. They said there would be problems with transferring hazardous soil that the cost of real remediation would be too high for the developer. So there should be a cheaper solution. She was upset by that and thought they should focus only on the environmental impacts. The problem is, she thought, that we are not looking at doing this. In California, we are trying to accelerate the pace of constructing new housing, so we have to invest in doing clean-ups the right way. She said the Shoreline Alliance is looking for funds to do more advocacy around clean-up issues.

Commissioner Linsley clarified that the site did qualify for the Federal National Priority List, but the EPA turned it over to the state to lead the clean-up.

Commissioner Brennan said she was surprised the City of Richmond rezoned the land for residential use. The cost of remediation is so high for sites that some communities are moving towards requiring what are known as Fossil Fuel Risk Bonds that can require money to be set aside to pay for clean-up activities in the future.

Commissioner Glueck added that clean up can sometimes be complicated by contaminants from near-by sites that can migrate.

Commissioner Linsley said that people need to be educated on what is going on at sites near them. The CAG has spent lots of time on the Bay Trail near Zeneca talking to people who didn't know what was going on there. Once educated, then these people can decide for themselves what they think ought to be done.

Jan Warren asked if there were groups in East County working on contaminated site issues. Michael Kent said that he didn't think so.

Shoshana Wechsler offered that in 2004 East County residents came together to oppose the re-use of the old PG&E oil storage tanks by WestPac, but that effort wasn't sustained. But she added that the City of Antioch is doing a lot of work around sustainability. Also, the County had done some brownfield inventorying for a study of potential solar farm development through the Sustainability group at the Department of Conservation and Development. In addition, the City of Brentwood is hoping the County will put a stop to Oil and Gas drilling in East County. Michael Kent mentioned that a group of residents and others came to the Commission a couple of years ago to discuss this issue and the update to the County General Plan is also going to address the development of oil and gas wells on agricultural land.

The committee thought it would be good to know how many contaminated sites there are in the County, how many have been developed and how many have had their zoning changed over time.

Commissioner Glueck thanked Commissioner Linsley for his report.

b) Review the DTSC guidance for incorporating sea level rise and groundwater rise into remediation projects

This item was not discussed because the guidelines have not yet been published.

6) Plan Next Agenda: The committee will interview candidates for the Environmental Justice Alternate seat, vote for chair and co-chair, and perhaps have an update on either the CWS or the pharmaceutical ordinance.

7) Adjournment: The meeting was adjourned at 12:00 pm.