

DOES NEW INFORMATION SHOW A DEVELOPER MISLED THE CITY?

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In 2018 City Council approved the “Pasadena Gateway” project on an un-remediated US Navy toxic-waste site, as the city needs affordable housing, and the developer repeatedly and publicly promised to “**safely clean up the site.**”¹ Given his promises, city officials also repeatedly promised that the “site will be cleaned up.”² On **3-8-19**, DTSC released its CEQA Findings and the developer’s Removal Action Work Plan (RAW).³ The documents have led to **new information** that now requires investigation, thus re-opening the CEQA process. They also suggest the developer may have **misled the city** about project safety.

1. There is **new information** that **the site was never tested for RDX or TNT**, potent neurotoxins and carcinogens.⁴ RDX and TNT are regulated by the state,⁵ the main ingredients in 71%⁶ of weapons manufactured onsite---weapons listed in the RAW **released 3-18-19.**⁷
2. There is **new information** that the site was never tested for perfluoralkyls, fire retardants used at 660 US military sites.⁸ CA has regulations for perfluoralkyls,⁹ as they are associated with **cancer, neurodevelopmental harm to children, and cardiovascular disease.**¹⁰
3. There is **new information** that state experts disagree with Pasadena’s partial, post-construction, toxic-site-cleanup plan. On **3-13-19** Anthony Zampiello, the Watermaster for the San Gabriel and Raymond Basins, said: "From our experience at other cleanup sites, the most thorough and best way to handle a site---of this type---is for site-cleanup work and supervision of work to be conducted by an **independent party.** It's easier and cheaper to **clean up the site now** rather than later, after construction."¹¹
4. In the developer’s RAW, **released 3-8-19**, the developer admits that “it is **unknown**” **whether site carcinogens** “will continue to present” health threats to residents,¹² despite his earlier safety promises, because most site carcinogens will be “left in place.”¹³
5. Based on the developer’s promises, city officials said on July 9, 2018 that the developer would do “excavation of all contaminated soil onsite.”¹⁴ Now the developer says most site **carcinogens will be “left in place;”** only several suspected hotspots will be excavated.¹⁵
6. In the developer’s RAW, **released 3-8-19**, the developer admits that because he is doing only partial, post-construction testing/cleanup, instead of full, pre-construction testing/cleanup, therefore site residents could be exposed to **increased cancer risks “for more than a year,”** until site carcinogens are removed.¹⁶
7. Despite the developer’s safety promises, his RAW, **released 3-8-19**, now admits that he **wants partial (not full) cleanup, as it costs \$1-2 million less** (half the cost¹⁷ of full cleanup.¹⁸) He says partial cleanup takes “three months,” and “due to this extremely tight development schedule,” the developer “favors remedial alternatives that can be performed quickly.”¹⁹ Yet the city told citizens that they would be safe---not that they would face higher cancer risks in order to save the developer \$1-2 million because he is not doing full cleanup.

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8. Despite his safety promises to the city, the developer's RAW, **released 3-8-19**, gives his cleanup plan, and it includes **land-use controls**,²⁰ eg, prohibiting human contact with site soil instead of his spending \$1-2 million more for full site cleanup and protection of residents. The developer also signed agreements with DTSC that give him (a) rights to use **land-use controls** onsite and (b) **protection from DTSC liability** for site toxins, in exchange for doing only partial site testing/cleanup.²¹ Yet safe, cleaned-up sites never need land-use controls.

9. Despite his safety promises to the city, the developer gave a questionable answer when DTSC asked him for "**evidence that site carcinogens, "left in place....will not be a future threat"** to site residents. The developer responded that providing such safety evidence "is outside the...obligations of Pasadena Gateway."²²

10. Despite safety promises, the developer's RAW, **released 3-8-19**, admits he will do no preconstruction groundwater testing, though **groundwater contamination** is "unknown." Yet site toxins caused city drinking-water wells to close, both East and West of the site.²³

11. Despite safety promises, the developer's RAW, **released 3-8-19**, admits the site has had **no full soil sampling**, not even **of all suspected hotspots**.²⁴ Toxins can't be "safely cleaned up," as the developer claims, when testing hasn't located where all of them are.

12. Despite safety promises, the developer's RAW, **released 3-8-19**, admits full soil/water testing won't be done before construction. This means the developer hasn't found (thus can't remove) all site-contaminant "sources."²⁵ Thus, in future, **soil carcinogens will continue polluting soil/water**. One can't remove soil-toxin "sources," that have buildings on them---just as dentists can't remove abscesses that have fillings or crowns on them.

13. Despite his safety promises, **the developer cannot safely clean up the site** because he is not doing what DTSC documents recommend: "undertake" his "own due diligence" by full site testing, given **problems with earlier site studies' "accuracy."**²⁶ Contrary to this recommendation, the developer relies on old site studies, most of which either (a) do not meet US EPA data-validation (anti-fraud) requirements,²⁷ (b) were done by companies fined nearly \$1 billion for fraud in other toxic-site testing,²⁸ or (c) cannot be replicated.²⁹

14. In a **March 19, 2019 email**, CA DTSC admitted that the developer will not do a Remedial Action Plan (RAP), and instead would do only a Removal Action Workplan (RAW).³⁰ (A RAP requires much more site testing, cleanup, groundwater protection, notification of affected agencies and groups, and public participation than is now being done under the RAW.³¹) Yet based on the developer's promises, **city officials promised** (at the July 9, 2018 Council meeting) that a Remedial Action Plan would be done.³²

DTSC said the developer did not need to do the more stringent RAP because it is required only for cleanup projects costing "over \$2 million. This removal project is...\$1.913 million, hence only a RAW is required."³³ However, the developer's listing of cleanup costs in the RAW, **released on March 8, 2019**, shows that soil-vapor extraction may be needed onsite,³⁴ because "after removal of...hot spots,,it is unknown if [carcinogenic] VOCs in soil gases will continue to present a...concern,"³⁵ and soil-vapor extraction could raise cleanup costs to "**\$2,221,600.**"³⁶

Because of this \$2,221,600 admission by the developer, a RAP appears required. In other words, the developer seems to have **artificially lowered his cleanup costs** by excluding soil-vapor extraction and a vapor mitigation system (both of which he admitted may be needed), and then claimed total cleanup costs were only "\$1,913,397."³⁷

Notes

1. Armbruster, Goldsmith, & Delvac for Pasadena Gateway, Re: 3200 East Foothill Boulevard, May 4, 2018, p. 2, https://ww5.cityofpasadena.net/commissions/wp-content/uploads/sites/28/2018/05/2018-05-09-Planning-Commission-Item-3B_3200-E.-Foothill-Blvd.-Planned-Development-Attachment-G.pdf
2. Pasadena City Council, Meetings: AV Archives, July 9. 2019, <https://www.cityofpasadena.net/city-clerk/audio-video-archives/>
3. Ninyo and Moore for Pasadena Gateway, Removal Action Workplan (RAW), https://www.envirostor.dtsc.ca.gov/public/community_involvement/7425007462/Removal%20Action%20WorkPlan%2012.12.2017.pdf
4. For RDX and TNT carcinogen and neurotoxicity hazards and the extent of contamination, see OEHHA, CAL-EPA, Evidence on the Carcinogenicity of 2,4,6-Trinitrotoluene, <https://oehha.ca.gov/media/downloads/proposition-65/chemicals/tnthid080110.pdf>; Sanderson et al, Civilian exposure to munitions-specific carcinogens and resulting cancer risks, Global Security 2, no. 1 (2017), <https://www.tandfonline.com/doi/full/10.1080/23779497.2017.1369358> ProPublica; <https://www.propublica.org/series/bombs-in-our-backyard>. Pichtel, Distribution and Fate of Military Explosives, <https://www.hindawi.com/journals/aess/2012/617236/>
5. For California regulations see California Drinking Water Standards, <http://www.gswater.com/download/California-Drinking-Water-Standards-rev-21218.pdf>;
6. For ingredients in these weapons tested and manufactured onsite, see http://www.navweaps.com/Weapons/WTUS_PostWWII.php
7. For weapons tested and made onsite, see Ninyo and Moore, RAW p. 4.
8. ProPublica, <https://www.propublica.org/article/how-the-epa-and-the-pentagon-downplayed-toxic-pfas-chemicals>
9. Ca Water Boards, California Releases New PFAS Drinking Water Guidelines, July 17, 2018, <https://www.asdwa.org/2018/07/17/california-releases-new-pfas-drinking-water-guidelines/> and ProPublica, <https://www.propublica.org/article/suppressed-study-the-epa-underestimated-dangers-of-widespread-chemicals>
10. Both the state and US EPA have documented perfluoroalkyl association with cancer, harm to children, liver damage, developmental delays, endocrine disruption (eg, diabetes, weight gain, cardiovascular disease), neonatal deaths, and neurological and reproductive harm. Perfluoroalkyls are very persistent in the environment and in the human body and are especially dangerous because they accumulate and don't break down. State Water Resources Control Board, Perfluorooctanoic Acid (PFOA) & Perfluorooctanesulfonic Acid (PFOS), <https://www.waterboards.ca.gov/gama/docs/pfoa.pdf>
11. The quote from Anthony Zampiello, Watermaster for the Raymond and the San Gabriel Water Basins (both of which include Pasadena) is used with his written permission. He gave this warning on 3-13-19 via email.

12. Ninyo and Moore RAW, p. 31.
13. Ninyo and Moore for Pasadena Gateway, pp. 8, 4 of 20 of Developer Response to DTSC Comments on RI (Appendix A) in Remedial Investigation (RI).
https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/3954603433/Final%20RI.FS%20report11.2018.pdf
14. See note 2.
15. See note 13.
16. Ninyo and Moore,RAW, pp. 47, 50; see the next note.
17. CA DTSC, Covenant Not to Sue, and Exhibit E, p. 7 of 7, 2011, 2017,
https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/8377835929/Final%20PPA%20Pasadena%20Gateway%20PPA.pdf
https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/5340940713/Executed%20Amendment%20to%20PPA12.2017.pdf
18. Ninyo and Moore RAW , pp. 51-54.
19. Ninyo and Moore, RI p. 36.
20. Ninyo and Moore RAW, pp. 46, 52-53; see notes 17-19.
21. See note 19 and Ninyo and Moore, RAW, pp. 47, 54.
22. See note 13.
23. Ninyo and Moore RAW, pp. 31,36, 44 and Ninyo and Moore RI, pp. 20, 39. Re closed water wells, see City of Pasadena, Pasadena Water and Power Report on City's Water Quality, p. 4 of 14, <https://ww5.cityofpasadena.net/water-and-power/wp-content/uploads/sites/54/2017/08/City-of-Pasadena-Public-Health-Goals-Report-2013.pdf> and Cal-EPA, California Regional Water Quality Control Board, Update on Perchlorate Groundwater Pollution, p. 2, https://www.waterboards.ca.gov/rwqcb4/water_issues/programs/remediation/perchlorate/perchlorate%20report.pdf
24. Ninyo and Moore, RAW, 31, 36, 44; see Ninyo and Moore, RI 20, 28-29, 38 and Kennedy/Jenks, Environmental Summary Report, pp. 27-38.
https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/4649860978/Environmental%20Summary%20Report%20Jenks%20May%2022%202007%20.pdf
25. See previous two notes.
26. Kennedy/Jenks, ES, p. 2.
27. See note 13
28. Eg, Project on Government Oversight,
<https://www.contractormisconduct.org/contractors/47/saic> and
<https://www.nbcbayarea.com/news/local/Hunters-Point-Residents-File-27-Billion-Class-Action-Lawsuit-Ocer--481441101.html>
29. Environmental Cleanup: Too Many High Priority Sites Impede DOD's Program (Letter Report, 04/21/94, GAO/NSIAD-94-133).

30. Email from Nicholas Ta, DTSC, 3-19-19.
31. California HSC 25357.
32. See note 2.
33. Email from Nicholas Ta, DTSC, 3-19-19.
34. Ninyo and Moore, RAW, p. 47.
35. Ninyo and Moore, RAW, p. 31.
36. Ninyo and Moore, RAW, p. 31.
37. Ninyo and Moore, RAW, pp. 52-53.