

Kirk Vartan

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Sent: Friday, April 23, 2010 11:56 AM
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Subject: Community Questions Regarding BAREC Site Cleanup
Attachments: BAREC Work Notice 4.22.2010.pdf; BAREC HASPs_Figure 3_revised 4-15-10.pdf

The Department of Toxic Substances Control (DTSC) received comments from several community members on the Work Notice and felt that providing responses to everyone together was appropriate.

The comments and responses are provided below. A list of the reference numbers and the names of persons who commented can be found after the comments and responses. Attached are a copy of the updated Work Notice and Map which are discussed in responses #2 and #19.

Comment 1:

I just received your letter stating that you plan to demolish the historical BAREC buildings on April 19, 2010. This is to inform you that if any developer plans to obtain HUD funds to build future buildings on the BAREC (Bay Area Research Extension Center) property on Winchester Blvd. in the future, you cannot demolish the historical buildings on this property. This information has been placed in the BAREC CEQA in several places. The current housing plans for BAREC have been approved for senior housing which will require HUD funds through the Santa Clara City Redevelopment Agency. This will no longer be possible because the HUD funds will no longer be available. Please contact the attorneys who made CEQA comments in the BAREC CEQA regarding this. (1)

Response 1:

This information has been forwarded to the Department of General Services.

Comment 2:

I read the attachment when it was stuck on my door the other day and I was disturbed in knowing the time has come when this unsafe land "clean-up process" is going on against all recommendation before the politicians solicited unconcerned citizens to vote for their white lie campaign on what this site is to become. No where was the public at large that votes was informed, only those/us citizens who live in close proximity to BAREC. (2)

Response 2:

The work notice was issued to the mailing list for the site which was developed by DTSC during the public comment process in 2007. Additionally, the flyer was mailed to local elected officials, and parties who were identified by the Department of General Services who had indicated interest in the site. Based on comments received this week, DTSC has expanded the list and is reissuing the notice next week to a significantly larger mailing list.

Comment 3:

I read about the fact that a mere 10 foot fence [described as a 'dust wall'] is suppose to keep airborne dirt from fying past it?
ESEPECIALLY WITH THE FACT THAT WE GET AFTERNOON SOUTHERNLIES (winds) off the bay that are annoyingly blowing all the pollen and debris regularly.

I have to close my windows even on hot days when this blows hard. How in the world are you going to protect all of us in the neighborhood and the malls and local merchants from having to breathe these toxic chemicals that we all know some have died from already!!!! Deep pockets! This land could have been an open space even as a park or free to master gardeners during this lock down but nothing constructive has been considered before or during or now. All I have read is how Summerhills is upset that their investment may have depreciated. Like we care. I hate the fact that we have to deal with the dust, noise, trucks, dirt, sounds and then all the extra cars that will zoom down Jill Ave. Forest, etc. It's a race way already and I am tired of it. You guys won the land to make your profit at state expense and few will benefit from it. It's a disgraceful waste. Now who gets to account for the next round of illnesses? (2)

Response 3

Dust control measures including the wetting of soil and dust monitoring will be conducted to ensure that the community is not exposed.

Comment 4:

We received the flier with regard to the field work to be conducted at the BAREC site. We have a few concerns with regard to the excavation at the site: What levels of excavation will take place on each field? It was unclear in the flier. (3, 5, 10) Response 4:

Most of the excavations will be excavated between 2 and 3 feet below the ground surface. Two areas within the larger excavation will be excavated to approximately 4 feet. Since the Raw was finalized in 2007, samples collected at the site in 2008 indicated four additional small areas require excavation. DTSC is issuing a revised work notice with a larger color map so that the areas and depths of the excavations is clearer. The revised work notice and map is attached to this note.

Comment 5:

How can we monitor the air monitoring stations you will have on the site? Will there be a website with the details? (3, 5, 10)

Response 5:

DTSC will post the dust monitoring data on a daily basis to its Envirostor website. Click on the Community Involvement tab. The website address is:

http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=43010031

Dust monitoring will only occur during excavation and loading of contaminated soils which is not scheduled to start until early May.

Comment 6:

There is a large tree in the corner that started on our property and should not be removed. Please confirm that it will stay. What recourse do we have if our homes are covered in dust from your site? Will the state pay to have our houses cleaned and painted if the dust lands on our homes? Being that there are many creatures that live on the site (i.e. rats, mice, birds, insects etc.) what is the state doing to insure that they do not invade our houses? If they do invade, will the state pay for the eradication? Please advise before work is commenced. (3, 5, 10)

Response 6:

These comments have been referred to the Department of General Services as they don't specifically relate to cleanup activities under DTSC oversight.

Comment 7:

My name is Roxanne Sheets and I live at 2508 Forest Ave. I have a pool and was wondering if there will be any impact to it by the field work that will be done at the BAREC site. You can contact me on my cell phone. (4)

Response 7:

Because there are dust control measures in place, which include monitoring, DTSC does not believe that there will be any impact to the pool.

Comment 8:

I echo John and Alice Azevedo's comments (below). I find it hard to believe that the State has moved forward on cleaning a site when there is no sign of development in the very near future. Not only is the State short of money but the property is in litigation and any removal of containments from the site could be viewed as destruction of evidence in the lawsuits. As the area already has a high string of cancers stirring up the carcinogens that are in this site and exposing thousands to more exposure is inexcusable.

(5)

Response 8:

This comment has been referred to the Department of General Services. Responses are provided below to comments from Mr. Acevado.

Comment 9:

First, why were we given only a week's warning for this remediation? Why only this flyer, and why no one on one contact by State personnel to our homes? Again, what is the rush? Who is pushing this through? (5,10)

Response 9:

DTSC generally gives a weeks notice prior to cleanup work on a site. These oil remediation activities are not scheduled to start until May 6.

However, since other work was planned at the site, DTSC and DGS agreed to send a more detailed notice out which discussed the other activities as well.

Comment 10:

Also, will there be other monitoring where people actually live and work, such as Valley Fair mall right across the street, or in our neighborhood? This is where the air monitoring is going to be the most important. Who will audit this air monitoring? (5, 10)

Response 10:

Dust monitoring will be conducted within the excavation work areas and at the perimeter of the site. There will be no dust monitoring outside of the site boundaries. DTSC will periodically conduct site visits to audit the work, including the air monitoring.

Comment 11:

Will there be any encroachment to abutting properties, by the excavation or otherwise? (5, 10)

Response 11:

No excavation is planned outside of the site boundaries.

Comment 12:

There is currently only a 6 ft chain link fence surrounding the property, what further containment will there be of the toxins? (5, 10)

Response 12:

The six foot fence around the site will be covered with fabric as a dust screen. Each excavation area will be surrounded by an additional dust screen. Dust monitoring will be

conducted within the excavation areas, as well as at the perimeter of the site to ensure that dust standards are met.

Comment 13:

Bottom line: What is going to be done to ensure that our health is not endangered by the toxin aeration created by the dust. Specifically, we know of at least the Dieldrin that has been cited over and over in the State's own reports, and has been cited by the State's own health experts as very unhealthy when it becomes airborne. Dieldrin is an extremely long lasting chemical banned from usage by EPA in 1989. The State's own records confirm there is three times more Dieldrin on BAREC than is allowable by EPA standards. Do the workers who will be remediating know this? It is basic knowledge that Dieldrin is extremely dangerous when it is airborne. The State's original plan was to clean up the soil contamination by moving the top two feet of soil off the site.

Moving the soil will obviously place Dieldrin in the air. We assume that there are more chemicals that are just as toxic there too. (5, 10)

Response 13:

Dieldrin is only found in one small area of the site. It is being removed because it is above levels which are acceptable for unrestricted land use. The majority of the excavations address arsenic which is found at levels approximately two times the level found in background soils in the Santa Clara Valley. These were the only two compounds which were found above the unrestricted cleanup levels. Dust controls and dust monitoring are used to ensure that onsite workers and nearby residents/workers are not exposed to unsafe levels of contaminants while the work is being conducted. DTSC provides oversight to the contractors to ensure that the work is conducted according to the approved plans.

Comment 14:

We have a very active 12 year old son that plays in our back yard every day that backs right up to BAREC. What is going to be his exposure? What should I tell him about playing in his own back yard? (5, 10)

Response 14:

DTSC feels that the dust control measures and monitoring which is planned for this project will ensure that the nearby community is protected and does not recommend any additional safety measures.

Comment 15:

At what point do you "responsible acting parties" of this project answer the public concerns? Especially the specific one listed below? I have a neighbor (on Jill Ave, that T's into Forest along BAREC and she has a toddler at home who plays outside. She is expecting a newborn in less than a month. I spoke to them yesterday and they were not even aware of this project and were VERY concerned. Do we need to get an air cleaner? DO we need to keep our windows shut indefinitely? What do WE do if ANY dust lands in our yards and on our kids play set? They are not the only ones with small children at home in this close proximity. What the next generation needs is a REAL park, not a token grass area, not more traffic, but agricultural reality of growing food and protecting our environment and keeping it green! What is wrong with the STATE of California?

Response 15:

See responses 3, 13 and 14.

Comment 16:

I am forwarding this urgent letter to you as this Santa Clara property also affects San Jose residents. We are in Councilmember Oliverio's District 6 and share the same fence line that Santa Clara shares on the other two sides. We are directly across the street from Valley Fair on Winchester Blvd.

We are all concerned with the safety measures and protocols used in this now very rushed clean-up activity. It is a 7+ week action that will impact residents and shoppers alike.

It is clear that the State is trying to rush the next step. I received notification of the cleanup on Thursday, April 15th (three days ago).

There are many children, adults, and seniors that live around this property and it is not clear why their health and safety is not a priority.

Please help the City of Santa Clara demand answers from the two State Agencies involved. The DGS and DTSC appear to be ignoring the citizens they are obligated to protect. Their contact information is in the attached letter I received in the mail on Thursday, but I have listed it out for you:

There leaves very little time to discuss since the State is ready to roll the dozers. What we are asking for does not cost any money and can be addressed with existing staff to reach out and talk to the right people. Please help a fairly underrepresented group of San Jose citizens. (7)

Response 16:

The Cleanup Plan was approved in 2007. DGS put the project out for bid earlier this year and notified DTSC of the upcoming work. Once the contractor was on board and have finalized a schedule, DTSC developed the work notice for distribution.

Comment 17:

You had told me the DGS' contractor would follow the RAW. One thing they are NOT supposed to do is to mow without a water truck (which, as I mentioned during our first phone conversation, the DGS has done before, in complete disregard for the safety of the worker and the residents).

And I thought you told me part of the site preparation was to mow the areas to be excavated (which weren't supposed to be mowed prior to this, because the dust is so toxic). Today, a VERY windy day (high wind and lots of gusts), the contractor was mowing!

What's UP with this?!? What and where was he mowing? Why did work continue at the site given how very windy it was, even by Noon? Who is monitoring for wind speed and wind gusts? Who is responsible for stopping the contractor? Where were they today? And, above all, who holds DGS accountable for their actions (or lack, thereof)?

I guess I still don't understand why the DTSC is not responsible for monitoring and addressing the actions or inactions of the DGS (or any other entity - be it public or private - that has any business on a site with known health hazards). I don't understand why you told me your dept. wouldn't be monitoring the first two weeks of work by the DGS.

Where's Environ? Were they out there today?

Thanks for whatever you can do to elucidate. (8)

Response 17:

As identified in the work notice, mowing of the grass at the site was planned to occur beginning on April 19. The grass/weeds were very damp and a water truck was not needed to prevent dust. Pictures from the site confirm that dust was not being created by the mower.

Comment 18:

I am sending this to you as you are listed as the contacts for this clean-up project. I am extremely concerned at what took place today. The blatant disregard for the process and safety is completely unacceptable.

Your own process that was supposed to be safe and well thought out already violated the procedures you outlined.

Please cease and desist from doing what you are doing. You are endangering thousands of lives.

Please call me when you can to review what I have shared with you in this email.

The attached pictures show the State has no way to properly clean this land or manage the process.

The State rushed so quickly into this activity that they mowed directly though THE highest concentration of dieldrin contamination on the site.

The State promises the strictest controls, monitoring, and attention to detail. The DTSC hired Environ (the company that did the toxic report in the EIR that was challenged) to run this process with them.

Here, the first day of the site clean-up, the workers did not use a water truck to keep down dust like they are supposed to, it was windy conditions, and the worker driving the lawnmower mowed two feet of weeds that cover the most contaminated part of the field with the worst poison: dieldrin.

Please call your local government representatives and tell them you need them to act immediately. If we do not stand up now to this fatally flawed process, we may be endangering generations of neighbors in our community. It doesn't matter what city you live in, just call or email your Mayor and City Manager. Tell them the Department of General Services (DGS) is allowing the Department of Toxic Substances Control to put the Santa Clara and San Jose neighbors in immediate risk around the BAREC site (90 N Winchester Blvd., Santa Clara, CA). Also, the thousands of daily shoppers at Valley Fair and Santana Row are at risk since the wind only has to take the dust and toxic material across the street (Winchester Blvd.).

The attached images are indisputable proof that the State is not in control of this process (or if they feel they are in control, they need to be removed from control). I would be happy to explain on the record to anyone how these images are proof positive of my statements above, and reason alone for a "cease and desist" action on the BAREC site.

I welcome any input and ways to share this information with as many people as possible to make an impact. Again, I will be at the Santa Clara City Council meeting tomorrow (on Tues, Apr. 20th at 7pm) to voice this concern and to meet with any of you that want to talk. I encourage all of you to find another way or join me in voicing your opinion strongly and often.

See the SJ Mercury News article in Tuesday's paper:
http://www.mercurynews.com/top-stories/ci_14916494
(9)

Response 18:

The work notice indicated that site preparation and mowing would occur the week of April 19. Due to the dampness of the grass/weeds being mowed, additional dust control was not needed at the site.

Comment 19:

My concerns as the work continues on BAREC property are that the State/DTSC 1) has not properly notified me and other affected local residents and 2) is not providing the proper management of the remediation efforts as exhibited by it's failings on day one of the cleanup efforts.

Both issues are alarming as this impacts the health of my family and that of the neighbors around me. Furthermore, I believe both failings to be a violation of the State/DTSC's legal obligation to protect public health and could lead to additional legal action by those impacted.

Unless the State can uphold their obligations, a call to "cease and desist" is requested immediately. (11)

Response 19:

The work notice was issued to the mailing list for the site which was developed by DTSC during the public comment process in 2007.

Additionally, the flyer was mailed to local elected officials, and parties who were identified by the Department of General Services who had indicated interest in the site. Based on comments received this week, DTSC has expanded the list and is reissuing the notice next week to a significantly larger mailing list. Also see responses 17 and 18.

Comment 20:

With the recent rains, has the excavation and backfill schedule been significantly delayed. (12)

Response 20:

Right now we are within 2-3 days of the original schedule. All dirt moving should be completed between June 8 and June 11.

LIST OF COMMENTERS

1. Email from Kathryn Mathewson dated April 16, 2010.
2. Email from Janet Petty dated April 18, 2010.
3. Email from Roger Idiart dated April 18, 2010.
4. Email from Roxanne Sheets dated April 18, 2010.
5. Email from Roger Idiart dated April 19, 2010.
6. Email from Janet Petty dated April 19, 2010.
7. Email from Kirk Vartan dated April 19, 2010.
8. Email from K.C. Yatsko dated April 19, 2010.
9. Email from Kirk Vartan dated April 19, 2010.
10. Email from John Azevado dated April 19, 2010.
11. Email from Ryan Wright dated April 21, 2010.
12. Voicemail from K.C. Yatsko dated April 22, 2010.