

Greenaction for Health and Environmental Justice

EMBARGO UNTIL 8AM THURSDAY, DECEMBER 7, 2023

Contact:

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Greenaction and Community Press Conference

Thursday, December 7, 2023 @ 11 am

Corner of Galvez & Donahue Streets, Bayview Hunters Point, San Francisco

Greenaction to Sue Navy & EPA Over Extensive Violations of Federal Law in Inadequate “Cleanup” of Toxic & Radioactive Waste at the Hunters Point Naval Shipyard Superfund Site

San Francisco, CA – On December 7, 2023, Greenaction for Health and Environmental Justice – on behalf of its members and constituents in Bayview Hunters Point - will serve a Notice to Sue on the Navy and the United States Environmental Protection Agency for failing to properly clean up toxic and radioactive waste at the Hunters Point Naval Shipyard Superfund Site.

The lawsuit, to be filed by Berkeley Law’s Environmental Law Clinic, seeks to compel the Navy and EPA to comply with their legal responsibility to address pervasive radioactive and toxic contamination at San Francisco’s only Superfund site. The law requires 60 days’ notice prior to suing. This legal action takes place just days after the Navy announced they found yet more radioactive contamination at Parcel B of the Superfund Site.

The Notice to Sue will be sent to the U.S. Navy, U.S. EPA, U.S. Attorney General, and the California Attorney General. It says that Greenaction will file suit to enforce the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), the National Contingency Plan (“NCP”), and Federal Facilities Agreement, Hunter’s Point Shipyard (“FFA”).

Kamillah Ealom, long-time Bayview Hunters Point resident, Greenaction Community Organizer, and Director of the All Things Bayview community group, said: “I’ve lived in this community my whole life. Many of my neighbors are fighting cancer and too many have lost that battle. But we will never give up on making this community safer for us and the next generation. The Navy owes it to us to clean up the toxic and radioactive nightmare of a mess it made over half a century ago. We will keep fighting for health and justice.”

The Hunters Point Naval Shipyard Superfund Site is located in the historically Black Bayview Hunters Point neighborhood in southeastern San Francisco. During decades of use as a naval base, the Navy contaminated the shipyard with toxic and radioactive pollution. After World War

If the Navy used the shipyard to decontaminate ships contaminated with radiation from nuclear weapons testing in the South Pacific. Radioactive ships were sandblasted, creating enormous amounts of waste radioactive sandblast grit. The area's swirling winds carried radioactive sand particles throughout the shipyard. The Navy also burned an estimated 610,000 gallons of radioactive fuel, which spread contamination throughout the area. Contamination also resulted from once-secret activities of the Navy Radiological Defense Laboratory.

In 1989, the EPA declared the shipyard a Superfund site under CERCLA. In 1992, the Navy, EPA, and State of California entered into a Federal Facilities Agreement governing the cleanup. Significantly, although the EPA's published cleanup guidances are usually not mandatory, all parties to the agreement agreed they would be; the cleanup was supposed to be done "in accordance with" EPA CERCLA guidances.

However, the suit will allege that the Navy and EPA have failed to comply with CERCLA, its regulations, the FFA, and EPA guidances during the "cleanup."

The Tetra Tech EC Radiological Fraud

Among the Navy's major failures was not adequately addressing widespread fraud committed by its radiological contractor, Tetra Tech EC, Inc. Though the fraud was discovered in 2012, the Navy insisted – for six years – that Tetra Tech EC's work was reliable. In 2017, however, an EPA review of Tetra Tech EC's data revealed that more than 90 percent of it was tainted due to intentional fraud and significant quality control deficiencies. As a result, in 2018, the Navy was forced to discard all Tetra Tech EC's data and agree to retest its work.

Greenaction, community groups, and residents continue to demand 100 percent retesting of the entire Superfund site. However, the Navy and regulators agreed to resample only one-third of Tetra Tech EC's work, with the proviso that if any of those samples detected contamination, that would trigger 100 percent retesting.

In 2021, Navy retesting found 23 samples contaminated with Strontium-90 exceeding the cleanup's remediation goals. This should have triggered 100 percent retesting, but the Navy has – for two years – refused to accept its own retesting results. To attempt to invalidate its own data, the Navy retested the samples with a new test method that despite the requirements of the FFA was not an approved EPA method. Though the Navy publicly claimed its new method found no contamination above cleanup levels, documents supplied in response to a Freedom of Information Act request show the retesting actually **confirmed the presence of contamination above cleanup levels** in approximately 27 percent of the samples. Still, the Navy has refused to undertake 100 percent retesting as required under the retesting agreement.

In September 2023, the Navy announced it discovered a radioactive "deck marker," a silver-dollar size device used at one time to illuminate ships' decks at night, in soil undergoing retesting. This too should have triggered 100 percent retesting.

Violations of CERCLA's *Five Year Review* Process

The Navy has also violated CERCLA's Five Year Review process. Under the law, the Navy must review its cleanup every five years and assure that it continues to protect human health and the environment. However, in its most recent *Five-Year Review*, the Navy admitted it could not assure the cleanup remained protective. EPA also found that the Navy had failed to assure protectiveness. In addition, the Navy violated its statutory deadline, publishing the review eight months late, which it then amended three times, rendering the review 20 months late.

Greenaction's lawsuit will seek to enforce the radiological retesting agreement to require 100 percent retesting. It will also seek to hold the Navy accountable for not conducting a proper five-year review and to require that the Navy's next five-year review comply with the law in ways its most recent review did not.

Bradley Angel, Executive Director of Greenaction commented: "When the one responsible for the cleanup is the one who caused the pollution in the first place, someone needs to step up to the plate to make sure the job is done right. The Navy should have listened to the community from the start. We demanded 100 percent retesting of Tetra Tech EC's work over five years ago, and we continue to support the community demand for 100 percent cleanup, not capping of toxic and radioactive waste. Greenaction is suing the Navy and EPA because they have betrayed the trust of the people of Bayview Hunters Point for too long. It's time we hold them accountable."

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Greenaction is a multiracial grassroots organization that works with low-income and working class urban, rural, and Indigenous communities to fight environmental racism and injustice and build a clean, healthy, and just future for all. We mobilize community power to win victories that change government and corporate policies and practices to protect health and to promote environmental, social, and economic justice.

The Berkeley Law Environmental Law Clinic is a program of the University of California, Berkeley School of Law. Under the supervision of experienced attorneys, law students tackle critical environmental health and environmental justice issues through litigation, administrative agency practice, legislation, and policy analysis on behalf of real-world clients.