From:	Yolanda Bender
To:	Campellone, Estrella F CIV USARMY CEPOA (USA)
Subject:	[Non-DoD Source] Proposed Development Superfund Site - Alaska PUBLIC COMMENT
Date:	Monday, July 29, 2019 9:00:19 PM
Importance:	High

Thank you, in advance, for taking the time to read and consider this email. It is lengthy but it is the only way that I can convey the trepidation that many of us in this small community are facing. After attending the site informational session on 7/29 I am even more concerned due to the lack of detailed information and disregard for the potential environmental impact. I will be submitting my concerns to the EPA, Washington Post, Juneau Empire, Ketchikan Daily News and SITNews.

The purpose of this email is to inform you about a potential environmentally disastrous project that has been proposed in Ketchikan, Alaska. It is being pushed through with minimal oversight or concern for the potential impacts. If this project is approved it will result in Norwegian Cruise Lines, and the President of the Cruise Line Association of Alaska, subjecting their passengers to high levels of carcinogenic chemicals. In addition this could expose this fishing community to return to the days of high toxins in the water in, and around, Ward Cove.

Norwegian Cruise Lines, in partnership with the Binkley and Spokley families of Alaska, are proposing to build 2 docks large enough for passenger cruise ships of up to 4500 passengers on a superfund site as well as a retail center, museum and bus loading zone.. John Binkley, who is the President of the Cruise Line Association of Alaska is purposely not listed as a partner as it would present a conflict of interest.

Around 1995 the site of the Ketchikan Pulp Company Mill was declared a superfund. As part of the remediation plan the site was dredged and a sand cap was placed on top of the affected areas. The toxic material that was dredged was buried in what is known as the "Uplands". The "Uplands" is located within yards of the proposed project. In the Five year Review Report for Ketchikan Pulp Company Superfund Site, dated 9/21/15, the following findings were made with regards to the "Uplands":

Uplands OU – Yes. After review of the current State and Federal applicable or relevant and appropriate regulations (ARARs), the EPA believes that the ROD exposure assumptions and RAOs are still protective.

The ROD utilized industrial worker exposure assumptions for areas evaluated on-site. As part of the 2010 Five-Year Review, a recalculation based on a residential scenario was conducted using standard EPA equations and parameters (see Attachment 12). The total risk exceeds a threshold of 1E-04 for all areas with the exception of the former bottom ash storage pile soils, wood waste and sludge disposal subarea soils, and forested and developed area soil. This reinforced the ROD requirement that the Uplands OU properties remain subject to ICs precluding residential use.

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The site itself includes the following covenant:

ICs requiring that post-remediation activities within the Area of Concern that materially damage the thin-layer cap or mounds will be required to redress such damage, at the direction of EPA.

While the remedy selected for the Marine OU assumed that Ward Cove would be redeveloped in the future, institutional controls are required and have been implemented to prevent the disturbance of the waste remaining on site and affects how the site may be redeveloped. Section IX of the 2000 ROD prohibits persons from "using the Site in any manner that would interfere with or adversely affect the integrity or protectiveness" of the remedy. Per Section XI of the 2000 ROD, this institutional control will remain in effect even after the Remedial Action Objectives are achieved.

In 1999 – before EPA had issued the ROD and before KPC had entered into a CERCLA Consent Decree (CD) to perform the remedial design and remedial action – KPC recorded an Environmental Easement and Declaration of Covenants on its property ("1999 Covenant"). The 1999 Covenant described restrictions on the use of Ward Cove, including, but not limited to, a requirement that any damage to the sediment cap be redressed by KPC at EPA's direction. The 1999 Covenant designated the State of

Alaska, Department of Natural Resources (ADNR) as the holder of the easement, and the ADNR subsequently granted oversight of the easement to the ADEC.

On February 16, 2010, the then-owner of the tidelands, Ketchikan Gateway Borough ("the Borough"), requested that ADNR release some or all of the restrictions established in the 1999 Covenant with respect to certain marine tidelands within Alaska Tidelands

Survey (ATS) 1. Following lengthy negotiations in 2010 and 2011, the State of Alaska Department of Law agreed through written correspondence with the Borough on a partial release, which only applied to the restriction set forth in Paragraph 8(g) of the 1999 Covenant. Paragraph 8(g) of the 1999 Covenant stated: "Projects or activities that materially damage the cap applied to tide and submerged lands shall be required, at the direction of EPA, to redress such impacts, e.g., a dredging project that may erode or displace large portions of the cap will be required to repair or replace the cap." The Department of Law agreed to this release based on the language of the 1999 Covenant, which stated that the restriction set forth in Paragraph 8(g) only exists until EPA determines that healthy benthic communities exist in the submerged lands.

It is unclear whether the partial release was ever formally memorialized in a signed document; however, the validity of Paragraph 8(g) of the 1999 Covenant is immaterial to the protectiveness of the remedy. The 1999 Covenant was in place before the ROD was issued in 2000 and was subsequently superseded by the July 2004 Environmental Easement and Declaration of Covenants ("2004 Covenant"). The 2004 Covenant, which was entered into by the Borough and KPC after KPC completed the remedy in Ward Cove, states, inter alia:

The Borough covenants and agrees that it shall not, through any activities or operations at or in the Ward Cove Area, materially damage any cap or capping materials that may be applied to sediments in the Ward Cove Area under the Ward Cove [CERCLA] Consent Decree.

In accordance with the 2004 Covenant, in the event of any such damage to the cap, the Borough (or any future owner) must immediately report the damage to EPA and KPC and then restore the cap. The 2004 Covenant states that the restricted uses shall run with the land and be binding on all future owners, and the terms and conditions shall be for a period of twenty years, after which time the Covenant shall be automatically extended for successive periods of ten years unless an instrument signed by KPC has been recorded agreeing to terminate the restrictions.

Ultimately, any activity that materially damages the thin-layer sediment cap at Ward Cove would be inconsistent with the ROD and a violation of the institutional controls, including the 2004 Covenant, and may also be considered a release of hazardous substances, subjecting the owner of the sediments to liability under Section 107(a) of CERCLA.

All of the documentation can easily be found on the government superfund site:
Blockedhttps://cumulis.epa.gov/supercpad/cursites/cscdocument.cfm?id=1000020&doc=Y&colid=30537
<Blockedhttps://cumulis.epa.gov/supercpad/cursites/cscdocument.cfm?id=1000020&doc=Y&colid=30537>

Best Regards,

Yolanda Bender

Ketchikan, Alaska