

Testimony of Debbie Mans
NY/NJ Baykeeper, Executive Director and Baykeeper
Co-Chair Passaic River Community Advisory Group
January 18, 2018
U.S. Congress House of Representatives
Committee on Energy and Commerce, Subcommittee on Environment

SUMMARY

- My name is Debbie Mans and I am the co-chair of the Passaic River Community Advisory Group or CAG. I am also the Executive Director and Baykeeper for NY/NJ Baykeeper. NY/NJ Baykeeper was founded in 1989 to protect, preserve and restore the NY Harbor Estuary, which includes the lower Passaic River. NY/NJ Baykeeper holds the Technical Advisory Grant (TAG) for the Passaic River Superfund site.
- The Passaic River Superfund site was first listed on the Superfund National Priorities List (NPL) in 1984, over 30 years ago, and includes 17 miles of the Passaic River, Newark Bay, and portions of the Hackensack River, Arthur Kill and Kill van Kull.
- In March 2016, a Record of Decision was selected for the lower 8.3 miles of the River. The cleanup plan calls for dredging approximately 3.5 million cubic yards of contaminated sediment, bank to bank, and will cost \$1.36 billion.
- The EPA recently listed the Diamond Alkali Co. (aka Upper Lower Passaic) section of the Superfund site as a site targeted for “immediate and intense action.”
- Recent announcements on the Superfund program by EPA Headquarters on increased involvement and shifting decision-making authority would appear to add a layer of bureaucracy, rather than make processes more efficient at EPA.
- The Superfund Task Force Recommendations report raises concerns with the emphasis on adaptive management, reuse or redevelopment of Superfund sites, and reduced oversight and the use of independent third parties to oversee certain aspects of the PRP lead cleanups.
- It is essential that human health and environmental protection be the top priority for taking action at Superfund sites.
- It is critical to keep the Superfund public participation program intact, through the use of CAGs, TAGs and other technical assistance provided by the EPA.
- Finally, it is important to note that while Administrator Pruitt has stated that the Superfund program is a cornerstone of the work that EPA performs for citizens and communities across the nation, President Trump has proposed slashing the EPA budget by 31%.

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My name is Debbie Mans and I am the co-chair of the Passaic River Community Advisory Group or CAG. The CAG provides advice and recommendations to the Environmental Protection Agency and its Partner Agencies to help ensure a more effective and timely cleanup and restoration of the lower Passaic River. In 2015, the CAG won the Community Involvement Award from the US Environmental Protection Agency (EPA), a national award that recognizes outstanding achievements in environmental protection.

I am also the Executive Director and Baykeeper for NY/NJ Baykeeper. NY/NJ Baykeeper was founded in 1989 to protect, preserve and restore the NY Harbor Estuary, which includes the lower Passaic River. NY/NJ Baykeeper holds the Technical Advisory Grant (TAG) for the Passaic River Superfund site.

I am here today to represent the communities that have been harmed by the pollution in the Passaic River for many decades.

This site was first listed on the Superfund National Priorities List (NPL) in 1984, over 30 years ago. Many members of our CAG can still remember when the federal and state agencies descended into their neighborhood in protective gear, sweeping the streets and local farmer's stand for dioxin dust.

Dioxin, pesticides and other hazardous substances were found in the soil and groundwater at 80-120 Lister Avenue, the former location of the Diamond Alkali site. Dioxin, polychlorinated biphenyls (PCBs), metals, polycyclic aromatic hydrocarbons (PAHs) and pesticides are found in sediment in the Lower Passaic River. The primary polluter on the River was a company called Diamond Alkali, which produced Agent Orange during the Vietnam War. A by-product of this production was dioxin, which was shoveled off the bulkhead next to the plant into the River. Tidal action has spread dioxin, along with a suite of other contaminants, throughout the lower 17 miles of the Passaic River, Newark Bay and portions of the Hackensack River, Arthur Kill and Kill van Kull, all of which lie in the NY Harbor Estuary and the port area surrounding New York City.

Over the years the cleanup had progressed slowly along, primarily consisting of a constant back and forth negotiation between the Responsible Parties and the EPA over sampling locations and methodologies, sampling results, new-fangled ideas to “clean” the River, fish swaps or recommendations to “let the River heal itself.” The recalcitrance of the PRPs was further amplified by the lack of funds to allow the EPA to move forward with the cleanup itself due to the lapse of the Superfund tax.

When the Obama Administration arrived in 2009, the community knew it had a chance to really achieve a timely and comprehensive cleanup plan and in the Fall of 2009 instituted the CAG. Since that time, we have been meeting on a near monthly basis, in the basement of a Newark church, to advise and push for a cleanup that would make it safe for people to fish and crab from the River.

Right now, it is illegal to catch a blue claw crab from the River and there is a “Do Not Eat” advisory in place for all fish and shellfish in the tidal portion of the Passaic River because of the potential to cause cancer in humans.

This risk to public health is unacceptable.

In March 2016, a Record of Decision was finally selected for the lower 8.3 miles of the River, the most contaminated section of the Superfund site and the source for ongoing contamination spreading throughout NY Harbor Estuary. The cleanup plan calls for dredging approximately 3.5 million cubic yards of contaminated sediment, bank to bank. After dredging, an engineered cap will be placed over the entire lower eight miles of the River. The contaminated sediment will be dewatered locally and transported off-site for disposal at a licensed facility. The estimated cost of the remedy is \$1.38 billion.

The Mayor of the City of Newark, both of New Jersey’s United States Senators, all the Congressional Representatives in the region, and local community members celebrated the announcement. Design of the remedy is currently underway.

However, the remainder of the Superfund site – an additional 9 miles of waterway upriver and the Newark Bay - is still under investigation. Recently, the Diamond Alkali Co. (aka Upper Lower Passaic) section was listed as a Superfund site targeted for “immediate and intense action” by the EPA. This is the upriver portion of the Superfund site. As described in EPA materials, “EPA considered sites that can benefit from Administrator Pruitt’s direct engagement and have identifiable actions to protect human health and the environment.”

Further inquiries to regional staff and a thorough reading of the EPA's "Questions and Answers" document has not produced a clearer understanding of what this designation means for us in the impacted communities.

This announcement, coupled with the May 2017 announcement and memo by Administrator Pruitt revising EPA's delegation of authority to ensure decision making comes straight from the Administrator to select remedies estimated to cost \$50 million or more, rather than the Assistant Administrator for Office of Land and Emergency Management and the Regional Administrators, gives me pause. The May 2017 memo further states that "as part of effectuating this adjustment to the remedy selection process, I ask that you involve the Administrator's office early-on and throughout the process of developing and evaluating alternatives and remedy selection."

This would appear to add a layer of bureaucracy, rather than make processes more efficient at EPA. Now, the regional offices must involve the EPA Headquarters early and often throughout the process. Now, the technical experts at the regional offices must confer with political appointees based in Washington, DC, on developing and evaluating cleanup alternatives and remedy selections for sites. This makes no sense to the stakeholders working locally on these cleanups. The people who know these sites the best are the local EPA technical experts, who come to our community meetings and inspect the sites, not someone sitting at a desk hundreds of miles away.

My best guess as to why the "Upper Lower Passaic" site is on the list of Superfund sites targeted for immediate and intense action is that EPA Headquarters would like to test out

adaptive management through use of an early action being promoted by the Potentially Responsible Parties (PRPs). As outlined in the Superfund Task Force Recommendations, “[u]nder an Adaptive Management strategy, Regions are encouraged to consider greater use of early and/or interim actions including the use of removal authority or interim remedies, to address immediate risks, prevent source migration, and to return portions of sites to use pending more detailed evaluations on other parts of the site.” (See Strategy 2, page 2.)

This concept was first proposed by the PRPs after EPA released the proposed plan in 2014 for the lower 8.3 miles of the River. The PRPs alternative cleanup plan was called the “Sustainable Remedy.” Essentially, the plan called for hot spot removal of contaminated sediments in the River, with natural attenuation to let the River heal itself. This plan was so lacking in scientific basis, actual data, and protections to public health, it was not even included in the EPA’s review of alternatives.

What concerns me is that the PRPs are potentially getting another chance to move forward with this concept, now under the guise of a Task Force report and new directives from EPA Headquarters. Indeed, regional staff recently informed the CAG that the PRPs will be presenting on an alternative cleanup plan for the upper portion of the River during our February 2018 CAG meeting. This proposal will also be the subject of an upcoming Contaminated Sediments Technical Advisory Group (CSTAG) meeting in Region 2.

The CAG will need to be convinced of the merit of this proposal and how it is different than the plan that was presented, and rejected by EPA, just a few years ago. On a contaminated sediment site like the Passaic River, it could be years before we understand how an early action

has reduced public health risks and, by then, how will we ever bring the PRPs back to the table to finish a cleanup? Short cuts could result in insufficient assessment of the contamination and, therefore, an incomplete cleanup. This may ultimately make it more difficult for sites to be used for other purposes than future industrial locations.

The Superfund Task Force Recommendations raises further concerns with the emphasis on reuse or redevelopment of Superfund sites and reduced oversight and the use of independent third parties to oversee certain aspects of the PRP lead cleanups.

First, it is essential that human health and environmental protection be the top priority for taking action at Superfund sites. Redevelopment should never supersede human health concerns. When our CAG members talk about future use of the Passaic River, they mention habitat restoration, new boat ramps, waterfront parks and other recreational amenities, they do not mention industrial redevelopment. The City of Newark recently cut the ribbon on the third phase of waterfront park along the River, with plans to expand. The Passaic River has been cut off from the community for decades due to pollution and industrial use, it is now time to restore a healthy River back to the community. This is the community priority and it must be respected by the EPA.

Second, reduced oversight and the use of independent third parties to oversee certain aspects of site cleanup has been underway in New Jersey for several years. This program is called the Licensed Site Remediation Professional (LSRP) Program (see <http://www.nj.gov/dep/srp/>) and it requires that all remediations under state oversight in New Jersey proceed under the supervision of a LSRP. It is important to bear in mind that the general tendency in New Jersey is

to ask EPA to take over more complicated contaminated sites or sites where the PRP is not cooperating, so simply transferring a LSRP-type program over to the Superfund program would not be appropriate.

The implementation of the LSRP program in New Jersey, while potentially addressing smaller contaminated sites more quickly, has led to less transparency and public engagement. This is due to the fact that our state agency, the New Jersey Department of Environmental Protection (NJDEP), no longer has immediate access to cleanup plans, sampling results or other technical reports because they are generated by a consultant hired by the property owner to conduct the investigation and then subsequently submitted to NJDEP, thus finally making them finally publically available. The onus is now on the public to work directly with multiple private consultants and property owners to get information, rather than one public agency.

It is critical to keep the Superfund public participation program intact, through the use of CAGs, TAGs and other technical assistance provided by the EPA. The Passaic River CAG has worked side-by-side with the EPA to develop Community Health and Safety Plans, local jobs, public participation guidelines, and meaningful comments on proposed cleanup plans. An engaged and educated public is an asset, not a burden.

The Superfund Task Force Recommendations make short shrift of engaging partners and stakeholders. The recommendations, tacked on at the end of the report, can be summed up as identify stakeholders, talk to them and form an advisory committee. This is unacceptable and falls far short of where EPA already is for the Passaic River Superfund site.

Finally, it is important to note that while Administrator Pruitt has stated that the Superfund program is a cornerstone of the work that EPA performs for citizens and communities across the nation, his own President has proposed slashing the EPA budget by 31%.

The Trump Administration proposed cuts to the Superfund program of 25% nationally, which would result in the loss of 536 staff slots. New Jersey has 114 Superfund sites, the most of any state and receives approximately 25% of the national budget, so cuts like this would be devastating to our communities.

Thank you for allowing me to testify today on this critical public health issue.

More information on the Community Advisory Group (CAG) and the Passaic River Superfund site can be found here: <http://ourpassaic.org/>