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Subject: California Public Participation Requirements for DTSC
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Hello IRP Members:

At the August 10 IRP meeting, Chair Gideon Kracov asked me to provide the Panel with statutes that pertain to DTSC public participation requirements. In subsequent email messages, Chair Kracov clarified that he was only interested in state requirements and was referring to public participation requirements for all DTSC programs, not just site mitigation, which was the specific program that the Panel happened to be discussing when the request was made.

I interpreted his request to include regulations as well as statutes. I did not interpret the request to include DTSC policies.

Keep in mind that there are quite a few federal public participation requirements, and I believe they play a considerable role in guiding DTSC's public participation activities. For example, in cases where the federal Resource Conservation and Recovery Act is more stringent or comprehensive than California Hazardous Waste Control Law, the former must be followed. However, as mentioned in the first paragraph, Chair Kracov indicated he only wanted me to provide state requirements.

I depended heavily on the DTSC Public Participation Manual to get my bearings for this information request. It's an excellent source on state and federal public participation requirements as well as DTSC policies on the subject. Although it is somewhat dated, Patrice Bowen assured me the other day that the manual is still valid when it comes to the overall requirements that pertain to public participation.

Hopefully I didn't miss any important state requirements in the summary below. I did not ask DTSC staff to verify that I captured everything.

Public Records Act

Government Code Section 6250 et seq. contains a finding by the Legislature that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state.

Hazardous Waste Control in General

Health and Safety Code section 25103 contains a finding by the Legislature that access to public records is a fundamental and necessary right and that it is necessary to further the public's right of access to public records pertaining to hazardous waste management, information, and cleanup to assure the fullest opportunity for public participation in permitting and other decisions in order to protect public health and the environment.

Hazardous Waste Management

Health and Safety Code section 25199 et seq. (Tanner Act) prescribes public participation activities

to be carried out during the local land use permit process for siting a hazardous waste facility.

The California Code of Regulations, Title 22, Division 4.5, Chapter 20, covers the Hazardous Waste Permit Program. See especially sections 66270.1 (Purpose and Scope of These Regulations), 66270.42 (Permit Modification at the Request of the Permittee), 66270.61. (Emergency Permits), and 66270.62 (Hazardous Waste Incinerator Permits).

The California Code of Regulations, Title 22, Division 4.5, Chapter 21, covers Procedures for Hazardous Waste Permit Decisions. See especially sections 66271.4 (Request for Modification, Revocation and Reissuance, or Revocation of Permits), 66271.5 (Draft Permits), 66271.7 (Fact Sheet), 66271.9 (Public Notice of Permit Actions and Public Comment Period), 66271.11 (Public Hearings), 66271.12 (Obligation to Raise Issues and Provide Information During the Public Comment Period), 66271.14 (Issuance and Effective Date of Permit), 66271.16 (Response to Comments), 66271.18 (Appeal of Decisions to Grant, Issue, Modify, or Deny Permits), 66271.19 (Appeal of Decisions to Suspend and/or Revoke Permits), 66271.31 (Pre-application Public Meeting and Notice), 66271.32 (Public Notice Requirements at the Application Stage), and 66271.33 (Information Repository).

Site Mitigation

Health and Safety Code section 25350 et seq. addresses public participation requirements for response actions. See especially sections 25356.1, 25358.7, and 25358.8. The first, section 25356.1, addresses the public participation requirements associated with remedial action plans. The second, section 25358.7, addresses more general response action public participation requirements. The third, section 25358.8, addresses technical assistance grants for community advisory groups.

CEQA

Public Resources Code section 21000 et seq. contains the California Environmental Quality Act, which requires state and local agencies to disclose and consider the environmental implications of their decisions, and to avoid or reduce the significant environmental impacts of their decisions whenever feasible. CEQA comes into play with both hazardous waste management and site mitigation. The act contains public notice and comment requirements. See especially sections 21003.1 and 21083.

The California Code of Regulations, Title 14, Division 6, Chapter 3, contains the Guidelines for Implementation of the California Environmental Quality Act, which have various public participation requirements. The guidelines are prescribed by the Secretary of Resources to be followed by all state and local agencies in their implementation of CEQA. See sections 15072 (Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration), 15073 (Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration), 15073.5 (Recirculation of a Negative Declaration Prior to Adoption), 15074 (Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration), 15075 (Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved), 15082 (Notice of Preparation and Determination of Scope of EIR), 15085 (Notice of Completion), 15087 (Public Review of Draft EIR), 15094 (Notice of Determination), 15201 (Public Participation), and 15202 (Public Hearings).

I hope the above information adequately addresses Chair Kracov's request and is helpful to the IRP.

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