

From: [Hardy, Terri@DTSC](mailto:Hardy.Terri@DTSC)
To: [Rohlfes, Larry@DTSC](mailto:Rohlfes.Larry@DTSC)
Cc: Boeh-Sobon, Baxter@DTSC
Subject: Advisory group definitions and background information
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Hi Larry,

You have asked about the difference between different advisory groups. Our legal office has prepared some information on Community Advisory Groups, Workgroups and Advisory Groups. See below.

DTSC has the authority to establish a "Community Advisory Group" (CAG) upon receipt of a qualified petition. (Health & Saf. Code, §25358.7.1.) DTSC received its authority to establish CAGs in 1999 with the re-authorization of Chapter 6.8. (Stats. 1999, c. 23, (SB 47), §2, eff. 5/26/1999.) Prior to that, DTSC relied on U.S. EPA's "Guidance for Community Advisory Groups at Superfund Sites" for guidance in facilitating the participation of community members. (OSWER #9230.0-28 (12/1995). Under U.S. EPA's guidance document, typically U.S. EPA determines what sites are appropriate for a CAG.

Under federal environmental law and guidance documents, U.S. EPA allows the affected public to participate in cleanup discussions by forming Community Advisory Groups that are encouraged to be involved as early as possible in CERCLA matters. The National Contingency Plan (NCP) promulgated by the US EPA pursuant to CERCLA, sets forth the specific steps parties must take in choosing a remedial action plan and cleaning up a site. (42 U.S.C. §9605; 40 C.F.R. Part 300 et seq.) The NCP has several requirements to ensure an opportunity for public involvement in developing and approving a cleanup plan. Failure to substantially comply with the NCP requirements for public participation can result in a failure to recover cleanup costs against a party liable for contamination at a site. (Carson Harbor Village v. County of Los Angeles (9th Cir. 2006) 433 F.3d 1260.) In addition, U.S. EPA provides Technical Assistance Grants under CERCLA to qualified community groups to pay for technical assistance needed to gather and interpret information regarding the nature and extent of the hazard and its remediation. (42 U.S.C. §9617(e)(1).)

Another example of community groups are Restoration Advisory Boards (RABs) which were established as a result of a Department of Defense (DOD) guidance document entitled "Fast Track Cleanup at Closing Installations" issued on September 9, 1993. A key element of the DOD guidance addresses improving public involvement opportunities in the base clean-up program at each closing or realigning military base.

Besides CAGs formed pursuant to Chapter 6.8 of the Health and Safety Code or Community Advisory Groups formed for sites where US EPA is the lead agency, an example of a "Workgroup", formed outside of any statutory scheme or guidance under federal law, is the Santa Susana Field Laboratory Workgroup or "SSFL-WG". The SSFL-WG was formed in 1989 at the request of Congressman Elton Gallegly (R-Simi Valley) when he asked U.S. EPA to establish and chair an "Inter-Agency Work Group", according to SSFL-WG's website. It has evolved over the years and ultimately been called the SSFL-WG. In 2012, when US EPA completed its work on radioactive issues at SSFL, US EPA

announced it could no longer fund the Workgroup. Since the Workgroup was formed outside any statutory scheme, DTSC could also not fund the Workgroup (although the SSFL-WG claims DTSC “discontinued” the Workgroup and “declined to act upon a petition” to reinstate the Workgroup). Nevertheless, evidently, the SSFL-WG found funding from a “Community Involvement Fund”, according to SSFL-WG’s website, and continues to hold meetings.

Thus, the SSFL-WG Workgroup predates, by nearly ten years, DTSC’s statutory authority to assist in the establishment of CAGs when a qualified petition is received by the agency. It is worth noting that the statute creating DTSC’s CAG authority specifically contemplates that this new authority does not affect the “status of any advisory group formed before the enactment” of this authority. (Health & Saf. Code, §25358.7.1(d).)

Finally, with respect to Community Advisory Committees (CACs), the only example readily available involves CACs formed for the purpose to advocate for Special Education funding. (See San Francisco Unified School District (SFUSD) CAC for Special Education.).

Terri Hardy
Special Assistant for Program Review
Department of Toxic Substances Control
Terri.Hardy@dtsc.ca.gov | (916) 327-4368