
Independent Review Panel

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



Gideon Kracov, J.D., *Chair*
Mike Vizzier, *Vice Chair*
Dr. Arezoo Campbell, *Member*

Edmund G. Brown Jr.
Governor

Independent Review Panel Meeting Minutes August 9, 2017

1. Call to Order

Vice Chair Mike Vizzier called the meeting to order at 10:05 a.m. in the Byron Sher Room of the CalEPA Building, 1001 I Street, Sacramento, CA.

Vice Chair Vizzier introduced himself and said he would be chairing the meeting because Chair Gideon Kracov could not attend. Panel members present: Vice Chair Vizzier and Panel Member Arezoo Campbell. A quorum was declared.

Vice Chair Vizzier led the Panel in the Pledge of Allegiance.

2. Welcome and Introductions

Vice Chair Vizzier asked the following individuals to introduce themselves: Panel Member Campbell; Supervising Deputy Attorney General Matthew Goldman, legal counsel for the IRP; IRP Program Analyst Larry Rohlfes; and IRP Office Technician Mike Singh.

3. Announcements

Vice Chair Vizzier said there were no requests for a translator at this meeting.

4. Agenda Review

Vice Chair Vizzier reviewed the agenda and said he would like to move the Closed Session to right after Agenda Item 9.

5. Minutes of June 14, 2017 Meeting

Motion: Approve the minutes of the June 14, 2017 IRP meeting with one change on page 11 to indicate that it was the Center for Environmental Health that submitted the petition in September of

2016 to add Bisphenol A (BPA) in canned food and beverages to the Priority Products List. Vice Chair Vizzier moved. Panel Member Campbell seconded. The motion carried unanimously.

6. General Public Comment

David Gerard, Ph.D. of Reflect Coaching said he was a member of the Morgan Hill Unified School District (USD) board, but was speaking as a Morgan Hill resident and not as a board representative. He said the district was planning to build an elementary school on the Borello Property, former farm land heavily laced with the pesticide Dieldrin. He said the district's recently submitted draft Removal Action Workplan (RAW) proposed to excavate toxic soil from the property to a nearby landfill. He said many of the neighbors did not want the school to be built and was disturbed that DTSC appeared to minimize the risk, with a staff toxicologist saying at a July 27, 2017 public meeting that the site was only slightly contaminated. He said this contradicted 2016 research on Dieldrin risks by Henk A. Tennekkes. Mr. Gerard also said that recent soil testing was inadequate and that large amounts of Dieldrin would remain on the site after the proposed remediation plan. He urged the IRP to encourage DTSC to suspend or deny approval of the proposed RAW.

Gino Borgioli, a resident of Morgan Hill, called attention to a 1995 Air Resources Board report entitled Pesticides in Air Part II: Development of Predictive Methods for Estimating Pesticide Flux to Air. He said the report, which he sent the IRP a few days earlier, explains how Dieldrin could have returned to over 2,000 percent above the state allowable limit on the Borello Property by wicking to the surface after the site was remediated and certified by DTSC in 2005. He said a DTSC staff member's explanation that the pesticide could have been applied after 2005 was not adequate because Dieldrin was used for termite control in trees and not with crops, and the trees on the site were removed in 2004. He said a DTSC toxicologist stated at a public meeting that the community should not worry about the Dieldrin. However, Mr. Borgioli said the Department's website had information on Dieldrin's dangers that contradicted that statement. Mr. Borgioli said the draft RAW called for three to four air monitoring units during remediation on the nine-acre parcel. Based on his career experience working with measuring and testing equipment as well as a telephone discussion with an equipment manufacturer, Mr. Borgioli said he had concerns about whether that number would be sufficient. He said that removing the top layers of the soil would not be appropriate because of the wicking effect and that bioremediation, phytoremediation, or a combination of the two were the only safe solution.

Meussa Hartley of Non-Toxic Morgan Hill said she lived three blocks away from the school site and that she found technical problems with the draft RAW as a result of her research. She said the hauling away of soil was too risky, especially when no one could guarantee that the remediation would leave the site 100 percent clean. She said the RAW did not explain how the neurotoxin returned to the Borello Property after the 2005 remediation. She said the three miles-per-hour stop work for wind was laughable because Morgan Hill had winds of nine to 16 miles-per-hour on average. She said the large size and infrequent testing of the stockpiles were concerns. She said the recent soil testing was inadequate. She said DTSC representatives came to the July 27, 2017 community meeting unprepared. She asked DTSC to deem the project as too unsafe or to insist on bioremediation or phytoremediation.

Donna Ruebusch, president of the Morgan Hill USD Board of Education, said she understood that the Borello Property remediation was not under the purview of the IRP, but wanted to express her appreciation for DTSC's understandable information and other support for the school district and her community. She said the school district accepted the Borello Property donation in 2003, and since then its board continued the action and approvals to remediate and prepare the site for a new

school through eight election cycles. She said the Borello Property had been continuously agendized since 2014, when she was elected, and that it voted to go forward with the remediation in June 2017.

Kirsten Perez, the assistant superintendent of the Morgan Hill USD, said local decisions were best made by those who were aware of what was happening in their community, and that the school district had undertaken an exhaustive public process and consulted with many experts and state agencies since 2003. She said the expertise and public outreach from DTSC were great.

Steve Betando, superintendent of the Morgan Hill USD, said he did not recommend bioremediation for the Borello Property because that strategy was used in the earlier remediation, and the Dieldrin unfortunately bounced back from it. He commended the school district board for opting for soil removal, even though it was the more expensive solution. Because of the district's public process and DTSC's advice, he said the district was very confident that it was where it needed to be on this issue.

Public comments by email:

Christina Hildebrand of A Voice for Choice Advocacy offered to share a letter that she wrote to DTSC regarding the Borello Property on August 7, 2017. The letter asked DTSC to suspend or deny the approval of the RAW until a more thorough investigation could be conducted and a safe plan developed. The letter also asked DTSC to research Dieldrin and the issues surrounding the site, rather than rely on community members and advocacy groups to do that work.

Claudia Cibrian, a resident near the Borello Property, expressed numerous concerns about the draft RAW for the school site and said she was disappointed by the lack of answers from the DTSC representatives at the July 27, 2017 public meeting in Morgan Hill. Ms. Cibrian also expressed concerns about an adjacent parcel of land for which DTSC was in process of reviewing a RAW: the Altamira Borello Property. She said she submitted her comments to the DTSC during the review period and had yet to hear back from the Department, yet the landowner was already installing fencing.

Gale Clark said that some school board members were requesting bioremediation for the Borello Property when that was used previously and without success. He said the best solution was to completely remove the soil, which was planned.

DTSC Brownfields & Environmental Restoration Program Deputy Director Mohsen Nazemi clarified that the Department was not involved in the decision regarding the future use of the property. He said DTSC reviewed the project and issued a draft RAW. He said the public comment period ended on August 7 and that the comments received were similar to those made at this IRP meeting. He said DTSC would consider the comments, make a final decision, and respond to all comments. He said his staff was at the public meeting to explain the RAW, but that it was not there to respond to comments.

7. Chair's Report

Vice Chair Vizzier highlighted various DTSC achievements since the last IRP meeting.

8. Staff Report

Mr. Rohlfs mentioned the various meeting documents that were posted on the Panel's website and available as handouts for the public.

He reviewed his report on pending legislation pertaining to DTSC.

He said DTSC notified the IRP on July 24, 2017 that the Department denied a petition from the Center for Environmental Health (CEH) to list food cans with BPA resin linings as a potential Priority Product. He said that a June 8, 2017 letter to the CEH from Karl Palmer, chief of DTSC's Safer Consumer Products (SCP) Branch, explained that the petition did not provide sufficient detail. Mr. Rohlfs said the notification was made to the IRP in response to the Panel's request at the June 14, 2017 meeting that the DTSC notify it of the disposition of what was then a pending petition.

He reported that DTSC had released for public comment its draft regulations on Toxicity Criteria for Risk Assessments, Screening Levels, and Remedial Goals for Hazardous Substance Release Sites in California. He said public workshops were scheduled and that DTSC would hold a public hearing on the proposed regulations on September 20, 2017.

He reported that a conference call took place on July 27, 2017 to discuss how the IRP and DTSC could work together to evaluate progress with respect to the Panel's recommendations and performance metrics for the Department. Participants on the call were Chair Kracov, DTSC Chief Deputy Director Francesca Negri, DTSC Administrative Services Deputy Director Andrew Collada, DTSC IRP Liaison Gabriella Nepomuceno, and Mr. Rohlfs.

Vice Chair Vizzier adjourned the meeting for a break at 11:35 a.m. and reconvened it at 11:46 a.m.

9. DTSC Presentation on the Enacted 2017-18 State Budget as It Applies to the Department

Mr. Collada and DTSC Fiscal Officer Sara Murillo gave a presentation on DTSC funding by source and program, adjustments, and fund condition statements entitled: "Enacted Budget: Fiscal Year 2017-18." A PowerPoint version of the presentation is available on the IRP's website at: <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Meetings.cfm>.

Mr. Collada explained that DTSC's budget increased from \$262.6 million in 2016-17 to \$293.2 million in 2017-18, an increase of \$30.7 million. He said the budget provided for 1,048.1 positions, an increase of half a position. He said the following programs had budget decreases: Site Mitigation & Brownfields Reuse (\$5.9 million), Hazardous Waste Management (\$5.4 million), SCP (\$2.2 million), and State Certified Unified Program Agency (\$14 thousand). He said the Exide Technologies program had a budget increase (\$44.2 million).

Mr. Collada said the major adjustments included the following: \$3.7 million for National Priorities List sites in 2017-18, \$2.5 million for Stringfellow Superfund site characterization over three years, \$4.2 million for Exide closure implementation over three years, \$1.2 million for Lead-Acid Battery Act of 2016 over two years, and a \$2 million for a park in Los Angeles County in 2017-18.

Mr. Collada said the Hazardous Waste Control Account had a structural deficit that DTSC was looking to address. He projected a drop in the ending balance from \$14.3 million in 2016-17 to \$3.0 million in 2017-18.

Mr. Collada said the Toxic Substances Control account (excluding Exide) had an imbalance as well. He projected a drop in the ending balance from \$22.0 million in 2016-17 to \$11.0 million in 2017-18.

Panel Member Campbell expressed concern about the account balance trends and asked if a plan had been developed to address them.

Mr. Collada responded that DTSC was working with the Department of Finance on addressing the deficit in the two accounts, but that there was no formal plan yet.

Vice Chair Vizzier said it seemed to him that expectations of DTSC were increasing while funding and the number of positions remained the same. He expressed concern that the success of the SCP Program could one day negatively impact revenues, and he asked Mr. Collada if he had any suggestions to help the IRP craft a recommendation on the issue.

Mr. Collada responded that DTSC was in the process of developing the budget for 2018-19 and that the process was confidential. He added that while revenues were projected to be steady, both accounts were facing pressures, and that the SCP Program was just one of them.

Vice Chair Vizzier said his real concern was increasing expectations in the face of decreasing revenues, and he asked if DTSC was being set up for failure again.

Panel Member Campbell said it would be helpful to know more about projections for the various revenue sources.

Mr. Collada responded that DTSC could provide the IRP with revenue source breakdowns and trends for each of the accounts.

Panel Member Campbell observed that Exide expenditures distorted DTSC financial picture.

Mr. Collada agreed and said that other than the Exide cleanup and the Lead-Acid Battery Act implementation, there was little growth in the Department.

Panel Member Campbell said she agreed with Vice Chair Vizzier that expectations for DTSC and its resources do not line up.

Vice Chair Vizzier said he was struggling with how to craft a recommendation and asked if the IRP should express concern about the condition of the two accounts or focus on the need to increase revenue.

Mr. Collada responded that any analysis of DTSC's financial position must consider expenditures and revenue. He added that DTSC was in an unsustainable position.

Public comment via email:

Robert Sullivan, a DTSC senior attorney, said the Department had many attorneys who were working for many years without upward mobility opportunities. He said this was because requests for Attorney IV positions were turned down for budgetary reasons and because three of the six individuals holding Attorney IV positions were recruited from outside the DTSC. Mr. Sullivan said he assumed this situation existed with other employee classifications too. To sustain succession planning, recruitment, and retention, he recommended an internal survey to identify topped out

employees. He suggested that this survey information be used to identify and plan for development opportunities.

18. Closed Session

Vice Chair Vizzier adjourned the meeting at 12:08 p.m. for Closed Session and a lunch break.

19. Reconvene and Report on Closed Session

Vice Chair Vizzier reconvened the meeting at 1:05 p.m.

Vice Chair Vizzier announced that there were no reports out of Closed Session.

10. IRP Reporting Requirements

DTSC Safer Consumer Products and Workplaces Program Deputy Director Meredith Williams, Ph.D., and DTSC Senior Scientist Simona Balan, Ph.D., gave a presentation on “Streamlining the Development of Priority Product Profiles.” A PowerPoint version of the presentation is available on the IRP’s website at: <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Meetings.cfm>.

Ms. Williams said the SCP Program had been trying to learn lessons from its experience in implementing the 2013 regulations, and one example was a recent Lean Six Sigma project to reduce the estimated time it took to complete 95 percent of the Priority Product profiles from up to 3.5 years to only one year without compromising quality or requiring additional resources.

Ms. Balan said this project was different from several other DTSC Lean Six Sigma projects in that the SCP Program did not have years of historical data. She said the project was aimed at the second phase of the four-step process and, specifically, working from the Candidate Chemicals List to propose Priority Products. She said the approximately 15-member Chemical-Product Evaluation Team increased efficiencies by incorporating key Lean Six Sigma principles. Those principles included eliminating waste, breaking down silos, simplifying the process and making it mistake proof, building decision-making into the process, standardizing the work, developing a flexible workforce, using single-piece flow rather than batches, improving communications, and using feedback from data to continue improving. She said the team eliminated or streamlined many process steps. She said their biggest challenges were the uniqueness and complexity of the regulations. She said the team identified the following as the root causes of problems: internal communications and decision-making, external communications, the research approach, and the toolkit. She said the team came up with various solutions for each of the root causes and was currently working on them. She said the one-year estimate included program work only and did not include external factors such as the time taken for public engagement.

Vice Chair Vizzier asked if the team had any plans to track the actual performance against the goal.

Ms. Balan said the team planned to track the time it took to go through each of the phases, from product scoping to public engagement to profile writing.

Panel Member Campbell said it would be difficult to recommend metrics for a novel program like the SCP Program.

Vice Chair Vizzier added that it may be a bad idea for the IRP to recommend metrics.

Panel Member Campbell said the fact that DTSC was evaluating its process at this early stage was appreciated and worthy of applause.

Public comment by email:

Tim Shestek of the American Chemistry Council asked how DTSC would solicit chemical-product nominations prior to scoping and whether the nominations would be posted on the CalSAFER website.

The IRP next turned its attention to the draft IRP Eighth Report to the Governor and the Legislature Pursuant to HSC Section 57014.

Vice Chair Vizzier noted that it was not the complete report and that the IRP would have an opportunity to discuss another draft at its next meeting.

Report Narrative

Panel Member Campbell noted that the narrative was more historical in its approach than the past reports and wondered if it had too much detail.

Mr. Rohlfs said he took a more historical approach because he felt it was necessary to show how the programs were evolving and to highlight connections between them.

Vice Chair Vizzier said he liked the detail.

Panel Member Campbell said it took a while for the narrative to get to the program today.

Mr. Rohlfs said that the source reduction and consumer products subject areas included quite a few programs and that he felt it necessary to recognize all of them. He said that if the IRP had identified the SCP Program as the subject matter of its review, he would have zeroed in on that program.

Panel Member Campbell suggested that the background information be included in an appendix if it wasn't directly related to the recommendations.

Vice Chair Vizzier suggested that the IRP table this subject for a future discussion.

The IRP agreed to change the phrase 12 long tons to 12,000 kilograms on page 2.

The IRP discussed making a recommendation to update the Pollution Prevention and Green Technology page of its website.

Dr. Williams said DTSC recognized the need to update the website information and was working on a strategy to revise the content and modernize its website overall. She said the challenge was that there was a lot of useful information on the website and that it was time-consuming to separate the wheat from the chaff.

The IRP agreed to add the phrase “on the other hand” to the paragraph about the website information on the required reports that generators must complete.

Dr. Williams offered to help IRP staff understand what was functional and what was not among the Department’s pollution prevention programs as well as discuss the paragraphs devoted to the Pollution Prevention and Green Technology section of the DTSC website.

The IRP agreed to substitute the word myriad for the word hodgepodge in the paragraph on the website information pertaining to the various statutory requirements to protect consumers from toxics in products or prevent pollution.

The IRP discussed the possibility of adding a recommendation on the AB 2948 (Chapter 1504, Statutes of 1986) requirement for state and county hazardous waste management plans that would be similar to the suggestion made by DTSC in its September 20, 2016 response to the Panel’s information request for an update on the plans.

Recommendations for the Governor and Legislature to Improve Source Reduction Program

Vice Chair Vizzier offered to improve the wording of the first recommendation about examining future revenue sources to replace expected decreasing revenue because of decreased hazardous waste generation and disposal and the successful implementation of the SCP Program.

Vice Vizzier offered to rewrite the second recommendation on giving Certified Uniform Program Agencies (CUPAs) the authority to require implementation of waste reduction plans.

Recommendations for the DTSC to Improve Source Reduction Program

The IRP agreed to add a recommendation to update the website to reflect the status of DTSC’s Pollution Prevention and Green Technology programs.

Recommendations for the Governor and Legislature to Improve SCP Program

The IRP asked Mr. Rohlfes to rewrite the recommendation on providing clear authority to DTSC regarding decision-making for the use of feasible alternate chemical substitutions to better capture the intent of a suggestion from Timothy F. Malloy, J.D., at the June 14, 2017 meeting.

The IRP agreed that more information and specificity were needed to evaluate the recommendation for a fee to pay for SCP.

The IRP agreed to recommend that the Legislature preserve the SCP Program’s comprehensive, science-based review process and not bypass it by identifying chemical/product combinations as potential Priority Products, requiring DTSC to adopt regulations in accordance with the Green Chemistry statute, or prohibiting the manufacture, sale, or distribution of a chemical/product combination.

Recommendations for the DTSC to Improve SCP Program

The IRP agreed to delete the recommendation to provide several meetings for stakeholders to discuss the Priority Products List chosen and actions taken by the Department.

The IRP agreed to add the words “related to that process” to the end of the sentence that recommended the following: DTSC should have milestones and metrics for the SCP, including some way to track source reduction.

The IRP agreed to delete the recommendation that DTSC publish a timeline for each product it identifies.

Recommended Goals and Performance Metrics for SCP Program

The IRP agreed to divide the first recommendation into two separate recommendations.

The first should read as follows: The most objective and accurate performance metrics for the SCP program would be biomonitoring data showing a reduction in the environmental and biological burden of the priority products that have been replaced by safer chemicals. This information will not be readily available and may take several years to assimilate. DTSC should plan to use biomonitoring as a metric in the future.

The second should read as follows: For immediate evaluation of the program, more subjective assessments can be conducted, such as surveys that monitor the perception of the various stakeholders as to the success of the program.

Information Requests to DTSC on the SCP Program

The IRP agreed to delete the draft request for periodic reports on the activity and progress.

The IRP decided to submit the report on source reduction and consumer products as its next quarterly report, due on October 18, 2017, rather than as a non-statutorily required report submitted prior to that date. The Panel decided to address the Department’s progress with the IRP’s suggested performance metrics in its annual report to be submitted at the end of the year.

The IRP decided to hold off on discussing the following reports until its next meeting: the tracking document on the recommendations to DTSC, the tracking document performance metrics, and the compilation of DTSC deliverables from recent budget change proposals (BCPs).

The IRP decided to task each Panel member to individually review the tracking documents on past recommendations and look for opportunities to consolidate them and/or eliminate recommendations that may no longer be relevant or appropriate.

Mr. Rohlfes reported that Me. Negri indicated during the July 27, 2017 conference call that the Department planned to submit a report to the Panel prior to its September meeting. He said the report would address the IRP recommendations to DTSC and its performance metrics for DTSC. Mr. Rohlfes said it also was his understanding that DTSC would submit a response to the IRP’s compilation of BCP deliverables prior to the Panel’s October meeting.

Vice Chair Vizzier adjourned the meeting for a break at 3:35 p.m. and reconvened it at 3:45 p.m.

Public Comment:

Dawn Koepke of the California Council for Environmental and Economic Balance expressed concerns about several of the draft recommendations. She said the recommendation to the Governor and Legislature to provide clear authority to DTSC regarding decision-making for the use of feasible alternate chemical substitutions could be construed to give DTSC the authority to require specific actions with regard to the use of chemicals in products. She said that levying additional fees on chemical manufacturers would be very complicated to put in place fairly and would be costly to the manufacturers, who already were incurring significant costs from the Alternatives Analysis process. She said the recommendation to provide standards for the Alternatives Analysis process would be challenging because it could eliminate the flexibility that was intended to provide manufacturers with decision-making power to innovate based on tradeoffs and options available to them. For the IRP's final report, Ms. Koepke urged the IRP to recognize the progress that DTSC had made and look for past recommendations that may no longer be necessary or relevant.

Vice Chair Vizzier asked Ms. Koepke for a written summary of her comments.

11. Organizational, Operational, and Administrative Matters

Mr. Rohlfes gave a presentation on the "DTSC IRP Self-Assessment Survey Results." A PowerPoint version of the presentation is available on the IRP's website at: <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Meetings.cfm>.

Mr. Rohlfes said IRP support staff worked with Panel Member Campbell to design the survey, which was sent out on June 21, 2017 to individuals on the IRP contact list, people on the IRP EList, and those who testified at IRP meetings. He said visitors to the IRP's Internet home page also were invited to fill out the survey by clicking on a button. He said the survey-takers were assured that their responses would be anonymous. He said the survey closed on July 20, 2017.

Mr. Rohlfes said there were multiple-choice questions about the public meetings, IRP communications, and the reports for the Governor and Legislature. He said the respondents also were asked to provide an open-ended response with their questions, comments, and concerns. He said the respondents were asked to self-identify themselves and that this information was used to place them in one or more of three subgroups for analysis and comparisons: DTSC employees, regulated industry, and communities. He said there were a total of 28 survey questions.

Mr. Rohlfes presented the response totals for all the questions. He also presented the responses by subgroups for seven key questions. Finally, he presented shortened versions of all responses to the open-ended question.

Mr. Rohlfes said that Panel Member Campbell and support staff did not draw any conclusions from the survey, as they thought it appropriate to leave that job to the full IRP.

Panel Member Campbell said she hoped the survey results could be useful in the IRP's final report, and she offered to summarize the information for that report.

12. Future Meeting Schedule and Agenda Items

Vice Chair Vizzier said he was arranging for a presentation at the September 11, 2017 meeting in San Diego to give the IRP an idea of the many agencies in the area that collaborate with DTSC on enforcement. He said there also would be a DTSC presentation on the Public Engagement Work

Plan, a discussion revolving around the expected DTSC report on the IRP recommendations and performance metrics, and a discussion about the next draft of the report on source reduction/consumer products.

Panel Member Campbell suggested the IRP discuss its past recommendations at the September meeting.

Vice Chair Vizzier said DTSC was scheduled to give several Lean Six Sigma presentations at the October meeting.

Mr. Singh said it appeared that the best date for the October meeting would be October 25, 2017.

Vice Chair Vizzier said he didn't think it was advisable to schedule a public meeting in Bakersfield in the remaining time the IRP had available to it before the end of the year.

13. Adjournment

Motion: Adjourn meeting. Vice chair Vizzier moved. Panel Member Campbell seconded. The motion carried unanimously.

Vice Chair Vizzier adjourned the meeting at 4:32 p.m.