
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 April 12, 2017

1. Call to Order

Chair Gideon Kracov called the meeting to order at 10:06 a.m. in the Byron Sher Room of the CalEPA Building, 1001 I Street, Sacramento, CA.

Panel members present: Chair Kracov, Vice Chair Mike Vizzier, and Panel Member Arezoo Campbell. A quorum was declared.

2. Welcome and Introductions

Chair Kracov introduced himself and asked the following individuals to introduce themselves: Vice Chair Vizzier; 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.

Chair Kracov led the Panel in the Pledge of Allegiance.

3. Announcements

Chair Kracov noted that there were no requests for a translator at this meeting. He said there would be public comment under the General Public Comment agenda item and all other agenda items. He announced that the meeting was broadcasted on CalEPA's website and that public comments could be sent to the Panel during the meeting by email.

4. Agenda Review

Chair Kracov reviewed the agenda. He said he did not believe the Panel would go into a closed session. He proposed to take up the agenda items in the order listed.

5. Minutes of February 8, 2017 Meeting

Vice Chair Vizzier suggested that his comment on page 6 of the minutes be changed to read that consistency requires continual attention and that DTSC "will never achieve perfection."

Motion: Approve the minutes of the February 8, 2017 IRP meeting with the suggested change. Panel Member Campbell moved. Vice Chair Vizzier seconded. The motion carried unanimously.

6. General Public Comment

Public comments by email:

Phil Chandler of Topanga asked the IRP to recommend that DTSC explain what he said were its different risk management decisions for contamination around the Santa Susana Field Laboratory (SSFL) site in Simi Valley and the Exide Technologies (Exide) facility in Vernon. He said that DTSC's proposal to evaluate the health risks with the Exide residential cleanup ignored existing and projected uses of backyards for urban agriculture. Mr. Chandler also mentioned several five-year-review issues for consideration: changing technologies, changing risk-based screening levels or other risk numbers, emerging pollutants, previously made cleanups to background levels, the universe of DTSC five-year-review sites, the universe of Certified Unified Program Agency (CUPA) five-year-review sites, the universe of five-year-review sites that were transferred from CUPA to DTSC regulatory responsibility, delays in five-year reviews, cumulative risk, and discrepancies between public health goals and the use of the maximum contaminant level standard.

7. Chair's Report

Chair Kracov said he had nothing to report at this time.

8. Staff Report

Mr. Rohlfs mentioned the meeting documents that were posted on the Panel's website and available as handouts for the public, reviewed a staff report on pending legislation pertaining to DTSC, and introduced a new DTSC co-liaison to the IRP, Program Analyst Joshua Sutterfield.

Mr. Rohlfs reported that he had contacted the California Law Revision Commission in response to the Panel's request for him to do so at its February 8, 2017 meeting. Mr. Rohlfs said he learned from his discussion with the commission's Executive Director, Brian Hebert, that requests to recommend law code revisions must come from or be approved by the Legislature, that the commission seems to prefer to work on nonsubstantive rather than substantive revisions, and that the clearer the parameters were set for a commission project, the better.

Mr. Singh gave a report on the IRP's expenses and budget forecast for fiscal year 2016-17. He estimated that the IRP would spend approximately \$34,000 of its \$50,000 2016-17 budget if the current spending pattern continued.

Chair Kracov adjourned the meeting for a break at 10:56 a.m. and reconvened it at 11:06 a.m.

9. Presentation by Jim Bohon, retired Cal EPA Assistant Secretary for Local Program Coordination and Emergency Response, on the CalEPA Regulated Site Portal

Mr. Bohon gave a presentation and live demonstration on the CalEPA Regulated Site Portal. A PowerPoint version of the presentation is available on the IRP website at:

<https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Meetings.cfm> .

Mr. Bohon said the portal had been live since December 2016. He said the system, which was hosted in the cloud and could be accessed at <https://siteportal.calepa.ca.gov>, allowed users to search for and use data on items of environmental interest from many different sources. He said it collected information from five other systems and displayed it in a map-based viewer. He said the five data sources were: the California Environmental Reporting System (CERS) that CalEPA developed to support the reporting of information by regulated businesses and CUPAs pertaining to hazardous materials and hazardous waste; EnviroStor, the DTSC database containing information on state and federally listed cleanup sites, along with hazardous waste permitted and corrective action facilities; GeoTracker, which was developed by the State Water Resources Control Board (SWRCB) to contain information pertaining to impacted groundwater sites; the California Integrated Water Quality System (CIWQS), which was developed by the SWRCB to manage permitting, compliance, and enforcement activities related to sites that discharge to surface water, or otherwise affect water quality; and the Toxic Release Inventory (TRI), a federal database containing detailed information on nearly 650 chemicals and chemical categories managed by over 1,600 industrial and other California facilities. He said the system was optimized for fast searching and had a variety of ways to filter and export information as well as a legend to overlay information on each site.

Mr. Bohon said the system could be used in a variety of ways. It could be used for general searching, for accessing a profile screen of a particular business/site/facility, and for accessing a compliance history screen for a particular business/site/facility. He said the system allowed the user to generate filtering displays for evaluation types, enforcement types, and 31 regulatory programs. He said the displays were dynamic in that they allowed the user to zoom in and out on the screen, with the filters adjusting to what was on the screen.

Mr. Bohon said users could export many different types of information, but they could not export chemical information on the public site for security reasons. He said they could see chemical information on a facility-by-facility basis, but it was only presented in ranges of chemical amounts. He said CalEPA worked with the Department of Homeland Security and other organizations to identify information security issues when designing the system.

Vice Chair Vizzier said he had used the portal and found it to be a powerful tool and very useful.

Chair Kracov asked how the availability of the portal had been communicated to the public. Mr. Bohon responded that it was communicated to the regulated agencies, to interested parties, and in a press release. He also said information about the portal was posted prominently on the CalEPA website. He said the agency began tracking website use in early March 2017.

Mr. Bohon acknowledged that the portal does not work well on a smart phone at the present time. However, he said CalEPA's contractor was working to make it mobile-friendly.

Panel Member Campbell asked how often the information was updated. Mr. Bohon responded that the information was updated daily. For example, he said that if EnviroStor was updated on a particular day, that information would be uploaded to the system the following day. He said that US EPA only updated its TRI information on an annual basis, and therefore the system's TRI information likewise could only be updated once a year.

Mr. Bohon then gave a live demonstration of the portal.

Chair Kracov asked if all of the actual documents that could be accessed on EnviroStor or the other four data sources could be accessed from the portal as well. Mr. Bohon responded that the portal provided live links to host systems and that documents were available through the host systems.

Tom Jacobs of the Chemical Industry Council said that his council was one of the test drivers of the system. He said the portal made a tremendous amount of information systematically available to the public. He said the developers of the portal tried to achieve a good balance between addressing the sometimes competing needs for transparency and security.

Vice Chair Vizzier congratulated CalEPA for getting the job done on the portal.

Mr. Bohon said he hoped the portal would become a great tool for the public.

Chair Kracov adjourned the meeting for a lunch break at 12:15 P.m. and reconvened it at 1:15 p.m.

10. DTSC Presentation on the Governor's FY 2017-18 Budget for the Department

DTSC Administrative Services Deputy Director Andrew Collada and DTSC Fiscal Officer Sarah Murillo gave a presentation on the Governor's proposed budget for fiscal year 2017-18. A PowerPoint version of the presentation is available on the IRP website at: <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Meetings.cfm> .

Deputy Director Collada began the presentation by summarizing the proposed budget by funding source and comparing it to the 2016-17 enacted budget. He said there were four funding sources: General Fund, Special Funds, Federal Funds, and Reimbursements. He then summarized the proposed budget by program and compared it to the 2016-17 enacted budget. He said there were six programs: Site Mitigation & Brownfields Reuse, Hazardous Waste Management, Safer Consumer Products, State CUPA, Exide Technologies, and Administration.

Deputy Director Collada said the proposed budget totaled \$285,827,000, \$5,463,000 more than the 2016-17 enacted budget total. He said the proposed budget authorized 1,053.1 positions, 5.5 more than the 2016-17 enacted budget.

Deputy Director Collada said the proposed budget included two budget change proposals (BCPs): \$2,460,000 from the General Fund for removal and remedial action to complete the characterization of the Stringfellow Hazardous Waste Site and \$610,000 to begin implementation of the Lead-Acid Battery Recycling Act of 2016. He said both BCPs also included adjustments for 2018-19 and 2019-20. He noted that the BCP for the implementation of the Lead-Acid Battery Recycling Act included 5.5 positions and had a revenue component.

Deputy Director Collada summarized the enacted and proposed funding for the Exide cleanup from 2015-16 through 2019-20.

Deputy Director Collada said the projected balance in the Hazardous Waste Control Account was \$7,694,000. He said DTSC recognized that the account had a structural deficit and a lower than prudent balance. He said the projected balance in the Toxic Substances Control Account, excluding Exide, was \$13,217,000.

Chair Kracov asked if the projected balances in both accounts were larger in the past.

Deputy Director Collada responded in the affirmative.

Vice Chair Vizzier asked about federal revenue expectations.

Deputy Director Collada said there were a lot of unknowns about the federal budget and that DTSC should have a better idea later in the year.

Panel Member Campbell asked if DTSC had a contingency plan in the event federal money dried up.

Deputy Director Collada responded that DTSC did not have a plan, but was considering whether to have one.

Chair Kracov noted that DTSC's budget was going down slightly if the Exide expenses were taken out of consideration.

Deputy Director Collada responded that one reason for this trend is that there were several projects that had limited-term funding that will end in 2016-17.

Chair Kracov asked if reporting was required on what was done with recent budget adjustments for projects of limited-term duration, such as the Improving Enforcement Performance Workplan.

Deputy Director Collada responded that it was not.

Chair Kracov said he would be interested in having the Department identify its deliverables for those projects and asked Mr. Rohlfes to work with DTSC staff to research them from BCPs that were approved in the last year or two.

Chair Kracov asked why there was no BCP for increased funding for the Site Remediation Account for direct site remediation costs on Superfund orphan sites and state orphan sites.

Deputy Director Collada responded that DTSC was aware of the future need, but did not have information that he could present to the IRP on the matter.

Vice Chair Vizzier asked if DTSC had money in its budget for IRP expenses between July 1, 2017 and December 31, 2017.

Deputy Director Collada responded that \$25,000 was budgeted for IRP expenses during the second half of 2017.

Chair Kracov suggested that Panel support staff present on what was finally approved in the 2017-18 budget at a future IRP meeting.

11. IRP Reporting Requirements

Chair Kracov turned the IRP's attention to the draft report to the Governor and the Legislature pursuant to HSC section 57014(f) on DTSC site mitigation.

Report Narrative:

The IRP agreed to delete the word "close" in a sentence in the section on program organization that said, "DTSC's site mitigation staff works in close cooperation with other federal, state, and local agencies."

Ingrid Brostrom of the Center on Race, Poverty, & the Environment (CRPE) said the paragraph on remedy selection in the section on the site mitigation process could be edited to recognize that

community acceptance is prioritized last among the factors used to evaluate alternatives for cleaning up a hazardous substance release. She added that the current weighting of the criteria could be modified somewhat.

In a paragraph that refers to DTSC's Public Participation Manual in the section on the site mitigation process, the IRP decided to add a statement that the manual was last updated in 2001 and that the Panel recommended in a previous report that DTSC finalize a manual update by December 31, 2017.

In the section on the site mitigation process, the IRP agreed to delete a sentence on DTSC updating and posting of its site mitigation policies.

Ms. Brostrom said the paragraphs on the Site Remediation Account (SRA) in the budget section seemed to imply the problem of future shortfalls was resolved. Ms. Brostrom said she did not believe that was the case.

The IRP agreed to delete the word "fortunately" in the sentence on the SRA that mentioned the AB 2891 (Chapter 704, Statutes of 2016) change in the funding process for the account as of January 1, 2017. The IRP also agreed to change a sentence stating that the IRP welcomed the expression of the Legislature's intent in AB 2891 to appropriate sufficient funds to the SRA in future budgets. The IRP decided to state instead that the Panel encouraged the Governor and the Legislature to appropriate the necessary funds for this purpose in the future.

In the section on process improvements, the IRP agreed to state that DTSC "plans to complete the initiative" to streamline the Voluntary Cleanup Program decision-making process and reduce time for review of program workplans and reports in 2017—instead of "hopes to complete the initiative."

In the same section, the IRP directed its support staff to work with DTSC Brownfields & Environmental Restoration Program Deputy Director Mohsen Nazemi to write an appropriate sentence to describe when DTSC expects the rulemaking will occur for new regulations to establish clearer toxicity criteria for contaminants of concern in cleanup sites.

In the same section, the IRP agreed to either add an expected submission date for the evaluation of the Voluntary Cleanup Program by DTSC's Office of Strategic Planning, Performance, and Analysis or delete the sentences that refer to the evaluation.

Chair Kracov adjourned the meeting for a break at 2:28 p.m. and reconvened it at 2:45 p.m.

In the section on three problem cleanup sites, the IRP agreed to delete the words "very small" from the following sentence: "However, a very small number of complex cleanups have severely challenged the Department, resulting in controversy and sometimes distrust."

In the discussion of the SSFL cleanup, the IRP agreed to delete the word "closely" from the following sentence: "DTSC has worked closely with Ventura County to collect the information it needs to determine the reasonably foreseeable land used at SSFL and has stated it will consider such uses in evaluating potential risks."

In the discussion of the SSFL cleanup, the IRP agreed to delete the following sentence: "It is not easy for a government agency and a community to have a productive dialogue about health and environmental risks when the latter is directly impacted by those risks, and worries exist about community health and whether onsite nuclear and chemical contamination will migrate offsite."

In the discussion of the Exide cleanup, the IRP agreed to refer to the investigation of inspection violations by the Los Angeles Times rather than “an investigation by Tony Barboza, a journalist for the Los Angeles Times.”

In the discussion of the Exide cleanup, the IRP agreed to delete a sentence stating that DTSC informed Exide that it would not approve a permit for the facility in February 2015, unless the Department provided the IRP with written documentation of this communication.

Ms. Brostrom suggested that the following sentences be deleted from the discussion of the Exide cleanup because they included value judgements and were not necessary: “The relationship between DTSC and many community residents has been rocky. This should not be surprising, given the public outrage about Exide and the cascade of news during the past few years about the contamination and its effect.”

The IRP decided to delete both sentences.

Ms. Brostrom said the following sentences in the discussion of the Exide cleanup included value judgements: “In fairness, it has understandably taken some time for the Department to gear up for this significant undertaking. For example, the Exide Division was not quite fully staffed as of January 2017.”

Deputy Director Nazemi added that the Exide Division was fully staffed in January 2017 for the workload at that time.

The IRP decided to delete the sentences in question.

In the discussion of the Exide cleanup, the IRP agreed to add a sentence stating that DTSC initiated cleanups under its January 2017 guidelines to allow for a limited number of properties posing the highest risk to undergo expedited, time-critical removal actions on a case-by-case basis in March 2017.

In the discussion of the Exide cleanup, Deputy Director Nazemi said that a paragraph on changes to DTSC’s hazard ranking system for assessing the level of contamination in residential properties was not factual and suggested that the IRP delete or change the paragraph.

The IRP agreed to delete the paragraph in question.

In a paragraph about allegations against two contractors conducting soil sampling on residential properties near Exide, Ms. Brostrom said that a sentence stating that the allegations were examples of a “problem that could have been contentious had DTSC not responded pro-actively” represented a value judgement.

The IRP agreed to modify the sentence in question to remove this value judgement.

Ms. Brostrom questioned a statement in the same paragraph that DTSC appeared to be taking the allegations seriously. Deputy Director Nazemi suggested the sentence be written to state that DTSC was taking the allegations seriously and had referred the case to the Attorney General’s Office for investigation.

The IRP agreed to edit the sentence as suggested by Deputy Director Nazemi.

In the section on successful cleanup examples, Ms. Brostrom said the examples presented were problematic.

The IRP agreed to delete the following sentences in the section on successful cleanup examples: “Contaminated sites that are difficult to remediate or where mistakes have been made become notorious. Successful remedial actions, on the other hand, can be taken for granted.”

Update on Previously Submitted Site Mitigation Recommendations:

The IRP agreed to be more specific in its update to the Panel’s previous recommendation to the Legislature and Governor to require DTSC to prioritize the Exide residential cleanup based on mapping data on metal levels in blood and soil. The IRP agreed to refer to the January 2017 Time Critical Removal Action Guidance for expedited actions and the cleanups that have been initiated under that guidance.

The IRP agreed to add a sentence to the update to the Panel’s previous recommendation to DTSC to provide Level 4 data packages for site mitigation analyses and decisions to the public upon request. The IRP directed that the sentence should state that the Panel intended to verify DTSC’s implementation of the recommendation.

Ms. Brostrom said it appeared from the draft report that DTSC was planning some general improvements to its Internet website. However, she said that the intent of the IRP recommendation for DTSC to publish on its website an easy-to-read matrix of cleanup standards, cleanup schedules, and sampling levels was more specific. She said it was to post this information, for each cleanup site, side by side on a website page. Ms. Brostrom said CRPE felt strongly about this recommendation.

Recommendations for the Governor and the Legislature on Site Mitigation:

Ms. Brostrom brought up several concerns, most of which she said were mentioned in an April 12, 2017 CRPE letter to the IRP: long periods of time between discovery or a complaint and adoption of a remedial action plan; failure to notify the public when there was suspected contamination; the low ranking of community acceptance in the factors used to evaluate alternatives for cleaning up a hazardous substance release; the need to make sure communities are on board with remedial action plans; insufficient communication with communities after the adoption of a remedial action plan; unilaterally made decisions to depart from remedial action plans after their adoption; inconsistent cleanup standards; the influence of responsible parties in remedy selection; the need to have a community dialog on contaminated soil; and insufficient funding.

The IRP agreed to make the following recommendations to the Governor and Legislature: (1) increase the number of staff members in the Office of Public Participation and Office of Communications to better engage stakeholders throughout all phases of contentious site mitigation projects, especially the early phases; (2) place in statute a requirement for DTSC to conduct five-year reviews of all long-term cleanup remedies for as long as the hazardous substances remain at the site above levels that allow for unlimited use and unrestricted exposure; (3) direct the California Law Revision Commission to review provisions pertaining to the response authority for releases of hazardous substances in Chapter 6.5 and Chapter 6.8 of the Health and Safety Code and provide nonsubstantive improvements, possibly using terminology from the Legislature’s 2016 instructions to the commission for a revision of the Fish & Game Code; and (4) select and appoint a DTSC Assistant Deputy Director responsible for Exide by June 1, 2017.

Chair Kracov adjourned the meeting for a break at 3:50 p.m. and reconvened it at 3:55 p.m.

Recommendations for the DTSC on Site Mitigation:

Ms. Brostrom expressed support for the following draft recommendations: give stakeholders the opportunity to discuss and contribute to the planning and implementation of site mitigation plans throughout the project period; review site mitigation policies; promulgate written guidance on when DTSC should use fence-line monitoring on remediation sites; and compile lessons learned from the DTSC cleanup activities at Riverside Agricultural Park.

Deputy Director Nazemi said the draft recommendation to write and post a report on what went wrong with Exide was a permitting recommendation rather than a site mitigation recommendation.

The IRP agreed to make the following recommendations to DTSC: (1) develop written procedures to give stakeholders the opportunity to be informed and participate during the implementation of remedy decision documents; (2) approve and certify the Remedial Action Plan and Environmental Impact Report for cleaning up the lead-impacted soil in residential neighborhoods near the closed Exide Technologies facility by July 1, 2017; (3) submit proposed regulation specifying the toxic criteria for human health risk-based screening levels, action levels, and remediation goals to the Office of Administrative Law by December 31, 2017 and adopt the final rule by spring of 2018; (4) compile written lessons learned from the DTSC cleanup activities at Riverside Agricultural Park and release them to the public by December 31, 2017; (5) on a timely basis, submit report to the Legislature with an estimate of the money needed to fund direct site remediation costs at State Orphan sites and meet the state's obligation to pay for site remediation costs at federal Superfund Orphan sites, as required by Health & Safety Code section 25173.7(c); and (6) regularly update "frequently asked questions" and other website information on specific site mitigation projects and indicate date of last update on website page.

Recommended Goals and Performance Metrics for Site Mitigation:

Ms. Brostrom expressed support for the draft recommendation to use surveys and other methods to measure community satisfaction of site mitigation projects. Ms. Brostrom said she also would like to measure the following: how long it takes DTSC to move between the different stages of the site mitigation process; and the environmental justice implications of funding and cleanup goals for specific projects.

Deputy Director Nazemi said DTSC was working on setting performance metrics for the Site Mitigation Program. He said the eventual metrics probably will emphasize outcomes rather than timeframes.

The IRP decided to ask DTSC to develop appropriate performance goals and metrics for site mitigation, including goals and metrics on timeliness, community satisfaction, cost, and protection of health and the environment, by March 31, 2018. The IRP decided to add this suggestion to its recommendations to DTSC and not include any recommended goals and metrics for site mitigation in the report.

Information Requests to the DTSC on Site Mitigation:

The IRP decided not to make any information requests of DTSC in the report.

Chair Kracov adjourned the meeting for a break at 4:37 p.m. and reconvened it at 4:43 p.m.

The IRP delegated to Panel Member Campbell the responsibility of incorporating the agreed-upon changes into a final draft, adding an executive summary to the report, and submitting the report on or before the due date.

12. Organizational, Operational, and Administrative Matters

Panel Member Campbell discussed her suggested draft questions for the proposed IRP self-assessment survey.

Chair Kracov suggested that an overall question be added on the value of the IRP's work and whether survey-takers found the process to be worthwhile or useful. He also suggested that the number of questions be reduced. Vice Chair Vizzier suggested that questions about the quality of meeting facilities could be dropped.

The IRP agreed to discuss the April 12, 2017 survey questionnaire draft again at its next meeting.

Chair Kracov said he would like to table discussion of a proposed report on lessons learned from Exide as well as an update on DTSC's Organizational Excellence efforts for a future meeting.

13. Future Meeting Schedule and Agenda Items

DTSC IRP Liaison Gabriella Nepomuceno said she did not have information yet on whether the Department could provide a presentation on safer consumer products at a May 10, 2017 meeting in the absence of DTSC Safer Products and Workplaces Program Deputy Director Meredith Williams.

Mr. Rohlfes said Dawn Koepke, co-chair of the Green Chemistry Alliance, had expressed an interest in making a presentation to the IRP on the alliance.

Vice Chair Vizzier said the Panel could get a jump on its October report by taking time at the May 2017 meeting to refine the IRP-suggested performance metrics for DTSC.

The IRP delegated to Chair Kracov a decision on whether to hold a May 2017 public meeting.

Chair Kracov said it was his turn to write the next IRP report, due in July 2017, and volunteered to do it.

14. Closed Session

There was no closed session.

15. Reconvene and Report on Closed Session

There was no closed session.

16. Adjournment

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

Chair Kracov adjourned the meeting at 4:55 p.m.