

THE PEOPLE'S SENATE

October 14, 2016

Independent Review Panel
California Department of Toxic Substances Control
1100 I Street
Sacramento, CA 95814

Dear Chairman Kracov and Members of the Independent Review Panel:

In March 2015, the People's Senate sent a letter to Director Barbara Lee outlining a one-year roadmap to implement necessary reforms at the Department of Toxic Substances Control (DTSC) to adequately protect residents from exposure to toxic material. On September 21, 2016, the Independent Review Panel (IRP) received a written response containing descriptions of the actions DTSC alleges it has taken to protect communities near sites of interest to the People's Senate. The report did not attempt to respond to the specific benchmarks included in our roadmap. Nor does the document acknowledge *any* deficiencies or ongoing dissatisfaction with DTSC's performance. Additionally, the DTSC report is rife with inaccurate and misleading statements on the actions the agency has and has not taken in our communities. In order to build transparency, accountability and community trust, DTSC must be self-reflective, acknowledge areas for growth, and respond directly to the questions and concerns raised by communities. Key among our concerns is the lack of communication between DTSC and the residents impacted by hazardous waste sites – at some active sites, DTSC has not met with impacted communities for over a decade; slow and inadequate enforcement of corrective actions and site clean-ups; and incomplete and inadequate site characterization.

After two years of working with DTSC leadership and staff, with various legislative offices, and more recently with the Independent Review Panel, the People's Senate continues to be astonished at the lack of progress and responsiveness to our site-specific concerns. In an agency tasked with protecting the public from toxic exposure, the best indicator for measuring the success of DTSC's reform efforts is whether conditions in affected communities have improved. And in order for the IRP to be effective, it must acknowledge community expertise and rely on sources outside of DTSC to assess agency performance. To assist you in this effort, we offer this document as a means to groundtruth the statements made by DTSC and to fill in the sizable information gaps left by DTSC's report.

The initial portion of this groundtruthing document responds to DTSC's report on "Leadership Actions to Enhance DTSC's Ability to Better Protect Communities" and notes areas where DTSC's report is misleading and where additional work remains to be completed to address fundamental community concerns. The second portion responds specifically to DTSC's site-specific updates and compares DTSC's responses to the initial concerns and requests made by impacted residents. Appended to this document are more detailed site-specific responses from those directly impacted by toxic sites, as well as a document updating community requests to account for developments within the last two years.

AGENCY REFORMS

➤ Bring in Strong New Leadership

The People's Senate expressed concern over the high turn-over in leadership at the agency which led to a dearth of institutional knowledge and memory. DTSC implicitly recognized that deficiency by announcing that it had hired seven new executive leaders over the last year. This represents well over half of the executive leadership for the agency and these new deputy directors are responsible for overseeing virtually all of DTSC's programmatic work. Though the People's Senate hopes to work closely with these new directors, we are concerned about the steep learning curve the new leadership needs to overcome in order to understand and address many community concerns, the high-turnover rate that required such extensive hiring, and the number of these executives who come to DTSC without a hazardous waste background. We believe that it is in DTSC's interest to schedule a time for all the new directors to participate in a listening/learning session with the People's Senate to better understand the communities' concerns.

➤ Establish an Accountability Body

The People's Senate advocated for a governing board and a community oversight committee to increase accountability and transparency in the agency's decision-making processes and to facilitate communication between impacted residents and the agency. Residents impacted by toxics deserve the same level of transparency and open decision-making processes as afforded to other environmental regulatory bodies. This is especially true for an agency that has been plagued with fiscal mismanagement, allegations of racial bias, widespread staff incompetence and/or discontent, and deep community distrust. DTSC impacts many stakeholders yet decisions are made behind closed doors, without the benefit of clear standards, and without oversight or meaningful opportunity to appeal. The DTSC report did not address this request.

➤ Develop Standardized Permitting Criteria

The People's Senate requested that DTSC adopt standardized permitting criteria to improve permitting decisions and reduce the backlog of expired permits which, at the time of our letter, consisted of nearly one-third of all permits. At the same time, we recognized the fundamental problem with expediting permit decisions before the agency updates its permitting criteria, required by law to be complete on or before January 1, 2018. The People's Senate also requested that permitting criteria address the disproportionate impact of hazardous waste permitting decisions on low-income communities of color.

DTSC responded that it completed its permitting enhancement project which included 86 action items. It also noted that it had made 12 permitting decisions during the past year, alleging that it was on target to eliminate the significant permit backlog.

The People's Senate initially notes the difficulty in evaluating DTSC's claims because the agency's website contains no link to view recent and pending permitting decisions. The People's Senate was aware of just two permitting decisions made within the last year. If DTSC renewed or approved 12 permits in the past year, it did so without the benefit of the updated permitting criteria required by SB 673. The total percentage of facilities currently operating on expired permits remains relatively unchanged at 29 percent. Therefore, DTSC's statement on meeting its permitting backlog targets is misleading. Additionally, the facilities that have been operating on expired permits the longest – Phibro-Tech Inc.'s permit expired in 1996 – continue to operate without a current permit.

➤ **Re-Invest in Pollution Prevention and Source Reduction Program**

The People's Senate expressed concern that DTSC de-funded much of its pollution prevention work in 2012. Without large reductions in the amount of hazardous waste generated, risks of toxic exposure will merely shift from one vulnerable population to another. The People's Senate requested that DTSC re-fund its pollution prevention and hazardous waste source reduction program, and use existing authority and propose new legislation to limit the generation of toxic waste.

DTSC responded that it created the Hazardous Waste Reduction Initiative Advisory Committee, which provided guidance in selecting four pilot project proposals to address various waste streams. What the Report fails to disclose is that DTSC's budget contains no funding to implement the pilot projects. Without funding, the program will not advance past the pilot selection phase, and will not result in any reductions in hazardous waste generation.

➤ **Increase Fines and Enforcement**

The People's Senate requested that DTSC levy fines at high enough rates to prevent violators from profiting or gaining a competitive advantage; use its considerable discretion to suspend, deny, or revoke permits from facilities that violate the law on multiple occasions; and adopt mandatory minimum penalties to prevent companies from negotiating away penalties and fines and leveraging the agency.

DTSC reported that it took significant enforcement actions and supported investigations in overburdened communities. It did not respond to our specific requests to strengthen the agency's enforcement program. DTSC provides no context for the statistics it cites, such as how many complaints the agency investigated and resolved; whether its enforcement activities increased or decreased in comparison to prior years; how the agency's enforcement actions compare to other regulatory agencies; and the amount of regulatory fines and penalties it collected.

➤ **Generate Sufficient Funding for Orphan Sites and Sites Where Responsible Party Is Not Yet Known**

The People's Senate expressed alarm that the agency anticipated that its fund for orphan and National Priority List site clean-up and maintenance would be fully expended within two to

three years. This is a looming crisis, and the lack of urgency and forethought on how to address this funding emergency is very concerning. The DTSC report did not address this issue.

➤ **Ensure Sufficient Financial Assurances and Post-Closure Care**

The People’s Senate requested that DTSC require sufficient financial assurances to cover the closure of facilities, any potential corrective actions, and long term post-closure care and for DTSC to review and revise the bond amount periodically based on a permit holder’s compliance history and other factors.

DTSC reported that it completed its review of financial assurances of its permitting facilities and voluntarily increased the frequency of its reviews to once every five years. DTSC does not address its failure to require financial assurances for corrective actions, and fails to disclose whether and how it included compliance history as a factor in determining financial assurance requirements.

➤ **Make Office of Criminal Investigations an Independent Office**

The People’s Senate requested that the Office of Criminal Investigations be removed from the Office of Legal Affairs and act as an independent program reporting to the Director.

DTSC did not address this in its report; however, the People’s Senate understands that OCI is now under the umbrella of the Hazardous Waste Management Program.

SITE-SPECIFIC BENCHMARKS

Agriculture Park Project, Riverside CA

NGT COMPLETED

Fully investigate and characterize the extent of contamination at the site.

DTSC says: Initial confirmatory soil sampling found higher than expected concentrations of PCBs. Based on the results, DTSC required the developer to conduct additional soil sampling. Results of the November 2015 sampling indicated that PCB levels at the Ag Park do not pose a significant health risk to surrounding communities but additional cleanup is needed onsite prior to residential use.

Fact check: What the report does not say is that if the Center for Community Action and Environmental Justice (CCA EJ) had not insisted upon split samples with EPA those “higher than expected concentrations of PCBs” would not have been found. It was the testing by EPA that identified the elevated levels while DTSC’s testing found much lower levels. If DTSC were left on its own – as happens in most sites—the elevated levels of PCBs would not have been found and homes would have been built, exposing new families to unsafe chemicals. Since no testing has been conducted in the surrounding neighborhoods it is impossible and irresponsible to determine the health risk to surrounding communities. The families living around this site have reported dust and exposures for more than 13 years. PCBs are bio accumulative, persistent man-made chemicals that do not belong in the neighborhood. DTSC has refused to test the homes and currently are postponing any testing until they complete modeling.

NOT COMPLETED

Remove and dispose as TSCA waste the sewer treatment plant main sewer line.

DTSC says: DTSC did not address this request.

Fact check: DTSC has not removed and disposed as TSCA waste the main sewer line.

NOT COMPLETED

Fully remediate PCB contamination and groundwater at the site.

DTSC says: On July 26, 2016, the developer submitted an updated work plan, which included the pre-excavation sampling results and an Air Monitoring Plan Addendum. The cleanup will include excavation of PCB-impacted soil from a large area of the Ag Park. The South Coast Air Quality Management District (SCAQMD) reviewed the Air Monitoring Plan Addendum and had no comments.

Fact check: This again is misleading. CCAEJ met with SCAQMD to discuss this site and were told that SCAQMD could not comment on areas in which it had no regulatory authority. SCAQMD does not have a rule covering contaminated sites and dust control. It can, however, apply Rule 403 dealing with fugitive dust at construction sites. Rule 403 has two tables of requirements for fugitive dust – one for small sites (under 50 acres) and expanded requirements for large sites over 50 acres. Although Ag Park is over 60 acres, DTSC approved plans for a 50-acre site, thus limiting the dust control requirements the developer would have to meet. DTSC’s rationale was that it estimated excavating only 50 acres so the remaining portion of the site did not need to be included. This manipulation means that the developer does not have to comply with stricter dust control requirements, even though they are dealing with contaminated fill rather than clean dirt.

DTSC’s report does not disclose that it is requiring only a shallow removal – less than three feet. This site has been contaminated since the 1940s. As Camp Anza, the site was used as a sewer treatment plant and has been in operation over several decades by various parties. The contamination went very deep. But DTSC proclaims, without data, that only the top three feet remain contaminated. Without deed restrictions, the families moving into these homes will assume it is safe, but DTSC can only verify that it is safe up to three feet. Neither DTSC, nor the developer, has indicated that they will restrict families from planting trees, putting in flower beds, or installing swimming pools or ponds.

Autumnwood Housing Development, Wildomar CA

NOT COMPLETED

Investigate the poorly conducted investigation at Wildomar and hold accountable staff that falsified the results in the final report.

DTSC says: Other agencies, such as the Office of Environmental Health Hazard Assessment, Department of Public Health, and the Federal Environmental Protection Agency supported DTSC’s conclusions.

Fact check: The external agencies reviewed only the data collected by DTSC and only assessed whether that data supported DTSC’s conclusions. The external agencies did not conduct their own sampling or review the many data points that were missing from DTSC’s sampling reports.

Indeed, residents who watchdogged DTSC’s sampling noted major deviations from DTSC’s sampling protocols in collecting samples, and discovered that over 40 unlabeled constituents were excluded from and undisclosed in DTSC’s sampling data. This resulted in a large data gap which was not available to the external agencies. Further, neither DTSC nor the laboratory was able to produce sampling data to match/support DTSC’s findings, making a review of the quality of DTSC’s data impossible. Nothing in the external agencies’ review would have addressed residents’ concerns over the missing data or the deficient sampling. Despite these fundamental flaws in the external review process, DTSC misstates the EPA’s findings. EPA noted that several chemicals were found in indoor air at levels that could cause acute health effects. EPA also found that the indoor air contamination was linked to contaminated fill, a finding that contradicts DTSC’s assertion that the contamination was linked to an indoor source. Finally, during an in person meeting with interested stakeholders, EPA noted additional concerns with DTSC’s sampling and analysis, and committed to facilitating further conversation between impacted residents, DTSC and EPA.

NOT COMPLETED

Revise the final report on Wildomar to include citations of raw data to support each conclusion provided in the report.

DTSC says: DTSC did not address this request.

Fact check: DTSC has not provided citations to the data to support its conclusions. Concerned Neighbors of Wildomar have yet to receive much of the underlying data it requested in order to assess and review DTSC’s conclusions.

NOT COMPLETED

Adopt a DTSC-wide policy to provide to the public analytical raw data to support the agency’s findings, reports, and decisions.

DTSC says: DTSC did not address this request.

Fact check: DTSC has not adopted any such policy. However, the Independent Review Panel has offered it as a recommendation to DTSC.

Brown & Bryant Superfund Site, Arvin CA

NOT COMPLETED

Schedule and attend regular check-in meetings with residents about the status of the site clean-up.

DTSC says: EPA has provided regular updates to the community group.

Fact check: The Center on Race, Poverty & the Environment and the Committee for a Better Arvin have developed an on-going relationship with EPA, and have been in semi-regular communication since 2008. The People’s Senate requested community involvement from DTSC since it shares responsibility for the site. Since the People’s Senate released its roadmap, DTSC has not engaged in any community outreach with Arvin residents.

NGT COMPLETED

Provide groundwater monitoring data in a user-friendly format to residents and advocates, and provide a report back on whether groundwater contamination is increasing or decreasing.

DTSC says: Most recent sampling from 2016 is being finalized. Previous results are available on envirostor. Most recent city well sampling indicates that the nearest city well was not impacted by the contamination from the site.

Fact check: Neither DTSC nor EPA provided the most recent groundwater monitoring results from 2014 to impacted residents or advocates. DTSC posted the 2014 groundwater results to envirostor on July 27, 2016. The results indicate a more than 3000-fold increase in concentrations of some chemicals of concern in a one-year period. [See Table 1 below.] This contamination sits directly above the City’s drinking water aquifer and places the entire system at risk. The Committee for a Better Arvin and the Center on Race, Poverty & the Environment are extremely disappointed that no agency disclosed this information to the public and alarmed at the risk this contamination poses to the City’s drinking water.

Table 1 – Chemical Concentrations in Monitoring Well WB2-1

	1,2 DCP (µg/L)	1,2,3 TCP	Chloroform	Dinoseb
2011	1	1.5	0.05	0.05
2012	0.56	1.2	0.02	0.02
2013	0.55	1.1	0.02	0.02
2014	1700	170	27	32

Brown & Bryant State Response Site, Shafter CA

NGT COMPLETED

Schedule and attend regular check-in meetings with residents about the status of the site clean-up.

DTSC says: The Project Manager and public participation specialist provided a briefing to CRPE staff on May 18, 2016 but were thereafter unsuccessful in coordinating a subsequent meeting with the public due to scheduling conflicts.

Fact check: On May 18, 2016, during an informal briefing with the project manager, CRPE requested that DTSC set up a public meeting to update impacted residents on the status of the cleanup. DTSC never followed up on that request. DTSC’s last public meeting regarding the Brown & Bryant site occurred in 2008.

NGT COMPLETED

Provide groundwater monitoring data in a user-friendly format to residents and advocates, and provide a report back on whether groundwater contamination is increasing or decreasing.

DTSC says: The five groundwater monitoring wells onsite are dry. DTSC requires an effective groundwater monitoring system be restored and maintained.

Fact check: The project manager orally approved a request from the responsible parties to discontinue groundwater monitoring in 2011 because one of the five monitoring wells was inaccessible due to soil excavation activities. The project manager's approval violates a court order mandating annual groundwater monitoring. Four years later, when the responsible parties attempted to restart monitoring, the wells had run dry. Therefore, DTSC has no groundwater monitoring data for the site since 2010. According to the project manager, DTSC has no plans to reinstate groundwater monitoring due to the expense of digging a deeper well. CRPE and the Committee for a Better Shafter are extremely concerned that DTSC has no means of determining the site's impacts to underlying water aquifers since the entire City relies on groundwater for its drinking supplies.

Carlton Forge Works, Paramount CA

NOT COMPLETED

Conduct comprehensive testing for toxics within a mile radius of the facility, including at Lincoln School, and Village Skate Park, and sample indoor dust for rare metals and other contaminants at residential properties.

DTSC says: On May 1, 2014, DTSC entered into a Voluntary Agreement with Carlton Forge Works to conduct off-site soil and dust investigation in the area downwind from the facility (east of the site) near homes and an elementary school. Results of investigation indicate elevated levels of cobalt and nickel from the facility in dust samples within several blocks of the facility. Paramount School District denied access to Lincoln school for sampling.

Fact check: Over five hundred concerned residents and workers within Paramount signed a petition requesting that DTSC conduct sampling within a one-mile radius of the facility due to the community's concern that there is widespread illness (cancer) in the area that could be linked to exposure to toxic materials. On October 15, 2014, the City of Paramount denied DTSC access to the Village Skate Park, which sits adjacent to the facility, and other parks in Paramount to take soil or dust samples. [See Image 1 below.] The Paramount Unified School District also denied DTSC access to Lincoln School. Though DTSC has sent notification to the school district requiring it to comply with all future requests (per the authority of the federal EPA), DTSC has not done the same with the City to compel access to the skate park. Neither the local parks or schools have been sampled for contamination.

California Communities Against Toxics conducted independent dust sampling in homes nearby Carlton Forge and found concerning levels of heavy metals. Rather than rely on the data to supplement its investigation, DTSC attempted to discredit the work, suggesting that high levels of lead found in attics resulted from paint or from samples taken from a vacuum bag. Residents reported that the attics were unpainted and samples were not taken from a vacuum bag. They offered access to their homes for resampling, but DTSC never responded to the offer.

Image 1 - Proximity of Carton Forge Inc. to Village Skatepark



NGT COMPLETED

Remediate all sites and properties, including Lincoln School, impacted by Carlton Forge Works' operations.

DTSC says: It has directed Carlton Forge to prepare a risk assessment and received funding from EPA for additional evaluation. DTSC did not discuss any plans to remediate the area.

Fact check: No cleanup action has been taken on the properties immediately east of the facility where senior citizens and small children are living. These residents have not been informed about the results of these tests nor have they been told what, if any, steps for remediation will be required.

NGT COMPLETED

Increased inspections at the facility, including unannounced inspections.

DTSC says: DTSC did not address this request.

Fact check: CUPA conducted one inspection since 2014. However, DTSC did not address the People's Senate request to increase unannounced inspections.

NGT COMPLETED

Work with regional water board, local air district, and Cal OSHA to identify and rectify all potential pathways of contamination to protect workers and neighboring community.

DTSC says: DTSC did not address this request.

Fact check: South Coast Air Quality Management District held a public meeting in Paramount on August 15, 2016 to inform the community that there has been an ongoing spike of hexavalent chromium at monitors 2 and 3 (across the street from the facility and near Lincoln School respectively) causing a substantial increase in the risk of cancer. SCAQMD officials admitted that it had not been in communication with DTSC regarding the investigation. In fact, SCAQMD personnel did not even know that DTSC was conducting an investigation or that

DTSC had entered into a voluntary clean up agreement with the company. Despite DTSC's assurances that it was coordinating with other regulatory agencies, this is not accurate in the case of DTSC and SCAQMD, the agency responsible for initially discovering the toxins of concern.

Clean Harbors Environmental, Buttonwillow CA

NGT COMPLETED

Place an air monitor in Buttonwillow area tied to real time advisories with the air district to register ozone and fine particulate matter.

DTSC says: DTSC did not respond to this request.

Fact check: No new air monitors have been placed near the site. However, independent air samples have been collected adjacent to the site, indicating radioactivity and air contamination near the site. Records indicate that radioactive demolition waste from the Santa Susana Field Laboratory was sent to Clean Harbors even though the landfill is not authorized to receive such material.

NGT COMPLETED

Levy penalties on trucks carrying hazardous waste that do not comply with truck route restrictions and travel through town and past the school.

DTSC says: It provided information to the People's Senate on rules controlling traffic routing to the facility; instructions on what to do if someone observes a violation of traffic routes; and instructions on how to report the violation.

Fact check: DTSC confirmed the People's Senate understanding that transporters must bypass the town of Buttonwillow. DTSC did not provide instructions on what to do and how to report violations of this provision. Rather notes from DTSC indicate that DTSC committed to providing more information to the People's Senate on the truck routes but this information was never received.

Delano PCE/TCE Plume, Delano CA

NGT COMPLETED

Find the extent of contamination by testing additional sites beyond existing testing boundaries.

DTSC says: It continues to investigate groundwater, soil gas and indoor air contamination in downtown Delano.

Fact check: The state first discovered PCE and TCE contamination in 2006. DTSC conducted five different site characterization investigations between 2010 and 2015. In each investigation, DTSC found additional properties and areas affected by the contamination. DTSC has not yet fully characterized the extent of contamination.

✓ **Test residential properties and preschool on Jefferson Ave.**

DTSC says: Daycare facility was sampled and no detections of PCE or TCE found.

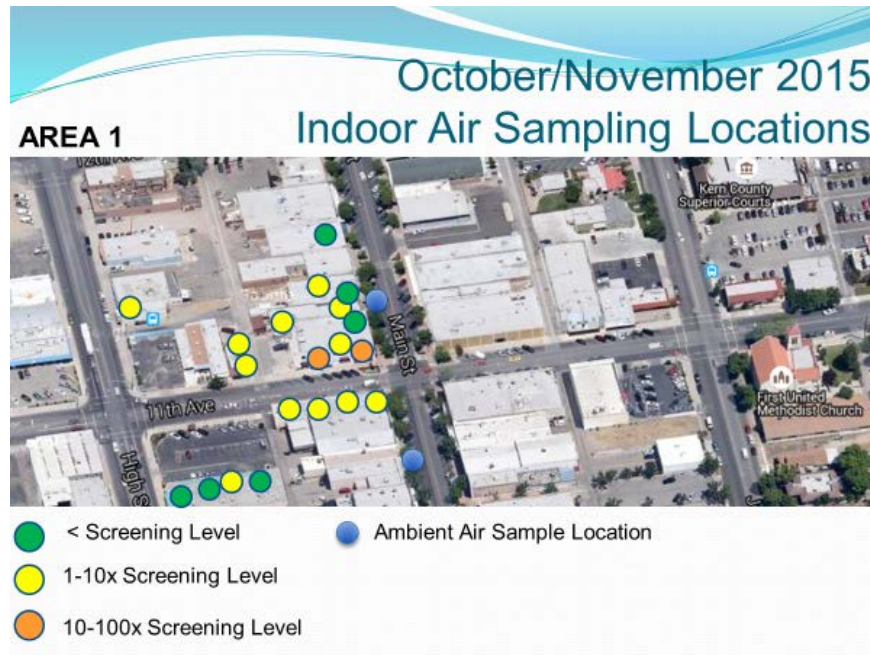
Fact check: Residents have been told that the agency tested five residences on Jefferson Avenue and the daycare. Residents do not have independent knowledge or information to refute DTSC’s statement.

NGT COMPLETED **Commit to and implement a full remediation of the site and impacted buildings in a timely fashion.**

DTSC says: Mitigation measures have been taken to bring down the amount of PCE and/or TCE found in the indoor air of 13 businesses.

Fact check: DTSC confirmed contamination in at least 22 buildings. However, it only attempted to implement mitigation measures at 14 properties. Of those where DTSC installed mitigation, even though chemical concentrations generally decreased, a significant portion continued to have concentrations above DTSC health screening levels. [See Image 2 below.] One property, in fact, showed higher concentration levels after DTSC implemented remediation efforts.

Image 2 – Chemical Concentration after Remediation in Area 1



NGT COMPLETED **Regularly update interested residents about the status of the site and the clean-up and include the community in preparing a remediation plan.**

DTSC says: It conducted two public meetings and met individually with people on three occasions.

Fact check: DTSC did host two public meetings – one in 2015 and one in 2016. However, the meetings were informational only and did not include any process for the public to contribute to the development of a remediation plan.

Jordan Downs Redevelopment Project, Watts CA

NOT COMPLETED

Provide complete and comprehensive soil and groundwater testing and vapor analysis within the entire Jordan Downs Master Plan redevelopment area.

DTSC says: DTSC asked the Los Angeles Regional Water Quality Board (LARWQB) to add additional ground water monitoring wells to address contamination in accordance with an agreement with Exxon. The wells were added and remediation of this petroleum contamination from a broken pipeline in the area north of the site is ongoing. DTSC submitted a letter to the Housing Authority of the City of Los Angeles, stating, “The Department of Toxic Substances Control is aware that there are additional data that suggest elevated concentrations of metals may be present at the Jordan Downs Housing site that could pose a risk to human health, particularly vulnerable populations such as children. Therefore, we are advising you to conduct sampling for metals, including lead and arsenic, during the housing demolition phase of the Jordan Downs development project. This sampling can be conducted by XRF instruments with confirmation laboratory sampling and analysis.”

Fact check: DTSC’s report omits the fact that there is a second groundwater plume of unknown size and origin under the remediation and redevelopment site. Although DTSC asked the LARWQB to assess this second plume, no reports have been generated on the nature of the plume. DTSC has also not determined what their plan of action is to eliminate the possibility of vapor intrusion due to the second plume. DTSC’s efforts to discover other sources of contamination offsite were a direct result of community organizing and advocacy. The commitment to allocate orphan funds towards this effort was made by ex-DTSC Director Deborah Rafael to the Jordan Downs Environmental Justice Coalition (JDEJC). However, after Ms. Rafael’s departure from the agency, DTSC ceased virtually all communication with JDEJC about these efforts. The public has been largely kept in the dark about the extent of the discovery and LARWQB has been unable to pinpoint a responsible party. For this reason, very little to nothing is being done to mitigate the impact of this contamination on the public.

On August 5, DTSC advised HACLA to conduct further sampling of metals in the soils around buildings 1-4, slated for demolition. They also stated they would require a new Voluntary Cleanup Agreement – a document that was not made available to community residents or advocates. Community advocates were not given access to the results of the testing prior to the demolition, and once released, found that clusters of elevated levels of lead and arsenic did indeed exist around the buildings. Despite this, HACLA determined that no further action was necessary. No community engagement occurred during this phase of the project.

NOT COMPLETED

Remediate all sites within a one-mile radius of the 9901 S. Alameda Street site.

DTSC says: The approved Interim Remedial Action Plan calls for excavation and disposal of contaminated soil onsite. Approximately 95% of contaminated soil was excavated and disposed of at various disposal sites, including a facility in south Yuma, Arizona, and the Clean Harbors hazardous waste landfill in Buttonwillow.

Fact check: The community was not consistently updated on the progress of the excavation. Furthermore, the consultant responsible for the excavation did not follow proper safety guidelines and binding Health and Safety Plan commitments throughout the process. Community residents documented multiple instances where: hauling trucks went off approved routes and down residential/non-truck route roads including in front of Jordan High School; stockpiles of contaminated soil were not properly covered; wheels of hauling trucks were not properly washed down; and other dust suppression methods were not consistently employed. As a result, fugitive dust was widely dispersed within Jordan Downs and along Alameda Street without appropriate measures taken to ensure the safety of pedestrians and motorists.

NGT COMPLETED

Provide meaningful opportunities for public participation and transparent communication regarding existing contaminated sites including 9901 S. Alameda Street, Exxon Mobil M8 & M145 pipelines, Atlas Metal Recycler, and David Starr Jordan High School.

DTSC says: It regularly attends community meetings in the Watts area and communicates with EJ groups and community members. On November 12, 2015, DTSC attended a meeting HACL A hosted with the Jordan Downs EJ Coalition, where DTSC committed to coordinate a monthly call with members of the coalition and DTSC staff. These conference calls occurred only in December and January 2015, and March 2016, as requested by the Jordan Downs EJ Coalition.

Fact check: DTSC has not meaningfully engaged *all* community residents and EJ groups in this process. Direct communication is sporadic, haphazard and incomplete as is the information and documents that are posted to Envirostor. Advocates and residents have continued to request improved transparency from the agency to little avail.

The Jordan Downs EJ Coalition chose to suspend the monthly calls because they turned into a tactic for DTSC and HACL A to check a community engagement box. These calls were not meaningful and did not resolve many of the larger issues that advocates have with the project. These calls did not serve as a space to find bilateral solutions to the major environmental issues that exist in the community.

Occidental of Elk Hills Project, Tupman CA

NGT COMPLETED

Provide scientific justification for removing areas of concern (“AOC”) from DTSC’s clean-up list.

DTSC says: DTSC staff issued No Further Action determinations for 15 areas of concern.

Fact check: DTSC has not communicated the reasons why it issued these No Further Action determinations. DTSC does not provide any public process before issuing these determinations.

NGT COMPLETED

Test the 661 well sites suspected of arsenic contamination in AOC 130, not just the 40 sites proposed now.

DTSC says: DTSC did not address this request.

Fact check: DTSC has not provided any sampling results for the wells as of August 2016. On September 2015, DTSC requested that the responsible parties prepare a “Remedial Investigation Feasibility Study” for DTSC review and approval including an evaluation of remedies within 60 days of submitting the final data summary report. Envirostor does not contain either the final summary report or the Remedial Investigation. The People’s Senate does not know whether these documents were, in fact, prepared.

NGT COMPLETED **Provide a schedule of clean-up and closure of all sites.**

DTSC says: DTSC did not address this request.

Fact check: As of the of 2016, DTSC has provided no record of completed work. Beginning in January 2015, DTSC reported that it was conducting remediation work in accordance with a Corrective Action Consent Agreement. DTSC has a five-year clean-up plan however residents and stakeholders have not been made aware of assessment work completed or remedial actions. The schedule should be adjusted as assessment work is completed and there should be a schedule available for what was accomplished in 2015 and 2016 but no such document or summary has been provided to the public.

NGT COMPLETED **Provide a full accounting of funds expended since 1997 on the cleanup.**

DTSC says: DTSC did not address this request.

Fact check: DTSC does not have information on the amount of funds expended by responsible party Department of Energy or how much has been paid to its subcontractor, “Athna.” DTSC consistently advises residents to request the information through the Freedom of Information Act rather than provide assistance in getting this information. DOE reports that DTSC has been reimbursed approximately \$1.2 million during the last 10 years of oversight.

Phibro-Tech Inc., Santa Fe Springs CA

NGT COMPLETED **Complete a full Environmental Impact Report.**

DTSC says: DTSC did not address this request.

Fact check: Despite triggering California Environmental Quality Act requirements on numerous occasions and having over 20 years to complete an environmental review of Phibrotech’s permit renewal request, DTSC has not prepared an Environmental Impact Report to disclose and evaluate the project’s impacts.

NGT COMPLETED **Deny request for new permit based on the facility’s impacts to nearby residents, DTSC’s issuance of three or more notice of deficiencies, the company’s recurring pattern of violations, and the company’s failure to comply with corrective orders.**

DTSC says: Phibro-Tech’s permit expired in 1996 but will remain in effect until DTSC reaches a decision on the renewal permit application. DTSC issued a draft permit in 2010, requested a revised permit application in 2014, and requested additional information and clarification on a

permit modification application on April 29, 2016. DTSC is reviewing the permit renewal and modification applications. In 2015, DTSC issued two summaries of violations, ten Class 1 violations and four Class II violations, including for making false representations in its operating record, storing hazardous waste in unauthorized areas, and operating unpermitted treatment and storage units.

Fact check: DTSC, by law, must initiate proceedings to deny Phibro-Tech's permit renewal application and has no discretion to continue to review and consider the application. Health & Safety Code section 25200.8 requires DTSC to initiate permit denial proceedings after it issues three notices of deficiency. On October 7, 2008, DTSC issued Phibro-Tech a third notice of deficiency but did not initiate permit denial proceedings as required by law.

In 2015, the legislature passed AB 1075, which requires DTSC to consider three violations that create a significant risk of acute or chronic harm to public health or safety of the environment within 5 years as a compelling cause to deny a permit.¹ Many of the Class 1 violations issued by DTSC in 2015 fall within this definition, as described by DTSC's Enforcement Response Policy.² Yet, DTSC recently shared with the IRP its view that no currently operating facility would trigger AB 1075 permit denial requirements and has allowed Phibro-Tech to continue operating.

NGT COMPLETED

Require immediate compliance with pending corrective orders and a full remediation of chromium and other legacy contamination linked to the site.

DTSC says: It ordered Phibro-Tech to close a hazardous waste area known as Pond 1. Phibro-Tech appealed that decision which stayed the order.

Fact check: In 1995, DTSC and Phibro-Tech entered into a Corrective Action Consent Order requiring the facility to remediate both groundwater and soil, which had been contaminated by very high levels of chemicals, heavy metals, VOCs and chlorides dangerous to human health. In 1997, the EPA traced a carcinogen, hexavalent chromium, in the groundwater "directly back to Phibro-Tech" at concentrations nearly 3 million times the state public health goal. Phibro-Tech has yet to comply with the Order and remains operational.

NGT COMPLETED

Conduct comprehensive off-site testing to determine the presence of contamination that poses a risk to nearby residents.

DTSC says: The health risk assessment prepared by Phibro-Tech indicated that current and historic operations do not pose a significant health risk to the surrounding residential population but may present a risk to future onsite workers.

Fact check: Residents near the facility believe that the facility poses a significant risk to the community. Residents report the occurrence of a greater-than-expected number of serious

¹ See also Health & Safety Code section 25110.8.5 [defining Class 1 violation as "a deviation [that] represents a significant threat to human health or safety or the environment because of one or more of the following: (A) The volume of the waste. (B) The relative hazardousness of the waste. (C) The proximity of the population at risk.

² Available at https://www.dtsc.ca.gov/LawsRegsPolicies/Policies/HazardousWaste/upload/DTSC-OP-0006_Enf_Response_Policy.pdf

illnesses and diseases, including a suspected “cancer cluster.” Phibro-Tech’s analysis of its own risk suffers from clear self-interested bias. Without conducting actual off-site sampling, it is impossible to know whether residents are exposed to toxics. Health risk assessments are not adequate to determine actual, as opposed to theoretical, risk of exposure.

Quemetco, Inc., City of Industry, CA³

NOT COMPLETED

Thoroughly and extensively sample the total area within a ¼ mile radius around Quemetco.

DTSC says: It has sampled 132 out of the 368 residential properties within a quarter mile from the facility.

Fact check: DTSC makes no mention of how many commercial properties have signed access agreements or what DTSC’s plan is to get samples from the over 50% of residential and over 60% of commercial properties that have not granted access. On August 29, 2016, the Clean Air Coalition (CAC) offered to help contact neighbors and encourage them to sign access agreements but DTSC staff in Chatsworth declined the offer despite using a similar model to work with East Yard Communities for Environmental Justice in obtaining access agreements in the neighborhoods around Exide.

NOT COMPLETED

Provide a full reporting of all metals found at high levels in soil samples taken from residences.

DTSC says: It approved Quemetco’s Revised RCRA Facility Investigation Workplan, which outlines the company’s plan to determine the extent of lead contamination in the soil around the perimeter of the facility and the surrounding community. Summary test results will be publicly available when sufficient data points are available to present information in the aggregate.

Fact check: While soil samples are being tested for the presence of 22 metals, DTSC continues to focus reports only on lead and, sometimes, arsenic. CAC, working with USC scientist Jill Johnston this past summer, tested soil samples from homes around Quemetco, but outside the ¼ mile radius from the facility and found very high levels of antimony, cadmium, and arsenic.

NOT COMPLETED

Develop clear and scientifically rigorous criteria for determining that Quemetco is not the source of metals contamination in surrounding residences.

DTSC says: Quemetco’s contractors are revising a background sampling work plan and plan to study and identify the source of lead found in the sampling.

Fact check: DTSC has charged Quemetco with determining whether and what types of contamination can be identified or “fingerprinted” as being sourced from the facility. Quemetco

³ Members of Clean Air Coalition of North Whittier and Avocado Heights joined the People’s Senate after the submission of the 1-year Roadmap. However, since joining, representatives near Quemetco have communicated their site-specific questions and concerns to DTSC on multiple occasions.

has every incentive to avoid liability for contamination by focusing the fingerprinting study on as narrow a range of metals as possible. For example, Quemetco initially proposed to focus only on bismuth, which is a metal that is emitted in *very* small amounts from the stacks.

NOT COMPLETED

Establish better policies to prevent serial violators, like Quemetco, from getting away with multiple violations for years on end.

DTSC says: It issued an Enforcement Order requiring the facility to cease depositing additional hazardous waste or other lead-bearing material in its containment building until it resolved the violation. Quemetco appealed the order, thereby staying its implementation.

Fact check: DTSC’s summary of its enforcement action fails to acknowledge the direct bearing these violations have the facility’s permit renewal application. The summary does not disclose statements from Terri Hardy, DTSC’s Interim Legislative Director to State Senator Ed Hernandez in an August 16, 2016 letter. Ms. Hardy writes: “The company has failed to provide consistent laboratory tests from all 19 wells... Quemetco’s monitoring network is defective, an issue we have attempted to get the company to fix... If Quemetco continues to fail to provide the state with useful groundwater monitoring data...this could negatively impact their pending permit renewal application.” Further, DTSC has refused to disclose whether it plans to request an administrative hearing to consider Quemetco’s appeal, leaving residents in the dark about whether and for how long Quemetco will avoid compliance with DTSC’s order requiring it to remove all stored hazardous waste and prohibit it from putting more hazardous waste into the containment building.

Santa Susana Field Laboratory, Simi Valley CA⁴

NOT COMPLETED

Fulfill DTSC’s 2010 commitment to a full site cleanup, including insisting that Boeing clean up to the most protective standard.

DTSC says: DTSC did not address this request, and makes no mention of the clean-up standards in its report despite it being one of the most important issues to the community.

Fact check: In December 2015, Congresswoman Julia Brownley wrote a letter thanking Director Barbara Lee for assuring her that, “DTSC intends to hold Boeing responsible for a full cleanup that meets all potential future land uses, as outlined by Ventura County’s zoning regulations, which indicate a wide array of both residential and agricultural land uses.” But, in August 2016 DTSC issued its first response to Boeing’s investigation report in which DTSC failed to require Boeing to include the agricultural standard. DTSC says it is wrong for Boeing to suggest that suburban residential will be the cleanup standard, but since it leaves the agricultural scenario out, the only other one Boeing analyzed is recreation – the land use with the least protective clean-up goals.

⁴ People’s Senate representatives near the SSFL site have an additional set of site specific concerns which were developed as circumstances at the site changed during the past two years. See Addendum A for more detail on the adequacy of DTSC’s responses to these community requests.

NGT COMPLETED

To rebuild community trust, change staffing for the site to remove current project management leadership and replace with Rick Brausch, the previous Project Director.

DTSC says: DTSC did not address this request.

Fact check: DTSC project staff for SSFL remain unchanged.

NGT COMPLETED

Provide accurate information and confirm well documented levels of on-site and off-site contamination, its impact to public health, and the negligible impacts from site cleanup on nearby communities.

DTSC says: DTSC did not address this request.

Fact check: At its April 2016 meeting, DTSC displayed a map stating that most measurements of the radionuclide strontium-90 offsite and in Area IV are “at levels not considered to be harmful to human health.” This is false. The radiological contamination at SSFL far exceeds EPA’s risk-based standards and indeed poses a threat to human health - the National Academy of Sciences and all radiation regulatory agencies have long said that there is no safe level of radiation exposure. The map was purportedly produced to show that there is no harmful offsite contamination, but does not make any such demonstration. DTSC relied upon Boeing, the responsible party, to set the standard used in the map. Boeing misrepresented the EPA cleanup standard, inflating it by roughly a hundred-fold.

NGT COMPLETED

Rebuild DTSC’s relationship with and support for the SSFL Workgroup.

DTSC says: DTSC did not address this request.

Fact check: Rather than work with the SSFL Workgroup, DTSC continues to sanction the SSFL CAG, which is led primarily by people with ties to the responsible parties (e.g., are former officials of the polluters rather than representing the community), works to break the cleanup agreement signed by DTSC, and spreads false and misleading information about the cleanup and its supporters. Further, the CAG has secretly been funded by one of the responsible parties that is working with the CAG to avoid its cleanup obligations. The CAG is pushing for cleanup standards that would leave in some cases thousands of times more contamination on site than cleanup agreements signed by DTSC. Further, DTSC has rebuffed offers by the community-based workgroup to provide input to DTSC on transportation alternatives for soil removal.

Conclusion

We appreciate the IRP’s support in attempting to obtain a written response from DTSC to the People’s Senate site specific concerns. However, the recent report provided by DTSC does not fulfill this information request since it does not actually respond to the People’s Senate, but instead merely provides a summary of each site for IRP review. We do not believe that was the intention of the IRP and now request your assistance in holding DTSC accountable to the residents it is tasked with protecting. We therefore ask that you do not consider this document as

responsive to your request and direct DTSC to submit a document that responds to the specific questions and requests provided by the People's Senate. Thank you for your consideration.

Sincerely,

THE PEOPLE'S SENATE

cc:

Governor Jerry Brown
Matthew Rodriguez, Secretary for Environmental Protection
Arsenio Mataka, Cal/EPA Assistant Secretary for Environmental Justice and Tribal Affairs
Senate President Pro Tempore Kevin De León
Senator Ricardo Lara
Speaker Anthony Rendon
Assembly Member Jimmy Gomez
Assembly Member Miguel Santiago
Senate Environmental Quality Committee
Assembly Committee on Environmental Safety & Toxic Materials