
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 10, 2016

1. Call to Order

Chair Gideon Kracov called the meeting to order at 10:00 a.m. at the Department of Toxic Substances Control's Sacramento Regional Office at 8800 Cal Center Drive, Sacramento, CA.

Panel members present: Chair Gideon 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; legal counsel for the IRP, Deputy Attorney General Russell Hildreth; IRP Program Analyst Larry Rohlfs; and IRP Office Technician Mike Singh.

Chair Gideon Kracov led the Panel in the Pledge of Allegiance.

3. Announcements

Chair Kracov announced that there would be no translation service for this meeting because no member of the public requested the service in advance. He noted that there would be public comment under the General Public Comment agenda item and all other agenda items. He announced that the meeting was webcast on the CalEPA website and gave out the email address for members of the public to submit comments via email.

4. Agenda Review

Chair Kracov reviewed the agenda. He proposed to take up the agenda items in order, with the exception of Closed Session, which he said the Panel probably would not go into that afternoon.

5. Minutes of July 13, 2016 Meeting

Chair Kracov suggested that the minutes of the July 13, 2016 meeting be revised to add Jane Williams' first name in summarizing her emailed public comment under Agenda Item 12, IRP Reporting Requirements.

Motion: Approve minutes of July 13, 2016 meeting with the suggested change. Panel Member Campbell moved. Vice Chair Vizzier seconded. The motion carried unanimously.

6. General Public Comment

Mr. Singh read separate comments by Jane Williams of California Communities Against Toxics and Penny J. Newman of the Center for Community Action and Environmental Justice that were submitted by email during the July 13, 2016 meeting and inadvertently not read into the record during that meeting. The comments were summarized in the minutes of that meeting.

Chair Kracov asked DTSC IRP Liaison Chris Law to summarize DTSC's recent work to enhance protection of public health and the environment. Mr. Law mentioned the following: (1) a July 25, 2016 order to the Quemetco battery facility in the City of Industry to correct violations; (2) a rulemaking to list children's foam-padded sleeping products containing the flame retardants TDCPP and TCEP as a product-chemical combination that has the potential to cause harm, (3) a dedication ceremony for the \$52 million Pyrite Canyon Treatment Facility at the Stringfellow Superfund site in Jurupa Valley, (4) work by DTSC and its contractors in assessing and removing hazardous waste from properties ravaged by recent fire in Kern County, (5) the beginning of construction of a Salinas Unified School District high school that was made possible by a previous DTSC cleanup of former farmland, (6) partnering with two academic and workforce training providers for the first phase of a program designed to train residents from communities near the now-closed Exide facility in sampling and assessment fieldwork, and (7) active recruitment for 15 permanent positions for the Permitting Division to implement the process improvements developed under the Permit Enhancement Work Plan.

Ms. Ingrid Brostrom of the Center on Race, Poverty and the Environment expressed disappointment that several introduced bills that would have addressed IRP recommendations were unsuccessful in the state Legislature during 2016. She suggested that additional work be done on formalizing how the IRP and the Legislature should work together. She also said that the IRP recommendations are viewed by some members of the Legislature as piecemeal solutions and suggested that the IRP try to look at the bigger picture when making them.

Vice Chair Vizzier asked Ms. Brostrom if she thought the IRP should resubmit its recommendations to the Legislature. Ms. Brostrom answered that it wouldn't hurt to resubmit in a future report.

Chair Kracov said that industry representatives recently made similar observations to him about the need for broader recommendations and asked Ms. Brostrom if she thought it would be wise to invite legislative staffers to an October IRP meeting for discussion about next year's legislation. Ms. Brostrom responded in the affirmative. Chair Kracov then asked Ms. Brostrom if the IRP should revisit recommendations from its 2016 reports when the Panel submits recommendations at the time of, or earlier than, the submission of the Governor's 2017-18 annual budget to the Legislature. Ms. Brostrom responded in the affirmative.

7. Chair Report

Chair Kracov reported that he recently met with DTSC Director Barbara Lee and Chief Deputy Director Francesca Negri on staff excellence issues. He added that the IRP wants to hear from DTSC staff members. He urged staff members to contact the Panel on “big picture,” organizational health issues.

Chair Kracov reported that he and Mr. Rohlfes participated in a meeting with industry representatives the previous day at the California Chamber of Commerce. Like Ms. Brostrom, the industry stakeholders pointed out the need for a more holistic, “big picture” assessment of DTSC. He said he told the industry representatives that he had three major goals for the IRP: (1) support the director, deal with staff turnover, and achieve management team stability; (2) improve DTSC transparency/sunshine into the future; and (3) improve organizational health and accountability.

Panel Member Campbell responded that while the IRP wants to tackle “big picture” issues, it also must look at metrics to assess the effects of its recommendations.

8. Staff Report

Mr. Rohlfes reported that he submitted the IRP’s 90-day progress report, which was dedicated in its entirety to DTSC enforcement, on July 26, 2016, as required by Health and Safety Code (HSC) section 57014(f).

Mr. Rohlfes reported that he sent out the survey on the performance of various DTSC programs and how to improve it to the list of IRP contacts on August 2. The survey questions were approved by the IRP at a previous meeting. The deadline to respond to the survey was August 22. He said he should be able to submit a write-up on the results by the September meeting.

Mr. Rohlfes reported that he had updated the IRP’s tracking documents on: its past information requests, recommendations to the Governor and Legislature, and recommendations to DTSC. He reviewed all three documents.

Chair Kracov asked Mr. Law if he had any information on the DTSC response to the IRP recommendation that the DTSC assign staff, charged with independent review, to revisit all cases in the past five years of “No Further Action” that involve William Bosan or Theo Johnson and report to the public on the findings. Mr. Law responded that a review was in progress and that he could get the IRP information on it at a later date.

Chair Kracov asked Mr. Rohlfes to create a fourth tracking document on the IRP’s recommended metrics.

Mr. Rohlfes then gave a report on pending legislation pertaining to DTSC.

Mr. Singh reported that he had trouble gathering the necessary information for a detailed budget report, but should be able to provide one at the next IRP meeting.

Chair Kracov adjourned the meeting for a break at 11:05 a.m. and reconvened it at 11:10 a.m.

Public Comment:

Representing the State of California Auto Dismantlers Association, Gavin McCue thanked the IRP for its recommendation that the Legislature pass AB 1858 in its July 26, 2016 report to the Governor and the Legislature and requested that the IRP additionally send a letter of support to the Legislature on the measure.

9. Presentation on Permitting and Regulation of Hazardous Waste in California and Compliance with Civil Rights Laws and Environmental Justice Mandates, with a Focus on the Kettleman Hills Facility

Bradley Angel of Greenaction for Health and Environmental Justice (Greenaction) and the Environmental Justice Coalition (EJC); Maricela Mares-Alatorre of El Pueblo/People for Clean Air and Water of Kettleman City (El Pueblo), Greenaction, and EJC; and DTSC Assistant Director for Environmental Justice Ana Mascareñas announced an agreement between Greenaction, El Pueblo, CalEPA, and DTSC to resolve a civil rights complaint about the department's 2014 decision to approve a permit to expand the Kettleman Hills hazardous waste landfill.

Mr. Angel said the agreement, signed that morning, was one of the first examples of a voluntary resolution jointly developed by state agencies and community groups under Title VI of the federal Civil Rights Act, which prohibits discrimination in any programs or activities receiving federal financial assistance.

Ms. Mascareñas said the agreement, which has a three-year window, contains provisions designed to improve public health and environmental quality for people in Kettleman City. DTSC has agreed to help facilitate Greenaction and El Pueblo's efforts to conduct a community-based public health assessment, improve third-party and community-based environmental monitoring, and establish an asthma intervention program for Kettleman City residents.

Ms. Mares-Alatorre said the agreement describes factors related to environmental justice that DTSC will consider when reviewing Chemical Waste Management Inc.'s pending application to renew its operating permit for the Kettleman Hills landfill and any expansion application if submitted within three years. DTSC will comply with applicable state and federal civil rights requirements during its permitting process for hazardous waste disposal facilities and during regulatory oversight of facilities under its jurisdiction. The department also will adopt policies to create a framework for more fully incorporating civil rights considerations, meaningful public participation, and language access in its decision-making process.

Mr. Angel said that by affirming that state hazardous waste permitting processes and regulatory oversight must comply with civil rights laws, and by strengthening opportunities for meaningful public participation, the agreement was an important step forward in making environmental justice a reality. He asked the IRP to recommend that issues addressed in the settlement as well as some issues not included in it be institutionalized by the Legislature.

Ms. Mares-Alatorre summarized the agreement terms that apply specifically to Kettleman City. DTSC agreed to provide notice to the complainants of actions at the Kettleman Hills Facility. It agreed to various considerations related to the facility's hazardous waste permit applications, including: Kettleman City's vulnerability, whether decisions on the permit application and processes undertaken are consistent with civil rights laws, enforcement actions against the facility since the last permit issuance, and violations or noncompliance that show a repeating or recurring pattern. It acknowledged that Petitions for Review of permit decisions are an appropriate forum in which to raise objections to the department's permitting decisions that include civil rights claims, when those objections are raised consistent with DTSC's regulations. It agreed to analyze measures to reduce air pollution related to the facility's hazardous waste management activities. It agreed to use its best efforts to support additional monitoring in Kettleman City and its environs through support of grant funding opportunities during the three years following the effective date of the agreement. In cooperation with CalEPA, DTSC agreed to use its best efforts to support and cooperate in the complainants' efforts to develop various public health assessments and programs in Kettleman City during the three years following the effective date of the agreement. In addition, DTSC and CalEPA agreed to consult with relevant agencies to provide updates to community residents on the status of the Kettleman City drinking water project and use their best efforts to request expedited review and implementation of the water project.

Chair Kracov asked Mr. Rohlfes to research statutes pertaining to the DTSC internal mechanism for permit decision appeals.

Mr. Angel summarized the agreement's programmatic and regulatory terms. DTSC agreed to comply with state and federal civil rights requirements. In consultation with CalEPA and after public comment, it agreed to adopt and implement a policy that describes the department's compliance with civil rights requirements during the permitting process for hazardous waste facilities. After receiving public comment, it agreed to adopt and implement one or more new policies to enhance public involvement, using procedures that provide for early identification and integration of public concerns into permitting decisions. Consistent with SB 673, the department agreed to adopt regulations by January 1, 2018, for permit issuance. And, it promised to transmit notice of the new regulations, policies, and guidance to other state and local agencies with jurisdiction over hazardous waste disposal permitting.

Ms. Mares-Alatorre Maricela mentioned two issues that the complainants would have liked to have had addressed in the settlement, but were not addressed. One is allowing statements of overriding consideration in the permitting process. The other is translation of environmental impact reports (EIRs) and other documents into the language of the community.

Mr. Angel expressed concern that a 25-year-old, English-only EIR could be used to reactivate the Westmoreland hazardous waste facility in Imperial County. He said he had written a letter to DTSC Director Lee on July 18, 2016 and offered to share the letter and settlement documents with the IRP.

Mr. Angel then asked Ms. Brostrom to say a few words.

Ms. Brostrom said the settlement provides carefully vetted considerations on how to address community impacts and civil rights compliance that are ripe to include as IRP recommendations to the Legislature for all hazardous waste facilities.

Vice Chair Vizzier asked the presenters if they recommended any specific legislation.

Mr. Angel suggested legislation to formalize how to assure compliance with civil rights, such as requiring local jurisdictions to provide executive summaries of EIRs in the language of the communities.

Chair Vizzier asked the presenters their opinion on SB 1000.

Ms. Brostrom said her organization was very supportive of the measure.

Chair Vizzier asked the presenters when the health assessments would start.

Mr. Angel responded that there is no concrete commitment for public health assessments in the settlement. He explained that DTSC simply committed to use its best efforts to support and cooperate in the complainants' efforts in Kettleman City.

Public comment:

Cynthia Babich of the Del Amo Action Committee and the Los Angeles Environmental Network expressed congratulations on the settlement.

Chair Kracov asked Ms. Brostrom if she thought some of the issues addressed by the settlement could be addressed in the upcoming SB 673 regulations.

Ms. Brostrom answered in the affirmative.

Chair Kracov stated that the state and county hazardous waste management plans are another place to address the issues.

Chair Kracov adjourned the meeting for a lunch break at 12:20 p.m. and reconvened it at 1:10 p.m.

10. Presentation on DTSC Public Participation Modernization: Steps Taken and Implementation Plan

DTSC Office of Communications Chief Patrice Bowen introduced a department presentation on the Office of Communications Public Participation Program. A Power Point version of the presentation is available on the IRP website at https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/IRP_supporting.cfm .

Ms. Bowen first introduced the other presenters, all of whom were public participation and community affairs management supervisors: Maya Akula, Cesar Campos, and Marcus Simpson.

Ms. Bowen said there are 22 Public Participation Program positions in the Sacramento headquarters and four regional offices across the state. The team, which reflects the demographics of the communities, is assisted by a new, eight-member Exide team currently located in the Chatsworth Regional Office. Nine of the Public Participation Program staff members speak Spanish. Their work is based on the principle that communities have a right to have their voices heard. The Public Participation Program and Exide team have a \$2 million budget in FY 2016-17. In addition, there are program contracts for translation support (\$80,000), public notices (\$89,000), court reporting (\$8,500), and Exide technical advice (\$50,000). The team is committed to public engagement. Although this work is driven by more than statutes, its work is mandated by HSC section 25103.

Ms. Bowen said the Public Participation Program supports core DTSC programs, including site mitigation and permitting. She then described the various public engagement activities that DTSC conducts for both programs.

Chair Kracov asked if public participation responsibilities differ by type of cleanup, how they determine the responsibilities, and if information on the responsibilities is available to the public.

Ms. Bowen responded that the responsibilities vary by type of cleanup, that the project manager sets them, and that this information is available to the public.

Ms. Bowen next reviewed what the program measures to assess performance: public meetings, public notices, community assessments, community members reached, and social media likes and followers. She provided numbers for fiscal year 2011-12 through fiscal year 2015-16 for all of the mentioned performance metrics.

Ms. Bowen next introduced DTSC Staff Information Systems Analyst Shuman Wong, the subject matter expert for EnviroStor.

Ms. Wong reviewed and gave a demonstration on EnviroStor, the data management system used by DTSC to track information concerning its cleanup, permitting, enforcement, and investigation activities on both an internal website and a public website.

In response to a question from Chair Kracov, Ms. Wong said that a vendor hosts and provides support and maintenance for the EnviroStor system.

Ms. Wong pointed out that the public can request email alerts for newly posted documents. She also pointed out that DTSC has a help desk, written information, and tutorials to help the public understand and navigate the EnviroStor data.

In response to a question from Chair Kracov, Ms. Wong said eight internet technology staff members work on EnviroStor. Among other duties, they provide much of the support for the help desk and communicate with the vendor.

Ms. Bowen pointed out that work requests for the Public Participation Program from other DTSC programs originate on EnviroStor's internal portal. This work request system acts as a workflow management and performance tracking tool. The program received 467 work requests in FY 2013-14, 477 in FY 2014-15, and 466 in FY 2015-16. Public outreach documents are retained on the

system. The public can access site specific documents and receive alerts for them from the external portal.

In response to a question from Chair Kracov, Mr. Simpson said that most of the regional offices have a public participation supervisor as well as a public participation specialist.

Ms. Bowen next covered the enhanced public engagement efforts that eventually will result in a Public Engagement Workplan. A DTSC internal assessment in late 2013/early 2014 identified key areas for improvement. In 2014 a human resources consultant, CPS HR Consulting, proposed various improvements. The following year DTSC contracted with UC Davis to conduct stakeholder outreach and focus groups and to identify specific steps to enhance policies, guidance documents, methods and workflow processes, procedures, and technologies. Ms. Bowen emphasized that DTSC's efforts to improve its public engagement have been going on for many years and will continue into the foreseeable future.

Chair Kracov asked Mr. Rohlfes to obtain a copy of the CPS HR Consulting Review report.

Ms. Bowen said that DTSC would like to discuss the UC Davis recommendations at a subsequent IRP meeting. DTSC will release a public report on the recommendations in approximately two months.

Ms. Bowen emphasized that DTSC has learned a great deal from all of those efforts and is not waiting to implement what it has learned. For example, four action items in the Permitting Enhancement Work Plan memorialize what was learned in the enhanced public engagement efforts. Overall, the department has learned the importance of early and frequent public engagement, early and thorough community assessments, ease of DTSC website and EnviroStor navigation, access to site-specific information, involvement in permitting decisions, community-tailored engagement approaches, policies for continuous community involvement, and community training and workshops.

Mr. Campos discussed the Enhanced Community Assessment Tool, a process that reveals different levels of interest in facility permitting in individual communities. The idea is that DTSC would designate appropriate public engagement activities for each level of interest. DTSC beta-tested the tool with two projects and has identified three future pilot projects for it.

Ms. Mascareñas highlighted several partnership efforts to enhance community outreach capacity.

Ms. Bowen then summarized several goals that are likely to be included in the Public Engagement Workplan: (1) ensure early and ongoing public outreach and engagement with impacted communities, (2) create a more direct connection between public feedback and DTSC decisions, (3) build capacity for public outreach and engagement within communities and within DTSC, and (4) increase community access to data and information relevant to decision-making.

Vice Chair Vizzier said that communicating the actual dangers of hazardous waste, properly managed, is a challenge.

Panel Member Campbell suggested that DTSC provide better explanations and justification in EnviroStor when there is a gap in the inspection frequency of specific sites.

Panel Member Campbell asked what determines whether something is posted on the public or internal portal of EnviroStor.

Ms. Wong responded that data is moved to the public portal when it is ready for public consumption.

Panel Member Campbell and Chair Kracov noted that the IRP has heard from members of the public that EnviroStor sometimes does not have information that they expect on the site or that the information isn't posted on a timely basis.

Director Lee responded that there could be a number of reasons for this: legitimate reasons, workload issues, and oversight, the last of which is not acceptable. DTSC currently is looking at how the process works and how it should work. The department could do a better job of articulating the legitimate reasons for not posting documents. However, the department is not looking at EnviroStor as an island; instead, it is examining how each program interacts with it. The Permitting Program is the furthest along, but problems won't be corrected overnight. She emphasized that it is important to her that the changes are solid and not just quick fixes.

Public comment:

Ms. Brostrom noted that she had just handed out to the IRP members the Public Outreach section of the People's Senate report and suggested that the Panel use some of those recommendations in its next report to the Legislature and Governor. She said she would like to see the metrics for how long it takes DTSC to do public outreach at specific sites. Ms. Brostrom also said that most people don't know about EnviroStor. It isn't prominent on the DTSC website, the search function isn't that great because users have to enter the facility name exactly as it is in DTSC's database, and there are broken links to posted documents. She also said that CAGs are a good model and should be improved, not discarded. Ms. Brostrom added that the state should provide technical resources for the public at facility sites to help the public participate in the permitting process, enforcement actions, and inspection information. She said decisions are too often made behind closed doors at DTSC and that this structural problem would be addressed by a board or some other oversight body, such as a statewide, community stakeholder board.

Chair Kracov asked about the status of the Public Participation Manual.

Ms. Bowen responded that DTSC was in the process of updating it and several months away from completing the update.

Chair Kracov asked if the site mitigation Community Advisory Groups (CAGs) are functioning well.

Ms. Bowen explained that the answer depends on the CAG. DTSC assists in the formation of a CAG when there is a petition to form one, but once formed, DTSC steps back and allows it to be community led and driven, only providing technical updates.

Ms. Mascareñas said DTSC would be open to a need for another community group structure.

Chair Kracov asked Mr. Rohlfs to provide him with the codes that pertain to public participation requirements.

Director Lee added that DTSC is committed to stepping outside of the structures that they are required to use in order to engage with other groups in ways that are meaningful to the communities, as the DTSC has an overarching obligation to connect with them. A community may already have a group that is its hub. Such engagement would be a blend of environmental justice and public participation work.

Chair Kracov asked if CalEPA's new complaint system was being integrated into DTSC's public participation efforts.

Ms. Bowen responded that the two programs are not yet working closely together, but that she would look into opportunities to do so.

Chair Kracov said he would like DTSC's opinion of the public outreach recommendations that the IRP made in its January 28, 2016 report to the Legislature and Governor.

Chair Kracov noted that he had heard that program managers do not value public engagement and asked Ms. Bowen if she thought that was something the IRP should improve/change.

Ms. Bowen responded that it was not her experience that program managers do not value public engagement and that she viewed them as collaborative partners.

Chair Kracov said that the same kind of work that the Public Participation Program has been doing with the permitting should be done with site mitigation.

Vice Chair Vizzier complimented DTSC's Public Participation Program on its tactfulness in dealing with diverse stakeholders.

11. IRP Reporting Requirements

Chair Kracov asked Panel members and Mr. Hildreth if they thought it would be appropriate to write a support letter to the Legislature on AB 1858.

Mr. Hildreth responded that it probably would be appropriate to write such a letter, but if the IRP decided to write a letter on only one of the legislative measures that would implement a Panel recommendation, the letter could diminish the perceived importance of the Panel's other recommendations.

The Panel members agreed to not send a support letter on AB 1858.

Chair Kracov asked Panel members if they thought it would be a good idea to invite stakeholders to an October meeting to look at the "big picture" and capture any resulting suggestions in the recommendations to the Governor and Legislature that are due at the time of the submission of the Governor's annual budget to the Legislature.

For this annual report, Mr. Hildreth suggested that the IRP submit all of its previous recommendations, perhaps prioritize them, and attach the prior reports as backup.

Panel Member Campbell suggested that the recommendations also include what the DTSC and the Legislature have done to respond to the IRP's previous recommendations.

Chair Kracov suggested submitting the recommendations prior to the deadline so that the Governor can consider them for his budget.

Panel Member Campbell suggested a November meeting on the "big picture" rather than an October meeting, when the IRP would be finalizing its Public Outreach recommendations.

Chair Kracov suggested that the November meeting include a presentation on cost recovery in the morning and a discussion of the "big picture" in the afternoon.

Chair Kracov suggested that the "big picture" meeting be held at the Capitol.

Chair Kracov said he planned to propose at the November meeting that an oversight board of some kind be created to replace the IRP when it sunsets on January 1, 2018.

Chair Vizzier said that adding an oversight body would be very difficult because Hazardous Waste Control Law was written with a director in mind, not an oversight body.

Ms. Negri said that the department staff would like to contribute its ideas on the suggested creation of an oversight body.

Chair Kracov suggested a cleanup of all legislation applying to DTSC as a "big picture" discussion topic at the November meeting.

12. Organizational, Operational, and Administrative Matters

Mr. Rohlfes reported that Ms. Negri had provided IRP support staff with FY 2015-16 budget information since that morning's staff report.

Chair Kracov suggested that the IRP hold off on discussing the budget until the next meeting.

Panel Member Campbell offered to work with Mr. Rohlfes on the survey report.

13. Future Meeting Schedule and Agenda Items

The IRP agreed to meet in three different locations on September 20 and 21, 2016: near the Santa Susana Field Lab, near Riverside Agricultural Park, and near the Exide facility. The Panel agreed to meet on October 12, 2016 at DTSC's Cal Center office in Sacramento. It agreed to meet at the state Capitol or the CalEPA Building in November.

The IRP agreed to schedule a presentation on CalEnviroView at the October meeting if CalEPA can be ready to give a presentation by then.

The IRP agreed to wait until December of 2016 or January of 2017 for a lab tour.

The IRP agreed to submit suggested recommendations for the October 24, 2016 report to support staff prior to the September meeting. Support staff should compile them for discussion at the September meetings.

Panel Member Campbell volunteered to work with Mr. Rohlfes on the report due on October 26, 2016.

Vice Chair Vizzier suggested that “less is more” when it comes to suggesting recommendations for discussion at the September meetings.

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. Vice Chair Vizzier moved. Panel Member Campbell seconded. The motion carried unanimously.

Chair Kracov adjourned the meeting at 5:02 p.m.