
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 December 9, 2016

1. Call to Order

Chair Gideon Kracov called the meeting to order at 8:15 a.m. at the DTSC Berkeley Regional Office in Berkeley, CA.

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

Chair Kracov led the Panel in the Pledge of Allegiance.

2. Welcome and Introductions

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

3. Announcements

Chair Kracov 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 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, said the IRP probably would not go into closed session, and suggested the IRP take up Agenda Item 5, Minutes of September 20 and November 16, 2016 Meetings, after Agenda Item 10, which was the Tour of the Berkeley Environmental Chemistry Laboratory and Poster Session on Its Projects.

6. General Public Comment

Jack Monger, CEO of the Industrial Environmental Association (IEA) of San Diego, thanked the Panel for its work to date and invited Panel members to attend the IEA's next conference in October 2017.

7. Chair's Report

Chair Kracov said he had nothing to report under this agenda item.

8. Staff Report

Mr. Rohlfes introduced Gabriella Nepomuceno, DTSC's recently hired liaison to the IRP. Chair Kracov welcomed Ms. Nepomuceno.

Mr. Rohlfes briefly reviewed the various meeting materials.

Chair Kracov asked questions about the significance of the DTSC-supplied information on operational plans from the technical support branches and the "on time, on budget" metrics in those plans.

DTSC Senior Engineering Geologist Brian Lewis explained that the "on time, on budget" performance metrics for Department geologists could be found in a few tables in the cleanup program operations plan for the Office of Geology and that similar tables could probably be located for the toxicologists and engineers in their operational plans. He said the target was 85 percent for geologist work requests completed on time as well as geologist work requests completed on budget. He said FY 2014-15 performance was somewhat lower than 85 percent for both targets.

9. Presentation by DTSC Staff and Discussion on Environmental Chemistry Laboratory's Roles in Providing Analytical Chemistry Support to Department Programs and Scientific Leadership on Emerging Chemical Issues

DTSC Laboratory Chief Bruce LaBelle, Ph.D., began the presentation with an overview of the mission, vision, role, values, structure, staffing, infrastructure, equipment, quality controls, standard operating procedures, current core program activities, and emerging issues facing the DTSC Environmental Chemistry Laboratory. A PowerPoint version of the presentation is available on the IRP website at: <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Meetings.cfm>.

DTSC Analytical Support Supervisor Robert T. Ramage, Ph.D., continued the presentation with an overview of lab testing procedures, method development and validation in response to legislative mandates, special projects and studies for other DTSC programs, consultation and support activities for DTSC enforcement, and research for new regulations.

DTSC Environmental Chemistry Branch Chief Myrto Petreas, Ph.D., continued the presentation with a review of the laboratory's history of scientific leadership in protecting California's residents from chemicals of emerging concern, beginning with the formation of what was then called the Hazardous Materials Laboratory within the Department of Health Services in the late 1970s to support enforcement and cleanup of hazardous waste sites. Dr. Petreas covered the laboratory's pioneering research with Dioxins in the mid-1980s. She discussed the laboratory's discovery of extremely high levels of Polybrominated Diphenylethers (PBDEs), a class of chemicals with Dioxin-like structure, in the body tissues of Californians and subsequent research that linked an increase of PBDEs in the environment to the widespread use of flame retardants in products to meet the California Flammability Standard. This led to 2003 legislation restricting use, a revision of the

flammability standard in 2013, and legislation to require product labeling in 2015 (SB 1019). Dr. Petreas said the laboratory had documented a decline in PBDE levels in breast milk samples and cats' blood in recent years and had selected children's foam-padded sleeping products containing safer fire retardants as an initial priority product in the Department's Safer Consumer Products Program. Dr. Petreas reviewed the laboratory's involvement in Biomonitoring California as well as its separate biomonitoring work outside of this three-agency program. Biomonitoring California was established by state legislation in 2006 (SB 1379) to determine chemical levels in Californians through studies and surveys, to communicate the results of those studies and surveys to the individuals who participated in them, to examine trends in chemical levels, and to help assess the effectiveness of environmental regulations and regulatory interventions. Dr. Petreas called attention to a new emerging chemical issue: fluorinated chemicals (PFASs). She said they are found in many everyday products, including carpets, rugs, upholstered furniture, and their care and treatment products, and as with PBDs, they have persistent, bioaccumulative, and toxic effects on health. Dr. Petreas said PFASs can and often do contaminate water, including wastewater, groundwater, surface water, and drinking water. Dr. Petreas said the lab recently participated in a study that found them in effluent from all major wastewater treatment plants that discharge into the San Francisco Bay. She said the laboratory also conducted its own study investigating correlations between drinking water with detectable levels of PFASs and the PFAS-blood levels of more than 3,000 female teachers. Dr. Petreas said that the laboratory is now focusing attention on about 1,300 chemicals used in products of which little is known about their harmful effects. Dr. Petreas said the Environmental Chemistry Laboratory is one of a small number of labs that has an instrument that can perform untargeted suspect screening on these chemicals. Dr. Petreas said untargeted screening expands the laboratory's capabilities, serves as an early warning system, and helps DTSC's Safer Consumer Products Program. Dr. Petreas concluded with the statement that the laboratory's work supports DTSC decision making.

Chair Kracov adjourned the meeting for a break at 10:10 a.m. and reconvened it at 10:22 a.m.

Tracey J. Woodruff, Ph.D., a professor in the Department of Obstetrics, Gynecology, and Reproductive Sciences at the University of California, San Francisco, said she was an enthusiastic collaborator with the laboratory's biomonitoring program. Dr. Woodruff said she had worked with the laboratory's excellent scientists on a number of groundbreaking projects that have had state as well as national resonance.

Public comment:

Ingrid Brostrom of the Center on Race, Poverty, and the Environment said she had ethical concerns about the treatment of individuals who are participating in biomonitoring testing and that the program needs more community participation. Ms. Brostrom also said that citizen science, or community participatory science as she preferred to call it, was a resource that was not used enough. She said guidelines were needed on how agencies could use communities to collect data.

Panel Member Campbell stated that for biomonitoring, Institutional Review Board protocols for protection of human subjects are used, but she agreed that there should be more communication between scientists and communities and said more studies were needed on how toxic chemicals affect vulnerable communities.

Myrna Hayes, community co-chair of the Mare Island and Naval Shipyard Restoration Advisory Board, said she would like to insert herself as a resource for the IRP and point of contact between her board and the Panel. She said her group was one of the oldest restoration advisory boards in the U.S.

Chair Kracov said IRP support staff would give Ms. Hayes information on how to follow the activities of the IRP.

Public comment via email:

Chair Kracov noted that the IRP was in receipt of three emails on the Environmental Chemical Laboratory that were posted on the IRP website prior to the meeting. They were from Asa Bradman, Ph.D., Arlene Blum, Ph.D., and Veena Singla, Ph.D.

Phil Chandler asked the IRP to recommend that DTSC prepare a list of the active and terminated permits where the Department has not required assurance of financial responsibility for corrective action. He also asked the IRP to recommend that DTSC seek and make public any and all South Coast Air Quality Management District permits for emission of lead in the Los Angeles area.

Chair Kracov asked IRP support staff to post on the IRP website the attachments to Mr. Chandler's email messages.

Chair Kracov asked the next external speaker for the Environmental Chemical Laboratory to speak.

Alyce C. Sandback, a district attorney with the Alameda County District Attorney's Office, gave a presentation on the critical value of the Environmental Chemistry Laboratory's testing and declarations in environmental prosecutions. She summarized the laboratory's involvement in three cases: a Comcast Corporation e-waste disposal investigation, an AT&T e-waste disposal investigation, and a cabinet shop solvent disposal investigation.

Dr. LaBelle introduced three staff members: Senior Environmental Scientist Carol E. Wortham, Research Scientist Supervisor John Quinn, and Biomonitoring Branch Chief June-Soo Park, Ph.D.

Vice Chair Vizzier asked why two similar samples can yield different results. Dr. LaBelle and Panel Member Campbell explained that a number of factors may be involved, including the materials being tested, the testing method used, and the accuracy and precision of the testing and testing equipment.

Chair Kracov asked who specifies the test method in a site mitigation activity. Dr. LaBelle responded that the project manager specifies the method.

Chair Kracov asked Dr. LaBelle if he had any general thoughts or observations about why DTSC and U.S. EPA testing of materials from site mitigation activities in southern California produced different results. Dr. LaBelle responded that he couldn't speak to issues beyond the lab itself, but he said that no testing method was perfect.

DTSC Director Barbara Lee added that if samples have very low levels of a substance the lab is trying to detect, small variations can make a big difference. The detection levels of the equipment can become an issue rather than the accuracy of the work.

Chair Kracov asked who determines which state agency does what work? Dr. LaBelle responded that each agency has clear jurisdiction in its mandate.

Chair Kracov asked how many lab staff members are committed to support of permitting and cleanup activities as opposed to biomonitoring and other scientific research. Dr. LaBelle responded

that approximately 35 staff members are involved in programmatic support and approximately 12 are involved in biomonitoring and other scientific research.

Chair Kracov asked about staffing trends. Dr. LaBelle responded that staffing has gone down a little over the past 10 years.

Chair Kracov asked if the lab had a role in the federal Toxic Substances Control Act regulatory activities. Dr. LaBelle responded that it did not.

Chair Kracov asked how the lab prioritizes what it studies. Dr. Petreas and Dr. LaBelle said the planning was tethered to the priorities of the Safer Consumer Products Program and other DTSC programs, but they also prioritized based on their expertise.

Chair Kracov asked DTSC to report to the IRP in the next month or so on its recent work in Paramount.

Dr. LaBelle explained the procedures for the lab tour, poster session, and opportunity to have lunch during the poster session.

Chair Kracov asked Jerilyn López Mendoza, DTSC's recently hired public participation deputy director, to introduce herself.

10. Tour of the Berkeley Environmental Chemistry Laboratory and Poster Session on Its Projects

5. Minutes of September 20 and November 16, 2016 Meetings

The IRP approved the resubmitted minutes of the September 20, 2016 meeting.

The IRP approved the draft minutes of the November 16, 2016 meeting with changes to indicate Chair Kracov's observations on DTSC strengths in Agenda Item 13.

11. Discussion by DTSC Staff and Discussion about DTSC Organizational Excellence Efforts, Including the Cultural Awareness Task Group and Proposed Survey of Department Staff

DTSC Chief Deputy Director Francesca Negri gave a presentation on Building Sustainable Organizational Excellence. A PowerPoint version of the presentation is available on the IRP website at: <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Meetings.cfm> .

Ms. Negri said DTSC was focusing on organizational excellence to make the Department an exceptional place to work, develop an organization that is ready for the future and continues to fulfill its mission, and prepare for the Department's strategic plan update. She said DTSC will develop an organizational goal and that this process included the following steps: incorporating the Department's mission and core values; assessing the organization and its benchmarks for training and preparing leadership skills (foundational work); developing goals; defining objectives, strategies, and metrics; implementing and managing; and measuring success of all these parameters. Ms. Negri said the goal was to complete the planning and foundational work by the spring of 2017. She said the organizational goal will not be established without input from internal stakeholders, an organizational health assessment, and community input.

Chair Kracov asked clarifying questions about the four scope-of-work documents for contractors working on various aspects of the organizational excellence efforts that DTSC submitted to the Panel for the meeting.

Panel Member Campbell asked what step DTSC was currently on in its efforts to create the organizational goal. Ms. Negri responded that DTSC was on the step devoted to planning and foundational work.

Chair Kracov asked about the status of the staff assessment survey. Ms. Negri responded that it was live. She said the survey was part of the foundational assessment work.

Chair Kracov asked questions about the Organizational Health Assessment scope-of-work contract. Ms. Negri responded that it was for foundational work only, goes to October 2017, and was on schedule.

Chair Kracov asked questions about the Maximum Potential scope-of-work-contract. Ms. Negri responded that it was to give the permitting and site mitigation staff the training and tools to draft their own plans.

Chair Kracov asked questions about the UC Davis Extension Collaboration Center scope of work contract. Ms. Negri responded that it was to identify opportunities to provide diversity and inclusion services to foster an organization that is more inclusive of diversity and better prepared to work interculturally on the Department's mission.

Vice Chair Vizzier asked if the plan would be evaluated. Ms. Negri responded that strategic plans typically last five years, are evaluated every year, and are adjusted along the way.

Chair Kracov asked clarifying questions about the training initiatives. Ms. Negri responded that the goal was to create a leadership academy for aspiring leaders as well as first and second-level supervisors. She said the training would be mandatory for the latter. She said she believed the curriculums for pilot training would be finalized in January 2017.

Chair Kracov asked when the strategic plan would be completed. Ms. Negri responded that it would be completed in 2018.

Chair Kracov asked how the IRP could assist DTSC in its organizational excellence efforts. Ms. Negri responded that the Panel could provide feedback.

Chair Kracov said the IRP will try to hold DTSC accountable for the various organizational excellence deliverables, including finalizing of the program-level plans by mid-2017, finalizing the strategic plan in 2018, and having the leadership academy running on full cylinders by the end of 2017. He added that the IRP would be open to supporting the Department if it has any budgetary needs for this work.

Chair Kracov adjourned the meeting for a break at 2:20 p.m. and reconvened it at 2:40 p.m.

12. IRP Reporting Requirements

Director Lee recognized Geraldine Rosen, the administrator of DTSC Berkeley Regional Office.

Chair Kracov called the IRP's attention to the draft recommendations due under Health and Safety Code (HSC) section 57014(h) at the time of the Governor's 2017-18 budget to the Legislature.

Public comment via email:

Cynthia Babich of the Del Amo Action Committee said the draft recommendations were well written and inclusive of enough background information to make them a stand-alone document. She said the recommendation for an oversight board or other structural change would lighten the Director's load and protect institutional memory in the event of staff turnover.

At Vice Chair Vizzier's suggestion, the IRP deleted a sentence stating that stable leadership for DTSC was more important than ever, given the challenges presented by the Exide Technologies site.

Vice Chair Vizzier suggested the IRP change the phrasing of a sentence on the February 2016 letter to CalEPA Secretary Matt Rodriguez from a group of minority DTSC scientists.

The IRP agreed to check with DTSC to determine what should be said about the personnel actions it took in response to the offensive emails it uncovered in 2015.

At Chair Kracov's suggestion, the IRP agreed to summarize the report that Ms. Negri gave at this meeting as follows: "She identified the intent to prepare strategic plans for the Hazardous Waste Management Program and Brownfields & Environmental Restoration Program, as well as an overall strategic plan for the DTSC, with measurable performance objectives."

At Vice Chair Vizzier's suggestion, the IRP agreed to state that DTSC's budget "currently is sufficient" rather than stating that the budget "is now relatively robust."

Public comment:

DTSC Hazardous Substances Engineer Elena Joy Pelen said the IRP should not delete the assertion in the February 2016 letter to Secretary Rodriguez that the minority scientists were confronted by a workplace culture of racial bias if that term was used in the letter.

DTSC Engineering Geologist Frankie Mansfield said it was worth mentioning in the report that the pay disparity between scientists and geologists/engineers is a separate issue from racial bias and that the disparity is not specific to DTSC.

Ms. Brostrom said that taking race out of the letter completely changes the meaning of the letter.

At Vice Chair Vizzier's suggestion, the IRP agreed to delete the phrase "within three years of expiration" from a reference in the narrative to the Panel recommendation that the Governor and Legislature consider the creation of a permit appeals board to decide on all hazardous waste facility permits that DTSC does not timely process within three years of expiration.

At Chair Kracov's suggestion, the IRP agreed to add a statement that the Panel believes it is important for DTSC to set realistic timelines for its work and be accountable for deadlines.

In Table II, IRP Recommendations to the Legislature and Governor: Not Adopted, the IRP agreed to indicate the status of bills if a particular bill died in the Legislature during the 2015-16 legislative session or if a recommended proposal was amended out of a specific bill.

Chair Kracov adjourned the meeting for a break at 3:35 p.m. and reconvened it at 3:40 p.m.

Public comments:

Ms. Pelen said that the issues of pay disparity and racial bias are separate but interrelated.

Public comments via email:

Cynthia Babich said the minority workplace culture was the issue in the February 2016 letter to Secretary Rodriguez.

At Panel Member Campbell's suggestion, the IRP agreed that the discussion of the February 2016 letter to Secretary Rodriguez should quote directly from the letter.

Motion: Delegate the aforementioned changes and any necessary factual changes to Vice Chair Kracov and Mr. Rohlfes. Vice Chair Vizzier moved. Panel Member Campbell seconded. The motion carried unanimously.

Chair Kracov next called the IRP's attention to the HSC section 57014(f) progress report on DTSC fiscal management.

The IRP discussed its list of Fiscal Management Recommendation Ideas As of December 9, 2016.

The IRP agreed to make information requests of the major Organizational Excellence deadlines. Chair Kracov asked Mr. Rohlfes to work with DTSC staff to come up with the most important Organizational Excellence deadlines to include as requests for informational reports on whether and how they were met.

Vice Chair Vizzier agreed to work with Mr. Rohlfes on the draft report for discussion at the January 11, 2017 IRP meeting.

13. Organizational, Operational, and Administrative Matters

Chair Kracov asked Mr. Singh and Mr. Rohlfes to attend upcoming DTSC workshops on proposed regulations specifying the toxicity criteria for human health risk-based screening levels and SB 673 implementation.

Panel Members agreed to submit up to four questions each on site mitigation to Mr. Rohlfes by December 31, 2016. Mr. Rohlfes should compile them to a list and give it to John Little, an analyst for the DTSC Brownfields and Environmental Restoration Program, who asked for questions to help the Department prepare its site mitigation presentations for the IRP.

The IRP agreed that the information requests on site mitigation that were due in January 1, 2017 could instead be submitted in February 2017. The IRP agreed that the requested report on the UC Davis Public Participation Plan recommendations could wait until the February 2017 meeting.

The IRP decided to request an overview presentation lasting about an hour and a half on site mitigation at the January 2017 meeting. Vice Chair Vizzier volunteered to work with DTSC on an outline for the report.

The IRP agreed to ask DTSC for an oral update on the status of the Exide Technologies facility closure and post-closure and residential cleanup, including funding for the efforts in February 2017.

14. Future Meeting Schedule and Agenda Items

Mr. Singh said the Byron Sher Room in Sacramento's CalEPA building had been reserved for the January 11, 2017 meeting. He said the DTSC's Cal Center Office in Sacramento had been reserved for the March 1, 2017 meeting.

The IRP set its February 2017 meeting for February 8.

Chair Kracov suggested that the IRP think about going to San Diego for the March meeting instead of holding it in Sacramento.

15. Closed Session

There was no closed session.

16. Reconvene and Report on Closed Session

There was no closed session.

17. Adjournment

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

Chair Kracov adjourned the meeting at 4:38 p.m.