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# 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 September 21, 2016

### 1. Call to Order

Chair Gideon Kracov called the meeting to order at 10:10 p.m. at the Jurupa Valley City Hall at 8930 Limonite Avenue, Jurupa Valley, CA 92509.

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: the IRP members; the IRP's legal counsel for the meeting, Supervising Deputy Attorney General Eric Katz; IRP Program Analyst Larry Rohlfes; and IRP Office Technician Mike Singh.

Mr. Rohlfes gave a presentation on the Independent Review Panel. A PowerPoint version of the presentation is available on the IRP website at:

[http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/IRP\\_supporting.cfm](http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/IRP_supporting.cfm).

Chair Kracov recognized the following legislative and congressional staff members in attendance: Melanie Ling, a constituent services representative for Rep. Mark Takano; and Denisse Lopez, a field representative for state Senator Richard D. Roth.

Chair Kracov asked DTSC staff members present to introduce themselves. They were: Brownfields and Environmental Restoration Program Division Chief Dot Lofstrom, Environmental Program Manager Peter Garcia, Brownfields and Environmental Restoration Program Deputy Director Mohsen Nazemi, Office of Communications Chief Patrice Bowen, Assistant Director for Environmental Justice Ana Mascareñas, Public Information Officer Abbott Dutton, Public Information Officer Phil Mcphaul, Public Participation Specialist Stacey Lear, and Chief Deputy Director Francesca Negri.

### 3. Announcements

Chair Kracov noted that there would be no video webcast of the meeting, but that there would be an audio webcast.

Chair Kracov explained that the primary purpose of the meeting was to listen to, and learn from, the community in connection with the IRP's review of DTSC programs and recommendations to improve those programs, especially the Department's public outreach and public participation activities.

Chair Kracov said there would be a five-minute limit on public comments except for presentations scheduled in advance of the meeting.

#### **4. Agenda Review**

Chair Kracov announced that he would like to take up Agenda Item 6, General Public Comment, before the other items and did not plan for a closed session.

#### **5. Minutes of August 10, 2016 Meeting**

This agenda item was taken up later in the meeting.

#### **6. General Public Comment**

Marylyn Whitney, a resident of Riverside Agricultural Park (Ag Park), said people and animals are dying in Ag Park and that she had cancer. She said DTSC Public meetings were a farce. She said the public was allowed to ask questions at those meetings, but did not get answers. She said venues were changed an hour before meetings and that they were badly run. She said DTSC was not honest or trustworthy.

Vice Chair Vizzier asked Ms. Whitney what it would take for DTSC to regain her trust. Ms. Whitney responded that it would take a new DTSC with new people who were not ready to lie. She asked how DTSC could ever be trusted again after it gave Ag Park a certificate of completion.

Chair Kracov asked Ms. Whitney how the IRP could address her concerns without doing away with the Department. Ms. Whitney responded that the Department could regain her trust by being accountable and having new staff members who live in the contaminated areas. She said DTSC had not explained why it gave Ag Park a certificate of completion or admitted it was wrong to do so.

Ms. Penny Newman of the Center for Community Action and Environmental Justice (CCA EJ) gave a presentation on Putting the Puzzle Together: Ag Park, Pedley Landfill, Anza Channel, Camp Anza, and ROHR Industry: "A Situation Ripe for Manipulation." A PowerPoint version of the presentation is available on the IRP website at:

<http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/SubmittedDocs.cfm>.

Ms. Newman said the information on Ag Park in the DTSC September 20, 2016 response to the People's Senate site specific concerns was an example of how the Department misleads and puts a

happy face on everything. She said DTSC has been ignoring the source of the pollution, Rohr Industries. She said DTSC determined that polychlorinated biphenyl (PCB) levels were the only cause for concern when the levels of other toxic chemicals were high as well. She said that in April of 2014 Ag Park was certified for unrestricted land use. She said that confirmation testing for PCBs was done only after prodding from her organization. She said it was U.S. EPA that subsequently found higher than expected levels of PCBs on the site, not DTSC. She said DTSC continued to say that PCB levels do not present a risk off site, even though testing has not been done off site. She said that the DTSC work group has been moving very slowly and is not racially diverse. She said DTSC staff did not answer questions at work group meetings, even though people come to meetings expecting to get their questions answered.

Chair Kracov asked Ms. Newman why she thought DTSC staff did not answer questions at work group meetings. Ms. Newman responded that DTSC did not seem to be open to listening to anything and speculated that there could be hidden legal agreements that DTSC was following.

Vice Chair Vizzier asked Ms. Newman if the length of the comment period was the problem. Ms. Newman responded that the problem is deeper than just the length of the comment period. She said the community should be at the table as the plan is being developed.

Vice Chair Vizzier asked Ms. Newman to submit suggested best practices for work groups/public participation to the IRP.

Ms. Newman said that while DTSC was in charge of the Ag Park site, other agencies were in charge of other nearby sites that were contaminated by Rohr Industries. She said it should have been a federal Superfund site and that the fundamental problem was that agencies were not talking to one another. She said DTSC has a responsible party with deep pockets.

Ms. Newman made the following recommendations: create a governing board or commission for DTSC, investigate when DTSC staff members are negligent and not doing their jobs, create a scientific review panel to make DTSC defend its approach to cleanups, set minimal cleanup levels that are not determined arbitrarily, institute enforceable agreements, and establish an ombudsman who can advocate for communities and who is not caught in the internal politics of the Department.

Ms. Newman suggested that the governing board be modeled on the California Air Resources Board and include environmental justice representation.

Chair Kracov asked Ms. Newman about the concern that an oversight board could politicize the DTSC. Ms. Newman responded that DTSC already is politicized and needs a community perspective.

Vice Chair Vizzier asked Ms. Newman if she was happy with the regional water quality control board's response to the cleanup. Ms. Newman responded that she was not.

Ms. Newman suggested that investigations of DTSC staff be conducted from an internal affairs section within CalEPA when there was an appearance of negligence or unethical practices. She said the scientific panel would address the problem of arbitrary cleanup plans. She suggested that the Office of Environmental Health Hazard Assessment (OEHHHA) set the cleanup standards using a rigorous scientific approach. She stated that agreements with the polluter result in the latter

becoming the client/customer instead of the public. She said the ombudsman should be housed in CalEPA.

Ms. Newman then made observations specific to the cleanup at Ag Park. They included: inadequate air monitoring (not enough monitors around site, not 24 hours per day, and testing for dust rather than chemicals), inadequate testing and identification of all chemicals of concern, inadequate testing to depth of soil, inadequate cleanup levels (only .22 mg/kg for PCBs), inadequate requirements for public disclosure to home buyers, no testing of residents' yards and homes adjacent to site, and legal negligence (such as the DTSC letter of "no further action required" and certificate of completion on April 1, 2014).

Chair Kracov asked how the IRP could make sure this does not happen again on other sites.

Bruce Bailey, a CCAEJ member and advisor and retired Riverside County hazardous waste specialist, responded that DTSC staff should follow federal protocols. Chair Kracov asked Mr. Bailey to send the IRP some information on this.

Scott Simpson, a CCAEJ member and retired DTSC branch chief, said the organizational culture at the Department drives everyone into "organizational think." He said staff members did not expect organizational assistance until there was a crisis and that DTSC was dismissive of the public and an advocate of the developer. He said DTSC's decision to leave persistent, bio-cumulative contamination in place relies upon dilution in soil and water to solve the cleanup problem. He said that was a mistake. He said that OEHHA was a better organization than DTSC to establish cleanup levels.

Chair Kracov asked Ms. Newman about the status of the CCAEJ August 2016 petition for writ of mandate under provisions of the California Environmental Quality Act (CEQA) against DTSC unless immediate corrective action was taken to comply with CEQA with respect to grading and remediation work at Ag Park. Ms. Newman responded that the lawsuit was intended to delay activities until the cleanup is done correctly and that a hearing was scheduled for October 4, 2016.

***Chair Kracov adjourned the meeting for a break at 12:05 p.m. and reconvened it at 12:13 p.m.***

Maria Castro, a CCAEJ member, said she lives fence to fence with the Ag Park site and that when she reported dust in her house, she was told that it came from a source other than the Ag Park site. Ms. Castro said she was told that they were controlling the dust so that it doesn't cross a chain link fence. Ms. Castro asked how this could be possible and said she was sick.

Scott Andrews of the Ag Park Family gave a presentation on Not Just Dirt. A PowerPoint version of the presentation is available on the IRP website at:  
<http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/SubmittedDocs.cfm>.

Mr. Andrews said the PCB levels at Ag Park were much higher than the .22 mg/kg that DTSC said was acceptable and that the Department should have been communicating with health agencies about the tremendous amount of toxic chemicals on the site. He said the wind has been blowing the chemicals all over the surrounding communities and illustrated the strength of the wind with several video clips. He said the surrounding neighborhoods should be tested for contamination and that

DTSC communication with the public had been inadequate. Mr. Andrews said he would provide suggested recommendations in a letter to the IRP.

Xonia and Floyd Villanueva of Concerned Neighbors of Wildomar and Ms. Newman gave a presentation on the Autumnwood Development in Wildomar. A PowerPoint version of the presentation is available on the IRP website at:

<http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/SubmittedDocs.cfm> .

Ms. Villanueva said the Autumnwood Development is a community of 61 homes built on toxic fill material from wastewater treatment ponds as well as other locations, possibly including gasoline station remediation sites. After residents developed numerous illnesses and rashes, pets died, and chemical odors were noticed, she said the residents found that toxic substances were in the groundwater and soil and permeating the ambient air in their homes. She said residents abandoned their homes as well as the possessions in their homes. She said they asked DTSC to investigate, but the Department ultimately closed the investigation in October of 2014, maintaining that the volatile organic compounds and other toxic substances were too low to be of concern. She said U.S. EPA asked DTSC to provide raw data backup to support its findings, but the Department couldn't produce it. She said U.S. EPA then asked DTSC to have the lab generate a new tentatively identified compound, raw data report per U.S. EPA procedures. She said the agency found 30 chemicals per sample compared to DTSC's 10 chemicals as well as high concentrations of various toxic chemicals. She said the residents met with U.S. EPA on June 8, 2016 to discuss the findings and share information. She said they agreed to discuss with DTSC the need for further, more robust testing. She said, in conclusion, that DTSC deviated from the Wildomar Work Plan and its verbal commitment to test for all chemicals of concern and refused to provide quality assurance/quality control reports to support its final conclusions. She said that raw data should always be made available to anyone upon request because this information holds agencies accountable for the integrity of their work. She said that if it were not for the raw data received, the community's residents would not have been able to identify many discrepancies in the product of DTSC's work.

Panel Member Campbell asked Ms. Villanueva if she thought construction materials could be responsible for the formaldehyde and other indoor toxins. Ms. Villanueva responded that she believed that the harmful contaminants were not coming from indoor sources.

Chair Kracov asked Ms. Villanueva if she concurred that the U.S. EPA report basically agreed with DTSC's conclusions. Ms. Villanueva responded that what U.S. EPA told her verbally was different from its report.

Chair Kracov asked Ms. Villanueva if additional indoor testing had taken place. Ms. Villanueva responded that no testing had apparently taken place since the U.S. EPA report. She acknowledged that her group had not yet approached DTSC to do the additional testing.

Mr. Bailey said one problem was that DTSC staffers working on site cleanup did not receive enforcement training. He said they did not see their role as one of regulatory enforcement. He also said it sometimes takes six months for DTSC to reply to his emails.

Ingrid Brostrom of the Center on Race, Poverty, and the Environment said she was disappointed in DTSC's response to the People's Senate site-specific concerns. She said it did not answer any of the questions posed by the communities, was riddled with errors, and was part of a public relations

campaign to show the Department was doing more for the communities. She said that never once did the report acknowledge that DTSC could do things better. She said the same thing was true of DTSC presentations to the IRP, which tell the public over and over that everything is great. However, the communities do not see it that way. She said the IRP is not equipped as a body to force DTSC to do more. She said her organization would be “groundtruthing” the DTSC report.

Panel Member Campbell asked how the IRP could help bridge the gap that Ms. Brostrom sees between DTSC and the communities. Mr. Brostrom responded that the creation of a governing board would give communities somewhere to go for accountability. She said the recent IRP survey report and the communities are telling the IRP that what it has been getting from the DTSC was not true. Panel Member Campbell responded that she was worried that the governing board solution would add another layer of bureaucracy and disagreement, and then cleanups would never get done.

## **5. Minutes of August 10, 2016 Meeting**

Vice Chair Vizzier said he incorrectly was identified as the IRP chair on two pages of the minutes.

**Motion:** Approve minutes of August 10, 2016 meeting with the suggested changes. Vice Chair Vizzier moved. Panel Member Campbell seconded. The motion carried unanimously.

## **7. Chair’s Report**

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

## **8. Staff Report**

Mr. Rohlfes reviewed the status of the IRP’s pending information requests.

Mr. Singh reviewed the IRP budget report that he put together for FY 2015-16. He said expenses totaled \$30,490, well under the Panel’s \$50,000 budget. He predicted that the IRP should be under its \$50,000 FY 2016-17 budget if expenditure trends from FY 2015-16 continue.

## **9. IRP Reporting Requirements**

The IRP reviewed a list of recommendations for public outreach that support staff had put together from suggestions by members of the public at the August 10, 2016 meeting and by Panel members subsequent to that meeting.

The Panel members individually discussed the recommendations that they had submitted.

Panel Member Vizzier suggested that the first three recommendations on the list be combined into one recommendation.

Ms. Brostrom discussed the CEJC and People's Senate suggestions on the list. She argued against the suggestion to expand the Office of Communications. She said that Community Advisory Groups (CAGs) should be used for permitted hazardous waste facilities and not just for site mitigation.

Ms. Newman said the People's Senate recommendations were strong and that a board or commission for DTSC was very important. Ms. Newman said she did not think an oversight board or commission would slow things down, as she did not see its role as one of making decisions on individual sites. She said the inspector general/ombudsman's office could be located in CalEPA and should not be part of DTSC. Ms. Newman said funding was critical and should come from industry fees, but she did not recommend funding for additional communications or public participation staff.

Mr. Bailey said lawsuits against responsible parties should be a source of funding and that voluntary cleanup agreements should not be allowed.

Mr. Simpson suggested that money be redirected away from staffing and to community grants. He also said DTSC needs stable source of funding, such as an environmental fee on products that incorporate hazardous materials into their makeup.

Chair Kracov suggested the IRP discuss what could be done to improve the CAGs and whether they should be used for permitted sites. He asked Mr. Rohlfes to contact the CAGs to find out what works and does not work to make them successful. He also asked Mr. Rohlfes to determine the difference between CAGs and work groups.

Vice Chair Vizzier suggested that all of the EnviroStor recommendations on the list could be grouped into the following recommendation: improve communications tools and make them more user-friendly and updated. Chair Kracov responded that he agreed, but said he also wanted sufficient detail.

Chair Kracov asked Mr. Rohlfes to look into the status/timeline of the Public Engagement Workplan.

Chair Kracov asked Mr. Rohlfes to look at the civil rights provisions in the August 10, 2016 Kettleman Hills agreement and see if any of them could be put into more general application at the Department.

Chair Kracov suggested that a presentation by Ms. Negri on the Cultural Awareness Task Group be scheduled in November or December of 2016.

Vice Chair Vizzier noted that the Panel already had a recommendation on providing contamination data to the public.

Panel Member Campbell said she would be willing to take the lead on drafting the report to the Governor and Legislature that was due on October 24, 2016.

Chair Kracov said he was looking to Panel Member Campbell and DTSC to suggest performance metrics.

Chair Kracov said he would like to defer to Panel Member Campbell on recommendations pertaining to the prevention of lead contamination.

Vice Chair Vizzier said he did not think the IRP should make recommendations that focus only on lead. Panel Member Campbell responded that she would probably suggest broad recommendations on the health effects of toxic contamination, but use lead contamination as an example.

#### **10. Organizational, Operational, and Administrative Matters**

The IRP did not take up this agenda item.

#### **11. Future Meeting Schedule and Agenda Items**

The IRP decided to hold a meeting on October 14, 2016 at DTSC's Sacramento Regional Office.

The IRP decided to hold a meeting on November 16, 2016 at the state Capitol in Sacramento. Panel members agreed to schedule a discussion on "big picture" issues and the recommendations that the IRP is required to submit to the Governor and Legislature at the time of the next submission of the Governor's annual budget. Panel members tentatively decided to schedule the DTSC presentation by Ms. Negri on the Department's Cultural Awareness Task Group during the morning portion of the meeting.

The IRP decided to accept DTSC Director Barbara Lee's invitation to visit the Berkeley Environmental Chemistry Laboratory in December.

Chair Kracov announced that the next meeting would take place at the Commerce City Hall at 5:30 p.m. on September 21, 2016.

#### **12. Closed Session**

There was no closed session.

#### **13. Reconvene and Report on Closed Session**

There was no closed session.

#### **14. Adjournment**

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

***Chair Kracov adjourned the meeting at 2:41 p.m.***