

**Independent Review Panel
Meeting Minutes
December 8, 2015**

1. Call to Order

Panel Member Mike Vizzier called the meeting to order at 9:15 a.m. in the Byron Sher Auditorium of CalEPA Headquarters, 1001 I Street, Sacramento, CA 95814.

Other Panel members present: Panel Member Arezoo Campbell. A quorum was declared.

2. Welcome and Introductions

Panel Member Vizzier asked Panel Member Campbell and CalEPA Legal Counsel Kristin Peer to introduce themselves. Panel Member Mike Vizzier then introduced himself.

Panel Member Gideon Kracov joined the Panel, introduced himself, and assumed the role of meeting chair.

3. Announcements

Chair Kracov said the public would have the opportunity to comment on each agenda item and that the meeting would be webcast. Webcast viewers may submit comments by email. He also announced that a translator was available for Spanish-speaking members of the public and asked the translator to introduce herself in English and Spanish.

Chair Kracov led the Panel in the Pledge of Allegiance.

4. Agenda Review

Chair Kracov suggested that the agenda item on the Minutes of the November 18, 2015 meeting be moved to the following day. Panel members agreed to take up the minutes on December 9, 2015.

5. General Public Comment

Delores Mejia of the Eastside Coalition Against Exide urged the IRP to demand reform or removal of the DTSC.

6. Department Presentation

DTSC staff members presented an overview of the department. The DTSC presenters were: Director Barbara Lee, Assistant Director for Environmental Justice Ana Mascareñas, Hazardous Waste Program Deputy Director Elise Rothschild, Office of Communications Deputy Director Jim Marxem, and Special Assistant for Program Review Terri Hardy. A PowerPoint version of the presentation is available on the IRP website at

https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/December_IRP_Briefing_Slides.pdf.

Director Lee introduced the presentation and gave an overview of DTSC's mission, programs, vision for improvement, and the Fixing the Foundation effort.

Ms. Mascareñas then discussed DTSC's commitment to Environmental Justice (EJ) and the developing plan to embed EJ principles into its core programs.

Panel Member Vizzier asked why the presentation did not contain tribal aspects. Ms. Mascareñas responded that work on tribal affairs is in process. Director Lee added that presentations do not cover all areas of department programs. She suggested the Panel devote individual future meetings to specific focus areas so that it can dig deeper into the details.

Panel Member Campbell said that a general overview is beneficial for the Panel. However, the Panel eventually will need more statistics, discussion, and review of department in order to establish benchmarks and metrics. Chair Kracov stated his agreement with Panel Member Campbell.

Chair Kracov asked Ms. Mascareñas about the EJ strategy and timeline. Ms. Mascareñas responded that a draft EJ plan will be available in writing by February 2016.

Chair Kracov asked Ms. Mascareñas about the timelines for the EJ Enforcement Initiative. Ms. Mascareñas responded that the timelines for Fresno, Los Angeles, and Pacoima are different. Fresno was in 2014. Los Angeles and Pacoima are in 2015. She said she believed the program would be expanded in 2016, but wasn't sure. Chair Kracov expressed his hope that the program would be continued and expanded in 2016.

Chair Kracov asked Ms. Mascareñas if there could be a presentation to the Panel on the University of California Davis (UCD) Extension Collaborative Center's Enhanced Public Engagement Strategy in early 2016. Director Lee responded in the affirmative.

Chair Kracov expressed his opinion that the Supplemental Environmental Projects (SEP) policy is taking a long time to become final. Ms. Mascareñas responded that it should be finalized in 2015.

Ms. Rothschild next discussed Enforcement. She presented an overview of the enforcement of California's Hazardous Waste Control Law and DTSC's role in that enforcement, the role of the Enforcement and Emergency Response Division (EERD) and the Office of Criminal Investigations (OCI), funding sources, EERD inspection statistics and frequency, Fixing the Foundation efforts, FY 2015-16 additional financial resources to improve enforcement performance, the Improving Enforcement Initiative, the OCI investigative universe, enhanced enforcement in vulnerable communities, and proposed performance metrics.

Panel Member Campbell asked why the number of closed cases did not improve between FY 2012-13 and FY 2014-15 in the overview of OCI statistics. Ms. Rothschild responded that she would look into this and provide an answer for the Panel.

Chair Kracov asked how many cases have been opened and not resolved. Ms. Rothschild said she would gather information on this and share with the Panel.

Panel Member Vizzier asked if DTSC is retaining trained OCI staff to perform investigations. Ms. Rothschild responded that the program is doing well and that DTSC is keeping staff trained and field certified.

Panel Member Vizzier asked the presenters to elaborate on encouraging community participation in the enforcement process. Ms. Rothschild responded that the idea is to make the enforcement process more transparent with a pilot program that involves communities before finalizing settlements. However, the pilot program has not found any participants yet. Director Lee added that DTSC is struggling to get community input and at the same time keep negotiations confidential. The pilot project has not been successful. Many violators do not want the settlements to become public before they are finalized. DTSC needs to find a different way to address the underlying concern, and the EJ Plan will address this problem.

Panel Member Vizzier stated that it is important for DTSC to have sufficient funding to reimburse local agencies for their emergency response efforts.

Panel Member Campbell expressed concern that the Enforcement Program may not be sufficiently funded and asked if the EERD inspection frequency is sufficient. Director Lee responded that the frequency information provided in the presentation largely reflects statutory requirements or Resource Conservation and Recovery Act (RCRA) grant commitments. However, the Enforcement Enhancement Initiative is designed to look at the Enforcement Program overall and whether it is achieving the goal of protecting health and safety and the environment. She expressed hope that the Panel will engage with the department and look at inspection frequency and other metrics of adequate performance in the coming months. It is a two-year initiative, just getting underway, and therefore corresponds nicely with the Panel's length of service.

Panel Member Campbell asked why Class I violations increased from 28 in FY 2013-14 to 52 in FY 2014-15 while EERD enforcement actions went down from 63 in FY 2013-14 to 46 during that period. Ms. Rothschild responded that she would have to get back to the Panel with an answer to this question.

Chair Kracov noted that there are a lot of metrics that the Panel can use from this presentation and asked where penalty monies go. Ms. Rothschild responded that they go to the Orphan Fund in the Toxic Substances Control Account (TSCA).

Chair Kracov asked about the status of the Enforcement piece of Fixing the Foundation. Director Lee responded that there is a 2014 update as well as other information from oversight hearings that DTSC could compile for the Panel. Chair Kracov then asked if the Fixing the Foundation process is

completed and if that means the foundation is fixed. Director Lee responded that DTSC is still working on activities suggested in the document or resulting from the document.

Chair Kracov asked about the timeline of the Enforcement Performance Initiative. Ms. Rothschild responded that DTSC is hiring staff for it and that the department should have a draft work plan within three months.

Chair Kracov asked about the timeline for the Pomona metal recycling and shredding initiative. Ms. Rothschild responded that DTSC is in the hiring stages for the initiative.

Chair Kracov asked if statutory change would be necessary to have public review of settlements. Director Lee responded that she did not think it is necessary for the pilot project process, but wasn't sure if it would be necessary if DTSC were to require public review. She said she would get back to the Panel with an answer.

Chair Kracov said the Panel will want to hear more about the following: how to plan for OCI to be under the Hazardous Waste Management Program instead of legal counsel, how permits and inspections interact, forensic capacity of the labs, ability to do third-party contracting, and training and staff retention.

Ms. Rothschild and Ms. Hardy then provided an overview of the Permitting Program. They covered core activities, the five tiers of permitting, the many permit requirements, the current universe of permitted facilities, permitting staffing levels, the historical relationship between staff levels and permit decisions, permit funding sources, the permitting content in the Fixing the Foundation initiative, the Permit Backlog Reduction Initiative, the Permitting Enhancement Work Plan, the use of a collaborative team methodology to improve performance called Lean Six Sigma, and performance metrics.

Chair Kracov stated that closure financial assurances are absolutely critical and an important area for the Panel to address.

Panel Member Vizzier asked if DTSC has any control or input in land use decisions and what prevents local jurisdictions from putting schools next to hazardous waste disposal facilities. Ms. Rothschild responded that DTSC has little control over land use decisions.

Panel Member Campbell asked how many requests for permit applications there were as opposed to the number of permits given out in the graph illustrating the relationship between staffing levels and permits. Director Lee responded that the department has struggled with a backlog of permit applications since the 1990s. A number of facilities were issued interim-status documents while the department reviewed the applications. The department took a long time to review the applications. The Exide permit is the last interim status permit. DTSC has struggled with the backlog for many

years. The graph reflects new applications, backlogged applications, and renewal applications. Director Lee agreed to provide the Panel with more information on the numbers of applications.

Panel Member Campbell asked why there was such a big budget cut in FY 2008/09. Director Lee responded that there were two reasons: the department underwent reorganization at that time, and the economic collapse in 2008-09 affected staffing levels.

Chair Kracov said the Panel will want to see more detailed reports on financial assurances, permitting goals, the issue of community involvement in permitting, the issue of better interface between air/soil and air/water monitoring to prevent “future Exides,” the CEQA unit, and “the red flag issue” of 59 sites expected to be on continued status in FY 2017-18.

Mr. Marxen next discussed Public Outreach. He presented an overview of how DTSC conducts public engagement, current performance metrics, reviews of the program, stakeholder meetings in the fall of 2014, 2014 UCD work plan for modernization, expected UCD recommendations in January of 2016, and key goals for change.

Chair Kracov said he would like to see the UCD work plan from 2014.

Panel Member Vizzier said that the public frequently brings up concerns that do not fall under DTSC’s scope and authority, but that it’s not sufficient to respond by saying, “It’s not my job.” Mr. Marxen agreed and said that other agencies should be present and at the table. He also said that the technical nature of DTSC’s work is often difficult to communicate in an understandable way.

Panel Member Campbell said the program budget of \$1.5 million for 22 staff members seemed on the low side and asked how DTSC reaches and engages underrepresented individuals. Ms. Mascareñas responded that this is one of the challenges faced by the DTSC’s EJ Program.

Chair Kracov made several observations. The integration between the technical staff and the public participation can be improved. Integrating EJ is important. The internet technology aspects of community engagement are very important. Staff morale is very important. The Panel will want to hear about all of these issues.

Public comments:

Delores Mejia of the Eastside Coalition Against Exide asked why the public participation improvements are taking so long and expressed her opinion that DTSC does not care about public input.

Ingrid Brostrom of the Center on Race, Poverty, and the Environment (CRPE) and the People’s Senate made several comments. After noting that the work on Fixing the Foundation is considered nearly finished, she said that DTSC isn’t looking for the right measures of success and must measure

it on the ground. The Panel should work on site cleanup recommendations and is statutorily permitted to do so. DTSC's definition of EJ is stuck on procedural justice; the department should instead define the term as achieving fair results. The frequency of enforcement inspections is very low. The issue of the OCI not taking new cases because of backlogs is a big concern and harming people. Involving communities in enforcement is very important. Compliance metrics are important, but internal metrics do not necessarily mean success. Reducing Permitting Program backlogs is important, but we must first have standards to measure what a good permit looks like. In the permitting process, public comment currently is the last step in the process; the timing should be corrected in statute. In permitting, there needs to be a metric for the quality of decisions. There also should be a discussion of civil rights when it comes to permitting decisions. DTSC staff must become unaware that DTSC has authority to require setbacks. The public participation metrics do not get at the quality of communications. DTSC has a community of groups who want to engage in a process to measure whether or not the department is succeeding. In conclusion, she said the community is not an obstacle for DTSC and that the department should be working more closely with it.

Chair Kracov adjourned the meeting for a five-minute break at 12:30 p.m. The meeting resumed at approximately 12:35 p.m.

Ms. Hardy next covered Cost Recovery. She presented an overview of the challenges of Cost Recovery and how DTSC measures its progress. Ongoing challenges include identifying responsible parties and the statute of limitations. Structural challenges include staffing shortages and data system issues. There also have been historical challenges. \$1.9 billion has been spent on cleanups between 1987 and 2013. 10 percent of that is unresolved. Of the \$194 million in unresolved money, progress has been made. DTSC has reduced the amount by \$71.5 million in various ways. Sites totaling \$65.4 million are being evaluated for litigation or are in bankruptcy. \$1 million is being written off. Sites totaling \$56.1 million are waiting to be resolved. The State Auditor has made 11 recommendations, most of which have been implemented. Unfortunately, Fi\$cal is unable to meet the department's billing needs.

Chair Kracov asked if there are more Orphan Sites in the \$56.1 that are waiting to be resolved. Ms. Hardy responded that that is very likely. They will be resolved by June 30, 2016.

Chair Kracov asked what the issue is with Fi\$Cal. Ms. Hardy responded that Fi\$Cal will not be able to meet the Cost Recovery Billing System (CRBS) business needs. DTSC now has to go through California Department of Technology (CIT) Project Management Life Cycle process to build a new CRBS.

Chair Kracov asked what would happen if the 14 cost recovery limited term positions expire on July 1, 2016. Ms. Hardy responded that the department would have to prioritize its work and perhaps revert to its previous cost recovery process.

Chair Kracov said the Panel will want to see the most recent work plans and tracking mechanisms.

Chair Kracov asked if the money due is mostly from old or new cleanup cases. Director Lee said they are mostly old cases. She added that the challenge of the future is to determine how much time should be taken to determine who the responsible parties are and pursue cost recovery.

Chair Kracov suggested a discussion of the governor's 2016-17 budget at the January meeting.

7. Closed Session

Motion: Adjourn meeting for closed session. Vice Chair Vizzier moved to approve the motion. Panel Member Campbell seconded the motion. The motion carried unanimously.

Chair Kracov adjourned the meeting for closed session at approximately 1:02 p.m. to discuss personnel matters. The Panel reconvened at approximately 4 p.m.

8. Reconvene and Report Out on Closed Session

Chair Kracov announced that the Panel had made a decision to hire a candidate for the office technician position, pending DTSC Human Resources Unit approval.

9. Adjournment

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

Chair Kracov announced that the meeting was adjourned at 4:11 p.m.