

## Independent Review Panel Meeting – December 9, 2015

### Agenda Layout

1. **Call to Order (9:00 a.m.)**
2. **Welcome and Introductions**
3. **Announcements**
4. **Agenda Review**
5. **Minutes of November 18, 2015 IRP Meeting**
6. **General Public Comment**
7. **Joint Presentation by People’s Senate and California Environmental Justice Coalition**
8. **Organizational, Operational, and Administrative Matters**
9. **IRP Reporting requirements**
10. **Future Meeting Schedule and Agenda Items**
11. **Closed Session**
  - Personnel
12. **Reconvene and report out on closed session**
13. **Adjournment**

### Meeting highlights

1. **Call to Order (9:07 a.m.)**

Mr. Kracov calls meeting to order
2. **Welcome and Introductions**
  - Panel Members in attendance:
    - Mr. Gideon Kracov, Chairman of IRP
    - Dr. Arezoo Campbell
    - Mr. Mike Vizzier
  - Panel’s legal counsel:
    - Ms. Kristin Peer, Assistant General Counsel for EPA
  - DTSC staff in attendance:
    - Barbara Lee, Director
    - Elise Rothschild
    - Rizgar Ghazi
    - Dot Lofstrom
    - Ana Mascareñas
    - Ray Leclerc
    - Jim Marxen
    - Terri Hardy
    - Keith Kihara
  - Spanish translation is available

- There will be a public comment period after each agenda item
- Agenda Item 6 will start at 10:30 a.m.

### 3. Announcements

- Panel members Mr. Vizzier and Dr. Campbell do not have announcements at this time
- Mr. Kracov
  - Panel received letters from:
    - Letter from Rita
    - Waste Management (Re: Kettleman)
    - People’s Senate “Building a New Voice”
    - Newspaper article from Ms. Brostrom (Re: lead poisoning)
    - Letter from Kings County (Re: Kettleman Hills)
  - These documents will be available online

### 4. Agenda Review

- Added minutes discussion to agenda (Re: minutes of November 18<sup>th</sup>, 2015 IRP Meeting)
- Agenda Change: Next meeting will be December 18<sup>th</sup>
- Mr. Kracov suggests to move Agenda Item 7 up, after the discussion of the November 18<sup>th</sup> minutes, with an issue-spotting session
- Mr. Kracov notes that the closed session will not take very long today
  - Expect to have 2 hours set aside for Agenda Items 8 & 9
- Public comment on Agenda Review:
  - None at this time

- **Minutes of November 18, 2015 IRP Meeting**

Comments and edits to minutes?

- Mr. Vizzier:
  - Minor typographical changes, nothing substantive
  - Reminds presenters/commenters to clearly state their name and organization, instead of just using acronyms
- Mr. Kracov:
  - Motion to approval changes?
- Dr. Campbell: Motions to approve
- Mr. Vizzier: Seconds Motion
- Panel Member vote:
  - Mr. Vizzier: Aye
  - Mr. Kracov: Aye
  - Dr. Campbell: Aye

- The vote is 3-0 to approve minutes from November 18, 2015 IRP Meeting with Mr. Vizzier's changes

## 5. General Public Comment

- No general public comment at this time

## 6. Joint Presentation by People's Senate and California Environmental Justice Coalition

### Mr. Kracov calls to reconvene Panel at 10:38 a.m.

- Panel Members reintroduce themselves to audience
- Reminds audience that Spanish translation is available
- House-keeping announcements
- Reminds audience that there is a public comment period after each agenda item

Continue meeting with Agenda Item #6: Joint presentation by People's Senate and California Environmental Justice Coalition

- Mr. Kracov: Agenda Item #6 should conclude approximately at 12:45 p.m.

Mr. Kracov: CCAEJ has been a client; as of today, all matters of CCAEJ has been concluded

- Agenda Item #6 begins at 10:38 a.m. and is tentatively projected to end at 12:45 p.m., followed by a short lunch break
- Presenters in attendance:
  - Penny Newman, Center for Community Action and Environmental Justice (CCA EJ)
  - Ingrid Brostrom
  - John Mataka
  - Thomas Helme

### Presentation Summary

- Penny Newman reads letter from Chamber of Commerce (Re: CCAEJ's public records act request on DTSC's staff's racial bias and exchange of e-mails containing racist remarks; the lack of an open process and lack of action to address issue; civil rights complaints against DTSC; a culture of racial bias within DTSC)
  - Requests:
    - Release all racist e-mails to public for open investigations
    - Review all other DTSC e-mails
    - DTSC to establish zero-tolerance policy for racist policy
    - Disclose staff diversity
    - Hold Senate Rules Committee on this matter
    - Address issues through community-created IRP

- 3 copies of the letter were given to Panel Members
- Ingrid Brostrom: this letter was just released publicly as of Ms. Newman's reading in this meeting
- Ingrid Brostrom's presentation (refer to PowerPoint for details)
  - IRP Roles and Responsibilities
  - This presentation will focus on:
    - Review and make recommendations on 4 areas
    - Make recommendations to improve the department's programs
  - Permitting: Issue Identification
    - No standardize criteria
    - Inadequate review of compliance history
    - 1/3 of hazardous waste facilities operate on expired permits
    - Most hazardous waste facilities locate in low-income communities of color
    - All 3 hazardous waste landfills in CA are located in low-income, Latino, Spanish-speaking communities
    - DTSC does not address cumulative impacts
    - CEQA compliance: lack of proper expertise or objectivity regarding permitting decisions
    - DTSC does not follow laws (Re: notice of deficiency)
    - DTSC does not have governing or appeals board
    - DTSC fails to address and engages in civil rights violations
  - Permitting Improvements: benchmarks and standards of performance
    - Policies and Practices
    - Quantifiable Data
  - Examples of Impacted Communities
    - The higher the CalEnviroScreen % score, the more vulnerable the community
    - CalEnviroScreen is a ranking tool to rank community vulnerabilities
  - Panel Questions:
    - Mr. Vizzier:
      - Specific examples that illustrate the problem (e.g., ## out of ##, some concrete numbers, etc.)?
        - What is "too much arbitrary discretion"?
        - What is "not adequately reviewed"? (numbers?)
      - Ms. Brostrom to provide additional data to Panel at a later date
    - Dr. Campbell:
      - Need for governing board
        - A little more details?

- What are the suggestions for this board? Suggested roles and responsibilities? What would membership entail?
  - *Response from Ms. Brostrom: there is a policy currently circulating and also Cal EPA has a process with more accountability while DTSC does not*
- Mr. Kracov:
  - What do you mean by “DTSC does not address accumulative impact”?
  - *Response from Ms. Brostrom: there are very little tools that DTSC uses to address issue of disproportionately burdened communities; the need for DTSC to look at cumulative stress and to use the authority given to it via SB 673*
  - CEQA compliance:
    - DTSC to do these documents instead of local government?
  - *Response from Ms. Brostrom: yes, DTSC has the expertise; local governments do not*
  - Tanner Act issues?
  - *Response from Ms. Brostrom: that is a known issue; want DTSC to do better on CEQA*
  - Overburdened communities?
  - *Response from Ms. Brostrom*
- John Mataka presents on “Enforcement: Issue identification” and “Enforcement: Benchmarks and standards of performance” (refer to PowerPoint for details)
  - Panel Questions:
    - Mr. Vizzier:
      - Elaborate on vision of “public participation in Enforcement settlements”
        - *Response from Mr. Mataka: It is important for members of the community to have a say in settlement amounts; those who are affected by pollution will know best, in terms of the amount of fines; a lot of the fines we have seen are very low*
      - DTSC already publishes enforcement order; what do you envision?
        - *Response from Ms. Brostrom: to make data more user-friendly; EnviroScreen is not user-friendly, virtually unusable to communities; orders are posted, but not sure of compliance are posted*
      - **Action Item: DTSC posting orders and compliance**
    - Dr. Campbell
      - “Fines are not used to benefit communities where violations took place”— any examples of where cleanup fines are used to help affected community?

- *Response from Mr. Mataka: fines are not necessary from cleanup, but air quality fines; fines should be used to better impacted areas*
- How can fines be used to help impacted communities?
  - *Response from Mr. Mataka: to do work to improve communities, such as planting more trees and other work to reduce further harm to communities that are already impacted*
  - *Response from Ms. Brostrom: to have polluters use the existing program regarding supplemental environmental impact (SEPs bill 1075—all CalEPA agency must have supplemental environmental program)*

Mr. Kracov

- What is the performance of Keith Kihara's Enforcement Division in your opinion?
  - *Response from Ms. Brostrom: have not been doing a good job; public perception is that DTSC is very close to industry; difficult to hold polluters accountable*
  - *Response from Mr. Mataka: facilities wait till the last minute to submit their permit application, which gives them extra time to operate on continued permits; this issue connects with the department's inability to enforce*
- What is your opinion on DTSC's handling complaints?
  - *Response from Ms. Brostrom: communities are largely left in the dark; lack of communication*
  - *Response from Ms. Newman: Pomona is an example of neglect complaints; auto dismantlers operating and creating unsafe environment and pollution; DTSC staff were called to stop investigation because of shortage of staffing—they took no action even though they saw the violations*
- Will this require statutory change for publicizing enforcement settlements?
- How do you respond to folks that call for the need to address our own hazardous waste (keeping CA wastes within CA)?
  - *Response from Mr. Mataka: the issue is not whether or not we take care of our own waste; the issue is why are these hazardous waste facilities always in Latino communities, communities of color; why can't these facilities be located somewhere without a population?*
- **Ms. Brostrom to write up information to Panel: regarding statutory requirement for DTSC to publish reports**

Mr. Vizzier:

- To have a presentation on enforcement action with community input on settlement?

- *Response from Ms. Newman: there is an example of a US EPA case where community had input on settlement*

Mr. Kracov:

- **Panel to schedule meeting with US EPA (reminder: IRP has no staff)**

- Ingrid Brostrom presents on “Public Outreach” (refer to PowerPoint for details)

- Panel Questions:

Mr. Vizzier:

- No questions at this time

Dr. Campbell:

- No questions at this time

Mr. Kracov:

- What do you mean by “DTSC is developing a new public participation plan without public participation”?
  - *Response from Mr. Bradley Angel: things need to happen so that the plan results in meaningful action; we want to see a draft plan that will actually be meaningful*
  - *Response from Ms. Newman: DTSC has a history of coming up with new plans whenever a “plan” is not approved by the community; DTSC needs to communicate and understand the communities’ concerns; you do not need help from a university; creating new plans is useless; DTSC simply needs to talk and listen to the community members*
  - *Response from Ms. Brostrom: communities are trying to build mechanism to hold DTSC accountable; it would be helpful if IRP can have a more formalized way for this to happen*
- Limitations of DTSC’s public participation? The reality is that community organizing is a tough job, DTSC staff may not be assigned to certain cases
  - *Response from Ms. Brostrom: there is an “us versus them” mentality; communities want DTSC to be there and communicate with them and be respectful to community members, not for DTSC staff to downplay problems; the communities are not the enemy; DTSC and impacted communities should have the same goals, but this is not the case currently; the need to rebuild trust and for DTSC to take this step*
  - *Response from Ms. Newman: should not use PR staff to communicate with community members, but to have DTSC staff who actually work on those cases/issues to talk with communities; having enforcement staff and other technical staff to work directly with people and build trust; for DTSC staff to understand community members not be afraid of them; also to bring in other agencies*

*because communities are usually trying to address issues not limited to DTSC but also others, such as ARB*

- *Response from Mr. Mataka: DTSC morale must be very low; too much time to send racist e-mails*
- Ms. Newman’s task force process: is this what you propose should happen?
- Thomas Helme, Valley Improvement Projects, presents on “Fiscal Management” (refer to PowerPoint for details)
  - Panel Questions:  
Mr. Vizzier:
    - Money to Orphan sites via SEPs, is that the ideal response?
      - *Response from Ms. Brostrom: SEPs are small amount and should go to cleanup communities; this is not the ideal response but the Orphan fund is dwindling*
  - Dr. Campbell:
    - No comment at this time
  - Mr. Kracov:
    - Financial assurance policy
      - *Response from Ms. Brostrom: hard to have proof needed to collect financial assurance*
    - Are adequate financial assurance needed for facilities to cover post-closure costs?
      - *Response from Ms. Brostrom: financial assurance are not sufficient to cover post-closure cleanup*
      - *Response from Ms. Newman: this is both State and Federal; not collecting fines or fees on industry—Superfund used to provide the incentive for industries to not use hazardous chemicals; no money in the Orphan fund means we can’t do proper cleanup*
      - *Response to Ms. Brostrom: needs to make Orphan funding sustainable*
      - *Response to Ms. Newman: to acknowledge a site is contaminated will require cleanup work; not having funding will make them less inclined to acknowledge contaminations*
    - Ms. Brostrom proposes to take public comments now and have the rest of the presentation later today

Mr. Kracov: there is time constraint for this meeting, but we will open the meeting to public comment and continue with the presentation later today; Director Lee will comment on complaints regarding racist e-mails

Director Lee provides response

- Does not condone racist e-mails

- Need to clarify: CCAEJ withdrew PRA request on June 23, 2015
- A subsequent PRA request followed and DTSC complied
- Took a number of actions in response to racist e-mails:
  - Conducted personnel investigation
  - AG's office performed independent investigation
  - All-staff meeting was held to communicate expectation of staff to be professional and respectful; specifically told staff that racism is not tolerated in the department
  - Mandatory Training for staff
- Took this matter extremely seriously
- Since joining DTSC, made it priority to improve public outreach

Ms. Newman's response to Director Lee's response

- CCAEJ changed their PRA request to ask for e-mails with sexist and other derogatory remarks, but was told that the request needs to be more specific; this was not possible because more details would review

Public Comments (summary)

- Maricela Mares-Alatorre
  - Use of Statement of Overriding Consideration—allows DTSC to victimize disproportionately burdened and vulnerable communities
  - DTSC continues to make decisions that negatively affect communities
  - Kettleman: 72 violations at toxic waste facilities—the facility was not fined the maximum amount
    - DTSC granted a permit for them to expand, despite violations
  - Permitting decision has to be about common sense
  - To have staff listen to communities, not send middlemen
  - Enhanced enforcement and take action where chronic violations occur
- Marie Harrison, Greenaction (from Bayview-Hunters Point)
  - Companies have private meetings with DTSC and no enforcement actions are taken
  - Enforcement staff do not do enforcement
  - Any violation that harms life must be dealt with
  - Concrete and grass does not solve the pollution problem
  - Pollution and contamination are dangerous
- Leaotis Martin, Greenaction (from San Francisco, Bayview-Hunters Point)
  - Asks for Enforcement action
  - If DTSC cannot enforce, have someone else do it
  - This is about human lives
- Lauren Ornelas, Food Empowerment Project (on behalf of Marylia Kelley, Tri-Valley CAREs)

- Read letter from Marylia Kelley from Tri-Valley CAREs, regarding Livermore Lab radioactive toxicants
  - DTSC does not intend to conduct EIR
- Tri-Valley CAREs wants Panel to understand that Livermore Lab is performing work with hazardous chemicals
- DTSC must conduct EIR and analysis of wastestream before issuing a permit to Livermore Lab
- Delores Mejia, Eastside Coalition Against Exide
  - 600 years are cumulative impact
  - Urges Panel to consider the total cumulative impact, not just current pollutions, but other historical disregard for public interests
  - DTSC is mandated to prove that they are on their way to improve
  - List of complaints:
    - DTSC ignored public request for audio and video recording of public meetings for accuracy
      - Exide CAG is a club not an advisory group; communities do not have the chance to provide input
    - Asked DTSC for complete list of advisory group members and access to them (e.g. via google listserv, etc.)
      - DTSC refused
    - DTSC did not review materials provided to them regarding SNAPLA
      - No response
    - Did not follow through with bringing in Office of Emergency Management to response
    - Community requested the rights and responsibility of CAG
      - No response from DTSC
    - Community requested CAG to meet in different location
    - Community proposed moratorium on new permits until backlog is resolved; but first demand external audit of DTSC, especially permitting and cleanup
    - Requested Exide be quarantined
      - Still no response on this
    - Asked to have DOJ compliance monitor
    - Asked for new permitted facilities to provide contingency plans
    - CAG working group in Maywood: DTSC did not inform that public was invited
    - DTSC's ideal of public participation is to have community meet with DTSC staff in a separate room from the CAG members
    - Panel should urge Senate to conduct audit of DTSC and to conduct full debrief on Exide

Mr. Kracov to Ms. Brostrom: How much time will presentation need?

Ms. Brostrom: 30 minutes for presentation, 30 minutes for public comments

Mr. Kracov proposes: Panel to reconvene after lunch at 1:40 p.m.; followed by 1 hour for presentation and public comments; then attend to Panel's internal business

**Mr. Kracov calls to adjourn meeting for lunch; will reconvene at 1:45 p.m.**

**Panel reconvened at 1:50 p.m.**

Public Comments (summary)

- Arthur Rodriguez, from Vallejo
  - Re: plume in Vallejo
  - Spoke with city councilman, but they are not willing to do anything
  - Needs someone to take care of this
- Xonia Villanueva (from Wildomar), People's Senate
  - Comments on experience with DTSC
  - Families were affected and plagued by sickness and death from chemical contamination
  - Illegal dumping was reported but no action was taken
  - Autumnwood: DTSC finally agreed to test this site
    - Testing excluded chemical of concerns, resulting in appearance that community is safe
  - Communities request for help and testing were repeatedly disregarded
  - No requirements for Developer on the dollar amount compensation policy
  - DTSC claimed that chisels are not regulated; told community that there is no clear responsible parties
  - Community feels that DTSC is willingly not taking action, even for cases when responsible parties are identified
  - DTSC claimed that Orphan fund does not have money to cleanup Autumnwood
  - People need accountability, integrity, transparency
  - DTSC staff who took worked on Autumnwood violated DTSC's own protocol
- Lupe Martinez, from Vallejo, work with folks from Shafter and Arvin
  - Plume does not take 20 years to cleanup
  - Shafter—situation with Brown and Bryan, a contaminated site; also another site in Arvin
    - Shafter is under DTSC; Arvin is under Superfund
  - Talk of cleanup has been on-going for 30 years; no significant work has been done
  - Some work was done at Shafter—some dirt was removed, but work stopped because they found more toxicants the further they dug

- There is no communications between DTSC and communities
  - Seems that the staff are afraid to communicate with community members
- In Arvin, a Superfund site; similar situation, little action from Federal government—have been waiting for 30 years for a well
- Supposedly the toxic waste from Brown and Bryan is supposed to go to a facility in Buttonwillow; that facility’s permit has not been renewed
  - How can facility operate without a valid permit?
- Issue of community’s loss of trust in DTSC
  - DTSC must rebuild this trust
- Either reform DTSC or get rid of it
- Wafaa Aborashed
  - No trust in DTSC
  - DTSC needs to change the way it deals with corporations and the way it deals with affected communities
  - Affected communities are worse off than third world countries
  - Visited Kettleman City 10-years ago: heard the consensus that DTSC is not doing its job
  - There are communities with polluted water sources, contaminated by fuel
  - DTSC needs to look at how they control corporation

Presentation from People’s Senate and CEJC continues:

- Ingrid Brostrom presents on “Site Clean-up” (refer to PowerPoint)
  - Panel Questions:
  - Mr. Vizzier:
    - No questions at this time
  - Dr. Campbell:
    - No questions at this time
  - Mr. Kracov:
    - Heard a lot about the concept of “averaging” rather than looking at hotspots during Cleanup. Are there any legal justifications for this?
      - *Response from Ms. Brostrom: no*
    - Radioactive waste going to permitted facilities. What is DTSC’s position on radioactive waste going to unpermitted facilities?
      - *Response from Ms. Brostrom and Mr. Angel*
    - Consistency in cleanup standards: is the issue that communities are cleaned up to different standards?
      - *Response from Ms. Brostrom: yes, communities are not getting the same level of cleanup, even though sites are close to each other*
- Bradley Angel, Greenaction and CEJC, presents on “Pollution Prevention” (refer to PowerPoint)

- The funding for pollution prevention needs to be restarted
- Needs to reduce pollution at its source
- Panel Questions:

Mr. Vizzier:

- Do you have an opinion on voluntary standards/measures?
  - *Response from Mr. Angel: voluntary measures are clearly not working*

Dr. Campbell:

- No questions at this time

Mr. Kracov:

- What is it that you would ask Panel to do?
  - *Response from Mr. Angel: Look at the hazardous waste prevention program and make sure it can address communities' concern*
  - *Response from Ms. Brostrom: ask that there is a mandatory source reduction*
- Ingrid Brostrom presents concluding thoughts (refer to PowerPoint for details)
  - Asks Panel to adopt recommendations from People's Senate and CEJC as the standard benchmarks
  - Impacted residents are experts—community members are willing and ready to provide input
  - IRP is the only accountability body with Legislature's authority to influence and force real change at DTSC

#### Comments from Panel Members

- No comments from Mr. Vizzier and Dr. Campbell
- Mr. Kracov
  - The reason we are here is because the community has pushed for this
  - IRP will try to meet community's expectation
  - Panel may have to prioritize all the recommendation that are given to it; we may not be able to accomplish everything that the communities ask, but it will work towards improving DTSC and to meet communities' expectations

#### Public Comments

- Ms. Cynthia Babich, Los Angeles Environmental Justice Network and Del Amo Action Committee, focus on Del Amo Superfund site
  - The need to have a strong State agency to balance Federal government's inefficiency
  - There is a groundwater cleanup plan in community that is supposed to take 5,000 years—this is not acceptable
  - Issue of State's concurrence with Federal opinion

- At this time, State is not in concurrence with Federal opinion to inject a chemical to address the plume
  - Need the Panel to do what it does, to stop poisoning future generations
  - Montrose site—contaminated soil
  - Want technology to be able to remediate contaminants in place, not to move things around
  - Want to work with DTSC and the Panel

#### Panel Comments and Questions

- Mr. Kracov: can you speak a little about the EJ Symposium next week?
  - Enforcement Seminar—EJ Symposium on December 14<sup>th</sup>
    - Hope to partner with some of the enforcement agencies to go to the communities and ask for input
    - Encourage community to participate
- Dr. Campbell: are proceedings available to Panel and DTSC?
  - *Response: will not be webcasted, but DTSC staff will be there and Panel Members are welcomed to attend*
- Dr. Campbell will not be able attend, but would appreciate if the Panel can have written information

#### **7. Organizational, Operational, and Administrative Matters (\*Moved up to after General Public Comment\*)**

- Mr. Kracov prepared a list of topics that the Panel should think about:
  - Lawyer for IRP?
    - We have originally thought to have a DTSC lawyer, but public commented that it is not very independent; EPA lawyer is also not independent
    - Looking to the AG's office
  - Question of immunity
    - Public officials managing staff?
    - What kind of immunities?
    - Bagley-Keene
  - Ex-parte communications
    - Due process requirements seems to indicate Panel Members cannot have non-reported discussions with stakeholders; must be disclosed
    - Panel Members needs to make sure to understand the rules for ex-parte communications
  - Conflict of interest
    - Mr. Kracov, as a lawyer, may have clients appear before IRP
    - Must keep in mind any actual conflicts on interests

- Chair
  - Mr. Kracov is the chair; there should also be a vice-chair
  - Should define duties for chair and vice-chair
  - Chair: set agenda, run meetings, primary liaison with staff and department
    - Liaison with appointing authorities and ensure regular communications
- Staff for IRP
  - No staff yet
  - Will need to discuss items such as their duties, review their duty statements, understand issues with timesheets, regular check-ins, who they report to
  - Need to consider Bagley-Keene
- DTSC's liaison to IRP
  - Duty statement
  - Relationship with this staff
  - What are the appropriate protocols?
  - Christopher Law, DTSC's liaison to IRP (DTSC start date: November 23, 2015)
    - Current tasks: getting up to speed with the department's work, meeting with all offices and departments
  - Panel Members Mr. Vizzier and Dr. Campbell do not have questions for Mr. Law at this time
- Agenda
  - English and Spanish for meetings? Is that sufficient?
  - Whether 10-day notice for agenda is sufficient?
- Webcasting
  - Constrains meeting because of the IT needs
  - December 18<sup>th</sup> meeting will not have capabilities to webcast; there will not be webcast for that meeting
- IRP Budget
  - Webcast and translation are costly
- Translation
  - Does every meeting need to have translator available?
  - What language(s)?
  - Format of translating?
- Office space
  - Where will IRP staff members be located?
- Minutes taker
  - IRP staff to take meeting minutes
- Transcription of minutes and webcast?
- Document submission

- Documents from public, from DTSC
      - How will these be maintained and subject to public records?
      - How will they be posted on website?
      - Maintenance of e-mail correspondence?
      - How soon do documents have to be posted on the website?  
Public document submission deadlines? Transparent protocols for IRP to receive and review documents and posting these documents?
- Length for Public Comment
  - What should be the length and protocol for public comment?
  - To have a set rule/time limit for public comments
- Order in meeting
  - Protocols for maintaining order in the meeting
  - Written protocol?
- Travel
  - Per diem? Reimbursement from DTSC? How will travel work?
  - Does statute allow for per diem, in addition to travel?
- Subcommittees
- Budget
  - What is covered in the \$50,000?
  - How IRP monitors budget?
  - Regular reporting on IRP budget
- Media Inquiries
  - Chair? Staff? Who will answer these inquiries?
  - Constraints? Guidance?
- Reporting
  - What is the Panel supposed to be doing exactly?
  - Statutory requirements: 4 specific areas are mentioned in statute, but did not include Cleanup
  - Should Panel look at Cleanup? Other areas?
  - Not to overwhelm Panel, but to look at other areas that may/should be focus of IRP's work
- Workplan
  - Need to discuss about next few months
  - IRP does not have its staff yet, so how will this reporting work?
  - Needs to be a transparent discussion and needs to be in writing
  - Workplan needs to start now
- Other topics?
  - Mr. Vizzier: this list appears sufficient
  - Dr. Campbell: this list appears thorough
  - Ms. Peer: counsel had nothing to add to this list

- Panel Discussion of list of topics:
  - Mr. Vizzier:
    - Having IRP staff is critical; they need to be involved in a lot of these discussions
    - Key Items: #1 Staff, #2 Workplan
    - Less pressing issues: lawyer, immunity, ex-parte, conflict of interest
    - Chair/vice-chair: may not be as necessary to have a vice-chair
  - Dr. Campbell:
    - To set staff expectations would make future work more organized
  - Mr. Vizzier: raises need to prioritize which items from this list to discuss first
  - Mr. Kracov: to take time to discuss staff's duty statements so that we have an idea of staff expectations
  - Mr. Vizzier: should staff discussion be part of closed session?
  - Counsel (Ms. Peer): person-specific personnel discussion should be closed session; discussion of general duties can be in open session
  - Mr. Vizzier:
    - Will work with Mr. Law (DTSC's liaison)
    - Agenda: primary audience will be English and Spanish
    - Public notice:
    - Webcasting: should not restrict IRP's ability to meet in different locations because of lack of certain capabilities
  - Dr. Campbell:
    - It is preferred that webcasting is available when possible, but IRP should not be restricted in terms of where they meet
  - Mr. Kracov:
    - Unavailability of webcast should not restrict IRP's ability to meet in different locations
  - Mr. Vizzier:
    - \$50,000 budget per year
    - Must be very careful with budget, depending on what the \$50,000 pays for
  - Counsel (Ms. Peer):
    - Initial understanding: panel is allocated \$50,000 per year, including per diem and travel; 2 IRP staff positions are not paid out of the \$50,000; the \$50,000 is for the Panelists
  - Mr. Vizzier:
    - Needs to have clarification on what the \$50,000 covers
  - Mr. Kracov:
    - The budget constrain is a real challenge for the IRP
  - Mr. Vizzier:
    - IRP staffs office space; will they need office? Cubicles?

- Documents availability: filing them by date will be good initially, may need other ways to make documents more searchable/accessible at a later time
  - Early documents submission: not sure what can be reasonably expect, in terms of having Panel Members being able to review documents in time for meeting
- Mr. Kracov:
  - Suggested deadline for document submission: 10 to 15 days?
  - Time to post documents, IRP's staff reports from reviewing these documents—to allow Panel Members enough time to review them
- Dr. Campbell:
  - Policy for amendments to agenda?
- Counsel (Ms. Peer):
  - Agenda can be amended before the 10-day deadline; must be finalized and made public 10 days before meeting
- Mr. Vizzier:
  - Will probably not need subcommittees
  - Public comments length: should not be more than 3 minutes; longer comments should be scheduled as a presentation
  - Chair should have discretion to limit length of public comments
  - Media—there are some definite risk in discussion with media, but there is also risk in not discussing with media; should discuss with Mr. Marxen on the best approach
  - The 4 statutory topics? IRP clearly needs to look at the 4 topics specified in statute; should look at other topics, such as Cleanup, but the focus should be the 4 topics
- Dr. Campbell:
  - Cleanup may come up in our discussion of Enforcement and Permitting
  - Cleanup may be integrated in the IRP's current tasks per statute
- Mr. Vizzier:
  - Corrective action may be a part of Enforcement
  - Financial assurance may be covered in Permitting
- Mr. Kracov:
  - Workplan discussion will ensue this afternoon
  - We will take a 5-minute break and reconvene at 10:35 a.m. and return to Agenda Item #6

**Panel resumes discussion on Agenda Item #7 (after closing Agenda Item #6)**

Mr. Josh Tooker, Ms. Terri Hardy, or Mr. Chris Law to provide to Panel:

- Copy of all legislation affecting DTSC in the last 2 years
- 2006 report on Financial Assurance and Cost Estimates

- 2005 Quemetco Permit: requirements for off-site monitoring (excerpts on this)
- DPMs: gather all DPMs generated in the past 18 months in one packet
- Copy of all regulations that agency promulgated in the past 2 years; and also future regulations anticipated (new regs)
- 2014 Public Participation Plan

#### Webcasting Every Meeting

- Will decrease Panel's ability to schedule meeting and to move meetings to different locations

#### Question on Counsel

- Amended agenda was sent out: will include closed session discussion on IRP's counsel

#### Question on Immunity

- Ms. Peer provided information to Panel

#### Closed session for today

- May need 5-minutes of closed session at the end of today

#### Selection of a Vice-Chair

- To have a vice-chair take over chair's duties as needed
- Dr. Campbell nominates Mr. Vizzier
- Mr. Kracov seconds nomination
- Mr. Vizzier is amenable
- Dr. Campbell: this Panel is small; should not need subcommittee
- Panel Vote:
  - Dr. Campbell: Aye
  - Mr. Vizzier: Aye
  - Mr. Kracov: Aye
  - The vote is 3-0 to select Mr. Vizzier as vice-chair of the Panel

#### Translation of minutes

- Mr. Kracov: agendas will continue to be translated?
- Dr. Campbell: should minutes be translated?
- Mr. Kracov: may need to consider cost of translating minutes; what is the best practice regarding translating meeting documents?
- **Ms. Ana Mascareñas will follow up with Panel regarding best practices**

#### Posting video online

- Mr. Kracov motions to put existing video online
- Dr. Campbell seconds the motion
- DTSC has no limitations in terms of capability of posting
- Panel vote:
  - Dr. Campbell: Aye
  - Mr. Vizzier: Aye
  - Mr. Kracov: Aye

- The vote is 3-0 to post video of Panel meetings on website

#### Posting Documents on Website

- To post on website all written documents that the Panel receives
- Mr. Kracov: What about documents attached to e-mails to individual Panel Members?
- Mr. Vizzier: Documents intended to be sent to Panel should be sent to Mr. Law, then distributed to Panel Members as appropriate?
  - Counsel (Ms. Peer) Response: Yes, it makes sense to communicate through Mr. Law for now, until IRP has its own staff
- Dr. Campbell: what about confidential matters that are sent to individual Panel Members? What are Panel Members obligated to do?
  - Counsel (Ms. Peer): Panel Members should feel free to communicate with any member of the public, Bagley-Keene requires documents sent to a majority of members of the panel to be made available for public inspection, but where a document is sent to just one panelist, the requirement would not kick in (although the document would likely be disclosable pursuant to the Public Records Act); panelists could decide to put on the website everything received
  - Counsel (Ms. Peer): with regards to confidentiality, documents are subject to the Public Records Act and there is no privilege associated with communications to the panelists, so the information cannot be kept confidential; in terms of whistleblower, the State has a policy to address this; Panel Members should let members of the public know that they have limited ability to maintain confidentiality; documents sent to Panel Members are subject to Public Records Act
- Mr. Kracov: any further comments on confidentiality?
  - Mr. Vizzier: background information would be helpful if someone wants to put something on the Panel's agenda
- Mr. Kracov: it does not seem appropriate to post all e-mails on the website. Should the policy be that all attachments or documents sent to Panel go through Mr. Law for now? These documents will be posted on the website.
- Dr. Campbell: clarification on attachments sent confidentially. Are those required to be posted or just sent to counsel to check if it is appropriate to post?
- Counsel (Ms. Peer): members of the public cannot send documents to Panel if they want them to remain confidential because they are likely to be subject to disclosure pursuant to the Public Records Act; there are also requirements under Bagley Keene for documents to be made available for public inspection when sent to a majority of panelists; Bagley Keene does allow for anonymous public comment
- Mr. Tooker clarification: DTSC has posted on the website all documents addressed to Panel so far
- Mr. Kracov: postpone this for further discussion

- Mr. Vizzier motions: documents addressed to Panel that are sent via mail or e-mail and or documents submitted at meetings are to be posted on website
- Mr. Kracov seconds
- Panel Vote:
  - Dr. Campbell: Aye
  - Mr. Vizzier: Aye
  - Mr. Kracov: Aye
  - The vote is 3-0 to post documents addressed to Panel that are sent via mail or e-mail and or documents submitted to Panel at meetings are to be posted on website

#### Length of Public Comments

- Dr. Campbell: need to determine length of comments before next meeting
- Mr. Vizzier: a number of comments have gone past time limit; an upper limit of 10 or 15 minutes? Anything longer should be made a presentation and put on agenda?
- Mr. Kracov: leave it up to chair's discretion for now?
- Dr. Campbell: it is fine for now, but should limit it to 5 minutes
- Public Comment:
  - Ingrid Brostrom:
    - It is important to allow public time to speak, but it is also important to have time limit; asks the Panel to continue the approach it has taken so far—to allow time to speak at chair's discretion; also, on the 18<sup>th</sup>, there are a lot of affected community members did not come today because they know they have time on the 18<sup>th</sup>
    - Webcasting: should be used if available, but if it is not, then it should not be a barrier to keep Panel from travelling
  - Dr. Campbell: what do you think would be a fair time limit per person?
    - Response from Ms. Brostrom: 5 to 10 minutes

#### Media Inquiries

- Mr. Kracov: should have a structure with regards to how to address this issue; typically, media requests go through staff or chair
- Mr. Vizzier: can this go through DTSC's Communications Office?
- Dr. Campbell: referring to chair?
- Mr. Vizzier: we have not made a lot of progress at this time, should not make a comment for now?
- Dr. Campbell: chair should handle media inquiry for now?
- Mr. Kracov: in general, we should not be saying a lot, since we have not made much progress

#### Workplan for IRP

- Can be discussed in context of Reporting requirements

## 8. IRP Reporting requirements

Mr. Kracov

- Two reports, plus reporting on 4 areas and programs
- Received initial recommendations from DTSC
- Received recommendations from communities and have reached out to CMTA, Chamber of Commerce, CCEEB for recommendations
- Should think about some type of workplan to guide what the Panel will do?

Mr. Vizzier

- For the Jan 10<sup>th</sup> report: may not be realistic to put any concrete recommendations; can have something very simple that reports on what the Panel has done so far; note that we have not hired staff
- Hopefully we will have more to report after that

Mr. Kracov

- Concerns with Mr. Vizzier's suggested approach
- There are some recommendations that we can put down
- We have received so many recommendations; there should be something we can include in the report

Dr. Campbell

- Panel is required to submit recommendations at the time the Governor submits the budget. Are these recommendations pertaining to budget only?

Counsel: this is ambiguous; it may not only pertain to budget-related issues

- Mr. Kracov: this item is also on the agenda on December 18<sup>th</sup>
- We have not had budget presentation, so it will be difficult to make recommendations on budget on January 10, 2016

Dr. Campbell:

- Agrees with Mr. Vizzier: at this point, because Panel does not have substantial information, have not hired staff—we need to let governing body know this

Mr. Kracov:

- Placeholder for reporting approach: first report to be more general; January 28<sup>th</sup> report to be more substantive
- Is the workplan something different than these reports?
  - Should workplan layout how Panel works, its schedule of work, timeline, milestones, etc.?
  - Plan to be circulated for public comment; finalize first quarter of following year

Mr. Vizzier:

- Agrees with Mr. Kracov's view on IRP's workplan
- Panel members are not able to circulate draft amongst themselves?

Counsel:

- No, Panel is not allowed to communicate amongst themselves

Dr. Campbell:

- Submission of report at the time Governor submits the budget: is this about reporting on Panel's budgetary need?
- Agrees with Mr. Kracov and Mr. Vizzier on the workplan
- Clarification: what does Panel have to report on in the two back-to-back reports?

Mr. Vizzier:

- Interpret these reports as reports on DTSC programs, not just budget

Mr. Kracov:

- To have a more introductory report for January 10<sup>th</sup>; try to have recommendations for January 28<sup>th</sup>; concurrent with drafting reports—should also start on workplan draft
- Panel Members may have to write the reports themselves until Panel gets its own staff
- Ms. Brostrom agrees that Panel should provide recommendations in January reports

## 9. Future Meeting Schedule and Agenda Items

Mr. Vizzier:

- From the last meeting: proposed Jan 13<sup>th</sup>, Feb 10<sup>th</sup>, and March 9<sup>th</sup> as following meeting dates

Mr. Kracov:

- These dates are for the IRP standing meeting in Sacramento
- Should we decide on meeting dates in other locations?
- Another meeting date between January 13<sup>th</sup> and February 10<sup>th</sup>?

Mr. Vizzier and Dr. Campbell are available on January 12<sup>th</sup> and 14<sup>th</sup>

Tentatively decides to have 2-day meeting: January 13<sup>th</sup>-14<sup>th</sup>

- Mr. Kracov will check on his schedule

Topics/items for next meeting:

Panel needs to know about:

- DTSC's Budget
- HR and Organization Chart
- Envirostor
- Reporting—what should DTSC be reporting on and how is it doing?
- What do we want from the Department at this time?
  - Mr. Vizzier: none at this time

Public Comments:

- Ingrid Brostrom:
  - Speaking on behalf of Delores Mejia—requests similar arrangements with regards to public comment; to have substantial time set aside for public comments (from other stakeholder groups) in future meetings

**Adjourn for brief closed session**

**10. Closed Session**

**Personnel**

**11. Reconvene and report out on closed session**

**Panel reconvened at 4:10 p.m.**

- Counsel: Nothing to report
- Mr. Kracov: next meeting will be at the Caltrans building in Los Angeles, 10 a.m. to 5 p.m.

**12. Adjournment**

Mr. Vizzier motioned to adjourn

Dr. Campbell seconds motion

Panel Vote:

- Dr. Campbell: Aye
- Mr. Vizzier: Aye
- Mr. Kracov: Aye
- The vote is 3-0 to adjourn meeting; meeting is adjourned at 4:11 p.m.