



Chemical Industry Council of California

November 10, 2016

Mr. Gideon Kracov, J.D., Chair
Dr. Arezoo Campbell
Mr. Mike Vizzier
Independent Review Panel
Department of Toxic Substances Control
Transmitted via email

RE: COMMENTS OF THE CHEMICAL INDUSTRY COUNCIL OF CALIFORNIA, ON THE OCTOBER 24, 2016 RECOMMENDATIONS OF THE INDEPENDENT REVIEW PANEL

Dear Chairman Kracov, Dr. Campbell and Mr. Vizzier:

On behalf of the Chemical Industry Council of California¹ (CICC), we would like to offer the following comments regarding the above-referenced recommendations. Our association represents a range of companies concerned with various aspects of chemical manufacturing, distribution and use within California. We appreciate the opportunity to provide comments to the Independent Review Panel (IRP), given the import of the Department of Toxic Substances Control to affairs of our industry, and the dependence of all industry on sustaining a functional system of hazardous waste management and disposal.

Tom Jacob sends his regrets at not being able to attend your November 16 meeting, due to industry meetings he is attending on the East Coast. In reflecting on your October 24 recommendations, however, we would like to formally reiterate on behalf of the CICC, several of the comments he offered informally at your last meeting, and add some additional thoughts.

We would also note for the record that our Council is a member of the Coalition of industries and companies led by Mr. Anthony Samson, which has been speaking on behalf of industry more generally, on matters relating to the IRP. In that regard, we fully subscribe to the comments forthcoming from him on behalf of the industry coalition regarding elements of these recommendations.

General Comment

With respect to the particular concerns of our Council, let us begin by noting our Council's appreciation for the time and effort you have all given to this mission. We have appreciated as well the unprecedented responsiveness of DTSC to your activities and inquiries, and so too the investment in this effort from the environmental justice community. It is distressing that circumstances in communities surrounding key facilities have deteriorated to the point where such exceptional effort is required. We concur with the comments of Mr. Samson regarding the tangled web of legislative mandates out of which this has evolved. As you are documenting, responsibility is, indeed, to be borne by many. It is our view that oversight and accountability of State Agencies in their ongoing administration of our laws, rests first and foremost with the Legislature that created those laws. We believe that the failure of the Legislature to maintain adequate ongoing oversight has contributed to our current situation. That should be remedied as a first order priority.

¹ The Chemical Industry Council of California is a voluntary trade association comprised of large and small chemical manufacturers, distributors and allied businesses throughout California representing 105 facilities, with annual sales in excess of \$3 billion; employing more than 5700 workers with combined annual payroll \$283 million. An additional 11,000 indirect jobs are created by CICC member companies, with a combined annual payroll of some \$360 million.

Chemical Industry Council of California

For our part, we have cautioned our members repeatedly in recent years to listen to and come to know the concerns of their surrounding communities. Industry programs such as Responsible Care under the American Chemistry Council and Responsible Distribution under the National Association of Chemical Distributors have significantly raised the bar in safe handling and transport of chemicals in the chemical industry, but they are still no substitute for attention to our communities.

Specific Comments

We appreciate the revision of a number of the recommendations from the prior draft, and regard the tightening language as helpful and appropriate. We would like to reiterate several points, however, that we believe still apply.

Recommendations to Governor & Legislature re public outreach

1 – Oversight Board: We certainly recognize that this Panel is commissioned to shine a light on the disenfranchised, and believe that is entirely appropriate in the context of reform of the larger system. But with respect to the creation of an entity such as an oversight board, we would like to reiterate that a very broad stakeholder community shares interest in accountability and transparency within DTSC. DTSC is charged with seeking solutions that best meet the broad range of all interests with a stake in these laws. Any such initiative should further that broad mandate. We therefore need solutions that not only respond to the concerns of the environmental justice community, but do so in a manner that minimizes disruption of our economy. We are all stakeholders in this.

Further, we noted the discussion regarding such an oversight entity that occurred at the last meeting, and recall the suggestion that such an entity be viewed as an ongoing extension of the IRP. In our view, this would not be appropriate. We need to take stock and make necessary changes, but we need to be cognizant of the burden this process has imposed upon DTSC. Again, they are responsible for administering a very large and complex sweep of laws upon which many different stakeholders depend. An indefinite extension of the demands made by this Panel would undermine their ability to do that job.

3 – Community Advisory Groups: We note that among the areas suggested as warranting amendment with respect to CAGs are "conflict of interest" and "membership." We welcome discussion as this recommendation moves forward, but it is our view that any CAGs should be open to all those with a stake in the facility(ies) involved. Our fear would be that those who share an economic interest would not be welcome. The reality is that many in any given community do have economic interest, and DTSC has a necessary responsibility to ensure that the necessary economic role of such facilities is served. We hope that this will be respected in any amendments relating to formation or operation of CAGs.

Recommendations to DTSC re Public Outreach:

1 – Enviro Star: We strongly support this recommendation. We would note, however, that curation of this web site, must include updating of regulatory outcomes, satisfaction of compliance orders, etc. If this site is to serve as a resource for the public it must provide timely information on positive developments, not just complaints.

We appreciate the opportunity to comment on these recommendations. Please do not hesitate to contact either of us, should you have any questions or concerns about the above.

Sincerely,



Thomas R. Jacob
Sr. Consultant
Chemical Industry Council of California



John R. Ulrich
Executive Director
Chemical Industry Council of California

CC: L. Rohlfses, IRP