
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 October 14, 2016

1. Call to Order

Chair Gideon Kracov called the meeting to order at 9:04 a.m. at the Department of Toxic Substances Control's Sacramento Regional Office at 8800 Cal Center Drive, Sacramento, CA.

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

2. Welcome and Introductions

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

Chair Kracov led the Panel in the Pledge of Allegiance.

3. Announcements

Chair Kracov announced that there would be no translation service for this meeting because no member of the public requested the service in advance. He 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 webcast on the CalEPA website and gave out the email address for members of the public to submit comments via email.

4. Agenda Review

Chair Kracov reviewed the agenda and said the IRP probably would not go into closed session.

5. Minutes of September 20 and 21, 2016 Meetings

The IRP did not take up this agenda item because the draft minutes of the September 2016 meetings were not yet ready.

6. General Public Comment

This agenda item was taken up later in the meeting.

7. Chair's Report

This agenda item was not taken up.

8. Staff Report

Mr. Rohlfes announced that DTSC had hired a new liaison to the IRP and that the liaison would begin work on October 17, 2016.

Mr. Rohlfes summarized the status of IRP information requests of DTSC.

Mr. Rohlfes reviewed 2016 chaptered legislation pertaining to DTSC.

Mr. Rohlfes summarized the results of the IRP's August 2016 survey of selected individuals on their recommendations to improve DTSC programs.

Panel Member Campbell said the survey report would be a good baseline to use in the future.

Vice Chair Vizzier said that while survey respondents of different backgrounds had similar opinions on DTSC performance, they had completely different and often conflicting opinions on the reasons for their performance ratings. Vice Chair Vizzier also said he did not see any surprises in the survey report and that it was very consistent with what the IRP had been hearing.

Chair Kracov said the survey, while not scientific, does not present a good public image of the Department. He suggested that the IRP reference the survey information in its reports and send the same questionnaire in 2017.

6. General Public Comment

Public comments via email:

Martha Stewart Waite said DTSC must enforce the Santa Susana Field Lab (SSFL) administrative orders on consent (AOC).

Rebecca Overmyer-Velázquez, the coordinator of the Clean Air Coalition of North Whittier, said DTSC's September 20, 2016 updated information on sites and facilities of interest to the People's Senate was not very helpful with respect to its summary of the Department's work at the Quemetco Inc. site in the City of Industry.

Catherine Lincoln of Van Nuys said DTSC should ensure that the SSFL AOC is followed and expressed support for a community advisory group (CAG) conflict of interest policy and funding of cancer cluster research near contaminated sites.

Denise Duffield, associate director of Physicians for Social Responsibility-Los Angeles, said DTSC's response to the People's Senate site specific benchmarks was incomplete, inadequate, and insulting to impacted communities. She said it was absurd for DTSC to suggest that it needs statutory authority to enforce its CAG handbook. She said DTSC could and should be able to stop sanctioning CAGs for a variety of reasons, including—as in the case of the SSFL CAG—spreading misinformation, aggressively disparaging other community members, having ties to the polluters, and lobbying elected officials against the Department's own signed cleanup agreements. Regarding the IRP draft recommendation for funding studies to determine any association between SSFL and cancer clusters, she said the SSFL community requested that this proposal be modified to include a provision that the community have full input as to who would conduct the studies—to ensure they would be unbiased and independent. She said the SSFL CAG was secretly funded by the Department of Energy (DOE), one of the polluters at SSFL. She said DOE was, in effect, paying the CAG to help it evade its cleanup obligations. She rejected assertions that community compromise was needed—if compromise meant breaking the AOC.

Chair Kracov cut Ms. Duffield's comment short because it exceeded the five-minute limit for public comments. He asked IRP support staff to post the comment on the Panel's website.

Ingrid Brostrom gave a presentation on Groundtruthing DTSC: The Big Picture. A PowerPoint version of the presentation and two accompanying documents, an October 14, 2016 letter to the IRP from the People's Senate and an appendix to that letter, are available on the IRP website at <http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Meetings.cfm>.

Ms. Brostrom said DTSC has not been responsive and was not a credible narrator when it comes to its own performance. She said community trust remains at an all-time low, despite the increased attention being given to environmental justice, and that the following common threads are woven through most communities: inadequate information and communication, inaccurate site characterization and sampling, delays, and communities and residents not being treated as partners. She said DTSC made at least two reforms in response to eight People's Senate, agency-wide requests: new Department leadership and the creation of an Office of Environmental Justice and Tribal Affairs. However, she said DTSC did not provide a detailed response to the People's Senate site-specific requests and appeared to have responded to very few of them. She said DTSC all too often rejected offers of help from communities and should involve them more in the process. She suggested the creation of local groups that would accomplish on the local level what the IRP does at the state level. She said the DTSC report was misleading, incomplete, and reflective of a trend throughout the IRP process whereby the Department conveys only favorable information about itself.

Chair Kracov said the assertion that the IRP was relying only on the DTSC was belied by the facts. Ms. Brostrom responded that the IRP structure holds the Panel back and makes it too dependent on DTSC. She said many community advocates were losing hope that the IRP could make a meaningful change and were questioning whether it was useful to participate in its process.

Ms. Brostrom said that large and systemic issues in the management of hazardous waste cannot be resolved if DTSC does not provide credible and accurate information or is not open to critical analysis of its shortcomings. Ms. Brostrom then gave examples of what she said were inadequate DTSC information and communication, inaccurate site characterization and sampling, and delays or inaction. She concluded that DTSC should institutionalize the communities' perspective, knowledge, and vision with a formal community board or panel.

Vice Chair Vizzier asked Ms. Brostrom what she thought of the Pod concept. Ms. Brostrom responded that an interactive relationship is needed between DTSC and the communities.

Panel Member Campbell noted that she had observed DTSC staff members being treated with hostility and without respect by communities and said that was not productive. Ms. Brostrom responded that communities have been dealing with problems for a long time and are frustrated.

Vice Chair Vizzier asked Ms. Brostrom how she would institutionalize community perspectives within DTSC. Ms. Brostrom said she would do that with a statewide advisory board or panel.

Public Comment via email:

Jeff Citizen said Ms. Brostrom stated many things as facts without providing her methodology or data, including her accusation that the IRP and DTSC were not transparent. He said he had seen improvements and hoped for a continued partnership with DTSC. Chair Kracov responded that Ms. Brostrom provided about 40 pages of information that would be posted on the IRP website.

John Luker said he would hate to see a new process instituted with supposedly independent special interests instead of fixing a process that was well established and would work if agencies were given the necessary resources.

Daniel Hirsh said that epidemiological studies of SSFL have already been done and that it was not clear that further expenditures to study the harm done by the site would be funds well spent. He said the promised cleanup should be the highest priority.

Chair Kracov adjourned the meeting for a break at 10:48 a.m. and reconvened it at 11:05 a.m.

9. IRP Reporting Requirements

DTSC Director Barbara Lee introduced the following individuals from the Department's leadership team: Brownfields & Environmental Restoration Program Deputy Director Mohsen Nazemi, Legislative Director C. David Johnson, Jr., Office of Communications Deputy Director Rosanna Westmoreland, Safer Products and Workplaces Program Deputy Director Meredith Williams, Chief Deputy Director Francesca Negri, and Office of Legal Affairs Chief Counsel Amilia Glikman.

The IRP then commenced discussion of the draft DTSC Independent Review Panel Fourth report to the Governor and Legislature Pursuant to Health and Safety Code Section 57014(f).

Report Narrative

Public comments in person:

Ms. Brostrom stressed the importance of creating a policymaking board. Ms. Brostrom said she did not see funding for public outreach as the root of the problem. She said that what was missing was a way to institutionalize community perspectives. She suggested that good environmental justice representation on the board was important.

Vice Chair Vizzier said he did not see how a policymaking board would make things better. Ms. Brostrom responded that it would add oversight authority. Vice Chair Vizzier responded that the Governor provided the oversight authority. Ms. Brostrom responded that oversight authority must

be transparent and public and that it was unusual for a CalEPA entity not to have an oversight board.

Tom Jacob, representing the Chemical Industry Council of California, said he did not have a position on the creation of a policymaking board, but said he trusted that a future board would provide accountability for all stakeholders, including regulated community stakeholders. With respect to the draft recommendation to establish a clear conflict of interest requirement for CAG members, he said it would be very challenging to fashion guidelines to capture that goal. Mr. Jacob said he concurred with the draft recommendation to improve EnviroStor's user-friendliness, accuracy, completeness, and regular updating of material and hoped the curation of the website would include up-to-date information on conditions that have been satisfied as well as circumstances that have been remedied. He said he agreed with the draft recommendation to provide funding for scientific studies to independently determine association between living proximity to contamination sites and the incidence of rare cancer clusters that have been observed by residents and said he hoped that such studies would reference previous studies. Mr. Jacob said he thought the IRP had conducted itself very responsibly, but should not forget that "we are all stakeholders."

Chair Kracov suggested that in addition to mentioning that the Public Participation Manual was last updated in 2001, the report narrative should mention that "Fixing the Foundation" in 2014 called for DTSC to develop/update its communication guidance documents.

DTSC Office of Communications Chief Patrice Bowen said that while the Department previously told the IRP that it had planned to update the Public Participation Manual by July of 2017, the Department has heard that stakeholders would like to be involved in the updating and would like to accommodate that need. As a consequence, DTSC planned to complete the update in December of 2017.

Chair Kracov suggested that the paragraph on the recent improvements to the public participation process be changed to indicate that the recommendations of the UC Davis Extension Collaboration Center had not yet been released, although the center's June 2015 work plan set an August 31, 2015 deadline for its draft recommendations report, an October 31, 2015 deadline for its final recommendations report, and a March 31, 2016 deadline for implementation assistance and program evaluation.

Chair Kracov suggested that the discussion about stakeholder perceptions of the Public Participation Program begin with the positives and then move to the negatives.

Chair Kracov suggested that the report indicate that the IRP used its survey report for information on public perceptions of the Public Participation Program.

Panel Members agreed to add a sentence to the report stating that while the Public Participation Program appears to be meeting statutory responsibilities and even taking extra steps to engage the public, there was a perception among many stakeholders that the Department was not doing enough.

Chair Kracov suggested that the phrase "negative experiences with the Public Participation Program" be changed to a reference about unmet stakeholder needs.

Chair Kracov suggested that the report state that the IRP believes unmet stakeholder needs are responsible for a perception that DTSC is in need of increased accountability.

Chair Kracov suggested that the narrative state that DTSC performs evaluations of its site-specific public participation activities.

Chair Kracov asked Mr. Rohlfes to summarize his phone calls with the DTSC CAG chairs on what was going well and what was going not so well with their groups. Mr. Rohlfes then summarized what he had learned from the calls.

Vice Chair Vizzier suggested that the report state that the DTSC-sponsored CAGs seem generally pleased with Department technical and logistical support.

Vice Chair Vizzier suggested that the “tragedy” was too strong a word to describe the toxic contamination in the vicinity of the Exide Technologies facility. The IRP decided to state instead that the contamination “was a great concern.”

Chair Kracov adjourned the meeting for a lunch break at 12:35 p.m. and reconvened it at 1:43 p.m.

Public Comment via email:

Cynthia Babich of the Del Amo Action Committee said that environmental justice representatives are experts on sites in their communities and that the IRP’s report should underscore the importance of oversight, transparency, and enforcement of existing laws. She said the report should be specific and that Chair Kracov was on the right track. She said CAGs have an ugly side when they are used by agencies and others to dilute the concerns of the impacted communities. She said “tragic” was the perfect word to describe what happened at Exide. She expressed support for the draft recommendation to create a policymaking board for accountability.

Ms. Walsh said that the SSFL CAG held meetings to remove her from the group and that DTSC did not protect her rights. Ms. Walsh also said she could not find the link to the webcast of the current meeting, CAGs should not be involved in cleanup action agreements, the CAG Handbook was not an underground regulation, and the Exide contamination was a tragedy. She also criticized the IRP and DTSC leadership.

Chair Kracov responded that the IRP is not perfect, but that the Panel was doing its best to listen to Ms. Walsh and had included many of her recommendations in the draft report.

Director Lee said that DTSC was actively working to improve its public outreach, but was constrained by its available resources. She said it did not have the resources to be active in every community.

Chair Kracov asked if the IRP should follow the example of its previous reports by providing an update on the status of the IRP’s initial recommendations on the subject matter being addressed. The Panel decided to simply mention that the recommendations in the October 2016 report were in addition to the initial recommendations made in January 2016.

Recommendations for the Governor and the Legislature on Public Outreach

The IRP agreed to make the following recommendation: “Create an oversight board or consider other structural changes at DTSC to improve accountability and transparency.”

The IRP agreed to make the following recommendation: “Provide additional funding to the newly established Office of Public participation for sufficient staffing necessary to adequately address all necessary public outreach needs of DTSC.”

The IRP agreed to recommend consideration of amendments to Health & Safety Code (HSC) section 25358.7.1 to address CAG transparency, conflicts of interest, funding, membership, and technical expertise.

The IRP agreed to reference the enhanced community assessment process in the report narrative.

The IRP agreed to reference the August 10, 2016 agreement between DTSC, CalEPA, Greenaction for Health and Environmental Justice, and El Pueblo/People for Clean Air and Water of Kettleman City and mention the IRP's support for the agreement's provisions pertaining to enhancing the transparency and rigor of the Department's compliance with civil rights laws in the report narrative.

Director Lee said she was surprised that the IRP made a recommendation for a sweeping structural change at DTSC. She said DTSC had just begun a long list of initiatives and changes, but the Panel seemed to be saying that they would not bear fruit and that the Department would not achieve transparency and accountability. She said it was her understanding that the IRP was going to learn about DTSC programs and advise how to improve them during its first year of existence, and that DTSC would work on those recommendations during its second year. Director Lee said she was looking forward to working with the IRP on its recommendations, but now it appeared that the Panel did not have confidence in her team to carry them out.

Chair Kracov responded that the IRP did not have the luxury of making the recommendation on structural change a month or so before the Panel sunsets. He said that if the Panel had full faith in the Department, it would not have made that recommendation. He said that rather than a matter of leadership, it was a matter of an antiquated structure.

Vice Chair Vizzier said he saw room for flexibility in the recommendation.

Panel Member Campbell said a board could serve as a useful buffer between DTSC staff and stakeholders.

Chair Kracov adjourned the meeting for a break at 3:20 p.m. and reconvened it at 3:30 p.m.

Public comments via email:

Ms. Duffield said that DTSC established the SSFL CAG and that the latter used this sanction to give itself credibility when lobbying elected officials.

Jane Williams of California Communities Against Toxics said she supported the recommendation to create an oversight board. She said that the issues facing the Department had been persistent since its creation in the early 1990's and that there was a widespread consensus that more active oversight was required. She said the Department needed to bend more toward restoring the communities affected by toxic chemical releases.

Ms. Babich expressed support for the oversight board recommendation.

Ms. Walsh criticized the SSFL CAG and said DTSC was more beholden to the polluter than to the people.

Recommendations for DTSC on Public Outreach

The IRP agreed to recommend the following: “Improve EnviroStor’s user-friendliness, accuracy, completeness, and regular updating of material. Provide technical support/assistance to public stakeholders on how to navigate EnviroStor.”

The IRP agreed to recommend that DTSC finalize the Public Engagement Workplan and the Public Participation Manual update by December 31, 2017.

The IRP agreed to recommend the establishment of long-term relationships between public outreach staff members and communities surrounding hazardous waste facilities as well as brownfields and environmental restoration sites, building on what is learned from the Exide cleanup. The Panel also agreed that this recommendation should encourage the hiring of bilingual public outreach staff members who are from the affected communities or live in or near them.

The IRP agreed to recommend the establishment of a permanent, crisis management team within the Public Participation Program for emergencies involving toxic materials.

The IRP agreed to recommend that DTSC offer its risk communication workshops to employees of other CalEPA entities to improve collaboration, training, communication, and consistency.

Recommended Goals and Performance Metrics for Public Outreach

The IRP agreed to recommend that DTSC measure community satisfaction of public outreach on an annual basis, using surveys and other methods.

The IRP agreed to recommend that DTSC compare results of an IRP survey of Panel contacts to be conducted in 2017 with the results of its 2016 IRP survey.

Information Requests to the DTSC on Public Outreach

The IRP agreed to ask DTSC to report on the work to date of its Organizational Culture Task Force Group, including the Department’s proposed staff survey, by the December 2016 IRP meeting.

The IRP agreed to ask DTSC to provide an update on the UC Davis Extension Collaboration Center recommendations for enhancing and modernizing the Department’s public outreach and engagement strategies by the December 2017 IRP meeting.

The IRP agreed to ask DTSC to report on staffing levels, recruitment, longevity of employment, and trends in the Office of Public Participation by June 1, 2017.

The IRP agreed to ask DTSC to give a presentation on the Public Engagement Workplan by June 1, 2017.

Recommendations to the Governor and Legislature on Building Public Trust by Evaluating Potential Adverse Health Effects of Toxic Contamination

Chair Kracov asked Mr. Rohlfes to track down epidemiological studies on the communities surrounding SSFL.

Chair Kracov asked Mr. Hildreth to research the recent amendments to the Toxic Substances Control Act for provisions addressing cancer clusters.

The IRP agreed to recommend the creation of a statewide lead taskforce to make recommendations on the sharing of information, leveraging of resources, and establishing of a comprehensive surveillance program on lead toxicity. The Panel also agreed that the taskforce should include representatives from DTSC, the Department of Public Health (DPH), the Office of Environmental Health Hazard Assessment, Cal/OSHA, air quality management districts, regional water quality control boards, county environmental health departments, worker safety advocates, labor organizations, healthy housing organizations, and impacted communities.

The IRP agreed to discuss possible information requests on site mitigation at its November 2016 meeting.

Chair Kracov adjourned the meeting for a break at 4:31 p.m. and reconvened it at 4:38 p.m.

10. Organizational, Operational, and Administrative Matters

The IRP agreed that its annual report to the Legislature and Governor due under HSC section 57014(h) should be a summary of existing Panel recommendations or simply key recommendations and probably should not include new recommendations.

Panel Member Campbell suggested that the report indicate whether the recommendations were implemented.

Vice Chair Vizzier suggested that the report discuss the IRP's process to develop the recommendations.

11. Future Meeting Schedule and Agenda Items

The IRP discussed the agenda of the November 16, 2016 meeting at the State Capitol in Sacramento.

Chair Kracov said legislative staff and stakeholders were invited to participate in the discussion about the IRP's annual report from 1 p.m to 4 p.m.

The IRP agreed that Mr. Rohlfes should give a PowerPoint presentation on the Panel and its work to date at the beginning of the afternoon session and that Panel Chair Kracov should work with Mr. Rohlfes on the content of the presentation.

The IRP agreed to ask DTSC to give a presentation on fiscal management topics— including the budget, cost recovery, and billing—during the morning portion of the November meeting.

The IRP agreed that the November meeting should begin at 9 a.m. and conclude at 5 p.m.

The IRP agreed to ask DTSC for an update on its quality government programs biennial report in compliance with HSC section 57007 at the November meeting.

The IRP agreed to meet in the San Francisco East Bay Area and visit the DTSC Berkeley Environmental Chemistry Laboratory in December 2016.

Chair Kracov asked Mr. Rohlfes to ask members of the regulated community if they would be willing to make a presentation on financial management, cost recovery, and billing at the December meeting.

Chair Kracov noted that Ms. Negri would be making a presentation on the Cultural Awareness Task Group at the December meeting.

Public comments via email:

Ms. Walsh said she appreciated what she saw happening at the Exide site as well the IRP's attention to the effects of lead contamination.

McKee Palms said the Quemetco facility in City of Industry should get as much attention as the Exide Technologies site was getting.

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 5:05 p.m.