

**California Environmental
Justice Coalition**

THE PEOPLE'S SENATE

July 9, 2015

President pro Tem Kevin de León, Chair
Senator Jean Fuller, Vice Chair
Senator Anthony Cannella
Senator Connie Levya
Senator Holly Mitchell
Senate Rules Committee

Re: Confirmation of Barbara Lee as Director of the DTSC

Dear Hon. Chair de León, Vice Chair Fuller, and Senators Cannella, Levya, and Mitchell:

On behalf of the People's Senate and the California Environmental Justice Coalition, which collectively include more than fifty groups representing urban, rural and indigenous communities adversely impacted by hazardous waste facilities, toxic contamination, and environmental racism, we write to urge this committee to defer voting on Ms. Barbara Lee's confirmation as DTSC Director, in order to provide her with one last opportunity to act on the many community requests pending before her agency. *At this time, we are unable to support Ms. Lee's confirmation because DTSC has not taken any of the decisive actions so desperately needed to protect our communities.*

The DTSC carries a significant legal mandate to enforce federal and state health and safety and civil rights laws to protect the public and environment from toxic harm. Yet this deeply troubled and dysfunctional regulator consistently fails to protect communities from toxic substances, is far too cozy with the polluters it regulates, and too willing to impose unacceptable risks on the state's most vulnerable and already impacted populations. Indeed, the Health & Safety Code requires that "[t]he department . . . prioritize an enforcement action . . . affecting communities that have been identified . . . as being the most impacted environmental justice communities." Health & Safety Code § 25180.2. Despite this edict, the Department has consistently flouted its environmental justice mandate and violated the civil rights of those disproportionately impacted by environmental harms.

This Department is widely recognized to be in need of fundamental, top-to-bottom reform. As Chair de León said last August in response to the State's audit, "[t]his department has been too focused on appeasing polluters and major reforms are necessary to ensure DTSC meets its critical mission of protecting the public's health."¹ It is thus critical that the new Director of the

¹ Tony Barboza, *State failed to collect \$194 million for toxic cleanups, audit finds*, Los Angeles Times, Aug. 7, 2014, available at <http://www.latimes.com/science/la-me-0808-toxics-audit-20140808-story.html>.

DTSC be equipped with the skills and capabilities necessary to carry out a thorough housecleaning of this broken department.

We cannot at this time support the confirmation of Director Barbara Lee to lead the DTSC on its stated mission "to protect California's people and environment from harmful effects of toxic substances," as she has not yet taken meaningful action to remedy the agency's formidable problems.

Our groups have met with Director Lee on multiple occasions since she was nominated. We recognize and appreciate her willingness to listen to us. She has shown interest in hearing our concerns and has made room to meet with us in her demanding schedule. We, as communities directly affected by hazardous waste facilities and toxic sites whose contamination has gone unchecked for far too long, have the greatest interest of all in ensuring that the head of the DTSC is successful in her mission. Accordingly, of greatest concern to us are the *actions* we have identified as necessary to put the DTSC on course to protect communities.

While Director Lee's initial conversations with us have appeared promising, unfortunately they have not resulted in positive change. In the eight months since Governor Brown appointed Director Lee, she has taken virtually no action on our requests.

Attached hereto are copies of prior letters and reports provided to Barbara Lee identifying the various changes needed. It is disappointing that, to say the least, there has been no meaningful progress on these and other critical matters. Community members' health is being threatened by toxic exposures right now, and decisive action must be taken to protect them. As Pope Francis recently declared, our right to breathe clean air and drink clean water is a "basic and universal human right, since it is essential to human survival and, as such, is a condition for the exercise of other human rights."

We respectfully urge the Rules Committee to defer voting on the proposed confirmation of Barbara Lee until August or early September, and bring her back to the Committee at that point to report concretely on which of the identified requested actions she has taken. Let the affected communities and groups testify then as to whether the actions have been satisfactory.

In short, the Rules Committee must vote for or against confirmation based on whether Director Lee has by that time taken serious and fundamentally appropriate actions on these identified matters critical to the safety and health of impacted communities statewide. We would like Ms. Lee to take advantage of this last opportunity to win our support by coming back and reporting on solid, effective actions to deal with specific problems and protect communities.

The public, and particularly low-income communities and communities of color plagued with disproportionate environmental burdens, cannot support at this time a Director that has not demonstrated the vision and taken the actions necessary to protect people from toxic harm. We deserve to evaluate Director Lee's fitness to lead a State department that is charged with protecting lives on the basis of actions, not words.

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Sincerely,

Ingrid Brostrom, Coordinator
The People's Senate

Tom Helme, Coordinator
California Environmental Justice Coalition

William Preston Bowling
Aerospace Contamination Museum of Education
Topanga, CA

Roberta Camacho, Representative
Asamblea de Poder Popular de Gonzales
Gonzales, CA

Tom Frantz, President
Association of Irrigated Residents
Shafter, CA

Wafaa Aborashed, Executive Director
Bay Area Healthy 880 Communities
San Leandro, CA

Miguel Robles
Biosafety Alliance
San Francisco, CA

Teresa Marquez
Boyle Heights Stakeholders Association
Los Angeles, CA

Carl Anthony and Paloma Pavel, Co-Founders
Breakthrough Communities
Oakland, CA

Amy Vanderwalker and Strela Cervas, Coordinators
California Environmental Justice Alliance

Penny Newman, Executive Director
Center for Community Action and Environmental Justice
Jurupa Valley, CA

Caroline Farrell, Executive Director
Center on Race, Poverty & the Environment
Delano, CA

Gustavo Aguirre Jr.
Central California Environmental Justice Network (CCEJN)
Project Coordinator: **Kern Environmental Enforcement Network (KEEN)**
Bakersfield, CA

Andria Ventura, Toxics Program Manager
Clean Water Action
Oakland, CA

Humberto Lugo, Policy Advocate
Comite Civico del Valle
Brawley, CA

Anthony Zepeda, Board of Directors
Committee to Bridge the Gap
Los Angeles and Santa Cruz, CA

Gladys Limon, Attorney
Communities for a Better Environment
Huntington Park, CA

Ernesto Saavedra
Community Alliance
Fresno, CA

Courtney Hendrix, Communications Specialist
Community Food and Justice Coalition
Oakland, CA

Xonia and Floyd Villanueva, Representatives
Concerned Neighbors of Wildomar
Wildomar, CA

Donna Charpiet
Desert Protection Society
Desert Center

Doelorez Mejia
Eastside Coalition Against Exide & All Toxic Technologies
East Los Angeles, CA

mark! Lopez, Executive Director
East Yard Communities for Environmental Justice
Commerce, CA

Maricela Mares Alatorre, Representative
El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water of Kettleman City
Kettleman City, CA

Salote Soqo, SF Bay Area Program Coordinator: Climate Change & Water Justice
Environmental Justice Coalition for Water

Lauren Ornelas, Founder/Executive Director
Food Empowerment Project
Cotati, CA

John Mataka-President
Grayson Neighborhood Council
Grayson, CA

Maya Golden-Krasner, Co-Chair
Greater Pasadena Jews for Justice
Pasadena, CA

Bradley Angel, Executive Director
Greenaction for Health and Environmental Justice
San Francisco & Kettleman City, CA

Mavis Williams, Coordinator
Huntersview Mothers and Fathers Committee for Health and Environmental Justice
Bayview Hunters Point, San Francisco, CA

Pennie Opal Plant, Coordinator
Idle No More SF Bay
San Francisco Bay Area

Jose T. Bravo, Executive Director
Just Transition Alliance
San Diego, CA

Lucy Ramos, President
Maria Teresa Griffin, Secretary/Treasurer
Terry Marcus, Board Member
Monsignor John T. Moretta, Technical Advisor, Founder
Frank Villalobos, Technical Advisor
Mothers of East Los Angeles
Los Angeles, CA

Jaime Sanchez, Member
Neighbors Against Phibro-Tech
Santa Fe Springs, CA

Ruthie Sakheim, Coordinator
OccupyForum & Occupy San Francisco Environmental Justice Committee
San Francisco, CA

Lisa Lappin, Paramount Representative
People's Senate
Paramount, CA

Martha Dina Argüello, Executive Director
Physicians for Social Responsibility-Los Angeles
Los Angeles, CA

Marie Mason and Cindi Gortner, Members
Rocketdyne Cleanup Coalition
Simi Valley, CA

Rey Leon, Executive Director
San Joaquin Valley Latino Environmental Advancement Project
Fresno, CA

Sheldon C. Plotkin, Ph.D., P.E., Executive Committee
Southern California Federation of Scientists
Los Angeles, CA

Davis Gortner and Chloe Wiguel, Co-Presidents
Teens Against Toxins
Oak Park, CA

Katherine King
TriCounty Watchdogs
Frazier Park, CA

Marylia Kelley, Executive Director
Tri-Valley CAREs (Communities Against a Radioactive Environment)
Livermore, CA

Bianca Lopez, Emiliano Mataka, Thomas Helme, and Alyssa Lee
Valley Improvement Projects (VIP)
Modesto/Stanislaus County

Janice Schroeder
West Berkeley Alliance for Clean Air and Safe Jobs
Berkeley, CA

Dr. Henry Clark
West County Toxics Coalition
Richmond, CA

Margaret Gordon, Co-Coordinator
West Oakland Environmental Indicators Project
Oakland, CA

cc:

Barbara Lee

Governor Jerry Brown

Matthew Rodriguez, Secretary for Environmental Protection

Arsenio Mataka, Cal/EPA Assistant Secretary for Environmental Justice and Tribal Affairs

Ana Mascareñas, Assistant Director for Environmental Justice

Senate Environmental Quality Committee

Senate Budget Committee

Assembly Committee on Environmental Safety & Toxic Materials

Attachments:

1. People's Senate Roadmap to Confirmation
2. California Environmental Justice Coalition Comment and Concern on Senate DTSC Director Confirmation
3. EJ Community Letter to Governor Brown re: New DTSC Director

THE PEOPLE'S SENATE

Impacted Residents United for Toxic-Free Communities

June 24, 2015

Barbara Lee
Director
California Department of Toxic Substances Control
1100 I Street
Sacramento, CA 95814

Dear Director Lee:

On March 27, 2015, the People's Senate presented you with a document entitled "Roadmap to Confirmation" which listed both agency-wide reforms and site specific requests that the members of the People's Senate believe to be necessary to ensure DTSC is adequately protecting California residents from exposure to toxic material. We informed you at that time that the People's Senate would be evaluating your commitment to working with us on the listed objectives to assess whether to support your confirmation.

Based on the deadlines for confirmation in California Government Code, Section 1774, and the legislative calendar, we believe that your confirmation hearing will take place in July or August. We are therefore conducting an analysis of your performance as Director based on the objectives listed in the Roadmap to Confirmation. We plan to publish a follow-up report for the Senate Rules Committee and other key officials describing DTSC's performance on the reforms we have requested. Since we understand that DTSC is a large, slow-moving agency and that there may be agency improvements and actions that we are unaware of, we wanted to provide you with an opportunity to report back on any progress DTSC has made on the People's Senate Roadmap. We would especially appreciate a summary of any concrete achievements you believe DTSC has accomplished since your tenure as Director, as well as written commitments on reforms and site-specific steps DTSC plans to take in the future and a timeline for those actions.

We have attached the Roadmap to Confirmation to this letter, as well as a short addendum to the Roadmap incorporating community requests based on developments since the Roadmap's release in March. To ensure we have adequate time to compile information and publish our follow-up report, please provide any responses by July 3, 2015. We will use any responses you provide along with information reported from communities represented on the People's Senate as the basis for our follow-up report and subsequent position on your confirmation. We look forward to your response.

Sincerely,

THE PEOPLE'S SENATE

cc:

Governor Jerry Brown

Senate President Pro Tempore Kevin De León

Senator Ricardo Lara

Assemblyman Luis Alejo

Matthew Rodriguez, Secretary for Environmental Protection

Arsenio Mataka, Cal/EPA Assistant Secretary for Environmental Justice and Tribal Affairs

Senate Rules Committee

Senate Environmental Quality Committee

Senate Budget Committee

Assembly Committee on Environmental Safety & Toxic Materials

THE PEOPLE'S SENATE

Impacted Residents United for Toxic-Free Communities

March 27, 2015

Barbara Lee
Director
California Department of Toxic Substances Control
1100 I Street
Sacramento, CA 95814

Dear Director Lee:

We are writing to you as members of the People's Senate and as representatives of neighborhoods directly impacted by hazardous waste. We, more than anyone else, have a direct and personal stake in the responsible and safe management of California's hazardous waste and the good governance of the Department of Toxic Substances Control (DTSC). We call on you, as the new Director of DTSC, to take swift and decisive action to institute meaningful reforms at the agency to increase its accountability, transparency, and responsiveness to impacted communities and residents.

We have developed, and outline here, a one-year roadmap to implementing necessary reforms at DTSC to ensure that residents across the state are adequately protected from exposure to toxic material. The recommendations outlined here are ambitious, yet achievable with DTSC's projected \$20.8 million budget and 1,005 employees. Above all, these steps are vital given the serious health risks facing residents living near hazardous waste sites across the state. We, as impacted residents, continue to face unsafe risks from toxic exposure as long as these reforms are not implemented. We look forward to working with you this coming year to ensure that DTSC fulfills its mission to protect public health and the environment.

AGENCY REFORMS

Step 1: Bring in Strong New Leadership

DTSC has long suffered from mismanagement and high turnover that has impacted its ability to make responsible, supportable, and timely decisions. DTSC has lacked continuity and consistency in its highest leadership position. Ten different directors have led the agency in the last twenty years. This has led to a dearth of institutional knowledge and memory in the director position, while providing non-appointed and unaccountable middle management unchecked discretion to make decisions on behalf of the agency. In fact, several of the agency's Deputy Directors have demonstrated a consistent inability to work and communicate with impacted communities and a history of making decisions that harm residents near hazardous waste sites. DTSC needs to bring in new mid-level leadership that can help you take the bold, visionary, and proactive steps needed to reestablish confidence and trust in the agency.

Step 2: Establish an Accountability Body

DTSC is singular among Cal/EPA permitting agencies in that it lacks a representative or governing board. DTSC makes decisions behind closed doors, with little transparency, oversight, or meaningful opportunity to appeal. By 2016, the Director should establish a permanent and standing body that will serve an oversight and advisory role to increase accountability and transparency in the agency's decision-making processes.

The People's Senate specifically supports the creation of a governing board, as well as a community oversight committee to: facilitate communication between impacted residents and the agency; offer policy recommendations to improve community trust, accountability and transparency; serve as a resource for residents and community groups who seek assistance in building positive relationships with DTSC; and provide feedback to Cal/EPA and the governor's office about the agency's performance in building and maintaining positive community relationships.

Step 3: Develop Standardized Permitting Criteria

Over the past decade, DTSC has allowed nearly a third of California's permitted hazardous waste facilities to operate on expired permits. DTSC has stated its commitment to reduce that number and is currently seeking additional state funding to reduce the number of facilities operating on expired permits. In 2014, DTSC commissioned a study of its permitting program, which found that DTSC does not have standardized criteria to determine when to issue a hazardous waste permit. Before DTSC embarks on a comprehensive effort to reduce the backlog of expired permits, it must first establish standardized criteria so that its permit decisions are justifiable and protective of public health. Without standardized criteria, each of DTSC's permitting decisions is made on an ad hoc basis, without assurance that the decision is based on concrete and enforceable objectives and criteria.

Further, because DTSC must comply with state and federal civil rights laws in making permitting decisions, any permitting standards must address the current disproportionate impact DTSC's permitting program has on Latino residents and other residents of color in California. Specifically, permitting criteria should address cumulative impacts, proximity to vulnerable communities, and concrete measures of noncompliance as grounds for permit denial.

Step 4: Re-Invest In Pollution Prevention and Source Reduction Program

In 2012, DTSC de-funded much of its pollution prevention work in order to pursue its green chemistry initiative. While all Californians will benefit from the use of safer chemicals in consumer products, these advances should not come at the expense of other projects to reduce the generation of toxic waste at its source. Without large reductions in the amount of toxics created and waste generated, risks of toxic exposure will merely shift from one vulnerable population to another. The only long-term solution to permanently reduce threats of toxic exposure is to reduce the amount of toxics in our environment. We, as a state, cannot afford to disinvest in pollution prevention. Instead, we must move toward mandatory, rather than voluntary, toxic reductions. DTSC should re-fund its pollution prevention and hazardous waste

source reduction program, and use existing authority and propose new legislation to place mandatory limits on the generation of toxic waste.

Step 5: Increase Fines and Enforcement

DTSC is tasked with protecting public health and the environment. It is not tasked with increasing hazardous waste capacity in the state. Nor is it tasked with ensuring the continued profitability and continued operations of hazardous waste corporations. Statements from DTSC staff demonstrate a conflict of interest in objectives that simply does not exist. A DTSC deputy director stated that DTSC has a responsibility “to make compliance easy and economic.” This statement reflects an agency that is unwilling or unable to hold polluters accountable. Without accountability, generators of hazardous waste will continue to skirt the law without any real consequences. If DTSC does not use its authority to pursue and punish those who violate California’s laws and put residents at risk, industry will continue to see DTSC enforcement and fines as a cost of business rather than as a deterrent.

DTSC must demonstrate through its enforcement program that it does not pay to pollute. Fines must be levied at high enough rates so that polluters do not profit or gain a competitive advantage by violating laws meant to protect the public from undue risk. DTSC must recognize that it has considerable leverage and authority to hold those it regulates accountable for any and all infractions. Specifically, DTSC should use its considerable discretion to suspend, deny, or revoke permits from facilities that violate the law on multiple occasions. DTSC should develop mandatory minimum penalties to prevent companies from negotiating away penalties and fines and leveraging the agency. Finally, DTSC should adopt mechanisms to return a portion of fines to the areas and communities impacted by violations.

Step 6: Generate Sufficient Funding for Orphan Sites and Sites Where Responsible Party Is Not Yet Known

In 2012, DTSC reported that out of a total \$34.31 million expended for its clean-up program, only \$1.18 million was used for orphan and National Priority List sites, representing just 4 percent of the overall budget. In 2013, DTSC reported that it anticipated that DTSC would be unable to meet its federal and state clean-up obligations within two to three years. DTSC stated it would stop or slow the funding to clean-up projects where no responsible party exists. It is alarming that DTSC’s solution to inadequate funding is to halt or slow clean-up projects. These contaminated sites put California residents at risk every day that they are not remediated. DTSC must ensure that the department receives adequate funding to ensure the timely clean-up of all sites that threaten California residents and the environment. DTSC should be partnering with impacted residents, advocates, and legislators to address this alarming short-fall through legislation or other opportunities.

Additionally, some neighborhoods have been contaminated by so many pollution sources that it is difficult to determine the responsible party for a particular contaminant or contaminated site. For these neighborhoods, the difficulty of determining responsibility should not slow or halt clean-up progress. DTSC should work to create a set aside fund to pay for these clean-ups up front before the responsible party is designated.

Step 7: Ensure Sufficient Financial Assurances and Post-Closure Care

DTSC must adopt enhanced financial assurance requirements to ensure that it is financially impracticable for toxic waste companies to walk away from their long-term clean up obligations or file bankruptcy rather than clean up their legacy of pollution. DTSC rarely requires companies to put up enough money to cover the closure of facilities, potential corrective actions, and long term post-closure care as a condition of permitting a facility. DTSC also allows companies to wait to put up money until it selects a clean-up remedy. DTSC must adopt regulations that require a financial bond or other security mechanism sufficient to cover all potential costs of monitoring and remediating a site and neighboring areas, along with additional funding to cover unforeseeable post-closure or corrective action costs. DTSC should review and revise the bond amount periodically based on a permit holder's compliance history and other factors, to ensure sufficient corrective action and post closure funding remains available.

DTSC uses a thirty year post-closure care period for facilities where waste remains in place after closure. This is inadequate in the many cases where the waste continues to pose a risk beyond 30 years. DTSC must adopt post-closure care standards that maintain the polluter's liability for as long as the waste poses a risk. This is especially true because DTSC has no independent funding for the long-term monitoring and remediation of these sites. Long term postclosure care for many sites includes groundwater monitoring; cover, cap and drainage maintenance; inspections; operation and maintenance of treatment systems; and periodic replacement of covers, drainage, wells, and treatment systems. Without a consistent source of funding for these costs, these necessary tasks may not occur, placing nearby residents at risk.

Step 8: Make Office of Criminal Investigations an Independent Office

DTSC is the only agency to house an office of criminal investigation and to employ peace officers within the California Environmental Protection Agency. But over the past decade, the number of department criminal investigations has dropped by half while the number of cases sent for enforcement is almost non-existent. In 2005, department investigators asked prosecutors to bring charges against polluters involved in 45 investigations. Those numbers have fallen to two requests for enforcement in 2011, one in 2012 and none in 2013, according to department spreadsheets. Currently the Office of Criminal Investigations is part of the Office of Legal Affairs.

In order to strengthen the efficacy of the Office of Criminal Investigations, it should be removed from the Office of Legal Affairs to act as an independent program which reports directly to the Director. This would remove interference from Legal Affairs or other offices that regularly negotiate with operators who violate hazardous waste laws and weigh other political considerations in deciding how to pursue potential legal claims. An effective and independent criminal investigation unit is critical in deterring unlawful behavior and holding violators accountable, as was evidenced in the federal criminal investigation of Exide in Vernon, CA which resulted in facility closure. DTSC's Office of Criminal Investigations was previously a free standing office and provided effective oversight and criminal deterrence. It must now be re-granted its independence to properly investigate potential criminal activity without constraint from other departments.

Conclusion

The steps outlined in this document call for agency reforms that are desperately needed to protect California residents from toxic exposure as well as to increase DTSC's accountability, transparency and responsiveness. The People's Senate is also attaching here site-specific benchmarks for communities represented on the People's Senate. These steps along with the agency reforms discussed above are necessary to rebuild trust in DTSC and should serve as a roadmap as you begin your leadership at this agency in crisis. The People's Senate is invested in ensuring that DTSC embarks on true and meaningful reform. To that end, we are committed to working with you and your staff to fulfill the objectives we outline here. Your commitment to working with us on these objectives will help us assess whether you are the strong, reform-minded leader that DTSC so desperately needs. Through this process, we hope to be able to support your Senate confirmation.

Sincerely,

THE PEOPLE'S SENATE

cc:

Senate President Pro Tempore Kevin De León

Governor Jerry Brown

Senator Ricardo Lara

Assemblyman Luis Alejo

Matthew Rodriguez, Secretary for Environmental Protection

Arsenio Mataka, Cal/EPA Assistant Secretary for Environmental Justice and Tribal Affairs

Senate Rules Committee

Senate Environmental Quality Committee

Senate Budget Committee

Assembly Committee on Environmental Safety & Toxic Materials

PEOPLE'S SENATE SITE-SPECIFIC BENCHMARKS

Agriculture Park Project, Riverside CA

- Fully investigate and characterize the extent of contamination at the site.
- Remove and dispose as TSCA waste the sewer treatment plant main sewer line.
- Fully remediate PCB contamination and groundwater at the site.

Autumnwood Housing Development, Wildomar CA

- Investigate the poorly conducted investigation at Wildomar and hold accountable staff that falsified the results in the final report.
- Revise the final report on Wildomar to include citations of raw data to support each conclusion provided in the report.
- Adopt a DTSC-wide policy to provide to the public analytical raw data to support the agency's findings, reports, and decisions.

Brown & Bryant, Arvin CA

- Schedule and attend regular check-in meetings with residents about the status of the site clean-up.
- Provide groundwater monitoring data in a user-friendly format to residents and advocates, and provide a report back on whether groundwater contamination is increasing or decreasing.

Brown & Bryant, Shafter CA

- Schedule and attend regular check-in meetings with residents about the status of the site clean-up.
- Provide groundwater monitoring data in a user-friendly format to residents and advocates, and provide a report back on whether groundwater contamination is increasing or decreasing.

Carlton Forge Works, Paramount CA

- Conduct comprehensive testing for toxics within a mile radius of the facility, including at Lincoln School, and Village Skate Park, and sample indoor dust for rare metals and other contaminants at residential properties.

- Remediate all sites and properties, including Lincoln School, impacted by Carlton Forge Works' operations.
- Increased inspections at the facility, including unannounced inspections.
- Work with regional water board, local air district, and Cal OSHA to identify and rectify all potential pathways of contamination to protect workers and neighboring community.

Clean Harbors Environmental, Buttonwillow CA

- Place an air monitor in Buttonwillow area tied to real time advisories with the air district to register ozone and fine particulate matter.
- Levy penalties on trucks carrying hazardous waste that do not comply with truck route restrictions and travel through town and past the school.

Delano PCE/TCE Plume, Delano CA

- Find the extent of contamination by testing additional sites beyond existing testing boundaries.
- Test residential properties and preschool on Jefferson Ave.**
- Commit to and implement a full remediation of the site and impacted buildings in a timely fashion.
- Regularly update interested residents about the status of the site and the clean-up and include the community in preparing a remediation plan.

Exide Technologies, Vernon CA

- Provide adequate clean-up funds to completely remediate the site and properties impacted by Exide's operations.
- Engage with community stakeholders to (1) receive and meaningfully address concerns and suggestions regarding remediation, (2) consult with regarding procedures and decisions affection remediation, (2) consult with prior to entering into stipulations with Exide.
- All properties requesting lead testing are timely tested and results are reported to residents.

Industrial Zone, Pomona CA

- Conduct enforcement actions for egregious violations (ie. oil contamination at U Pick U Save business).

- Conduct multi-agency investigations to address air, soil, groundwater, and stormwater pollution.
- Close and prohibit toxic facilities.
- Undertake a public health study to ascertain and document elevated illness and health conditions.
- Provide groundwater monitoring that is publicly accessible.

Jordan Downs Redevelopment Project, Watts CA

- Provide complete and comprehensive soil and groundwater testing and vapor analysis within the entire Jordan Downs Master Plan redevelopment area.
- Remediate all sites within a one-mile radius of the 9901 S. Alameda Street site.
- Provide meaningful opportunities for public participation and transparent communication regarding existing contaminated sites including 9901 S. Alameda Street, Exxon Mobil M8 & M145 pipelines, Atlas Metal Recycler, and David Starr Jordan High School.

Kettleman Hills Hazardous Waste Landfill, Kettleman City CA

- Revoke the hazardous waste permit for the Chemical Waste Management Kettleman Hills Facility based on its long history of noncompliance and to remedy DTSC's noncompliance with state and federal civil rights laws.

Occidental of Elk Hills Project, Tupman CA

- Provide scientific justification for removing areas of concern ("AOC") from DTSC's clean-up list.
- Test the 661 well sites suspected of arsenic contamination in AOC 130, not just the 40 sites proposed now.
- Provide a schedule of clean-up and closure of all sites.
- Provide a full accounting of funds expended since 1997 on the cleanup.

Phibro-Tech Inc., Santa Fe Springs CA

- Complete a full Environmental Impact Report.
- Deny request for new permit based on the facility's impacts to nearby residents, DTSC's issuance of three or more notice of deficiencies, the company's recurring pattern of violations, and the company's failure to comply with corrective orders.

- Require immediate compliance with pending corrective orders and a full remediation of chromium and other legacy contamination linked to the site.
- Conduct comprehensive off-site testing to determine the presence of contamination that poses a risk to nearby residents.

Santa Susana Field Laboratory, Simi Valley CA

- Fulfill DTSC's 2010 commitment to a full site cleanup, including insisting that Boeing clean up to the most protective standard.
- To rebuild community trust, change staffing for the site to remove current project management leadership and replace with Rick Brausch, the previous Project Director.
- Provide accurate information and confirm well documented levels of on-site and off-site contamination, its impact to public health, and the negligible impacts from site cleanup on nearby communities.
- Rebuild DTSC's relationship with and support for the SSFL Workgroup.

ADDENDUM TO PEOPLE'S SENATE SITE-SPECIFIC BENCHMARKS

Exide Technologies, Vernon CA

- Establish a plan for and support an independent truth & reconciliation investigation of the Exide matter to identify what went wrong, learn the appropriate lessons, and publish a full report. The purposes for such an investigation should include: identifying the DTSC's regulatory and compliance function failures in regulating the Exide facility, including the role of the Office of Criminal Investigation, and why it did not pursue an investigation into Exide; identifying the environmental and health consequences suffered by impacted residents; preparing a complete public account of the Exide case, providing recommendations designed to prevent the reoccurrence of similar events

Santa Susana Field Laboratory, Simi Valley CA

- Strictly comply with commitments it made in 2010 to full cleanup of the nuclear and chemical contamination at the Santa Susana Field Laboratory, including: (1) issue a directive that all detectable contamination at the Boeing portion of the property will be fully cleaned up; (2) stop all actions by DTSC staff that are aimed at undercutting the 2010 cleanup agreements (AOCs) with DOE and NASA to clean up all detectable contamination on their portions of the site; (3) replace the current project director, widely viewed as responsible for attempts to undo the 2010 cleanup promises, with his immediate predecessor, who helped write and is committed to the 2010 cleanup agreements and commitments; (4) formally reject the inflated soil volume and truck estimates put forward for DOE by Boeing's contractor and return to the earlier, more realistic estimates of volumes at the DOE site being roughly equivalent to what NASA estimated for its portion, and so notify DOE; (5) direct staff to work cooperatively with the community-based SSFL Transportation Options Task Force to identify acceptable conveyance and route options for the cleanup shipments; and (6) order a return to prior policy that no materials with radioactivity above background from the site will be sent for recycle, or disposed of at other than a licensed Low-Level Radioactive Waste site.

California Environmental Justice Coalition

559 Ellis Street, San Francisco, CA 94109 www.cejcoalition.org cejcoalition@gmail.com

July 1, 2015

Senate President pro Tempore Kevin de León
State Capitol, Room 5108
Sacramento, CA 95814

RE: Concerns about upcoming Senate Confirmation Hearing for DTSC Director Barbara Lee

Dear Senator de León:

On behalf of our thousands of members of the 57 grassroots groups from urban, rural and indigenous communities comprising the California Environmental Justice Coalition, we thank you for your leadership in efforts to reform the troubled Department of Toxic Substances Control (DTSC) and make it accountable to the communities it is supposed to protect.

Last summer, many of us appealed to Governor Brown to appoint a committed reformer as the new DTSC director who would fix a deeply dysfunctional department that has become beholden to the industries that it is supposed to regulate, rather than to the public that its stated mission is to protect. The letter called for a new approach that would ensure that our communities are no longer at risk from toxic pollutants. That letter identified criteria for the new director, including that this leader be willing and unafraid to deny permits to serial polluters, perform comprehensive and timely remediation of toxic sites, vigorously enforce existing state laws, and remove managers who protect polluters at the expense of public health.

Last October, the California Environmental Justice Coalition submitted comprehensive recommendations for DTSC reform, based on input from dozens of grassroots community groups across the state. Since Governor Brown's appointment of Barbara Lee on November 4, 2014, numerous community groups and environmental justice coalitions have met with Ms. Lee and shared extensive recommendations for reforming and improving this troubled agency. We appreciate the time she has taken to listen to us and learn about the struggles that we face dealing with toxic threats in our neighborhoods. But Barbara Lee has now been in office for eight months and our communities remain at significant risk. **Now that her confirmation is set for July 15, we write to say that she has not taken any real action, and this is what we would need to see before any vote on confirmation is taken.** Our lives, in many instances, literally depend on it.

We respectfully ask the Senate Rules Committee to evaluate Director Lee's confirmation based on concrete evidence of decisions and actions that she has taken to resolve issues regarding our communities and the DTSC. Director Lee's actions—or inaction—on these matters will inform our final position on her confirmation.

We include here key steps that Director Lee can and should promptly take to reform DTSC and protect impacted communities. Many of these issues have been raised with her since she was nominated. We respectfully suggest that the Rules Committee use them as criteria in evaluating Ms. Lee's confirmation. We further respectfully request that a vote on confirmation not take place until we see decisive action on many of these significant problems and concerns. Again, we thank you for your efforts to protect vulnerable communities that are threatened by environmental toxics and environmental injustice throughout California.

Sincerely,


Maricela Mares Alatorre

El Pueblo Para el Aire y Agua Limpia/People of Clean Air and Water of Kettleman City,
on behalf of the California Environmental Justice Coalition

cc: Members, Senate Rules Committee
Barbara Lee

California Environmental Justice Coalition

559 Ellis Street, San Francisco, CA 94109 www.cejcoalition.org cejcoalition@gmail.com

Kettleman Hills Hazardous Waste Landfill, Kettleman City

- Immediately remedy the civil rights violations against Latino and Spanish-speaking residents by revoking the hazardous waste expansion permit for the Chemical Waste Management Kettleman Hills Facility due to the racial discriminatory permit approval process including use of an English-only EIR process, and the facility's long history of non-compliance.
- Agree to cease use of Statements of Overriding Consideration to issue pollution permits in environmental justice communities
- Stop using documents and studies produced in English-only or other racially discriminatory processes in permit decisions

Exide Technologies, Vernon

- Provide adequate cleanup funds, collected from Exide, to completely remediate the facility and all areas it impacted
- Commit to broaden sampling of areas near the Exide facility (including the Bandini and Ayers neighborhoods in the City of Commerce that are to the east of the facility) and cleanup all priority 1, priority 2 and priority 3 sites identified within the radius of Exide where the elevated levels cannot be attributed to another facility or source, including residential properties, park ways, all public lands and schools
- Conduct prompt testing by an independent entity in which the community has confidence and full and timely reporting to residents

Santa Susana Field Laboratory, Simi Valley

- commit to take concrete actions to return DTSC to strict compliance with commitments it made in 2010 to full cleanup of nuclear and chemical contamination including:
- issue a directive that all detectable contamination at the Boeing portion of the property will be fully cleaned up, as DTSC promised in 2010 would be required under its normal procedures even were SB990 and Agreements on Consent not to exist, and prohibit averaging of contaminated areas with less contaminated areas
- stop all actions by DTSC staff that are undercutting the 2010 cleanup agreements (AOCs) with DOE and NASA to clean up all detectable contamination on their portions of the site
- replace the current project director, widely viewed as responsible for attempts to undo the 2010 cleanup promises, with his immediate predecessor, who helped write and was committed to the 2010 cleanup agreements and commitments
- formally reject the inflated soil volume and truck estimates put forward for DOE by Boeing's contractor and return to the earlier, more realistic estimates of volumes at the DOE site being roughly equivalent to what NASA estimated for its portion, and so notify DOE
- direct staff to work cooperatively with the community-based SSFL Transportation Options Task Force to identify acceptable conveyance and route options for the cleanup shipments
- order a return to prior policy that no materials with radioactivity above background from the site will be sent for recycle, or disposed of at other than a licensed Low-Level Radioactive Waste site

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Clean Harbors Hazardous Waste Landfill, Buttonwillow

- Return to and enforce prior position barring disposal of radioactive waste with artificial radionuclides at Buttonwillow (and Kettleman City and any other site not licensed to dispose of Low-Level Radioactive Waste)
- Deny permits to expand this facility as the low-income Latino community has already disproportionately borne its share of hazardous waste disposal in the state

Clean Harbors Hazardous Waste Landfill, Westmoreland

- Put in writing and inform the community about the status of the facility and information on any current or proposed new permit applications
- Commit to using Cal Enviroscreen and IVAN information in any permit decisions
- Commit that DTSC will not use a Statement of Overriding Considerations in order to approve a new permit

Hunters Point Naval Shipyard, PGE Power Plant Sites, Brownfields, Bayview Hunters Point, San Francisco

- Put in writing and distribute to the community a list of all sites it is involved in and/or responsible for, including the status of the site and opportunities for public involvement
- Commit to work with other regulatory agencies to provide urgently needed coordination, oversight and planning to address the threat posed by climate change and sea level rise to the many toxic contamination sites and industries along the waterfront of San Francisco Bay

Romic (Bay Enterprises), East Palo Alto

- Hold Romic accountable to finish the Clean-up/Removal of contamination at and caused by the former Romic Site
- Promptly provide a detailed update and summary of plans regarding to the community

FMC Barium Site, Modesto:

- Inform residents and Valley Improvement Projects of status of cleanup and public participation opportunities

Lawrence Livermore National Laboratory Nuclear Weapons Facility, Livermore

- Ensure that the agency will conduct an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act prior to granting the Lawrence Livermore National Laboratory (LLNL) nuclear weapons facility a renewal of its "Part B" Permit, issued in 1999, to store and treat all forms of hazardous waste including those mixed with radioactive elements. LLNL operations have changed significantly over the past 16 years and the permit renewal decision is presently being made on the basis of environmental data that are more than a decade old and out of date. An EIR fully analyzing LLNL waste streams, operations and facilities, as well as alternatives and mitigation measures, before issuing a permit renewal for the coming decade (or more) is the minimum that DTSC must do to protect public health and the environment in and around Livermore

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California Environmental Justice Coalition's Recommendations for DTSC Reform

- Barbara Lee must immediately provide a written response as she promised months ago to the extensive and constructive recommendations submitted to DTSC on October 1, 2014 by the California Environmental Justice Coalition, a grassroots community-led coalition of 57 urban, rural and indigenous groups from across the state. This written response from DTSC must specifically and satisfactorily address the recommendations

IVAN Task Forces

- Update DTSC's 2014-2018 Strategic Plan so that it includes clear objectives and goals of how the department will engage and interact with IVAN Task Forces for all departments, especially Enforcement and Emergency Response and Office of Criminal Investigations
- Develop a workplan for the DTSC Statewide EJ Coordinator to include IVAN as a core program that promotes equity among Urban, Rural and Rural Border communities
- Commit that DTSC will be accessible to communities and tribes through participation in regional environmental justice task forces and tribal affairs committees and work groups. DTSC currently provides monthly representation at the 7 regional community environmental justice task forces statewide. DTSC & DTSC CUPA's will develop a plan for early consultation with task forces on matters of clean up, policy, performance measures, permitting

Aerospace Contamination Museum of Education · TheAeroSpace.org /COREadvocacy.org · Asian Pacific Environmental Network (APEN) · Boyle Heights Neighborhood Council · Boyle Heights Stakeholders Association · Center for Community Action and Environmental Justice · Center for Environmental Health · Center on Race, Poverty, and the Environment · Central California Environmental Justice Network · Comite Pro Uno · Committee to Bridge the Gap · Communities for a Better Environment · Concerned Neighbors of Wildomar · Consumer Watchdog · Eastside Coalition Against Exide/Toxic Technologies · El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water · Environmental Health Coalition · Environmental Justice Coalition for Water · Food and Water Watch · Grayson Neighborhood Council · Greenaction for Health and Justice · Healthy 880 Communities · Huntersview Mothers and Fathers Committee for Health and Environmental Justice · Neighbors Against Phibro-Tech · Physicians for Social Responsibility-Los Angeles · Resurrection Parish · Rocketdyne Cleanup Coalition · Southern California Federation of Scientists · Teens Against Toxins · Tri-Valley CAREs (Communities Against a Radioactive Environment) · Valley Improvement Projects · West Berkeley Alliance for Clean Air and Safe Jobs · West County Toxics Coalition

June 5, 2014

Governor Jerry Brown
State Capitol
Sacramento, CA 95814

Dear Governor Brown:

In light of the resignation of DTSC Director Debbie Raphael, we believe it is critical for you to promptly appoint a strong, vigorous, and committed reformer as her replacement, along with a new senior management team similarly dedicated to reform, with a mandate for a top-to-bottom house-cleaning of this deeply troubled and dysfunctional department. DTSC has been failing to an extraordinary and unacceptable degree at its mission to protect the public from toxic materials. Dramatic steps must be taken to fundamentally change its policies and practices. DTSC has become a classic case of a “captured regulatory agency,” beholden to the polluting industries it is supposed to regulate, rather than the public it is supposed to protect. Without the appointment of a new director and top managers who are committed to fundamentally altering the way DTSC does business, the health of communities around the state will continue to be at risk.

We are extremely concerned about the failure of the Department of Toxic Substances Control/California Environmental Protection Agency to make urgently needed and dramatic reforms to enable it to carry out its mission to protect public health and the environment. In the last year, there has been revelation after revelation about DTSC’s failures. As representatives of and for impacted communities throughout the state, this matter is of vital importance to us. Our communities’ very health and wellbeing is at stake – for some, DTSC decisions are a matter of life or death.

We therefore call on you to ensure the following criteria are met for the new director of DTSC:

- The new director must have a well-documented track record of protection of environmental health, including a strong commitment to environmental justice, strict enforcement of and compliance with environmental and civil rights laws, and a strong ability to take the actions necessary to get a troubled department back on track.

- The new DTSC Director should be from outside DTSC/CalEPA, as the culture of polluter-friendly policies, systemic failures to uphold civil rights and environmental justice, and lax enforcement of violations is pervasive throughout the agency.
- The new DTSC Director must fully comprehend the issues and reforms that are needed in the department. Specifically, the new director must be willing and unafraid to:
 - Take a company's compliance history into account and deny permits to chronic violators.
 - Require proper, comprehensive and timely remediation of toxic sites in our communities.
 - Make companies put up financial assurance for their operations AND their corrective actions.
 - Vigorously enforce existing state laws, expand DTSC's enforcement authority, and develop and implement a new system for permitting, so that permits are enforceable and meaningful.
 - Remove senior DTSC employees who allow the department to be captured by the industries it is supposed to regulate. Much industry influence on DTSC comes from the "revolving door" of former Cal EPA/DTSC officials who become industry lobbyists and utilize their longtime relationships with senior DTSC staff to push polluters' agendas.

Finally, we call on you to ensure that the search for a new DTSC director is prompt and not delayed. DTSC is making critical decisions right now that affect our communities. We are concerned that if the search is delayed or dragged out, those at DTSC whose decisions have injured our communities will continue to call the shots and hurt us. Lobbyists for polluting interests, who already have far too much sway at DTSC, thrive in periods where there is no permanent director, and communities are further injured.

Governor Brown, it is time to rebuild public trust in the DTSC, as a true community and government partnership is essential if we are to protect public health and the environment from toxic pollution. Promptly appoint strong, independent, reform-minded leaders for the director and senior management positions at DTSC, with a mandate for fundamental change so that DTSC starts protecting the public, not the polluters.

We will be watching this process closely and intend to make our needs and concerns known at each stage and in every way possible.

Sincerely,

William Preston Bowling, Founder
Aerospace Contamination Museum of Education

D'Lanie Blaze, Director
TheAeroSpace.org / COREadvocacy.org

Miya Yoshitani, Executive Director
Asian Pacific Environmental Network (APEN)

Carlos Montes, Executive Board
Chair Transportation Environment Committee
Boyle Heights Neighborhood Council

Boyle Heights Stakeholders Association

Penny Newman, Executive Director
Center for Community Action and Environmental Justice

Kathryn Alcantar, Policy Director
Center for Environmental Health

Ingrid Brostrom, Senior Attorney
Center on Race, Poverty, and the Environment

Cesar Campos, Coordinator
Central California Environmental Justice Network

Felipe Aguirre, Director
Comite Pro Uno

Dan Hirsch, President
Committee to Bridge the Gap

Maya Golden-Krasner, Attorney
Communities for a Better Environment

Lisa Lappin, Member
Communities for a Better Environment
Impacted by Carlton Forge in Paramount CA

Xonia Villanueva, Member
Concerned Neighbors of Wildomar

Wil Lybarger, Member
Concerned Neighbors of Wildomar

Liza Tucker, Consumer Advocate
Consumer Watchdog

Doelorez Mejia, Coordinator
Eastside Coalition Against Exide / Toxic Technologies

Maricela Mares Alatorre, Representative
El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water

Environmental Health Coalition

Colin Bailey, Executive Director
Environmental Justice Coalition for Water

Brenna Norton, Southern California Organizer
Food and Water Watch

John Mataka, President
Grayson Neighborhood Council

Bradley Angel, Executive Director
Greenaction for Health and Justice

Wafaa Aborashed, Director
Healthy 880 Communities

Tessie Ester, President
Huntersview Mothers and Fathers Committee for Health and Environmental Justice

Jaime "Jim" Sanchez, Member
Neighbors Against Phibro-Tech

Margarita Montelongo, Member
Neighbors Against Phibro-Tech

Martha Dina Argüello, Executive Director
Physicians for Social Responsibility-Los Angeles

Father John Moretta, Pastor
Resurrection Parish

Barbara Johnson, Founding Member
Rocketdyne Cleanup Coalition

Sheldon Plotkin, Ph.D., P.E.
Southern California Federation of Scientists

Davis Gortner, President
Teens Against Toxins

Marylia Kelley, Executive Director
Tri-Valley CAREs (Communities Against a Radioactive Environment)

Emiliano Mataka
Valley Improvement Projects

Janice Schroeder, Core Member
West Berkeley Alliance for Clean Air and Safe Jobs

Dr. Henry Clark, Executive Director
West County Toxics Coalition

Cc: Senator Kevin de León
Secretary Matt Rodriguez
Martha Guzman
Cliff Rechtschaffen

