
Independent Review Panel

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



Gideon Kracov, J.D., *Chair*
Mike Vizzier, *Vice Chair*
Dr. Arezoo Campbell, *Member*

Governor Edmund G. Brown Jr.

October 24, 2016

The Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: DTSC Independent Review Panel Fourth Report to the Governor and Legislature Pursuant to Health & Safety Code Section 57014(f)

Dear Governor Brown:

The DTSC Independent Review Panel is submitting the attached report to the Legislature and your Office on progress by the Department of Toxic Substances Control in making improvements to its programs. Health & Safety Code Section 57014(f) requires submission of this report 90 days after the Panel was initially appointed and every 90 days thereafter. The IRP submitted reports on January 28, April 21, and July 26 of 2016. This, the fourth report, is devoted to the Department's public outreach efforts.

An electronic copy of the Report can be viewed at:

<https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/IRPReports.cfm>

If you have any questions, please contact Larry Rohlfes at (916) 327-4493 or e-mail him at larry.rohlfes@dtsc.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Larry Rohlfes".

Larry Rohlfes (on behalf of Gideon Kracov, Chair)
DTSC Independent Review Panel
CalEPA Headquarters
1001 I Street
Sacramento, CA 95814-2828
Legislation/MS 22C

Enclosures

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DTSC Independent Review Panel Fourth Report to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f)

October 24, 2016

Introduction

The Department of Toxic Substances Control (DTSC) Independent Review Panel (IRP) submits this fourth report in compliance with section 57014(f) of the Health and Safety Code (HSC), which requires the Panel to report to the Governor and the Legislature 90 days after it was appointed and every 90 days thereafter on DTSC's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management. The Panel previously submitted progress reports on January 28, April 21, and July 26 of 2016.

The first report addressed five DTSC topics: budget, permitting, enforcement, public outreach, and fiscal management. After providing background information, the report made initial recommendations to the Governor and Legislature, recommendations to DTSC, and information requests to the DTSC for each topic. The second and third reports addressed DTSC's permitting and enforcement efforts, respectively. They presented summaries, recommendations to the Governor and Legislature, recommendations to DTSC, suggested performance metrics, and information requests for both programs. The second report also included initial recommendations and information requests on DTSC's Site Mitigation Program.

Following the IRP Work Plan, the Panel devoted portions of its last five public meetings to DTSC public outreach. Those meetings took place on August 10 in Sacramento, September 20 in Chatsworth, September 21 in Jurupa Valley (morning/afternoon), September 21 in Commerce (evening), and October 14 in Sacramento. The IRP also asked DTSC to provide the Panel with public outreach reports and data, and many stakeholders submitted written or verbal comments on the subject. In addition, the IRP surveyed a small cohort of stakeholders about DTSC programs, including public outreach, in August of 2016. Using the information gathered, this fourth report is devoted to an in-depth discussion of public outreach, including recommendations for the Governor and Legislature, recommendations for DTSC, suggested performance metrics, and information requests.

Public Outreach Summary

California law and DTSC policy mandate a community involvement program that engages the public when the Department oversees a cleanup, reviews a permit application, or begins a rule-making process. According to its Public Participation Manual, “The Mission of DTSC’s Public Participation Program is to ensure that the public is informed and involved early; that their issues and concerns are heard; and their comments are considered prior to final decisions by DTSC staff and management.” The manual also clarifies that “DTSC’s Public Participation Program is not a public relations tool in the sense that public relations is a ‘one-way’ communication.” Instead, the manual states that “it is DTSC’s policy to create a dialogue with all stakeholders to ensure that their concerns and priorities are incorporated into each project.”

The Public Participation Manual is intended to provide technical staff and public outreach specialists with the requirements and suggested activities for the program. The process for public outreach, as the manual explains, can include developing a community assessment, creating factsheets or informational materials, posting information on the DTSC website or EnviroStor, holding formal and informal meetings, issuing public notices for meetings, responding to public comments, and providing technical assistance for Community Advisory Groups (CAGs).

The Public Participation Program consists of 22 positions. Fourteen public participation specialists are located in four different DTSC regional offices. They are assisted by a new, eight-member Exide team currently located in the Chatsworth Regional Office, but expected to relocate to an office closer to the Exide Technologies facility in Vernon. The Public Participation Program and the Exide team have a \$2 million budget in FY 2016-17. In addition, there are program contracts for public notices (\$89,000), translation support (\$80,000), Exide technical advice (\$50,000), and court reporting (\$8,500). In September of 2016, DTSC Director Barbara Lee announced that the Governor had approved the establishment of a separate Office of Public Participation and would be appointing a Deputy Director to lead the new office. The IRP supports this decision, which acknowledges the importance of public engagement in all of the Department’s activities. Previously the Public Participation Program was part of the Office of Communications.

DTSC’s Public Participation Program also supports several other Department activities, such as the Safer Consumer Products Workshops, Green Ribbon Science Panels, Supplemental Environmental Project Workshops, and Risk Communication Workshops.

The newly created Office of Environmental Justice and Tribal Affairs performs closely related tasks. DTSC worked with the Legislature to create an Assistant Director of Environmental Justice in statute in 2015. Among other duties, HSC section 57015 requires this person to serve as an outreach coordinator for disadvantaged communities where hazardous materials and hazardous waste disposal facilities are located and to provide information and assistance to communities on permitting, enforcement, and other DTSC activities in the major languages spoken in those communities—to ensure maximum feasible community participation. DTSC received a budget augmentation of \$881,000 and six permanent positions to create the new

office for FY 2016-17. The IRP believes the office will broaden the transparency of DTSC's programs and promote meaningful public involvement.

According to DTSC presentations at IRP meetings, the Department uses the following metrics to assess Public Participation Program performance: public meetings, public notices, community assessments, community members reached, Facebook "likes," and Twitter "followers." In general, these metrics show increased activity and reach between FY 2011-12 and FY 2015-16.

In response to an IRP information request on how DTSC assesses the quality and effectiveness of its public outreach, the Department indicated that it also conducts community and post-meeting surveys. The IRP supports such efforts.

DTSC's strategic plan for 2014-18, *Fixing the Foundation—Building a Path Forward* (Fixing the Foundation), lists five objectives for engaging the public: (1) building public confidence in DTSC and its decisions, (2) meeting the information and engagement needs of communities, (3) presenting complex technical information and processes in a manner that is accessible and understandable, (4) ensuring that communities, the public, and other stakeholders are made aware of opportunities to participate in DTSC decisions, and (5) recognizing that good government requires transparency.

DTSC has been working on improvements to its public engagement efforts since at least late 2013/early 2014, when an internal assessment identified key areas for improvement. In late 2013 the Department hired a human resources consultant, CPS HR Consultants, to make recommendations for improvements in a report issued the following year. DTSC contracted with the UC Davis Extension Collaboration Center in 2015 for support in modernizing its public outreach and engagement strategy for impacted communities. The center conducted stakeholder outreach and focus groups to identify specific steps to enhance policies, guidance documents, methods and workflow processes, procedures, and technologies. Its recommendations were not yet released at the time this report was submitted, 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.

These and other efforts are expected to culminate in a Public Engagement Workplan. According to a DTSC presentation at the August 10, 2016 IRP meeting, this work plan is likely to address the following goals: (1) ensure early and ongoing public outreach and engagement with impacted communities, (2) create a more direct connection between public feedback and DTSC decisions, (3) build capacity for public outreach and engagement within communities and within DTSC, and (4) increase community access to data and information relevant to decision-making. DTSC plans to finalize the work plan in July of 2017. The presentation emphasized, however, that the Department is not waiting for the work plan to make improvements/changes, based on what it learns on an ongoing basis. For example, DTSC is piloting an enhanced community assessment process as part of its public participation efforts associated with permit applications for hazardous waste treatment, storage, and disposal facilities.

Fixing the Foundation called for DTSC to develop/update its communication guidance documents, including the Department's public participation guidance, by applying a publicly transparent process. The IRP notes that DTSC has not yet updated the Public Participation Manual, last updated in 2001.

DTSC's Public Participation Program depends heavily on EnviroStor to give the public access to critical, nonconfidential information and documents. EnviroStor is the Department's online search and geographic information system for tracking information on its cleanup, permitting, enforcement, and investigative activities. It consists of a secured system for internal use as well as a public website. The IRP has heard numerous complaints from members of the public about EnviroStor's user-friendliness, accuracy, and updating.

At the August 10, 2016 IRP meeting, the first of the Panel's sessions devoted primarily to public outreach, an agreement was announced between DTSC, CalEPA, Greenaction for Health and Environmental Justice, and El Pueblo/People for Clean Air and Water of Kettleman City to resolve a civil rights complaint about the Department's 2014 decision to approve a permit to expand the Kettleman Hills hazardous waste landfill. In addition to provisions intended to improve public health and environmental quality for people in Kettleman City, the agreement sought to enhance the transparency and rigor of DTSC's compliance with civil rights laws. In consultation with CalEPA and after public comment, it agreed to adopt and implement a policy that describes the Department's compliance with civil rights requirements during the permitting process for hazardous waste facilities. It agreed to adopt and implement one or more new policies to enhance public involvement, after receiving public comment, using procedures that provide for early identification and integration of public concerns into permitting decisions. Specifically, DTSC pledged to draft a policy or policies on public participation and language access for its processes no later than nine months after the effective date of the agreement (August 10, 2016) and to adopt a final policy or policies 18 months after the publication of the draft policy or policies. Consistent with Chapter 611, Statutes of 2015 (SB 673), the Department agreed to adopt regulations by January 1, 2018 for permit issuance. And finally, it promised to transmit notice of new regulations, policies, and guidance to other state and local agencies with jurisdiction over hazardous waste disposal permitting. The IRP supports these agreement provisions.

During the past few months, the IRP has learned about how the DTSC Public Participation Program is perceived—from written comments, public meeting testimony, and the August 2016 survey of IRP contacts. On the one hand, many members of the public feel that Public Participation Program personnel have been responsive, that they are trying to make a difference, that they are advocates for impacted communities within DTSC, that they regularly participate in community meetings, and that they are diligent about providing answers to questions. Even critics of the Public Participation Program have told the IRP that they feel performance has improved in recent years and that they are impressed with recent public outreach or environmental justice hires, who often are bilingual and ethnically reflective of the impacted communities, and appear especially enthusiastic about their work. On the other hand, many members of the public feel that the program's communication with communities has been irregular or insufficient, that community meetings are not always well planned or run, that follow-through on commitments can be sporadic, that community

engagement is not given a high enough priority within the Department, and that all too often staff members cannot supply answers at community meetings, either because they do not know the answers, because the issue in question is “another agency’s responsibility,” or because they are not authorized to answer.

Although the Public Participation Program appears to be meeting statutory responsibilities and even taking extra steps in its efforts to engage the public, there is a perception among many stakeholders that the Department is not doing enough.

The IRP believes that the unmet needs of Public Participation Program stakeholders are at least partly responsible for a perception that DTSC is insular and in need of increased accountability. To address this perceived problem, many members of the public suggested the creation of a policymaking board for DTSC, the creation of a new ombudsman office with jurisdiction over the DTSC, or the continued existence of the IRP beyond its January 1, 2018 sunset date.

The IRP heard individuals who live near the Santa Susana Field Laboratory (SSFL) voice strong opinions from many different perspectives about the SSFL CAG. Other DTSC-sponsored CAGs, however, seem to be more or less reflective of community opinions. DTSC has expressed to the IRP a willingness to provide technical information and otherwise work with community groups of all kinds, not just CAGs. The four DTSC-sponsored CAGs all seem generally pleased with Department technical and logistical support.

The toxic contamination in the vicinity of the Exide Technologies facility was a great concern for the surrounding communities. The \$176.6 million appropriation to expedite and expand testing and cleanup of surrounding properties, signed by the Governor in April of 2016, was greatly needed and appreciated by the impacted communities. DTSC has a big job ahead of it. Based on comments from community residents or representatives at IRP meetings, the Department’s public participation and environmental justice staff are off to a good start in the surrounding communities, and there are high hopes that the new local office for the DTSC Exide team, which some refer to as a “Pod,” will make a difference. The Workforce for Environmental Restoration in Communities Program appears to be especially promising. The IRP believes that the Exide cleanup is an opportunity for DTSC to gain experience with modernized public participation best practices.

In response to public concern about the adverse health effects of lead exposure in the vicinity of the Exide Technologies facility, the IRP invited health experts to make presentations on blood lead contamination at the Panel’s May 12, 2016 meeting. Based on what was learned at that meeting and from subsequently submitted expert recommendations to improve site assessment and remediation to prevent exposure to lead around the facility and throughout California, the IRP believes that additional action to protect the public is needed.

The following recommendations should be considered along with six initial public outreach recommendations to DTSC in the January 28, 2016 IRP report:

Recommendations to the Governor and Legislature to Improve Public Outreach

1. Create an oversight board or consider other structural changes at DTSC to improve accountability and transparency.
2. 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.
3. Consider amendments to HSC section 25358.7 et seq. to address CAG transparency, conflicts of interest, funding, funding disclosure, membership, and technical expertise.
4. Create 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 taskforce should include representatives from: DTSC, Department of Public Health (DPH), 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.

Recommendations to the DTSC to Improve Public Outreach

1. Improve EnviroStor's user-friendliness, accuracy, completeness, and regular updating of material. Provide technical support/assistance to public stakeholders on how to navigate the website.
2. Finalize the Public Engagement Workplan and the Public Participation Manual update by December 31, 2017.
3. Building on what is learned from the Exide cleanup, establish long-term relationships between public outreach staff members and communities surrounding hazardous waste facilities as well as brownfields and environmental restoration sites. Encourage the hiring of bilingual public outreach staff members who are from those communities or live in or near them.
4. Offer DTSC's risk communication workshops to employees of other CalEPA entities to improve collaboration, training, communication, and consistency.
5. Establish a permanent, crisis management team within the Public Participation Program for emergencies involving toxic materials.

Recommended Goals and Performance Metrics for Public Outreach

1. Using surveys and other methods, measure community satisfaction of public outreach on an annual basis.
2. Compare results of a planned IRP 2017 survey of Panel contacts with results of the 2016 IRP survey.

Information Requests to the DTSC on Public Outreach

1. Report on work to date of the DTSC Organizational Culture Task Force Group, including the proposed staff survey, by the December 2016 IRP meeting.
2. Provide an update on the UC Davis Extension Collaboration Center recommendations for enhancing and modernizing DTSC's public outreach and engagement strategies by the December 2016 IRP meeting.
3. Report on staffing levels, recruitment, longevity of employment, and trends in the Office of Public Participation by June 1, 2017.
4. Give a presentation on the Public Engagement Workplan by June 1, 2017.

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