

## Independent Review Panel Meeting – December 8, 2015

### Agenda Layout

1. **Call to Order (9:15 a.m.)**
2. **Welcome and Introductions**
3. **Announcements**
4. **Agenda Review**
5. **Minutes of November 18, 2015 IRP Meeting**
6. **General Public Comment**
7. **Department Presentation**
8. **Closed Session**  
**Personnel**
9. **Reconvene and report out on closed session**
10. **Adjournment**

### Meeting highlights

1. **Call to Order (9:15 a.m.)**  
Mr. Vizzier calls meeting to order
2. **Welcome and Introductions**
  - Panel member present:
    - Mr. Mike Vizzier
    - Dr. Arezoo Campbell
    - Mr. Gideon KracovIRP Legal Counsel: Kristen Peer
  - DTSC staff present:
    - Barbara Lee
    - Ana Mascareñas
    - Elise Rothschild
    - Jim Marxen
    - Terri Hardy
3. **Announcements/ 4. Agenda Review**  
Mr. Kracov: general announcement and agenda review
  - Key item for today: department’s metrics and metrics measuringMr. Kracov: move agenda item #5 to tomorrow; no objections from Panel Members
6. **Public Comments:**
  - Delores Mejia: Representative from Eastside Coalition Against Exide—raises issue of IRP being an “internal” panel, not independent; DTSC as a cartel and its disregard for public health

- IRP needs to demand the Legislature to reform or remove

## 7. Department Presentation

PowerPoint Presentation from DTSC staff

- Mr. Kracov: Housekeeping issues/clarifications
  - Approximately 25 minutes for 4 focus area presentations; additional 10 – 15 minutes for presentations from Director Lee and Assistant Director for Environmental Justice and Tribal Affairs
  - Panel Members can ask questions at any time during presentations

Director Lee begins presentation with DTSC Overview (refer to PowerPoint section: “DTSC Overview”)

- No questions or comments from Panel

Ana Mascareñas, Assistant Director for Environmental Justice and Tribal Affairs presents on Environmental Justice (refer to PowerPoint section: “Environmental Justice”)

- Questions and comments from Panel:
  - Mr. Vizzier: presentation did not contain tribal aspects—why?
    - Response: work in tribal affairs is in process
  - Clarification from Director Lee: presentations do not cover all areas of the department; these are just some of the key areas; additional discussion on other aspects of the department’s work is welcomed
  - Dr. Campbell: department overview is beneficial for the Panel—able to understand overview of the department; will need more statistics, detailed discussion, and review on department in order to work towards metrics
  - Mr. Kracov:
    - Concurs with Dr. Campbell’s comment
    - EJ Strategy: timeline and how will it be presented?
      - **DTSC commitment: February 2016, as a draft for public review and comments**
    - EJ Enforcement Initiative: timeline?
    - UCD Public Engagement Modernization: will there be a presentation?
      - **Action Item: will present to Panel**
    - SEP Policy: timeline for finalizing SEP?
      - **Commitment: finalized sometime in 2015**

Elise Rothschild, Deputy Director for Hazardous Waste Management Program presents on Enforcement (refer to PowerPoint section: “Enforcement”)

- Questions and comments from Panel:
  - Mr. Kracov: pilot project to solicit public comment—what do you mean by “no respondents”?

- Response: No one volunteered to make enforcement settlements public
- Mr. Vizzier: there is a big jump between penalties collected in FY 2012/13 through 2013/14 and FY 2014/15
- Dr. Campbell: how come number of closed cases did not improve?
  - **Action Item: will look into this and provide answer to Panel**
- Mr. Kracov: how many cases have been opened and have not been resolved?
  - **Action Item: will provide number to Panel**
- Mr. Kracov: can you discuss proposed enforcement performance metrics?
  - Ms. Rothschild lists proposed metrics (list available in PowerPoint)
- Mr. Vizzier:
  - How is staffing? Keeping trained staff to perform this work?
    - Response: Program is doing well in keeping staff trained and certified
  - Can you elaborate on having community participation in Enforcement process?
    - Response:
      - The idea is to have enforcement process be public and transparent; pilot program is to have enforcement settlements made public
      - Having community input will allow department to consider factors that are affecting community members so that it can consider those factors before finalizing settlements
  - Funding for emergency response?
    - Response: heavy emergency response work due to fires; have not seen SEP value
- Dr. Campbell:
  - How sufficient is the Enforcement budget source? Budget seems worrisome because some of the amounts seem low. Is Enforcement sufficiently funded?
- Mr. Vizzier: the issue is having enough people (staff) to perform enforcement work. Is Enforcement sufficiently staffed?
- Dr. Campbell:
  - Is inspection frequency sufficient? More data on this?
    - Response: the inspection frequency listed in the PowerPoint are largely statutory requirements; DTSC plans to use enforcement enhancement initiative to discuss and improve enforcement efforts, including discussion on inspection frequency
  - Inspections with Class I violations increased from 28 in FY 13/14 to 52 in FY 14/15, but enforcement actions actually went down from 63 in FY 13/14 to 46 in FY 14/15. What caused this trend?

- **Action Item: will look into it and report back to Panel**
  - Mr. Kracov:
    - There is a lot of metrics that we can take away from this presentation (refers to last slide on *Proposed Performance Metrics*)
    - Where does the penalties money go?
      - Response: goes to clean up fund (TSCA)
    - Fixing the foundation: status?
      - Response: there is an update on the fixing the foundation; for some areas, actions were taken and completed workplans, but as a result of the process, additional work is needed
    - Enforcement Enhancement Workplan: timeline?
      - Response: in hiring stages
      - **Commitment: after hiring staff, expect to take about 3 months to produce draft**
    - Pomona Initiative: timeline?
      - Response: in hiring stages
    - Public input for Enforcement process: will DTSC need statutory changes in order to include public participation?
      - Response: do not believe DTSC will need statutory changes
    - OCI under the Hazardous Waste Management Program: how is that working?
      - **Action Item: to provide update to Panel on how this is working**
    - **Important issues for further discussion:**
      - **Lab's forensics capacity and third party contracting affecting Enforcement**
      - **Issue of training and staff retention**

Elise Rothschild, Deputy Director for Hazardous Waste Management Program presents on Permitting; Terri Hardy, Special Assistant for Program Review presents on Permitting Improvement Process (refer to PowerPoint section: "Permitting")

- Questions and comments from Panel:
  - Mr. Kracov: who is the chief of Permitting?
    - Response: Mr. Rizgar Ghazi
  - Mr. Kracov:
    - Closure financial assurance is absolutely critical; this is an important area for the Panel to address—ensuring facilities have sufficient funding to cover cleanup cost
  - Mr. Vizzier:
    - Does DTSC have any control or input in land use decision? What prevents local jurisdiction from putting schools next to hazardous waste disposal facilities?

- Response: facilities only submit applications for permits. DTSC has little control over land use decisions; these decisions are made at the local level
- Dr. Campbell:
  - How many permit applications are there, as opposed to number of decisions made?
    - Response: the department has struggled with a backlog of permit applications; a number of facilities were issued “interim-status permit” to operate while the department review the permit applications
    - Follow up questions: Why was there such a big budget cut in FY 2008/09?
      - Response: the department underwent reorganization at that time and staff were shifted to cleanup program; there was also the economic collapse in 2008-09, which affected staffing levels
    - **Action Item: Provide number of applications to Panel**
- Mr. Kracov:
  - **Items requiring further discussion:**
    - **Reports on FA**
    - **Reports on Permitting Goals**
    - **Issue of community involvement in permitting**
    - **Communication between air/soil and air/water, monitoring—to prevent “future” Exides**
    - **CEQA unit**
    - **2017/18—59 sites on continued status: this is a red flag**
  - Note: Panel will spend a lot of time on Permitting
- Dr. Campbell: will we have enough time to go over all the presentations?

Jim Marxen, Deputy Director for Office of Communications presents on Public Outreach (refer to PowerPoint section: “Public Outreach”)

- Questions and comments from Panel:
  - Mr. Kracov: have not seen a copy of the UCD workplan from Fall 2014
    - **Action Item: Provide UCD 2014 Workplan for Modernization to Panel**
  - Mr. Kracov: may extend the meeting to 12:30 PM
  - Mr. Vizzier: DTSC has defined responsibilities and roles but from previous hearings, a lot of people bring up concerns that are out of DTSC’s scope and authorities; technical nature of DTSC’s work; the issue of “this is not my job”—issues that are out of DTSC’s authorities and working with other oversight agencies

- Response: need to have all agencies with oversight responsibility present at meeting with community members—on-going struggle; community’s perception of risk vs. DTSC’s perception of risk
  - Dr. Campbell:
    - Program budget—\$1.5 million available for 22 staff—this amount seems a bit on the low side
      - **Action Item: to provide more detailed budget to Panel**
      - Response: the \$1.5 million represents the staff’s salaries; the issue is whether or not we have sufficient staffing to perform all the work—the need to prioritize work
    - Is community interest factored into this prioritization? The issue of underrepresented individuals and those who are not familiar or as educated with the risks—how can we provide equal protection to people and to allow individuals to be educated and be involved? Newsletters? Other outreach methods?
      - Response: these are some of the key issues and focus for the EJ program; the department is figuring out more effective ways to disseminate information and inform community members—the goal for the department is to improve this process
  - Mr. Kracov:
    - **Observations:**
      - **Integration between integration of community participation and technical staff—needs improvement**
      - **Issues of integrating EJ and EJ workplan, RCRA Grant workplan**
      - **Manual seems outdated, not very searchable—IT aspects will be very important in modernization process**
      - **Staff’s morale—training, retention?**
        - **Expanding public outreach is very important to Senator De Leon**
  - Mr. Kracov: the issue of meeting time
    - Mr. Vizzier: no problem with continuing presentations
    - Dr. Campbell: would like to hear public comments first
    - Mr. Kracov: to have public comment and then continue DTSC presentation

Public Comment (summary)

- Delores Mejia:
  - Why are public participation improvements taking so much time?
  - Need to focus on taking action, not spending time to decide how to send information on twitter
  - Issue of DTSC not really caring about public input

- DTSC's disregard of public interest
- No access to Exide CAG
- Making technical staff available to community
- The community needs people that speak their language
- Community needs thorough debrief on Exide, thorough audit of DTSC
- Ingrid Brostrom, CRPE and People's Senate:
  - The presentations so far does not present a "right" measurement of success
  - Responsibilities of the IRP—recommendations for DTSC program
    - Cleanup did not present today
  - EJ presentation: DTSC's definition of EJ is stuck on procedural justice
    - Providing access to decision-making is not enough
    - DTSC's definition of EJ is outdated; it is all about process not the next level (e.g. distribution justice, etc.)
  - Enforcement and Inspection
    - Inspection frequency is very low
  - OCI
    - The issue of DTSC not taking new cases: DTSC cannot put things on hold just because there is a backlog
  - Enforcement actions
    - Using community monitoring
  - How to determine success? Checking off internal metrics does not mean success
  - Permitting
    - Permitting backlog is important, but the priority is to create standardize permitting criteria
    - Permitting process still takes public comment as the last step, when there is really little room for revision; this has to be fixed in statute
    - Metrics for DTSC on looking at civil rights in permitting decisions
  - Issue of setback in statute
    - Rulemaking on 673
  - Public Participation
    - Metrics are inadequate to measure quality of communication and community satisfaction; needs quality assurance
    - DTSC has community groups that want to and are willing to engage in process to measure whether or not the department is succeeding
    - Changing dynamics at DTSC meetings with community—the community is not an obstacle for DTSC; DTSC should be working with community

Time check: 12:25 PM

- Mr. Kracov: to finish meeting with Cost Recovery presentation?
- Mr. Vizzier: postponing the presentation to later today?
- Dr. Campbell: postponing presentation for tomorrow?

- The Panel will take a 5-minute break and will continue with the next DTSC presentation

Terri Hardy, Special Assistant for Program Review presents on Cost Recovery (refer to PowerPoint section: “Cost Recovery”)

- Questions and comments from Panel:
  - Mr. Kracov:
    - Are there more Orphan sites in the \$56.1 million?
      - Response: very likely
    - How soon will those be resolved?
      - Response: June 30, 2016
    - What is the issue with FI\$Cal?
      - Response: FI\$Cal will not be able to meet the CRBS business needs; DTSC now has to go through California Department of Technology (CIT) Project Management Life Cycle process to build a new CRBS
  - Mr. Vizzier and Dr. Campbell: no comments at this time
  - Mr. Kracov:
    - Cost recovery LT positions? What happens when they expire? How will this affect cost recovery work?
      - Response: makes work difficult, may have to revert to previous cost recovery process
    - Workplans and tracking mechanism
    - Outstanding money owed? Are they old enforcement/cleanup cases? Not current cases?
      - Response: these are mostly old cleanup cases; takes time between sending out bills and retrieving the money; there will always be sites requiring cost recovery—the issue is identifying responsible parties
    - Is there a backlog on cost recovery for permitted facilities?
      - Response: this is largely site mitigation, not permitting; cost recovery for cleanup work performed
  - Mr. Kracov: there is not enough time for the Budget Overview presentation
  - Mr. Vizzier: can we go over budget after Jan. 10, 2016?
  - Mr. Kracov: plan to discuss budget in January; Budget is a key priority; will also hear about Safer Consumer Products Program in January

Public Comment (summary)

- Delores Mejia:
  - Are the fines and cleanup cost part of permitting process? If not, should there be an emergency contingency plan be required from all toxic-handling industries? There is nothing in place, in terms of an “emergency exit plan”

Mr. Vizzier: motion to adjourn for closed session

Dr. Campbell: seconds the motion

Panel: no objection

Panel Vote:

- Mr. Kracov: Ay
- Dr. Campbell: Ay
- Mr. Vizzier: Ay

The vote is 3-0 to adjourn; meeting is adjourned at 1:02 PM for closed session.

#### **8. Closed Session – Personnel**

#### **9. Reconvene and report out on closed session**

Panel members return from closed session

Mr. Kracov call to order: Panel reconvenes for the IRP meeting

Announcements of actions taken in closed session:

- We have made a conditional decision to hire a candidate for the clerical position (OT) pending HR approval

Public Comments

- No public comments at this time

The Panel will reconvene at 9:00 a.m. tomorrow in the Coastal Hearing Room for the second day of the meeting.

#### **10. Adjournment**

Motion to adjourn

- Mr. Vizzier motions
- Campbell seconds

Panel:

- Mr. Kracov – Ay
- Mr. Vizzier – Ay
- Dr. Campbell – Ay

The vote is 3-0; the Panel votes unanimously to adjourn. The meeting is adjourned at 4:59 p.m.