

*California Environmental
Justice Coalition*

THE PEOPLE'S SENATE

Independent Review Panel

GOALS AND BENCHMARKS - THE IMPACTED COMMUNITY PERSPECTIVE

IRP Roles and Responsibilities

- 1) Review and make recommendations regarding improvements on departments' permitting, enforcement, public outreach, and fiscal management. (H&S Code § 57014(a))
 - ▶ Reporting mechanism: Annual report to Governor's office and legislature at time of budget submittal. (H&S Code § 57014(h))
- 2) Make recommendations for improving the department's programs. (H&S Code § 57014(d))
 - ▶ Reporting mechanism: Annual report to Governor's office and legislature at time of budget submittal. (H&S Code § 57014(h))
- 3) Report the department's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management. (H&S Code § 57014(f))
 - ▶ Reporting mechanism: Reports to the Governor and legislature every 90-days. (H&S Code § 57014(f))

IRP Roles and Responsibilities (cont.)

4) May advise DTSC on issues related to its reporting obligations. (H&S Code § 57014(c))

- ▶ Reporting mechanism: undisclosed

5) Must advise DTSC on compliance with Section 57007. (H&S Code § 57014(e))

- ▶ Agency must institute quality government programs to increase environmental protection and public satisfaction through improving quality, efficiency, and cost-effectiveness of state programs.
- ▶ Submit biennial report to governor reporting the extent of attainment with performance standards and continuous quality improvement efforts.
- ▶ “Quality gov’t program” means: process for obtaining the views of stakeholders regarding performance, vision and needs of agency; process for developing measureable performance objectiveness; and processes for continually improving quality and for training agency personnel.
- ▶ Reporting mechanism: undisclosed

Step 1

REVIEW AND MAKE
RECOMMENDATIONS
REGARDING IMPROVEMENTS
ON DEPARTMENT'S PERMITTING,
ENFORCEMENT, PUBLIC
OUTREACH, AND FISCAL
MANAGEMENT.

Permitting

Issue identification

- ▶ No standardized permitting criteria, leading to too much agency discretion and arbitrary decisions.
- ▶ Compliance history not adequately reviewed or used as basis for permit denial.
- ▶ One-third of hazardous waste facilities operating on expired permits, leading to out of date standards and a failure to regularly review facility compliance history.
- ▶ Virtually all hazardous waste facilities permitted in low-income communities of color, a violation of California Government Code 11135. All three hazardous waste landfills in California located in low-income, Latino, Spanish speaking communities.
- ▶ DTSC does not address cumulative impacts in determining risk to communities near proposed hazardous waste facilities.
- ▶ CEQA compliance often left to other lead agencies without proper expertise or objectivity regarding the permitting decisions.
- ▶ DTSC does not follow laws regarding notices of deficiency.
- ▶ No governing or appeals board to review agency decision-making. Appeals of agency decisions are reviewed by agency itself, which leads to a lack of objectivity and a conflict of interest.
- ▶ DTSC fails to address and engages in civil rights violations in permitting decisions, including relying on English-only CEQA documents.

Permitting Improvements

Benchmarks and standards of performance

Policies and Practices

- ▶ Adopt standardized permitting criteria.
 - ▶ Implementation of SB 673
 - ▶ Permitting criteria includes review of community vulnerability using CalEnviroScreen and other screening tools and requirement to deny permits in areas over-burdened with other pollution sources.
 - ▶ Permitting criteria includes concrete and measurable benchmarks for permit denial based on poor compliance history.
- ▶ Assess and publicize data on permitted hazardous waste facilities and neighboring populations by race.
- ▶ Adoption of a governing or appeals board to review agency decisions (SB 654).
- ▶ Adoption of policy to act as lead agency and prepare Environmental Impact Report on any proposed RCRA permit decision.
- ▶ Adoption of policy to affirm, acknowledge, and implement civil rights obligations.
- ▶ Adoption of policy to cease using Statement of Overriding Considerations to approve projects with known health and/or environmental impacts to EJ communities.

Quantifiable Data

- ▶ Number of permits or permit renewals approved and denied, including number of decisions relying on non-EIR CEQA documents and decisions where DTSC does not act as lead agency.
- ▶ Number of facilities operating on an expired permit.
- ▶ Number of permit applications pending or approved that DTSC failed to deny despite the issuance of three notices of deficiency.
- ▶ % of non-white populations living near permitted hazardous waste facilities.
- ▶ Number of projects approved in EJ communities using a Statement of Overriding Considerations.

Examples of Impacted Communities

- ▶ **Chemical Waste Management, Kettleman City (96% Latino, CES 91-95%):** DTSC used addendum to and relied upon County issued English-only EIR; hundreds of violations did not lead to permit disapproval with no coherent rationale provided; facility adjacent to very vulnerable populations who are overburdened by multiple pollution sources and suffered from unexplained birth defect cluster.
- ▶ **Phibro-Tech Inc., Santa Fe Springs (93% Latino; CES 96-100%):** Facility operating on expired permit for – years; DTSC failed to initiate denial proceeding triggered by third notice of deficiency; DTSC has not prepared EIR despite proposed expansion to the facility; DTSC continuing to process permit application despite facility's failure to comply with decades old corrective action.
- ▶ **Quemetco Inc., City of Industry (86% Latino; CES 96-100%):** Facility operating on expired permit; DTSC not requiring permit modification despite plans to increase battery throughput by 25 percent; facility responsible for 74% of lead emissions in South Coast air district with known releases of lead outside fence line of facility, yet no plans for testing or clean-up.

Enforcement

Issue identification

- ▶ Lack of clarity in DTSC's role based on its inaccurate view that it must maintain and increase hazardous waste capacity in the state.
- ▶ Fines are not levied at sufficiently high rates so as to incentivize compliance.
- ▶ Improper and undue polluter influence in negotiating low fines through settlements.
- ▶ Lack of criminal prosecution.
- ▶ Fines not used to benefit communities where violations took place.
- ▶ Insufficient monitoring and use of self-monitoring to discover violations.
- ▶ Once enforcement action taken, industry response untimely or lacking altogether.
- ▶ No compliance with AB 1329 (prioritizing enforcement in EJ communities)

Enforcement Improvements

Benchmarks and standards of performance

Policies and Practices

- ▶ DTSC leadership publically and in writing clarifies that agency goals do not include maintaining or increasing haz waste capacity in the State.
- ▶ Adopt mandatory minimums for different types of penalties. Collect maximum fines for each serious or chronic violation.
- ▶ Track and publicize settlement amounts and provide opportunity for public comment on settlements.
- ▶ Track and publicize the amount of time for companies to come into compliance with agency orders.
- ▶ Adopt a multiplier when compliance not achieved in timely fashion.
- ▶ Increase number of unannounced inspections.
- ▶ Adopt policy to provide air monitoring equipment and grants to communities to enable community monitoring of hazardous waste facilities. Adopt policy to use community-generated data in enforcement actions.

Quantifiable Data

- ▶ Number of enforcement actions taken and amount of money collected from fines.
- ▶ Number of criminal enforcement proceedings undertaken.
- ▶ Amount of enforcement fines diverted to EJ supplemental environmental projects.
- ▶ Number of inspections (including unannounced inspections) conducted at each permitted hazardous waste facility.
- ▶ % of enforcement actions taken in EJ communities.
- ▶ Number of enforcement staff

Examples of Impacted Communities

- ▶ **Exide Corp., Vernon (96% Latino, CES 96-100%):** Never permitted, despite decades of known dangerous activities. Exide cited every year for over 80 violations, yet received only 7 fines. Violations included egregious lead and arsenic air emission violations, violations of storm-water regulations, and consistently exceeding air emission standards for lead and other contaminants. Now, up to 10,000 homes have been contaminated with lead.
- ▶ **Carlton Forge, Paramount (79% Latino, 12% African American, CES 96-100%):** Metal manufacturing facility in a residential area surrounded by homes, several schools and a park next door. Facility emitting high levels of nickel, cadmium and hexavalent chromium. The City has orally denied DTSC access to public lands to test for contamination, including the schools and park. The agency has yet to use its authority to test despite the City's refusal. The park remains open despite known unsafe contamination beyond the park's boundaries.
- ▶ **Pomona Industrial Zone, Pomona (80% Latino, CES 96-100%):** Mixed residential and industrial zoning area, oversaturated with waste facilities. 11 schools site within a one-mile radius of this area. Many of the facilities have code violations, are uncovered, recycle products containing toxic chemicals, such as mercury and lead, and have inadequate or damaged groundcover, allowing toxins to seep into the earth. The facilities pose a risk to groundwater and the active wells in the area. Yet, DTSC has not conducted any enforcement activities.

Public Outreach

Issue identification

- ▶ Residents near haz waste sites are largely left in the dark about contamination levels, risks, clean-up status and DTSC activities for very long periods of time.
- ▶ DTSC unresponsive to community requests for investigation, site characterization.
- ▶ DTSC withholds testing information, fails to provide information in a useable format.
- ▶ DTSC downplays risks to neighboring residents, leading to distrust of the agency.
- ▶ DTSC's website is difficult to use, incomplete, and English-only.
- ▶ Residents near haz waste sites are not offered CAGs or other stakeholder committees.
- ▶ DTSC does not notify eligible communities of outreach programs like the CAG.
- ▶ DTSC has allowed CAGs to be taken over by industry interests.
- ▶ DTSC developing new public participation plan without a robust public process.

Public Outreach

Benchmarks and standards of performance

Policies and Practices

- ▶ Require regular community updates at both clean-up and permitted facility sites.
- ▶ Adopt and publicize standard process by which communities and stakeholders can request and receive public notices, testing and site characterization.
- ▶ Adopt policy and practice to provide raw data when requested.
- ▶ Adopt policy to provide testing and monitoring data to impacted communities whenever testing and monitoring is conducted.
- ▶ Update envirostor website to ensure database is user friendly, includes all records including those from other Cal/EPA agencies, and is translated into Spanish.
- ▶ Revise CAG program to provide site-specific groups with technical assistance and increase communication between DTSC and public.
- ▶ Ensure public participation plan assures meaningful civic engagement in compliance with civil rights laws. Plan should cover language access, accessible hearing times and places, and preventing obstacles to participation such as police presence and other intimidation factors.
- ▶ Provide resources to community groups to foster public participation.
- ▶ Provide adequate notices to all affected and interested parties and conduct multilingual outreach to publicize how the public has receive notices and other public documents.

Quantifiable Data

- ▶ Number of community meetings, total and at each site.
- ▶ Amount of time between public meetings at People's Senate/CEJC communities.
- ▶ Number of CAGS or other organized stakeholder groups that DTSC works with.
- ▶ Number of People's Senate/CEJC communities reporting back favorable outcomes to its community specific requests.

Examples of Impacted Communities

- ▶ **Brown & Bryant, Shafter (80% Latino, CES 86-90%):** No public meetings since 2009 despite on-going activities at the site and regular requests for updates. Due to lack of community outreach, site has fallen into disrepair on several occasions, leaving holes in fences, cracked ground cover, graffiti on-site most contaminated areas. Residents have received no assurances that contamination has not seeped in to town's drinking water despite regular groundwater monitoring by DTSC.
- ▶ **Santa Susana Field Laboratory, Simi Valley/San Fernando Valley:** The SSFL CAG was created at the initiative of RP Boeing and its surrogates. DTSC ended its support for the longstanding SSFL InterAgency Work Group, which held RPs accountable. The CAG is composed of several individuals who were previously officials of the Responsible Parties. It has lobbied consistently to break the 2010 cleanup agreements which DTSC signed. CAGs are supposed to represent diverse viewpoints, yet the SSFL CAG has only one point of view and that is to oppose the cleanup DTSC signed. The SSFL CAG propagates demonstrably false information about SSFL contamination and cleanup, yet DTSC continues to promote the CAG and its meetings.

Fiscal Management

Issue identification

- ▶ Insufficient funds to clean-up contaminated properties.
- ▶ Orphan fund is depleted, clean-up of orphan sites could slow even further and grind to a halt.
- ▶ Financial assurances not available to pay for corrective actions.
- ▶ No funds available to pay for costs exceeding financial ability of responsible parties to pay.
- ▶ Responsible parties wield too much power in determining the amount they are willing to pay for corrective actions, remediation and monitoring.
- ▶ Fines and fees not collected, allowing responsible parties off the hook for their liabilities.

Fiscal Management

Benchmarks and standards of performance

Policies and Practices

- ▶ Adoption of policy to allow the use of financial assurances to be collected for corrective actions.
- ▶ Work with Governor's office and impacted communities to supplement dwindling orphan fund.

Quantifiable Data

- ▶ Amount of money available to fund orphan site characterization and clean-up.
- ▶ Amount of money collected from responsible parties.
- ▶ Amount of money billed but not collected.
- ▶ Amount of money not billed, and not collected.
- ▶ Number of cases brought (and won) to recover moneys owed.

Examples of Impacted Communities

- ▶ **Delano Plume, City of Delano (88% Latino, CES 96-100%):** In 2008, an investigation of a leaking underground storage tank by the Central Valley Regional Water Quality Control Board uncovered TCE and PCE contamination in the groundwater of Downtown Delano. These chemicals have seeped into downtown businesses at unacceptable levels. Yet, no funding is available for complete site remediation. Stop-gap measures are being employed such as sealing cracks and suggesting that residents keep windows open.
- ▶ **Autumnwood Housing Development, Wildomar (Latino 42% CES 41-45%):** Residents in housing development suffered numerous unexplained illnesses, including several deaths. Independent testing showed dozens of cancer causing chemicals in indoor and outdoor air. There is no responsible party to pay for cleanup. Residents believe this to have contributed to DTSC's determination that no action was necessary.

Step 2

MAKE RECOMMENDATIONS
FOR IMPROVING THE
DEPARTMENT'S PROGRAMS.

Site Clean-Up

Issue-Identification

- ▶ Clean-ups lack standardized criteria and are largely based on the funding available from responsible parties.
- ▶ Site characterization largely left to responsible parties.
- ▶ Communities subject to different clean-up standards and goals.
- ▶ Cumulative impacts not considered in determining level of site remediation required.
- ▶ Remedial action plans take years and even decades to develop, leading to more contamination.
- ▶ Clean-ups are piecemealed.

Site Clean-Up

Benchmarks and Standards of Performance

Policies and Practices

- ▶ Adoption and publish standards for site remediation and site characterization. Standards should consider cumulative impacts and community vulnerability.
- ▶ Track and publish in a user-friendly format clean-up goals and background levels for each remediation site to allow for easy comparison and analysis.
- ▶ Adopt policy and practice to conduct simultaneous cross-media testing where contamination suspected. Include all media in remedial action plans.
- ▶ Provide neutral third-party testing as selected by a committee that includes a majority representation of impacted residents. Testing to be funding by polluter.
- ▶ Establish policy for using biomonitoring to establish public health risks associated with contamination.
- ▶ Offer and provide temporary or permanent relocation to residents at risk from toxicity and/or remediation activities.
- ▶ Provide meaningful opportunities for public participation in selection of remedial activities.
- ▶ Engage in proper consultation with Native Nations and peoples impacted by any issue within DTSC's jurisdiction.

Quantifiable Data

- ▶ Amount of time between discovery of suspected contamination and site characterization
- ▶ Amount of time between site characterization and commencement of remedial activities.
- ▶ Total amount of time for site clean-up.
- ▶ Amount of money spent on remediation by site, with CalEnviroScreen overlay.
- ▶ # of active clean up sites.
- ▶ # of completed clean up sites.
- ▶ Amount of resources provided to communities to hire independent technical experts.

Examples of Impacted Communities

- ▶ **Elk Hills Oil Reserve, Tupman (CES 86-90%):** DTSC approved a work plan for an assessment of 131 areas of concern, but the assessment was never completed. Suspected contamination includes arsenic, selenium, cadmium and lead, among other toxins. In the years since, DTSC alleges that some work has been complete, but little information has been provided to the public. DTSC states that only two sites have been cleaned to date.
- ▶ **Jordan Downs, Watts (Latino 67% African American 37% CES 96-100%):** Area includes two dozen clean-up sites within a 1.5 mile radius. Testing of a neighborhood clean-up site showed levels of lead up to 22,000ppm, 275 times the state standard for a residential scenario. DTSC testing at 30 areas outside the industrial site revealed that 100% of samples contained elevated levels of toxins including arsenic, lead, cadmium, and tetrachloroethylene. Yet DTSC has made a finding of no further action.
- ▶ **Agriculture Park, Riverside (Latino 73% CES 86-90%):** A residential area contaminated with PCBs, yet never cleaned. Site now slated to become a new housing development despite not being fully investigated or characterized by DTSC. Testing conducted after public outcry has been limited in scope.

Pollution Prevention

Issue-Identification

- ▶ The state needs to develop a long-term plan to reduce the amount of waste generated but has no concrete plans for how to do so.
- ▶ Source reduction program defunded, DTSC no longer receiving source reduction reports.
- ▶ Historically program has been all voluntary, with little success in actually reducing hazardous waste.
- ▶ Without source reduction, hazardous waste is simply shifted from one impacted community to another.
- ▶ Fifty percent reduction in disposal goal is not tied to source reduction, potentially leading to increased “leave in place” treatment options.
- ▶ Safer Consumer Products program behind schedule and slow to roll out.
- ▶ Advisory committee is now defunct.

Pollution Prevention

Benchmarks and Standards of Performance

Policies and Practices

- ▶ Re-fund pollution prevention/source reduction program.
- ▶ Require use of least hazardous processes to obtain permit.
- ▶ Work with legislature to establish source reduction targets in state law.
- ▶ Track and publish source reduction efforts by industrial source and individual companies.
- ▶ Adopt a plan to reduce waste disposal by 50% in California that does not rely on increased use of in situ or leave in place treatment for contaminated sites.

Quantifiable Data

- ▶ Amount of hazardous waste generated and disposed of California.
- ▶ Amount of contamination treated using “in situ” or leave in place clean-up approaches.

Examples of Impacted Communities

- ▶ Clean Harbors/Chemical Waste Management/Santa Susana Field Laboratory
- ▶ California EJ communities

Concluding Thoughts

- ▶ The success of the agency must be measured based on on-the-ground improvements. This Board should adopt the recommendations from the People's Senate and the California Environmental Justice Coalition as benchmarks because they are based on community impacts and can be measured by those directly impacted.
- ▶ Impacted residents are experts; you have an army of engaged residents who are willing and ready to be your eyes and ears in the field. Please take advantage of this.
- ▶ This Panel is the only accountability body that has the influence, authority, and independence to force real change at the agency. Please use it wisely. The lives of countless Californians depend on the decisions you will be making in the coming months.