Independent Review Panel
Meeting Minutes
January 14, 2016

1. **Call to Order**
   Chair Gideon Kracov called the meeting to order at 9:33 a.m. at the Department of Toxic Substances Control's Sacramento Regional Office at 8800 Cal Center Drive, Sacramento, CA.

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

   Chair Kracov led the Panel in the Pledge of Allegiance.

2. **Welcome and Introductions**
   Chair Kracov introduced himself and asked the other IRP members to introduce themselves. He also introduced Deputy Attorney General Teri Ashby, who served as legal counsel, and Erik Erreca, the Panel's office technician.

3. **Announcements**
   Chair Kracov announced that a translator was available for Spanish-speaking members of the public: Jesus Cruz. He asked Mr. Cruz to introduce himself in Spanish. He also announced that public comment would be accepted under the General Public Comment agenda item and all other agenda items. Chair Kracov also announced that the meeting was webcast on the DTSC website.

4. **Agenda Review**
   Chair Kracov reviewed the meeting agenda.

5. **General Public Comment**
   Ms. Penny Newman of the Center for Community Action and Environmental Justice (CCAEJ) addressed the Panel.

   Chair Kracov disclosed that CCAEJ has been a client of his, but all matters he has handled for the client have been settled or dismissed, and that he has informed CCAEJ that he will not be taking on any new matters for the client while serving on the Panel.

   Ms. Newman asserted that the first batch of the recently discovered offensive emails that DTSC has released represent an unfortunate belief system among several DTSC staff members and questioned the decisions the two staff members responsible for them made in contamination investigations, given their demonstrated attitudes. She stated that community representatives tell her they have received the same type of disrespect from other DTSC staff members and that their concerns are often dismissed. She contrasted the state's active handling of the gas leak in the affluent and predominantly white community of Porter Ranch with how it has handled the toxic contamination from Exide in a less affluent, Latino community. She called for the IRP to recommend a full investigation of the work of the two staff members as well as of DTSC's culture.

6. **Organizational, Operational, and Administrative Matters**
   Panel Member Campbell discussed a draft IRP Work Plan for 2016 that she put together for Panel consideration.

   Public comment:

Anthony Sampson of the California Chamber of Commerce agreed that 2016 should be an information-gathering year and that submitting recommendations that have a broad consensus is appropriate. However, he cautioned the Panel against submitting recommendations in January of 2016 that should be studied in depth and undergo a robust discussion in the coming months.

Public comments via email:

Ingrid Brostrom of the Center on Race, Poverty, and the Environment (CRPE) expressed her agreement with the concept of a permit appeals board. In addition to providing a means of appealing permits that are not timely, she said the board should review permit decisions upon appeal by any party.

Dolores Mejia of the Eastside Coalition Against Exide (ECAE) expressed disappointment that the Panel could not amend its meeting agenda within 10 days of an upcoming meeting to add an item on Exide Technologies. She also stated her opinion that the state's open meeting law allows such changes.

Panel members agreed that the document should be viewed as a work in progress and that the program analyst ultimately should fine tune, add more information about how the Panel will do its work, establish a less aggressive work program timeline, schedule the gathering of data for recommendations and the making of recommendations for 2016 work, schedule the evaluation of the implementation of those recommendations for 2017 work, include report submission dates all the way through 2017, focus on one topic per quarter, and provide meeting dates and locations. Panel members also agreed that the IRP should make initial recommendations for the governor and the Legislature if there is broad consensus for those recommendations at this meeting.

Vice Chair Vizzier agreed to work on the procedures with the program analyst. Panel Member Campbell agreed to work with the program analyst on the work plan.

Vice Chair Vizzier emphasized the need to issue timely meeting minutes.

Chair Kracov asked Mr. Erreca to make sure meeting agendas are sent out to the public via DTSC's EList.

Public comment via email:

Ms. Mejia thanked the Panel for its work and urged DTSC to use various media in announcing meetings.

Chair Kracov adjourned the meeting for a break at 11:40 a.m. He reconvened the meeting at 11:45 a.m.

7. IRP Reporting Requirements

Chair Kracov announced that a brief 57014(h) report, written by Panel Member Vizzier, has been submitted to the governor and Legislature and is posted on the website.

Chair Kracov also announced that he wrote a draft 65714(f) report for IRP consideration with recommendations for the department's Permitting, Enforcement, Pubic Outreach, Fiscal Management and Budget, Site Mitigation, and Staff E-mails. He asked the Panel to review the draft, make decisions on the various recommendations, and give him direction to submit a final report based on the Panel's decisions by the January 28, 2016 deadline.

Chair Kracov adjourned the meeting for lunch at 12:15 p.m. and reconvened it at 1:15 p.m.

<u>Permitting</u>
The Panel discussed the draft Permitting narrative, recommendations, and data requests.

Vice Chair Vizzier said that assigning tasks and not allocating resources can result in problems rather than solutions, that he could use more information about the role of the suggested Permit Appeals Board, and that he agreed with most of the draft recommendations.

Panel Member Campbell said she liked the idea of a permit appeals board if staffing is increased along with it.

Vice Chair Vizzier said the recommendation about funding Technical Assistance Grants to allow public participation before draft Resource Conservation and Recovery Act (RCRA) permits are prepared needed a little more information on the timing of public participation. He also said that the issue of requiring financial assurances for corrective action as a part of permit issuance is a complicated one, that the issue of coordination between regulatory agencies in monitoring is complex, and that the data requests could result in significant work for the DTSC staff.

Panel Member Campbell suggested that the draft document be organized in such a way as to separate the recommendations for the governor and Legislature, the recommendations for DTSC, and the data requests from one another.

Public comment:

Mr. Sampson expressed support in concept for several of the draft recommendations. However, he pointed out that if the process of the suggested Permit Appeals Board is complicated and legalistic, it could increase backlogs rather than reduce them. With respect to the suggested recommendation on DTSC's Violation Scoring Procedure, he expressed concern that the suggested DTSC guidance or regulations on the procedure could go beyond the recently chaptered, carefully crafted AB 1075. With respect to the suggested recommendation for a policy that CEQA analysis of full RCRA permits include robust analysis of least hazardous processes/equipment, he said that the existing law already requires feasible mitigation measures and least hazardous processes and equipment if the project creates hazards to the public or environment.

Ms. Newman expressed overall support for the recommendations. She encouraged the Panel to submit tentative recommendations now, rather than wait. She said an appeals board would address lack of transparency in DTSC, especially for affected residents. It would give them a place to go to be heard and get answers. She said there is a need for an appeals board for many DTSC programs, not just for the Permitting Program. She expressed concerns about "fee for service" for permitting because it could encourage DTSC staff members to see the polluters as their client. If implemented, a "fee for service" program should find a way to separate staff work from actual payment. She agreed that the public should be involved as early as possible in the permitting process.

Tom Jacob of the Chemical Industry of California urged the Panel to consider the practical implications of the recommendations it puts forward.

Public comments via email:

Ms. Brostrom agreed that DTSC should expedite rulemaking in compliance with SB 673, but said IRP also should develop recommendations around the contents and substance of the regulations. For example, the Panel should recommend that DTSC include an analysis of community vulnerability in its permitting criteria. She said CRPE recommends that DTSC adopt regulations to codify its Violation Scoring Procedure rather than adopting a guidance document. She said that in addition to funding Technical Assistance Grants, the Legislature may need to clarify or increase DTSC's authority to provide technical assistance to stakeholder groups working on issues related to permitted facilities as well as groups working on issues related to site remediation. She said CRPE agrees with recommendations to require financial assurances for corrective actions. She said CRPE agrees that DTSC should require RCRA sites to use least hazardous processes. However, this goal will not be accomplished through CEQA review, since CEQA itself does not mandate any particular agency action. DTSC and the Legislature should work with advocates and stakeholders to develop proper mechanisms to ensure the use of least hazardous processes.

Generators must be included in the strategy in addition to RCRA permittees. She said CRPE agrees with the suggested data request for financial assurances for corrective action. However, the request should not be limited to a static, one-time request for data. Rather, the IRP should recommend that DTSC publish and regularly update information on financial assurances at RCRA-permitted sites to ensure that the public has ongoing access to this information. She said CRPE agrees with the recommendation to provide information on facilities which would have fallen under AB 1075's violation categories. However, in addition to providing the number of facilities, DTSC should identify which facilities have exceeded the number of violations that would now trigger a presumption of permit denial under AB 1075.

Jane Williams of California Communities Against Toxics (CCAT) said it is critical that DTSC establish a binding criteria for adequate financial assurances at RCRA facilities and that violation scoring procedures should take into account air violations.

Chair Kracov disclosed that CCAT has been a client of his, but all matters he has handled for the client have been settled or dismissed, and that he has informed CCAT that he will not be taking on any new matters for the client while serving on the Panel.

Ms. Mejia said that if done properly, a permit appeals board could be an effective tool.

DTSC Director Barbara Lee said many of the recommendations are very helpful, but a couple of them should be carefully thought out so we don't have unintended consequences. She pointed out that the department can't endorse or oppose any proposals for legislation. She said that an appeals board, done properly, can be an effective tool, but careful consideration must be given to its composition, what its powers are, and what the process is. She added that DTSC will make a total of 17 decisions on permits from the backlogged list in 2016. She pointed out that the issue of financial assurances is very complicated. A number of sites have had multiple owners, and the current owners may not have knowledge of contamination from previous owners. Those sites have to be fully characterized, and doing so can take an extensive amount of time. The process of performing the site investigation must not be allowed to hold up the permit. She said DTSC may not have the statutory authority to adopt a policy that CEQA analysis of full RCRA permits include an analysis of least hazardous processes and equipment. She added that CEQA is probably not the best vehicle for that process.

Motion: Consider each recommendation separately and allow the Panel chair to make editorial changes to the recommendations. Vice Chair Vizzier moved to approve the motion. Panel Member Campbell seconded the motion. The motion carried unanimously.

The Panel voted unanimously to include a recommendation that the governor and Legislature consider whether to create a Permit Appeals Board to hear and decide on all Hazardous Waste Facility Permits that DTSC fails to timely process within three years of expiration.

The Panel voted unanimously to include a recommendation that the governor and Legislature require that DTSC obtain full cost recovery connected with its Hazardous Waste Facility Permit decisions.

The Panel voted unanimously that DTSC should publish by January 1, 2017 its draft regulations on SB 673 and adopt those regulations by January 1, 2018.

The Panel voted unanimously that DTSC should adopt through guidance or publish draft regulations by January 1, 2017 on its Permit Violation Scoring Procedure.

The Panel voted unanimously that the governor and Legislature should fund Technical Assistance Grants to allow public participation before a draft RCRA permit is prepared.

The Panel voted unanimously that the governor and Legislature should require that DTSC require, as part of its hazardous waste facility permitting, that adequate financial assurances be set aside for corrective action for existing hazardous waste releases at the site.

The Panel voted unanimously to ask that DTSC give the IRP a list of existing financial assurances for every Hazardous Waste Facility Permit site by March 1, 2016.

The Panel voted unanimously to ask DTSC to give the IRP a list of how many Hazardous Waste Facility Permit holders now fall within AB 1075's violation categories, with specifics, by April 1, 2016.

C***hair Kracov adjourned the meeting for a break at 3:05 p.m. He reconvened the meeting at 3:10 p.m.***

Enforcement

The Panel discussed the draft Enforcement narrative, recommendations, and data requests.

Vice Chair Vizzier wondered how DTSC could allow public review of draft settlements and consent decrees and at the same time keep them confidential.

Public comment:

Mr. Sampson expressed concern about the draft recommendation to ask the Legislature to consider whether DTSC should allow public reviews of draft settlements and consent decrees. He argued that publicizing them would be a deterrent to the process.

Public comments via email:

Ms. Mejia said that all minutes must be transcribed to comply with the Americans with Disabilities Act (ADA). Chair Kracov asked Mr. Erreca to determine if the Panel's meeting procedures are in compliance with ADA.

Ms. Mejia said the draft report does not adequately address the status of DTSC or reflect the People's Senate and CEJC recommendations. She called for an external investigation of DTSC and said the public needs a cost-benefit analysis to protect funding that is being squandered by the department on public participation commercials. She also presented a list of recommendations that Eastside Against Exide had previously proposed for improving DTSC enforcement.

DTSC Legislative Director Josh Tooker clarified that federal eManifest requirements are still a work in progress.

The Panel voted unanimously that DTSC should adopt an AB 1071-compliant Supplemental Environmental Projects policy by May 1, 2016.

The Panel voted unanimously that DTSC should adopt an Improving Enforcement Performance Initiative work plan by January 1, 2017.

The Panel voted unanimously to ask DTSC to provide IRP with data on its compliance with the 65-day inspection report requirement and 175-day return to compliance/referral requirements under the Health & Safety Code Section 25185, including inspection, violation, and enforcement outcome data for every site from 2014-2015 to the present.

The Panel voted unanimously to ask DTSC to report to the IRP on progress with data management goals from its USEPA/Cal DTSC 2015-2017 RCRA Grant Work Plan, pp. 28-30, by May 1, 2016.

The Panel voted unanimously to ask DTSC to report to the IRP on how environmental justice (EJ) and health risk is prioritized in enforcement under AB 1329, particularly Health & Safety Code Section 25180.2, including identification of planned EJ initiatives, by May 1, 2016.

The Panel voted unanimously to ask DTSC to provide IRP with data on cases created in EnviroStor for calendar years 2014 and 2015, including the number of referrals to the Attorney General's office and city attorneys for prosecution, by May 1, 2016.

The Panel voted unanimously to ask DTSC to report to the IRP on SB 1249 metal shredder regulatory status by May 1, 2016.

Public Outreach and Staff Emails

The Panel discussed the draft Public Outreach and Staff Email narratives, recommendations, and data requests.

Vice Chair Vizzier questioned the draft recommendation to request that DTSC provide an update on the DTSC work and regulatory status of all sites listed in a People's Senate letter to the Senate Rules Committee and concerns expressed by the People's Senate to the IRP on agency regulatory capture. He argued that DTSC should not single out any one interest group.

Public comment:

Mr. Sampson mentioned pending legislation that would require the Office of Planning and Research to provide more robust reporting of CEQA notices.

Public comments via email:

Denise Duffield of Physicians for Social Responsibility-Los Angeles suggested that the Panel provide additional specificity to the draft recommendation to ask DTSC to update the Panel on its work in response to the People's Senate letter and suggested recommendations. She also suggested that the review of staff emails should be extended to examine 10 years of cases in which the staff members who sent the offensive emails played any role.

Ms. Mejia said that all public notices should be ADA-compliant.

Ms. Williams said the DTSC EJ coordinator needs more help to do her job.

Ms. Mejia said DTSC should never require members of the public to leave a room to filter their comments, as was done at an Exide working group meeting last summer.

Director Lee said the following: she cannot commit to implementation of the UC Davis Public Participation Work Plan, which hasn't been finalized yet; the suggested EJ accountability calls or equivalent mechanism should also account for changing modes of communication; summaries of enforcement action can be posted on one tab on the website, but if the Panel would like all enforcement information, it may not be possible to comply; she has already responded to the People's Senate letter but can't comment on specific facilities until decisions are made; she already reported to the IRP on DTSC review of the email issue the previous day; to date the department has not found anything that would cause it to question the quality of the technical work of the two staff members who were responsible for the inappropriate emails; and she does not have resources to review all of the work of the two individuals for the past 10 years.

The Panel voted unanimously to ask that DTSC report to the IRP on procedures for formal public feedback and evaluation of each public participation report and how such evaluation is used to evaluate and improve the overall public participation program, by June 1, 2016.

The Panel voted unanimously to recommend to the governor and Legislature to fund positions to strengthen the role of the Assistant Director for Environmental Justice and Tribal Affairs, including more staffing and resources.

The Panel voted unanimously to recommend that DTSC begin implementing the UC Davis Public Participation Work Plan by January 1, 2017.

The Panel voted unanimously to recommend that DTSC continue its practice of bi-monthly EJ accountability calls or use an equivalent mechanism designed to increase communication between the department and communities.

The Panel voted unanimously to recommend that DTSC publish the following on one tab on its website: all CEQA notices, all Hazardous Waste Facility Permits, and all public enforcement actions.

The Panel voted unanimously to ask DTSC to report to the IRP on public participation budget, staffing, and language skills by June 1, 2016.

The Panel voted unanimously to recommend that DTSC immediately assign staff charged with independent review to revisit all cases in the past five years with a "no further action" recommendation involving the two staff members who were responsible for the offensive emails, and report to the public 2016 on the findings by June 1.

The Panel voted unanimously to ask DTSC to provide the IRP with an update on the actions DTSC is taking to strengthen its commitment to supporting diversity and fostering cross-cultural understanding by June 1, 2016.

Public Comment via email:

Ms. Mejia pointed out that some of her earlier comments were not read during the public comment periods.

Fiscal Management and Budget

The Panel discussed the Fiscal Management and Budget narrative, recommendations, and data requests.

Director Lee commented that a state audit would be extremely consuming of staff resources and that the California State Auditor has been reviewing the department's improved procedures and provided DTSC with a letter stating that those procedures are now in good shape. In response to a question from Vice Chair Vizzier, she reported that five limited-term positions in the Permitting Program will expire on June 30 in addition to the 14 limited-term cost recovery positions mentioned in the draft recommendations.

DTSC Special Assistant for Program Review Terri Hardy added that the California State Auditor concluded that DTSC's policies and procedures are sound as long as they are followed. She also noted that DTSC is using the Attorney General's office with increasing frequency.

The Panel voted unanimously to recommend to the governor and Legislature that they adopt legislation and funding to address orphan site funding as well as the transition of federally funded cleanup sites to state oversight.

The Panel voted unanimously that DTSC provide the Health and Safety Code Section 57007 biennial report by January 1, 2017 and tie the report to DTSC's Fixing the Foundation report, including documenting compliance with all goals and objectives therein.

The Panel voted unanimously to recommend to the Legislature that it support the governor's 2016-17 budget proposal for DTSC.

The Panel voted unanimously to recommend to the governor and the Legislature to provide position authority and funding to DTSC to maintain the 14 limited-term cost-recovery staff positions through 2018, or make them permanent.

The Panel voted unanimously to request that DTSC report to the IRP on the status of Fi$cal implementation and billing by February 15, 2016.

The Panel voted unanimously to request that DTSC report to the IRP on the status of limited term cost recovery positions by September 1, 2016.

The Panel voted unanimously to request that DTSC provide the IRP with data on how much of its collections are billed and outstanding for all of its programs as well as solutions to the collection barriers by September 1, 2016.

The Panel voted unanimously to request that DTSC report to the IRP by September 1, 2016 on goals and timelines on its internal cost recovery improvement programs, including sustainable cost recovery systems, audit backlog work plan, and EnviroStor enhancements to improve cost recovery.

The Panel voted unanimously to ask DTSC to report to the IRP on any follow-up examination or comments by the California State Auditor on its cost recovery procedures and improvement efforts.

Chair Kracov adjourned the meeting at 5 p.m. for a Closed Session to discuss possible action on personnel matters. He reconvened the meeting at 5:05 p.m. and reported that there was nothing to report from the closed session.

Site Mitigation

The Panel discussed the Site Mitigation narrative, recommendations, and data requests and decided to delay action on this topic until the next meeting.

Public comment via email:

Ms. Duffield stated that instead of reporting its disposal requirements for radioactive waste above the background, DTSC should report to the IRP on whether or not it has rescinded its 2012 position that materials from the Santa Susana Field Laboratory cannot be routed for recycle or non-rad disposal. She asserted that after a Boeing lobbyist subsequently complained to a DTSC senior staff member, the department's staff began allowing materials from the site to be shipped out for recycling and disposal in sites not licensed to receive such waste, including one in the community of Buttonwillow.

8. Future Meeting Schedule and Agenda Items

Chair Kracov noted that the next meeting is scheduled for February 10. Agenda items may include the work plan, site mitigation, a Fi$cal report, Exide closure and cleanup, and follow-up on data requests.

11. Adjournment

Chair Kracov adjourned the meeting at 5:15 p.m.