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# Independent Review Panel

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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



*Edmund G. Brown Jr.*  
*Governor*

## Independent Review Panel Meeting Minutes April 7, 2016

### 1. Call to Order

Chair Gideon Kracov called the meeting to order at 9:05 a.m. at the Kern County Administrative Center at 1115 Truxtun Avenue, Bakersfield, CA.

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

### 2. Welcome and Introductions

Chair Kracov introduced himself and asked the Panel members, Deputy Attorney General Deborah Barnes, and Panel support staff members Larry Rohlfes and Erik Erreca to introduce themselves. Chair Kracov led the Panel in the Pledge of Allegiance.

### 3. Announcements

Chair Kracov announced that translators were available for Spanish-speaking members of the public: Carlos Díaz de León and Luisa Díaz de León. He asked them to introduce themselves in Spanish. Chair Kracov noted that there would be public comment under the General Public Comment agenda item and all other agenda items. He also announced that the meeting was webcast on the DTSC website.

### 4. Agenda Review

Chair Kracov reviewed the meeting agenda. He suggested that the General Public Comment agenda item take place in the late afternoon in addition to the time period sequence in the agenda and that the discussion on Organizational, Operational, and Administrative Matters take place before IRP Reporting Requirements. He also said there probably would be no Closed Session. The other panel members agreed with his suggestions.

## 5. Minutes of Dec 18, 2015, January 13-14, 2016, and March 9, 2016 Meetings

Vice Chair Vizzier noted that the minutes of the March 9, 2016 meeting were not ready yet.

**Motion:** Approve the minutes of the December 18, 2015 and January 13-14 meetings. Panel Member Campbell moved. Vice Chair Vizzier seconded. The motion carried unanimously.

## 6. General Public Comment

Chair Kracov limited each public comment to five minutes, with the exception of a scheduled comment from Alec Uzemeck, co-chair of the Santa Susana Field Lab (SSFL) Community Advisory Group (CAG), whom he allowed 15 minutes.

Mr. Uzemeck of the SSFL CAG said the advisory group was set up three years ago with the help of DTSC. He said there was an agreement of consent with DTSC by Boeing, NASA, and DOE to clean up the site in 2007. He said there was a new agreement signed by NASA and DOE in 2010. He said the problem with the second agreement is that it does not consider human health. It requires the removal of about 300 chemicals in the soil that are above background levels even if they are not toxic. They will have to remove soil in excess of U.S. EPA standards and doing so will ruin wildlife historical sites, and Chumash Tribe paintings. The nearby communities have all called for a reasonable, EPA-authorized cleanup. He asked the IRP to tell DTSC to use the US EPA method for site cleanup instead. If chemicals in the soil are not a health risk to humans, they should be left alone. There have been eight health studies that show no cancer risks on the site. There are two other studies. One is inconclusive, and the other is based on conjecture and makes some extreme assumptions.

Chair Kracov asked Mr. Uzemeck if he was authorized by the SSFL CAG to make the comments he made. Mr. Uzemeck responded in the affirmative. Chair Kracov then asked Mr. Uzemeck if he was representing the West Hills Neighborhood Association. Mr. Uzemeck responded that he was not.

Maricela Mares-Alatorre of Greenaction said DTSC relied on documents provided by other agencies that violated civil rights in evaluating a Kettleman Hills expansion project. She also questioned the use of statements of overriding consideration and said that as long as DTSC can use them, people in low-income communities like her community of Kettleman City are not safe.

Dr. Rosanna Esparza of the Clean Water Fund said she was very concerned about health risks in two Kern County communities near the Occidental of Elk Hills project: McKittrick and Tupman. There are schools near the fence line of the site, and the communities want to know when the cleanup will begin. The property was sold in 1998, and one of the conditions of the sale was that a cleanup was to take place within 10 months. The community has not received responses from DTSC. She said she would like to know how much money has been spent on site reports.

Chair Kracov noted that the site was included in The People's Senate Site-Specific Benchmarks document that was distributed during DTSC Director Barbara Lee's confirmation hearings in 2015 and that the document requested four specific actions for the site. He asked Dr. Esparza if the communities received responses to the requests.

Dr. Esparza responded that they received responses, but they do not feel the responses are satisfactory. They have not received an accounting of money spent, although they do know that two areas of concern have been cleaned up.

Ingrid Brostrom of the Center on Race, Poverty, and the Environment stated that there is a great deal of distrust of the SSFL CAG in the SSFL area and that Mr. Uzemeck may have close connections to Boeing. She said numerous DTSC staff members have reached out to her who are all concerned about their department. They are concerned about its morale, performance, high turnover, and inadequate training. They also say there are disincentives to do full investigations and that there is an unofficial work slowdown occurring. This has a direct impact on disadvantaged communities near hazardous waste and cleanup sites. She also said that DTSC Director Barbara Lee's comments at the last IRP meeting about Panel visits to regional offices had a chilling effect for the staff. She said staff members feel that DTSC doesn't want the Panel to know what is really going on. It is important for the IRP to hear from the staff, not just the top DTSC officials.

Chair Kracov asked Ms. Brostrom if she had talked to Director Lee about these concerns.

Ms. Brostrom responded that she has not had substantive discussion with Director Lee since the director was confirmed by the California Senate.

Jane Williams of California Communities Against Toxics said there is a retinoblastoma cluster among children near the SSFL site. She said that previous Republican Administrations advocated for a more extensive cleanup than the current Administration. She observed that the financial assurances data received from DTSC by the IRP show no financial assurances for Fibro Tech post-closure. Its closure bond is only \$1.8 million. She also said the data show that China Lake's open detonation facility is exempt from financial assurances. If California is not demanding realistic financial assurances, the state will be in the same situation with these facilities as it was with Exide. Those costs will be passed on to the taxpayers.

Cynthia Babich of the Del Amo Action Committee said the Panel has been working hard and its work is appreciated. She said her experience is with a voluntary cleanup program at a superfund site in Torrance. People living near the site should be included more in decisions being made. DTSC's public outreach should do a better job of involving the community. She said DTSC staff members also have reached out to her about the department's leadership. She said she chooses to support the efforts of the director and staff who are trying to improve things.

Vice Chair Vizzier suggested that Ms. Babich reiterate her comments at future meetings when the Panel addresses public outreach and other topics.

Panel Member Campbell thanked Ms. Babich for her comments, but suggested that she accompany them with more specific suggestions about how the Panel can act on her observations.

## **7. Chair's Report**

Chair Kracov said he, too, has been receiving emails from DTSC staff. He said DTSC needs to get good people into environmental justice positions who understand different perspectives.

He said he reached out to Director Lee in the course of working on the IRP's permitting recommendations but is disappointed that they have not been able to interact in recent weeks.

He expressed disappointment in the information the department has provided the IRP on financial assurances for corrective actions. The documents given to the Panel have some information on closure and post closure, but very little for corrective actions.

He said he hopes the Panel's reports help to improve functioning of the DTSC and not remain on a shelf to gather dust. In the end, though, it will be up to others to decide what to do with the reports, and all the Panel can do is keep working.

He observed that the department is not spoon-feeding the IRP with information, as some critics feared would happen. Just the opposite is true, he said.

He concluded his report by saying that he would continue to reach out to the director.

Panel Member Campbell said that perhaps the director is disassociated with the IRP because of public concern that the Panel is improperly influenced by the department.

Vice Chair Vizzier said the IRP should stay away from personnel issues. There is not much that it can do with personnel information. The IRP already has a big mission, and it should stick to that mission. At some point someone may have decided to build a wall between DTSC and the Panel because of public comment that the entities are too close to one another. He said he could understand why the IRP isn't getting clear answers on corrective action, as that is a complicated subject. He said the director's responsibilities are increasing while resources are decreasing, and this is the underlying problem. He said he doesn't disagree with the Panel chair, but has a different perspective.

Panel Member Campbell called for better communication and openness.

Chair Kracov added that lack of communication prevents the IRP from doing its job.

## **8. Staff report**

Mr. Rohlfs reported that the IRP Authority, Composition, and Meeting Procedures document and the IRP Work Plan for 2016-17 have been finalized and posted on the IRP Governance Documents section of the Panel's website, and he is catching up with preparing minutes of past meetings. He reported that he represented the IRP at the Assembly Budget Subcommittee 3 hearing on March 30, 2016. He said he gave the subcommittee a brief summary of the IRP's statutory responsibilities, composition, and work plan. He also pointed out to the subcommittee that the Panel recommended support for Gov. Brown's 2016-17 budget proposal for the DTSC, including funding to convert eight temporary positions to permanent status to ensure more timely permitting actions and reduce backlogs. Mr. Rohlfs also reported that Mr. Erreca has been working to make numerous meeting arrangements, handle Panel member expense reimbursements, and track the Panel's budget.

***Chair Kracov adjourned the meeting for a break at 10:50 a.m. and reconvened it at 11 a.m.***

## 9. Organizational, Operational, and Administrative Matters

Chair Kracov noted that members of the public have not yet availed themselves of the spontaneous translation to Spanish at public meetings and that the IRP's translation budget could hit \$20,000 over the course of a year when entire budget is only \$50,000. He recommended that the IRP work with support staff to make determinations on whether to offer it at future meetings, based on agenda content.

The other IRP members expressed agreement with this procedure.

Chair Kracov asked what other Panel members thought about visiting DTSC branch offices. He clarified that he is not suggesting that more than one Panel member participate in any single visit.

Panel Member Campbell suggested lunch meetings in branch offices as a compromise.

Vice Chair Vizzier mentioned that staff members typically are in the field rather than in the office on a typical work day. He said that a survey might be a more efficient and a less disruptive tool to gather information.

Chair Kracov said he wants DTSC staff members to feel that that Panel members care about them. If Panel members only meet with senior management, they are not meeting their statutory responsibility.

Chair Kracov suggested that the Panel direct support staff to work with DTSC Program Analyst Chris Law to investigate a workable way of doing site visits or a survey of DTSC staff members on big picture issues. They should report back to the IRP at the next meeting.

Panel Member Campbell suggested that Vice Chair Vizzier write the survey questions.

Chair Vizzier agreed to work with support staff to create a survey of DTSC staff members.

Chair Kracov mentioned that he is working with Mr. Erreca on putting together contact information on people in and out of government who have an interest in DTSC issues.

Chair Kracov suggested that the Panel also survey the people on the contact list. The survey should ask the contacts for recommendations and metrics on the four topics mentioned in Health & Safety Code Section 57014.

Vice Chair Vizzier agreed to work on this survey as well.

Chair Kracov directed staff to continue working on the contact list and to work with Vice Chair Vizzier on survey questions.

Panel members agreed that they should have some involvement in evaluating the performance of support staff.

Ms. Barnes said there are civil service protocols about evaluating staff, but she can look into how the IRP could be involved in the process.

Chair Kracov asked Ms. Barnes to report on this at the next meeting.

Chair Kracov asked Panel members if there was interest in recommending structural reforms at DTSC, such as the creation of a governing board, reducing the number of programs administered by the department, or cleaning up statutes that no longer work well together.

Chair Kracov concluded after some discussion that he gets a sense from the Panel that it should attempt this, perhaps in the final recommendations at the end of 2017.

Ms. Williams said that California has adopted some important Resource Conservation and Recovery Act (RCRA) exemptions and that this creates problems because it results in hazardous waste in the municipal waste stream. For example, there is a metal shredder exemption, and as a result metal shredders are virtually unregulated in some areas of the state. If the Panel is going to look at the underpinning of hazardous control laws, it should look at what is in and out of the hazardous waste system. DTSC also has lost its ability to do technology assessments. Bottom line, she supports looking at the construction of laws governing hazardous waste in California.

Dr. Esparza said it will be advantageous to have Spanish translators in the afternoon of this meeting.

Mr. Erreca presented the budget report. He noted the Panel is under budget for FY 2015-16, but would have a deficit of about \$15,000 in FY 2016-17 if its current spending patterns continue into that fiscal year.

Chair Kracov asked for the budget report to be presented in a spreadsheet format next time.

Panel members decided to discuss what to do about the projected FY 2016-16 deficit under the next agenda item.

***Chair Kracov adjourned the meeting for a lunch break at 11:46 a.m. and reconvened it at 12:50 p.m.***

## **10. IRP Reporting Requirements**

Chair Kracov initiated discussion of the draft IRP second report to the Governor and Legislature pursuant to Health and Safety Code Section 57014(f), beginning with the Panel's initial recommendations on site mitigation section. The Panel decided to vote on specific items in the draft report if there was no clear consensus on a particular item.

### **Initial DTSC Site Mitigation Program Recommendations and Data Requests:**

#### Site Mitigation Program Summary

Cynthia Babich of the Del Amo Action Committee asked if the Voluntary Cleanup Program addresses contamination to the same standards as DTSC site mitigation of contaminated properties.

Vice Chair Vizzier replied that it is his understanding that voluntary cleanup is to the same standards as DTSC site mitigation.

Chair Kracov stated that the mention of the Voluntary Cleanup Program in the narrative is just a factual summary of what the program is.

Panel members agreed to leave the summary as submitted.

#### Recommendations to Governor and Legislature to Improve Site Mitigation

Chair Kracov read the first recommendation: “The Legislature should support Gov. Brown’s proposed \$176.6 million appropriation to fund expedited and expanded testing and cleanup of residential properties, schools, daycare centers, and parks of the former Exide Technologies facility in Vernon.” He noted that DTSC did not offer comments on the recommendation.

Ms. Williams argued that the recommendation should not mention the 1.7-miles radius and should instead refer to the impacted communities.

Panel members agreed to delete “within a 1.7-mile radius of” and replace with “impacted by.”

Panel Member Campbell suggested an additional recommendation to the Governor and Legislature to use blood lead levels as a marker in the Exide cleanup, now that DTSC has this information, and prioritize cleanup based on blood levels.

Chair Kracov agreed and suggested legislation to prioritize the Exide cleanup based on blood lead levels and to require DTSC to show where the hot spots are based on soil and blood data and indicate whether levels above background can be attributed to Exide.

Vice Chair Vizzier responded that there are a lot of variables when it comes to attributing blood and soil lead levels to a single source and that DTSC already is on a path to do area cleanup. He expressed concern that additional studies could slow down the cleanup.

Panel Member Campbell said the blood data should help DTSC prioritize the cleanup. Attributing the cause of the contamination would be a secondary consideration.

Ms. Williams stated that the problem with the blood levels is that they don’t have good denominator data; that is, we can’t determine from the data how many people were tested.

**Motion:** Add a recommendation to the draft report asking the Governor and Legislature to encourage collaboration between national, state, and local agencies to better correlate lead contamination in California communities. Vice Chair Vizzier moved. Panel Member Campbell seconded. The motion carried unanimously.

**Motion:** Add a recommendation to the draft report asking the Governor and Legislature to instruct DTSC to prioritize the Exide cleanup based on the data it possesses on soil and blood lead levels related to residential locations. Chair Kracov moved. Panel Member Campbell seconded. The motion carried, with Vice Chair Vizzier voting against it.

Chair Kracov read the second draft recommendation: “The Governor and Legislature should support SB 820 (Hertzberg), pending legislation that would remove the January 1, 2017 sunset for the California Land Reuse and Revitalization Act.” He noted that DTSC did not offer comments on the recommendation.

Ms. Williams spoke against the recommendation and said voluntary cleanup has been used to avoid liability by responsible parties in the past.

Ms. Brostrom also suggested not moving forward with the recommendation.

Vice Chair Vizzier stated he was not comfortable with the recommendation, and Panel Member Campbell suggested the recommendation be tabled.

Panel members agreed not to include the recommendation in the report.

#### Recommendations to the DTSC to Improve Site Mitigation

Chair Kracov read the first draft recommendation to the DTSC: “The DTSC should convene relevant regulatory agencies and publish a strategy by January 1, 2017 on how, in appropriate cases, to require fence line/aerial deposition monitoring during site mitigation in situations where there are adjacent sensitive receptors.”

Mr. Law read DTSC’s response to the recommendation. He said the department already is engaged in preliminary discussions with CalEPA and its boards, departments, and offices on impacts that may cross boundaries and has already reached out to local air districts on aerial deposition. He said DTSC believes these are complex issues that require thoughtful, collaborative response by multiple agencies and may fall outside current regulatory structures to fully address. The department instead would like to provide the IRP with the existing requirements and guidance documents and then talk to Panel staff to better understand the scope and direction of the request. He also said that while a comprehensive strategy is unlikely by January 1, 2017, DTSC would be happy to update the IRP on progress made.

Ms. Williams spoke in favor of the recommendation, using an incident at Jordan Downs to illustrate her point. She said her organization is requesting 3<sup>rd</sup> party monitoring at Jordan Downs and believes more robust fence line monitoring during cleanup is a good suggestion.

Vice Chair Vizzier said DTSC should continue its preliminary discussions and the Panel should back off the January 1, 2017 deadline based on the department’s comments.

Panel members agreed to change the draft recommendation to ask DTSC to provide the IRP with an information request update on its preliminary discussions as well as the existing requirements, guidance documents, and other pertinent information by January 1, 2017 and to publish a joint strategy by July 1, 2017.

Chair Kracov read the second draft recommendation to the department: “DTSC should publish, on its website, an easy-to-read matrix of clean-up standards and sampling levels to enhance transparency of mitigation at particular sites that are subject to public concern and inquiry by July 1, 2017.”

Chair Kracov also read the DTSC response to the recommendation, which was that the department will prepare an estimate of the resources needed to complete this enhancement to EnviroStor.

Chair Kracov suggested that the website also include information on the timing of the cleanups.

Ms. Brostrom expressed disappointment in the DTSC response to the recommendation.

Panel members decided to keep the recommendation and add the cleanup schedules to the requested website information.

## **6 General Public Comment Continued**

Chair Kracov agreed to take a General Public Comment out of order.

Chris Romanini addressed the Clean Harbors Environmental facility near Buttonwillow. Ms. Romanini said she farmed and raised a family near the facility, which has had an expired permit for some time. She said trucks carrying hazardous waste do not comply with truck route restrictions and travel through town and past the school. She said she believed there have been very few citations for the truck violations. She said the facility's conditional use permit requires the facility to have a tree wind break, but the wind break is inadequate. She questioned how well the facility was inspected and wondered why it has been allowed to operate without a permit for so long. She stated her family feels vulnerable and let down by DTSC.

## **10. IRP Reporting Requirements Continued**

Chair Kracov read the third draft recommendation to the DTSC: "DTSC should provide raw data for site mitigation to the public upon request, once the data are verified, by July 1, 2017."

Chair Kracov also read the DTSC response, which was that the department does not routinely receive raw data packages from laboratories, but will assist the public in efforts to obtain raw data when requested.

Ms. Babich said she supported the recommendation. She and other members of the public want data that have not been manipulated.

Ms. Brostrom agreed. She said communities should be able to see Level 4 data and that she believed the department has access to the information and can provide it.

Vice Chair Vizzier said he has never looked at raw data for site mitigation and can see why DTSC would not collect it. He also said complying would involve considerable expense.

Panel Member Campbell said DTSC should provide raw data or samples upon request.

Panel members agreed to change the draft recommendation to ask DTSC to publish its procedures for providing Level 4 data upon request.

## Data Requests to the DTSC Regarding Site Mitigation

Chair Kracov read the first recommendation: "DTSC should provide IRP with an oral presentation on disposal requirements for radioactive waste that is above background levels at the Panel's February 2017 meeting. The presentation should incorporate information from the state Department of Public Health, where appropriate, and include a discussion of the disposal of radioactive and mixed waste from the Santa Susana Field Laboratories in Simi Valley."

Chair Kracov also read the DTSC response, which was that the Department of Public Health (DPH) has oversight authority on radioactive waste issues, but that the DTSC would be happy to provide the IRP with the names of individuals at DPH to convey the presentation request.

Panel members agreed to change the draft recommendation to state that DTSC should provide the IRP with an oral presentation "in collaboration with DPH."

Chair Kracov read the second draft recommendation: "DTSC should provide IRP with an oral presentation on sampling and analysis methods used for site characterization and mitigation at the Panel's February 2017 meeting. The presentation should include the criteria and methods used for 'no further action' determinations. The presentation also should include results of follow-up sampling at Riverside Agricultural Park in 2015, why the department concluded that 66 acres were safe to build residential homes at Ag Park in 2014, and why the DTSC and US EPA investigations came to different conclusions about levels of PCB contamination at the site."

Chair Kracov also read the DTSC comment on the draft recommendation, which stated that the department can provide a list of approved sampling and analysis methods.

Panel members agreed to leave the draft recommendation as written.

Chair Kracov read the third draft recommendation: "DTSC should provide the Panel with an update on the status of the Exide Technologies facility closure and cleanup, including funding for the efforts by January 1, 2017."

Chair Kracov read the DTSC comment on the draft recommendation, which stated that the department can provide the IRP with links to documents available on its website and copies of future reports to the Legislature regarding the expenditure of funds pursuant to AB 118 and SB 93.

Panel members agreed to amend the draft recommendation to request an update by a date certain on the status of the closure and post-closure and residential cleanup.

Chair Kracov suggested an additional information request to ask Director Lee to respond in writing on the status of sites mentioned in The People's Senate's 2015 document on Site-Specific Benchmarks.

Ms. Brostrom said she submitted the site-specific benchmarks document to the director at the time of her confirmation. She said Director Lee sent her a written response to the document at the time of her confirmation, but the response did not address specific sites.

**Motion:** Add an information request to respond in writing to the People’s Senate Site-Specific Benchmarks document by June 1, 2016 with detailed information on what is being done to address the sites in the document that require mitigation. Chair Kracov moved. Panel Member Campbell seconded. The motion carried, with Vice Chair Vizzier voting against it.

**IRP Second Report to Governor and Legislature Pursuant to Health & Safety Code Section 57014(f):**

Mr. Rohlfs summarized the draft introduction to the report.

Panel members agreed to leave the summary as submitted.

**DTSC Permitting Program Recommendations, Performance Metrics, and Data Requests:**

Permitting Program Summary

Panel members agreed that a graph should be added to the program summary similar to the one in the January 28, 2016 report entitled Permitting Actions and Volume of Continued Permits at Authorized Staff Levels. Panel members agreed.

In discussing the summary of the Panel’s January 28, 2016 recommendation that DTSC should adopt guidance or regulations on its proposed Violation Scoring Procedure (VSP), Chair Kracov said he is unclear on the relationship between the proposed VSP and AB 1075, which requires the department to consider three or more violations within a five-year period as compelling cause to deny, suspend, or revoke a permit.

Vice Chair Vizzier added that US EPA also has a violation classification system.

Ms. Williams said she does not understand how the proposed VSP and AB 1075 relate with one another and stated that she has concerns about the proposed VSP because it does not take into account air violations and is too discretionary.

Panel members agreed to modify the discussion of the proposed VSP in the program summary to express a need for consistency between the VSP, AB 1075, the California hazardous waste violation classification system, and the federal hazardous waste violation classification system.

Panel members agreed to delete a sentence stating that the information received to date on financial assurances raises more questions than it answers.

Panel members agreed to mention that DTSC has not yet provided a list of hazardous waste facility permit holders that currently fall within AB 1075’s violation categories, but expects to receive this information shortly.

Recommendations to the Governor and Legislature to Improve Permitting

Chair Kracov read the first draft recommendation: “Augment the Hazardous Waste Control Account to fund \_\_ limited-term positions to achieve the goal of making 16 permit decisions a year and processing 90 percent of permit decisions in a two-year period or less.”

Chair Kracov also read the DTSC comment on the recommendation, which stated that a finance letter will be submitted to the Legislature requesting an augmentation to the Governor’s proposed budget for additional permanent positions to sustain timely permitting actions, ensure facilities do not operate for extended periods of time on expired permits, and improve the clarity, consistency, protectiveness, and enforceability of the permits issued.

Panel members agreed to fill in the blank in the recommendation with “necessary” and replace the phrase “limited positions” with the phrase “permanent positions.”

Chair Kracov read the second draft recommendation: “Require DTSC to review each permitted hazardous waste facility’s financial assurances every five years.”

Chair Kracov also read DTSC’s comment on the recommendation, which stated that the Governor’s proposed budget included resources needed to review each permitted hazardous waste facility’s financial assurances every five years.

Panel members agreed to leave the draft recommendation as submitted.

Chair Kracov read the third draft recommendation: “Require DTSC to hold a public meeting within 60 days of every hazardous waste permit application submission to inform nearby communities about the application and facilitate meaningful understanding and dialogue about a facility’s potential health, environmental, and other impacts.”

Chair Kracov also read DTSC’s comment on the recommendation, which stated that the department is currently developing proposals to enhance its public participation program and asks the IRP to delay making recommendations on the public participation process until the IRP addresses this subject in July of 2016, consistent with its work plan schedule.

Panel members agreed to delete this recommendation from the report.

Chair Kracov read the fourth draft recommendation: “Extend permit length to 15 years for hazardous waste facilities with no major violations.” He noted that DTSC had no comment on the recommendation.

Ms. Williams stated her opposition to this recommendation. She said facilities may not have violations because they haven’t been inspected.

Ms. Brostrom stated that she had the same concerns, but suggested that the term Class One Violations be substituted for the term major violations.

Vice Chair Vizzier said inspections are important and that he has seen facilities go from a period of no major violations to “a horror show.”

Panel Member Campbell suggested a recommendation to extend permit length for hazardous waste facilities that are yearly inspected and have no Class One Violations.

Chair Kracov said the Panel should hear from regulated community on this recommendation.

Panel members agreed to drop the recommendation for the report, but to discuss it again, perhaps when the IRP takes up enforcement issues.

Chair Kracov read the fifth draft recommendation: "Require owner or operator of a hazardous waste facility to submit an application for a permit renewal at least two years before the permit expiration. Require DTSC to respond by a date certain (e.g., 30 days, 9 months) to particular permitting actions/milestones (e.g., finding application complete, finishing technical review, etc.) with a notice of deficiency or acceptance, or the particular permitting action/milestone shall be deemed approved. If DTSC has responded as required, and the final permit decision has not been issued within 2 years after the permit expiration, the permit shall be denied." He noted that DTSC had no comment on the recommendation.

Chair Kracov said the regulated community tells the IRP that they submit permitting information, but the information sits out there too long. The purpose of this recommendation is to require the department to respond in a timely manner to certain permitting milestones, with the result being that the information would be deemed approved if the department doesn't meet the deadline. On the other hand, if applicant drags its feet, the permit would expire.

Ms. Brostrom said she agrees with the goal, but sees a few problems with the specifics. For example, instead of saying that the permit would be denied, the recommendation should say that a denial process would be initiated.

She said there are real questions about whether DTSC can meet some of the milestones. Also, the recommendation doesn't sufficiently address applicant negligence.

Panel Member Campbell stated that there should be some accountability for meeting deadlines.

Chair Kracov agreed and said there should be some accountability mechanisms, such as approval of the submitted information or initiation of permit denial proceedings.

Panel members agreed to include a recommendation to: (1) require DTSC to respond within certain time periods to hazardous waste permit application submittals, (2) require applicants to submit application information on a timely basis and (3) establish accountability mechanisms, such as approval of the submitted information or the initiation of permit denial proceedings, if these event deadlines are not met by DTSC or the applicant. Vice Chair Vizzier agreed to work with Mr. Rohlfes on the exact wording of this recommendation.

Chair Kracov read the sixth draft recommendation: "Amend Section 25200 of Health & Safety Code to give DTSC specific authority to require fence line monitoring by permit holders in appropriate cases." He noted that DTSC had no comment on the draft recommendation.

Ms. Babich said that using the word appropriate would make the recommendation too arbitrary.

Ms. Williams also recommended against using the word appropriate.

Panel members decided to leave the draft recommendation as submitted.

Chair Kracov read the seventh draft recommendation: “Give DTSC ability to designate hazardous waste facilities that require more time, consideration, and resources to process than the typical facility. Create emergency permitting fund from general fund for DTSC to access for processing these facilities.” He noted that DTSC had no comment on the draft recommendation.

Chair Kracov said this recommendation came from the regulated community. The goal is to not let problematic facilities drive everything. The regulated community says it would pay in part for devoting extra resources to problematic facilities, but it also argues that it is in the state’s interest to pay as well.

Vice Chair Vizzier suggested the Panel table the recommendation. The general fund should not be subsidizing hazardous waste facilities.

Chair Kracov suggested that along with fee structure reform, the Panel do something to provide cost certainty in the permitting process.

Panel members agreed to delete the draft recommendation.

As a follow-up to the IRP’s January 28, 2016 initial recommendation to change the permitting fee structure so that fee income at least equals department permitting costs for each applicant, Panel members agreed to add an additional recommendation to give applicants a reasonable assurance of costs and include some mechanism to hold the department accountable for those assurances.

#### Recommendations to the DTSC to Improve Permitting

Chair Kracov read the first draft recommendation: “Using CalEnviroScreen, post clear and concise data on racial composition and income levels of communities in proximity to permitted hazardous waste facilities on DTSC website by January 1, 2017.”

Chair Kracov read the DTSC response to the draft recommendation, which stated that the department agrees that this information would be a good enhancement to the website, but that it cannot commit to completing this improvement by January 1, 2017.

Panel members agreed to include this recommendation with one change: use terminology from CalEnviroScreen to refer to these communities.

***Chair Kracov adjourned the meeting for a break at 4:05 p.m. He reconvened the meeting at 4:14 p.m.***

Chair Kracov read the second draft recommendation: “Post clear and concise information on website that lists all permitted sites with contamination, status of cleanup, and amount of financial assurances for cleanup by January 1, 2017.”

Chair Kracov read the DTSC response to the draft recommendation, which stated that while DTSC agrees with the recommendation, it cannot commit to completing this improvement by January 1, 2017.

Ms. Babich stated that she likes the recommendation and agrees with the timeframe.

Ms. Brostrom said she believes the recommendation is needed and that DTSC could implement it by the deadline date.

Panel members agreed to leave the draft recommendation as submitted.

Panel members agreed to add an information request for DTSC to provide the IRP with its information technology governance document.

Chair Kracov read the third draft recommendation: "Post all formal responses and permit processing documentation in EnviroStor to improve transparency and community understanding of permit application status by January 1, 2017." He noted that DTSC agrees with this recommendation.

Panel members agreed to leave the draft recommendation as submitted.

Chair Kracov read the fourth draft recommendation: "To give hazardous waste facility permit applicants an incentive to renew their permits on a timely basis, assess hazardous waste facility violations from the time of the last permit renewal (not only the past five years) in determining whether past compliance should prevent the applicant from receiving a new permit, by January 1, 2017."

Chair Kracov read the DTSC response, which was that the scope of review contemplated by this recommendation will be addressed through the rulemaking process for the draft VSP and that the department cannot commit to any outcomes until that rulemaking process is complete.

Panel members decided to table this draft recommendation for the reasons given by DTSC and because the IRP already has a recommendation calling for better integration between the proposed VHS and other violation scoring and classification systems.

#### Recommended Performance Metrics for Permitting Program

Chair Kracov read the DTSC response to the draft performance metrics, which stated that the translation to an annual measurement of the goals resulting from the Lean Six Sigma projects is in some cases inconsistent with the Lean Six Sigma process or project outcomes. Some of the department's performance goals are established for a longer time period.

At Vice Chair Vizzier's suggestion, the Panel decided to add a preamble to the performance metrics section stating that the Panel understands that many of the goals are over an extended period of time, but that the Panel will ask DTSC to report on its progress at the end of the 2016-17 fiscal year and that, if the department can't reach them, will expect an explanation.

Chair Kracov read the first metric: "Make 16 hazardous waste facility permit decisions during fiscal year 2016-17."

Chair Kracov read the DTSC comment on the proposed metric, which stated that the goal of 16 permit decision is an annual-average number based on the total number of permit decisions that must be made over a 10-year permitting cycle.

Panel members decided to change the metric to require an annual-average of 16 permit decisions over a 10-year permitting cycle.

Chair Kracov read the second metric: "Send out reminder letter at least 18 months in advance of hazardous waste facility permit expiration date 100 percent of the time in fiscal year 2016-17." He noted that the DTSC agrees with this goal.

Panel members agreed to change the metric from "in fiscal year 2016-17" to "each fiscal year."

Chair Kracov read the third metric: "Conduct a pre-application meeting with the hazardous waste facility permit applicant within three months after issuance of the reminder letter 100 percent of the time in fiscal year 2016-17." He noted that DTSC agrees with goal.

Panel members agreed to change the metric from "in fiscal year 2016-17" to "each fiscal year."

Chair Kracov read the fourth metric: "Review hazardous waste facility permit application for administrative completeness within 30 days of receipt of the permit application and notify the applicant in writing whether the application is complete 100 percent of the time in fiscal year 2016-17." He noted that DTSC agrees with goal.

Panel members agreed to change the metric from "in fiscal year 2016-17" to "each fiscal year."

Chair Kracov read the fifth metric: "Complete technical review for 80 percent of permit applications within 13 months after the application is determined to be administratively complete during fiscal year 2016-17."

Chair Kracov read the DTSC comment on the goal, which stated that its performance with this goal must be evaluated over a longer period of time to incorporate a large enough population of permits. With sufficient staffing levels, the DTSC indicated it could achieve this goal by FY 2021-22.

Panel members agreed to change the proposed metric to the following: Complete technical review for an average of 80 percent of permit applications within 13 months after the application is determined to be administratively complete for the next 10 years.

Chair Kracov read the sixth metric: "Establish average processing time of 2 years or less for 90 percent of hazardous waste facility permits completed during fiscal year 2016-17."

Chair Kracov read the DTSC comment on the goal, which stated that it would be impossible to meet.

Panel members agreed to change the proposed metric to the following: Establish average processing time of 2 years or less for 90 percent of hazardous waste facility permits completed for the next 10 years.

Chair Kracov read the seventh metric: "Review 24 hazardous waste facility permit closure and post-closure plans and associated engineer's cost estimates in fiscal year 2016-17."

Chair Kracov read the DTSC comment on the goal, which stated that in order to meet it, the department would have to assess time elapsed between permit issuance and its review of the closure and post-closure cost estimate, the number of facilities with closure and post-closure cost estimate reviews completed within five years after the issuance of a permit, and the number of facilities for which a closure and post-closure cost estimate is not completed within five years after issuance of a permit.

Panel members agreed to change the goal to the following: Review, on average, 24 hazardous waste facility permit closure and post-closure plans and associated engineer's cost estimates each fiscal year.

Chair Kracov read the eighth metric: "Experience less than five-percent staff turnover with permitting staff during fiscal year 2016-17."

He read the DTSC comment on the goal, which stated that the goal is not possible to reach.

Panel members agree to change the percentage to 10 percent.

#### Data Requests to the DTSC on Permitting

Chair Kracov read the first draft request: "Provide IRP with information by July 1, 2016 on whether a Statement of Overriding Considerations was used, what type of CEQA document (EIR, addendum, negative declaration, exemption, etc.) was used, and whether a human health risk assessment was prepared for each permitted hazardous waste facility."

Chair Kracov read the DTSC comment on the request, which stated that the department can commit to providing the information by July 1, 2017 for permits issued during FY 2015-16, but that additional time may be needed to provide information for permit decisions prior to FY 2015-16.

Panel members agreed to change the submittal date to September 1, 2016.

Chair Kracov read the second draft request: "Provide IRP with list of sites on continued permit status by July 1, 2016." He noted that DTSC indicated it will provide this information.

Panel members agreed to leave the request as written.

Chair Kracov read the third draft request: "Report to IRP by July 1, 2016 on the advantages, disadvantages, and feasibility of simplifying/reducing engineering review of hazardous waste permit applications and instead emphasizing more rigorous enforcement in the case of inadequately built hazardous waste facilities."

Chair Kracov read the DTSC comment on the request, which stated that the department already is engaged in some aspects of this analysis pursuant to SB 673 and other requirements and will share related information when available.

Panel members agreed to delete this request.

Chair Kracov read the fourth draft request: "Report to IRP by July 1, 2016 on why DTSC has never adopted a state Hazardous Waste Management Plan, reviewed the plan on an annual basis, or revised the plan at least once every three years in compliance Section 25135 of the Health & Safety Code. DTSC also should indicate any recommended amendments to that code section."

Chair Kracov read the DTSC comment, which stated that the department will provide information about actions taken pursuant to Health & Safety Code Section 25135 to the extent it is available.

Ms. Brostrom stated that she supported the recommendation and said it is essential that California take a bird's eye view of how it is managing hazardous waste.

Panel members agreed to amend the recommendation to request an update on the status of the state Hazardous Waste Management Plan, the status of county hazardous waste management plans, and any recommended changes to Health & Safety Code Section 25135.

Chair Kracov read the fifth draft request: "Report to IRP by January 1, 2017 on whether DTSC is complying with the Health & Safety Code Section 25200.8 requirement to initiate proceedings to deny a permit application if an applicant does not respond to three or more notices of deficiency, or responds with substantially incomplete or substantially unsatisfactory information on three or more occasions. If the department is not currently complying, what are the reasons for not doing so, and should the code section be amended?" He noted that DTSC said it will provide the information.

Panel members agreed to submit the request as worded.

Chair Kracov read the sixth draft request: "Adequately address IRP questions raised at April 7, 2016 meeting about March 23, 2016 data on financial assurances for corrective action. Provide clear information by May 1, 2016 on how many hazardous waste facility permit holders with known site contamination have provided financial assurances for site corrective action and how many have not."

Chair Kracov read the DTSC comment on the recommendation, which stated that the department will work with the IRP staff to better understand what additional information the Panel is requesting.

Panel members agreed to leave the request as worded.

#### **Final Version of IRP Second Report to Governor and Legislature Pursuant to Health & Safety Code Section 57014(f):**

Panel members agreed to delegate wordsmithing of the report to the chair.

### **11. Future Meeting Schedule and Agenda Items**

The Panel decided to hold its next meeting on May 11 in Sacramento and to ask DTSC for detailed presentation on its Enforcement Program at that meeting. *(Note: The meeting subsequently was rescheduled to May 12.)*

Vice Chair Vizzier suggested that each Panel member say something to DTSC and his or her appointment authorities about the IRP's expected budget shortfall in 2016-17.

The IRP members agreed to note the projected shortfall in the 57014(f) report.

***Chair Kracov adjourned the meeting for a break at 5:14 p.m. and reconvened the meeting at 5:24 p.m.***

## **12. Closed Session**

There was no closed session.

## **6. General Public Comment Continued**

Chair Kracov introduced himself to members of the public who arrived at the meeting for the continuation of General Public Comment in the afternoon, asked Panel members and staff to introduce themselves, and briefly discussed the role of the Panel.

Ms. Brostrom expressed her appreciation to the Panel for holding a meeting in Kern County. She said three communities were represented in the room: Shafter, Arvin, and Delano. The first two were impacted by Brown & Bryant, a pesticide manufacturer that spilled chemicals into unlined ponds. The facility was shut down in the 1980s. Both sites are orphan sites. The Arvin site is a federal superfund site with shared federal and state responsibilities. The Shafter site is a state responsibility. She said nobody told the communities that the sites were toxic. The third community, Delano, is dealing with a toxic plume in the downtown area of unknown origins, but possibly caused by dry cleaning operations. The water board found the contamination. DTSC did six investigations and found high-level contamination. However, the community did not know about the problem until 2015. It is an orphan site, and there is no money to pay for cleanup. DTSC has said it is not sure if it will be able to come up with any permanent solutions.

Roberto Ibarra said he lives near the contamination in Delano. He said his family hasn't been given information on the contamination and that it seems like people want to keep them in the dark. He said he knows someone who worked in the fields and is ill. He also heard that someone else died who worked in the fields. When grape season arrives, he said he feels faint. He said he doesn't know if that is because of the fumigation they do at night in the fields or if there is some other cause.

Roberto García said he is a resident of Arvin and the secretary/treasurer of Committee for a Better Arvin. He said that when he moved to Arvin, he thought it would be a healthy place. However, he said that the area is unhealthy. The Brown & Bryant site is close to the wells where they get their water. There is an asphalt slab in the ground that is supposed to protect them, but it is cracked. He said he is not aware of anyone from DTSC coming out to the community, although Cal/EPA comes

out once in a while. He said the community deserves some respect and hopes his words will reach the right person at the DTSC.

Filipa Trujillo said she moved to Shafter because it was a quiet town and then discovered that it was contaminated. She said nobody tells the community anything about the contamination. They had an issue with contamination of their water supply for about a week recently.

Valerie Gorospe said she is a community organizer in Delano and grew up near the town. She said that DTSC's hiring of Ana Mascareñas gave her hope, but she was disappointed upon learning about the offensive staff emails that were brought to light last year. She said the emails display the disrespect that DTSC has for the communities. She said DTSC scheduled a community meeting in Delano in a facility that was much too small. Then DTSC cancelled the meeting because it didn't have enough information to present to the community. DTSC subsequently held a meeting, but the meeting wasn't that great.

Gloria Herrera, a 40-year resident of Delano, said DTSC is not functioning properly and that there is a lack of communication and information about the plume.

Arthur Rodríguez, a 64-year resident of Delano, said he is concerned about the plume and smells it all the time.

Gustavo Aguirre said he is a community organizer for the Center on Race, Poverty, & the Environment working with the Arvin community. He said the community was told that DTSC would take over the maintenance of the Brown & Bryant site, but the community needs to see DTSC representatives on a regular basis. He said the community believes the site is responsible for the poor quality of water in area. He said his office is within the boundaries of the Delano plume, and consequently he is concerned about his health.

Juan Flores of Delano commented on what he said was a lack of transparency and lack of communication. He said DTSC has become a Sacramento agency rather than a California agency. If DTSC has local staff members, he hasn't met them.

Lupe Martínez said he is a resident of Delano, but wanted to address the community of Buttonwillow. He said there was an agreement many years ago to reroute the trucks carrying hazardous waste so they don't go through town, but it has never been enforced. He also said he didn't understand how Clean Harbors Environmental could be allowed to operate with an expired permit. He said government agencies should be protecting communities, but they are not.

Public comments submitted by email:

Denise Duffield of Physicians for Social Responsibility-Los Angeles stated that the SSFL CAG is an example of what is wrong with DTSC. She asserted that the CAG was formed at Boeing's urging, is dominated by the interests of the parties responsible for the SSFL pollution, and was approved by DTSC despite a counter petition and over objections of local officials. She added that Alec Uzemeck, who spoke to the Panel earlier in the meeting on behalf of the CAG, worked for Boeing's predecessor, North American Aviation, for seven years. *(This comment was not read into the record during the meeting because of time restraints.)*

Chair Kracov thanked everyone for participating. He said the IRP has asked the DTSC director to respond in writing about the sites mentioned in the People’s Senate Site-Specific Benchmarks report, which mentioned the sites discussed at this meeting. He committed to holding an IRP meeting in Kern County next year to see if there are improvements.

#### **14. Adjournment**

**Motion:** Adjourn meeting. Panel Member Campbell moved. Vice Chair Vizzier seconded. The motion carried unanimously.

*Chair Kracov adjourned the meeting at 6:35 p.m.*

DRAFT