

**Independent Review Panel  
Meeting Minutes  
January 13, 2016**

**1. Call to Order**

Chair Gideon Kracov called the meeting to order at 10:02 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.

**2. Welcome and Introductions**

Chair Kracov introduced himself and asked Panel members and Deputy Attorney General Teri Ashby, who served as legal counsel, to introduce themselves. He then announced that one of the IRP support positions had been filled and asked Erik Erreca, the recently hired office technician, to introduce himself. Chair Kracov also announced that the meeting was webcast on the DTSC website.

**3. Announcements**

Chair Kracov announced that two translators were available for Spanish-speaking members of the public: Veronica López-Villaseñor and Jesus Cruz. He asked Ms. López-Villaseñor to introduce herself in Spanish. He also announced that public comment would be accepted under the General Public Comment agenda item and all other agenda items.

**4. Agenda Review**

Chair Kracov reviewed the meeting agenda.

**5. Minutes of December 8, 9, and 18, 2015 Meetings**

Panel members agreed that the December 8, 9, and 18 minutes needed further work.

**6. General Public Comment**

There was no public comment.

**7. Department Presentation**

DTSC Director Lee first introduced recently hired DTSC Chief Deputy Director Francesca Negri and then began a presentation on DTSC organizational structure and staffing, its budget and finances, the proposed FY 2016-17 budget, and the issue of offensive email communications by two staff members in 2015. A PowerPoint version of the presentation can be accessed on the IRP website at [https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/DTSC-Presentation-for-IRP-Meeting-January-13-14-2016\\_011216.pdf](https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/DTSC-Presentation-for-IRP-Meeting-January-13-14-2016_011216.pdf).

Director Lee first discussed the department's organizational structure and staffing. Among other things, she pointed out that staffing levels in 2014-15 were at approximately the same level as in 1990-91, when the department was first formed. Staffing levels have been flat over time.

In answer to a question from Chair Kracov, Director Lee explained that the department was looking into possibly establishing more senior management in one or more of the branch offices. The goal would be to give staff members in the regional offices a stronger connection with senior management.

Chair Kracov asked if there are protocols for reporting between division chiefs and branch chiefs. Director Lee responded that there are regular calls to go over various issues of concern and a good continuing dialogue. Both division chiefs also travel to the regional offices on a frequent basis. Director Lee has a weekly staff meeting in which division chiefs participate. There are also frequent meetings on a project specific basis. Director Lee said she has changed the meeting format to make them more productive.

Chair Kracov asked if there are protocols about communications between branch chiefs and staff members in the regional offices. Director Lee responded that they do not have written protocols. It is up to each deputy director to decide how to handle communication issues.

Director Lee suggested that the Panel ask the department to go into more detail at a future IRP meeting on what goes into DTSC's inspections of a Resource Conservation and Recovery Act (RCRA) facilities. She also clarified that the department inspects more than just RCCA facilities.

In response to a question from Chair Kracov, Director Lee clarified that the Safer Products & Workplace Program primarily focuses on worker safety protocols that make sure contaminants do not leave a workplace. The program does not focus on the effects of site cleanups on nearby communities, such as Riverside Agricultural Park and Jordan Downs. Those activities are handled by the cleanup staff in the Environmental Restoration Program and should be incorporated into site cleanup plans. DTSC is working more closely with local environmental quality districts to make sure the department is better integrating what DTSC is doing with other requirements.

In response to questions from Chair Kracov about billing, Deputy Director Andrew Collada said he is responsible for the DTSC conversion to Fi\$cal. He said the department is encountering some implementation issues with the new system. They are dealing with some issues that are unique to DTSC and implementation issues are to be expected in a big conversion project such as this one. Director Lee added that Fi\$cal is being run outside of the department. The department is an end-user of the system.

Chair Kracov said he would like a DTSC presentation for the Panel on Fi\$cal sooner rather than later.

In response to a question from Chair Kracov, Director Lee said the Biomonitoring Program is devoted to looking for biomarkers in people, animals, and aquatic life. For example, program work by DTSC scientists on flame retardants led to state action to protect the public.

Chair Kracov asked how many employees in the Office of Communications are fluent in Spanish. DTSC Deputy Director Jim Marxen estimated six or seven individuals.

In response to a question from Panel Member Campbell, Director Lee said that the federal-state relationship varies from program to program. EPA is resistant to getting involved in sites that are not specifically under their umbrella. DTSC has more resources for cleanup than does EPA.

Public comment via email:

Joseph SM expressed concern that DTSC is establishing a unit in Sacramento to manage the Exide site and expressed his opinion that the unit should be geographically closer to the site. Director Lee responded that DTSC has not made a decision yet about where the staffing would be located. She also noted that DTSC Brownfields & Environmental Restoration Program Division Chief Ray Leclerc has staff members reporting to him from around the state.

***Chair Kracov adjourned the meeting for lunch at 11:52 a.m. and reconvened it at 1:20 p.m.***

Director Lee and Ms. Negri provided a high-level look at the department's budget and finances. Funding, adjusted for inflation, has trended down overall since the department was established in 1991-92 to 2013-14. Legislative mandates increased during that period and staffing remained flat. As a result, the department is struggling to get its work done. DTSC is determined to demonstrate that it is a good steward of resources going forward, so that it will be given the means to accomplish its mission. DTSC's total FY 2015-16 budget is \$216 million. Director Lee also discussed funding sources: Hazardous Waste Control Account (\$61.8 million), Toxic Substances Control Account (\$55.1 million), Site Remediation (\$10.6 million), Reimbursement (\$13.1), Federal (\$33.6), Special Funds (\$13.0), and General Fund (\$27.1). Hazardous Waste Control Account (HWCA) funds primarily come from fees paid by industry, with the exception of cost recovery. With respect to permit application fees, companies almost always choose to pay the flat fee rather a time and materials fee, and the income from the former is not sufficient to cover costs.

Chair Kracov asked if industry fees have been adjusted over time and if DTSC is paid fees directly. Director Lee responded that some fees have been adjusted and some have not. All fees are set in statute. Some fees are paid to the Board of Equalization and some directly to DTSC.

Chair Kracov asked if some of the fees are federal pass-through fees. Director Lee responded that none are.

Director Lee then discussed the programs funded by the HWCA, which totaled \$49.12 million in FY 2014-15 expenses.

In response to a question from Chair Kracov, Director Lee said revenue is lower than projected this year because of billing problems associated with the Fi\$cal conversion.

In response to a question from Chair Kracov, Director Lee explained that it would be unusual to make changes to the budget during the course of a fiscal year. In extraordinary circumstances, if something truly unforeseen occurs, the department could submit a Notice of Deficiency to address a problem that must be addressed during the course of the same fiscal year. The usual process, however, is to make program cuts.

Director Lee next explained that Toxic Substances Control Account (TSCA) funds come from environmental fees, cost recovery, and fines and penalties. Activities funded by the TSCA totaled \$58.8 million in FY 2014-15.

Director Lee next discussed the Site Remediation Account. DTSC is required to provide a 10 percent match for federal design and construction cleanup at contaminated sites on the National Priorities List (NPL) and 100 percent of subsequent operation and maintenance costs. The federal government generally seeks to maximize its funding dollars by using the cheapest possible remedies, but unfortunately the cheapest construction and design remedies are often the most expensive to maintain. DTSC also pays for cleanup of contaminated sites that do not have a responsible party and are not on the NPL. It pays for cleanup at contaminated sites that are not on the NPL during cost recovery activities, with recovered costs being returned to the TSCA. DTSC has had a \$10 million budget for site remediation for a very long time, but the expected costs of dealing with NPL and Orphan Sites are expected to increase to nearly \$30 million by FY 2018-19, primarily because of an expected dramatic increase in NPL maintenance costs. That means DTSC will have little or no money to do Orphan Site cleanup by then. DTSC has identified approximately 9800 contaminated sites statewide, and at most of those sites the responsible parties no longer exist or have no ability to pay for cleanup. When that is the case, those sites are designated Orphan Sites and the state steps in to clean them up.

Director Lee next presented information on the new Safer Consumer Product Program. DTSC has developed a candidate chemical list, has proposed three priority products that contain candidate chemicals, will be requiring manufacturers to do alternative analysis on those products, will implement regulatory responses, and will enforce compliance of the regulatory response. Program staffing will have to increase as the program matures.

In response to questions from Vice Chair Vizzier, Director Lee reiterated that companies almost always choose to pay a flat fee for permit applications. She added that this creates equity issues because the department must make up the shortfall from other fee payers. In addition, if companies paid on a time-and-materials basis, they likely would be more careful about how they use DTSC services and interface more efficiently with department staff. Absent a cost, there is little incentive for permit renewal clients to move quickly through the process because the existing permit remains in force and the rules typically tighten with a new permit. DTSC has done a number of things in the past year and a half to make things more efficient on the department's end, and the big remaining hurdle is to incentivize more efficient interaction with the applicants.

Director Lee next discussed the state budget process and Gov. Brown's proposed budget for FY 2016-17. The DTSC Budget Change Proposals include: \$200,000 for cost recovery ability to pay, \$370,000 to address workload associated with recent treated wood waste legislation, \$350,000 for biomonitoring, \$50,000 for Attorney General costs for IRP assistance, and \$1,167,000 to convert eight limited-term permitting positions to permanent positions. DTSC also is working on proposals for the coming fiscal year on the Permitting Program, Environmental Justice Program, Exide issues, the Safer Consumer Products Program, other expiring limited term positions, and Orphan Site funding. Finally, DTSC is evaluating its budget and statutory requirements that may uncover needs that no longer exist.

Public comment via email:

The Beasleys asked if there are incentives in place for DTSC staff to fully act on permit applications. Director Lee responded that her permitting staff is aware of the need to move expeditiously on permitting decisions and is not aware of any incentives against acting.

Director Lee next updated the Panel on the investigation in response to offensive emails sent by two DTSC staff members in a regional office. Both DTSC and the Attorney General's Office conducted investigations, including the review of over 50,000 email communications, of which 90 were offensive or otherwise inappropriate. Disciplinary action was taken, and the employees were transferred from their former positions. The 90 emails were made available in the first release, as well as 3300 additional emails. Names and confidential legal information mentioned in those emails were redacted out of the released emails for privacy reasons. However, she reached out to each of the individuals who were mentioned in the emails and offered to share the unedited communications with them. Director Lee said she expected the department to release another 10,000 emails the following week. She has also spoken with the department's entire staff about her expectations that staff members treat everyone with respect at all times and not to ignore disrespect when they see it. In addition, DTSC has begun to implement human resources strategies to hire a culturally diverse work force. Director Lee is also forming a creative task force to work on cross cultural understanding within the department as well as with the public. DTSC Assistant Director for Environmental Justice Ana Mascareñas will lead this effort. DTSC also will be hiring consultants to make recommendations to the department. Policies will be updated as a result of this work.

Public comment via email:

Dolores Mejia of the Eastside Coalition Against Exide said the battery tax should finance remediation of lead and arsenic contamination by Exide Technologies and that the IRP should have an additional meeting before it finalizes draft recommendations.

Panel Member Campbell said it was unfortunate that the problem with the inappropriate emails by the two DTSC employees necessarily distracts from the DSTC's important efforts in safeguarding human health.

Vice Chair Vizzier said this behavior is a cancer that DTSC should not tolerate.

Chair Kracov requested an update on the department's efforts to improve cultural understanding later in the year.

Chair Kracov asked Director Lee's opinion of the Panel's draft recommendation to ask the department to review past decisions of the two staff members. Director Lee responded that the department has begun to do that and is prioritizing this significant amount of work.

**8. Closed Session**

*Chair Kracov adjourned the meeting for closed session at 3:20 p.m. to discuss personnel and litigation matters.*

**9. Reconvene and Report Out on Closed Session**

*Chair Kracov reconvened the meeting at approximately 5 p.m.*

**10. Adjournment**

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

Chair Kracov announced that the meeting was adjourned at 5:09 p.m.

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