**Independent Review Panel**
**Meeting Minutes**
**December 9, 2015**

1. **Call to Order**
   Chair Gideon Kracov called the meeting to order at 9:07 a.m.in the Coastal Hearing Room of CalEPA Headquarters, 1001 I Street, Sacramento, CA 95814.

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

2. **Welcome and Introductions**
   Chair Kracov introduced himself and asked Panel members and Legal Counsel Kristin Peer to introduce themselves.

   Chair Kracov said the public would have the opportunity to comment on each agenda item and that the meeting would be webcast. Webcast viewers may submit comments by email. He also announced that a translator was available for Spanish-speaking members of the public and asked the translator, DTSC Public Participation Specialist Veronica Lopez Villasenor, to introduce herself in English and Spanish.

3. **Announcements**
   Chair Kracov said the Panel received several documents the previous day and overnight, all of which would be available online.

4. **Agenda Review**
   Chair Kracov added discussion of the November 18, 2015 minutes to the agenda, announced that the next meeting would take place on December 18, 2015 instead of December 15, 2015, and suggested having an issue-spotting discussion under the agenda item devoted to Organizational, Operational, and Administrative Matters and to move that agenda item ahead of the joint presentation by People's Senate and the California Environmental Justice Coalition.

5. **Minutes of November 18, 2015 Meeting**
   Chair Kracov suggested that in the future the minutes be shorter and limited primarily to action items.

   **Motion**: Approve minutes of November 18, 2015 meeting with typographical changes identified by Panel Member Vizzier. Panel Member Campbell moved. Panel Member Vizzier seconded. The motion carried unanimously.

6. **General Public Comment**
   There was no general public comment.

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**7. Organizational, Operational, and Administrative Matters**

Chair Kracov read a list of topics he thought the Panel should consider.

Chair Kracov asked Christopher Law, DTSC's recently hired liaison to the IRP, to introduce himself.

Chair Kracov asked DTSC Executive Assistant Kim Smith to answer several questions about the per diem and reimbursement amounts/limits. Ms. Peer also provided some statutory information on the per diem.

The Panel discussed the issue of webcasting. Webcasting technical needs constrain where Panel meetings can be held, he noted. For example, the December 18 meeting will not have webcast capability.

The Panel discussed the issue of the budget. What is covered in the $50,000 budget for the Panel? How does IRP monitor and report budget? Ms. Peer said it was her initial understanding that the Panel is allocated $50,000 per year, including per diem and travel, and that the department is paying for the two IRP staff positions outside of the $50,000 IRP budget. Chair Kracov noted that the Panel will be severely constrained by its $50,000 budget, as it is understood. He asked if the AG's counsel would be paid from the Panel's $50,000 budget. Ms. Peer responded that the AG would charge for legal counsel services, but it was her understanding the Panel would not be charged for CalEPA's counsel.

The Panel discussed the issue of office space and necessary equipment for support staff. Panel Member Vizzier suggested that it may be important at some point to locate the support staff away from DTSC staff.

The Panel discussed the need to understand and abide by the Public Records Act.

The Panel discussed the need for policies to release agendas, minutes, and other documents in a timely fashion.

The Panel discussed the need to understand DTSC procedures for keeping order at public meetings.

The Panel discussed the issue of meeting agendas. It was noted that the Bagley-Keene Open Meeting Act requires that agendas be sent out 10 days prior to a public meeting. In response to a question from Panel Member Campbell, Ms. Peer said agendas can be amended before the 10-day deadline, but they must be finalized and made public 10 days before the meeting.

The Panel discussed the issue of subcommittees. Will there be subcommittees? Panel Member Vizzier responded that he did not recommend subcommittees.

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The Panel discussed the issue of meeting transcription. Chair Kracov stated he did not think it was needed.

The panel discussed the issue of whether the Panel should work on recommendations for more than the four topics specifically mentioned in SB 83. Should the panel address Site Mitigation separately or as part of the four topics?

***The panel took a five-minute break at 10:30. At 10:35 a.m. Chair Kracov invited the presenters for the People's Senate and the California Environmental Justice Coalition to make their presentation and said the Panel would continue the discussion of Organizational, Operational, and Administrative matters following the presentation***.

**8. Joint Presentation by People's Senate and California Environmental Justice Coalition**

Chair Kracov disclosed that the Center for Community Action and Environmental Justice (CCAEJ) has been a client of his in the past and that as of the day of this meeting, all matters handled with CCAEJ have been concluded.

Presenters:
Penny Newman, CCAEJ
Ingrid Brostrom, Center on Race, Poverty, and the Environment (CRPE)
John Mataka, CEJC and Grayson Neighborhood Council
Thomas Helme, Valley Improvement Projects

Ms. Newman was the first presenter. She read a December 9, 2015 letter addressed to Gov. Brown and signed by representatives of numerous organizations, including herself on behalf of CCAEJ. The letter demanded the Legislature and governor's immediate attention to the use of government computers and email systems within DTSC to transmit overtly racist emails specifically targeting Asians, Latinos, and African Americans. The letter stated that as a result of the emails and countless meetings and hearings with DTSC, her organization and the other signatories to the letter have lost faith in the department. The letter made the following requests:

- Release all racist e-mails to public and conduct a full, open, and transparent investigation into them.
- Review all emails within the department to identify any other inappropriate and unacceptable communications and take appropriate action.
- Review all cases the identified employees have participated in to determine if their racial beliefs and attitudes have impacted decisions.
- Establish a zero tolerance policy for racists or otherwise prejudicial statements, attitudes, or behavior.
- Analyze and disclose staff demographics at DTSC and implement a diversity outreach and hiring program.

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- Hold a Senate Rules Committee hearing on this matter using subpoena power and provide recommendations to the governor for implementation.
- Address this issue through the newly created IRP.

Ms. Newman urged corrective action by the department, which she stated has not been taken to date.

The group then made a presentation on IRP Goals and Benchmarks: The Impacted Community Perspective on behalf of the California Environmental Justice Coalition (CEJC) and The People's Senate. The presentation made recommendations on Permitting, Enforcement, Public Outreach, Fiscal Management, Site Cleanup, and Pollution Prevention. For each topic they discussed issue identification, benchmarks and standards of performance, and examples of impacted communities. *(The PowerPoint version of this presentation is available on the IRP website at https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/IRP-presentation-December-9.pdf)*

Ms. Brostrom first covered Permitting**.**

Panel Member Vizzier then asked for examples to illustrate problems such as too much arbitrary discretion and what is not adequately reviewed. Ms. Brostrom promised to provide this information at a later date.

Panel Member Campbell asked for suggestions about the role of an appeals board to review agency decisions that CEJC and The People's Senate suggested. Ms. Brostrom responded that there is a proposal currently circulating and that CalEPA has a process with more accountability than DTSC. She promised to provide specific examples.

Chair Kracov asked what is meant by the statement that "DTSC does not address cumulative impact in determining risk to communities near proposed hazardous waste facilities." Ms. Brostrom responded that DTSC has few tools to address disproportionately burdened communities; if DTSC implements SB 673 correctly, this issue could be addressed.

Chair Kracov asked if DTSC should be responsible for CEQA compliance instead of the local governments. Ms. Brostrom responded in the affirmative; DTSC has the expertise, not local governments.

Chair Kracov asked if there are Tanner Act responsibilities that locals have to assume. Ms. Brostrom responded yes, but said that the act does not address which agency should be the lead one. Chair Kracov noted a desire to see the department assume greater responsibilities.

Chair Kracov asked Ms. Brostrom to elaborate on recommendations regarding overburdened communities. Ms. Brostrom responded that it is inappropriate to permit projects with public health impacts in overburdened communities.

Mr. Mataka next covered Enforcement.

Panel Member Vizzier then asked Mr. Mataka to elaborate on the vision of public participation in enforcement settlements. Mr. Mataka responded that it is important for community members to have a say in settlement amounts. Those who are affected by pollution should have a voice in the fine amounts. Many of the fines he has seen are very low, he said.

Panel Member Vizzier noted that DTSC already publishes enforcement orders and asked what is envisioned about tracking and publishing the orders. Ms. Brostrom responded that EnviroStor is incredibly hard to use. She added that while the orders are posted, she is not sure if compliance is posted.

Panel Member Campbell called attention to the presentation statement that fines are not used to benefit communities where violations took place and asked if there are examples of fines being used to benefit a community. Mr. Mataka responded that fines should be used to improve communities, such as planting more trees. They should seek out the advice of environmental justice people who are working in the community. Ms. Brostrom responded that there is mechanism in place with CalEPA to increase the fine revenue that could be used in a Supplemental Environmental Program (SEP) and that DTSC should track and incentivize it.

Chair Kracov asked the presenters about their opinion of the performance of the Enforcement Division. Ms. Brostrom responded that it has not been doing a good job. The public perception is that DTSC is very close to industry and has difficulty in holding polluters accountable. Mr. Mataka responded that facilities wait until the last minute to submit their permit application. This gives them extra time to operate on continued permits.

Chair Kracov asked about their opinion on DTSC's complaint handling. Ms. Brostrom responded that communities are largely left in the dark. There is a lack of communication. Ms. Newman said that there is an example of negligence in Pomona; DTSC stopped an investigation due to a staff shortage and took no action, even though the department saw violations.

Chair Kracov asked if a statutory change would be required to publicize enforcement settlements. Ms. Brostrom responded that she was not sure.

Chair Kracov asked how the presenters respond to folks who call for keeping California wastes within the state. Mr. Mataka responded that the issue is not whether we take care of our own waste; the issue is why hazardous waste facilities are always in communities of color.

Chair Kracov asked if there is something in statute that requires or incentivizes local addressing of hazardous waste. Ms. Brostrom said a law was passed in the 1990s that required local hazardous

waste plans, but it was never implemented. Chair Kracov asked Ms. Brostrom to write up something on this subject.

Panel Member Vizzier said he would like to hear from U.S. EPA about how that agency works with communities on settlements. It would be worthwhile for CalEPA to give a presentation on this.

Ms. Brostrom next covered Public Outreach.

Chair Kracov then asked what was meant by the statement that DTSC is developing a new public participation plan without public participation. Mr. Bradley Angel of Green Action and CEJC responded that things need to happen so that the plan is meaningful and not window dressing. Ms. Newman responded that we have numerous plans, but the plans must talk to people in a way they understand; we need better communication with the community. Ms. Brostrom responded that communities are trying to build mechanism to hold DTSC accountable; it would be helpful if there were a more formal way for this to happen.

Chair Kracov asked the presenters about their thoughts on DTSC staff morale. Ms. Brostrom responded that there is a lack of respect and an "us versus them" mentality. Ms. Newman said DTSC should not use PR staff to communicate with community members. Instead, the staff members who actually make decisions should talk to the communities. Mr. Mataka responded that DTSC morale must be very low because they have so much time to send racist e-mails.

Mr. Helme next covered Fiscal Management.

Panel Member Vizzier then asked if allocating money to orphan sites via Supplemental Environmental Projects (SEPS) is the ideal response. Ms. Brostrom responded that SEPs involve a small amount of money and are meant to go to clean up communities. It is not the ideal response, but the Orphan Fund is dwindling.

Chair Kracov asked the presenters to elaborate on the financial assurances policy. Ms. Brostrom responded that they address post-closure, but not corrective action, although there seems to be uncertainty on this subject. A legislative solution may be needed. They are also insufficient for corrective action. Ms. Newman responded that the federal "Superfund" used to provide funding for orphan sites, but no longer does. The state does not have funding for maintenance. Ms. Brostrom commented that orphan site funding needs to be sustainable. Ms. Newman commented that we need to acknowledge that a contaminated site will require cleanup work.

DTSC Director Barbara Lee addressed the issue of racist emails. She stated that she does not condone the behavior of the emails. She said CCAEJ withdrew its Public Records Act request, but a subsequent request was made, and the department complied with it. DTSC took a number of actions in response to the emails. It conducted a personnel investigation as well as a broader investigation and requested an independent investigation by the Attorney General's Office. A staff meeting was

held to communicate expectations that DTSC staff be professional and respectful and that racism will not be tolerated. There also is mandatory training for staff. In conclusion, Director Lee said she took this matter extremely seriously and has made a priority of reaching out to communities.

Chair Kracov said it is up to everyone to work together to right the ship at DTSC.

Ms. Newman said she was told that her organization's request for sexist and racist emails in its PRA request was too subjective.

Public Comments:

Maricela Mares-Alatorre of People for Clean Air and Water in Kettleman City questioned use of the Statement of Overriding Consideration, which she said allows DTSC to victimize disproportionately burdened and vulnerable communities. DTSC continues to make decisions that negatively affect communities. For example, the Kettleman facility had 72 toxic waste violations, but only minor fines.

Marie Harrison of Greenaction and CCEJ said she lives in San Francisco's Bayview-Hunters Point and stated that DTSC staff is not enforcing the law and that she wants her community to be a safe environment.

Leaotis Martin of Greenaction and CCEJ said he is from Bayview-Hunters Point in San Francisco and requested enforcement action.

Lauren Ornelas of Food Empowerment Project read a letter from Marylia Kelley of Tri-Valley CAREs regarding Lawrence Livermore National Laboratory radioactive toxicants. The letter stated that the Lawrence Livermore Lab is performing work with hazardous chemicals and that DTSC should conduct an Environmental Impact Report (EIR) of its waste stream before issuing a permit renewal to the facility.

Delores Mejia of the Eastside Coalition Against Exide urged the Panel to address total cumulative impacts of toxics. She said DTSC has not addressed or responded to her numerous past complaints. She stated that public participation is a hoax with DTSC and concluded with the suggestion that the state Senate conduct an audit of DTSC.

***The Panel adjourned for lunch at 1:10 p.m. and reconvened at 1:50 p.m.***

Arthur Rodriguez of Delano expressed concerns about a toxic plume in Vallejo. He said the city is not willing to do anything about the problem and someone needs to address the problem.

Xonia Villanueva of the People's Senate and Concerned Neighbors of Wildomar said she is a former resident of the Autumnwood community in Wildomar. Her family fled the community as a result of chemical odors. Her family and many other families have been plagued with sickness and death

from chemical contamination in the community. Residents have reported illegal dumping, but no action has been taken. DTSC finally agreed to test the Autumnwood site. The testing excluded chemicals of concern, resulting in the false appearance that the community is safe. Community requests for help and testing were repeatedly disregarded. Raw data and reports from third party investigations support the community's claims. Developers did not have to provide a sufficient insurance policy for liability associated with their importation of toxic landfill material. DTSC had an advisory for fill material, but it was not mandatory. DTSC staff said that there was no clear responsible party, this did not fall under its jurisdiction, and the Orphan Fund did not have money to clean up the site, even though $500,000 was in the fund at the time. People need accountability, integrity, transparency, and broad reform. DTSC staff who worked on Autumnwood violated DTSC's own testing protocol.

Lupe Martinez of Delano expressed concerns about contaminated Brown and Bryon sites in Shafter and in Arvin. Talk of cleanup has been on-going for 30 years, but no significant work has been done. Some work was done at Shafter, which is under DTSC's jurisdiction. Some dirt was removed, but work stopped because they found more toxicants the further they dug. In Arvin, a "Superfund" site, there has been little action from the federal government. There is no communication between DTSC and communities. Supposedly, toxic wastes will go to a facility in Buttonwillow, but that facility's permit has not been renewed. DTSC must rebuild this trust. Either reform DTSC or get rid of it, he concluded.

Wafaa Aborashed of Bay Area Healthy 880 Communities stated that there is no trust in DTSC and that the department must change the way it deals with corporations and the affected communities.

People's Senate and CEJC next continued their presentation, with Ms. Brostrom covering Site Clean-up.

Chair Kracov stated he has heard a lot about the concept of "averaging" rather than looking at hotspots during site cleanup and asked Ms. Brostrom if she knows of any justification for this. Ms. Brostrom responded in the negative.

Chair Kracov asked if radioactive waste is going to unpermitted facilities. Ms. Brostrom and Mr. Angel responded that this has occurred.

Chair Kracov asked if cleanup standards are consistent from community to community. Ms. Brostrom and Mr. Angel responded that communities are not getting the same levels of cleanup.

Mr. Angel next presented on Pollution Prevention.

Chair Kracov asked the presenters what they would ask the Panel to do about pollution prevention. Mr. Angel responded that DTSC should look at the Hazardous Waste Prevention Program and make

sure it addresses the communities' concerns. The contemplated pilot projects are just a drop in the bucket, he said.

Mr. Vizzier asked Mr. Angel if he had an opinion on voluntary standards/measures. Mr. Angel responded that voluntary measures clearly are not working. Ms. Brostrom responded that DTSC should move away from voluntary measures and work for mandatory source reduction.

Ms. Brostrom next presented concluding thoughts. She asked the Panel to adopt recommendations from The People's Senate and CEJC as the standard benchmarks. She stated that the impacted residents are experts and willing to provide input. Finally, she stated that the IRP is the only accountable body with the authority to influence and force real change at DTSC.

Chair Kracov recognized Mr. Angel as a person with great energy for this work. He added that the IRP will try to meet their expectations and the expectations of the communities and that it will take the collective wisdom to figure out how to do that. He implored everyone to be patient with the Panel as it tries to meet high expectations.

Public Comments:

Ms. Cynthia Babich of the Los Angeles Environmental Justice Network and Del Amo Action Committee said she has been working on the Del Amo "Superfund" site for over two decades and called for a strong state agency to balance the federal government's inefficiency. As an example, she said there is a groundwater cleanup plan in the community that is supposed to take 5,000 years. This is not acceptable, she said. Ms. Babich added that the issue of state concurrence with federal opinion is confusing to her. She also said the Panel has an army of community people to help it.

***The Panel resumed its discussion of Organizational, Operational, and Administrative Matters.***

Chair Kracov asked DTSC to provide the IRP with the following documents: all legislation affecting DTSC in the last two years; 2006 LAO report on Financial Assurance and Cost Estimates, 2005 Quemetco Battery Recycling Permit with requirements for off-site monitoring, departmental procedure memorandums (DPMs) generated in the past 18 months, DTSC regulations promulgated in the past two years, anticipated regulations, and 2014 Public Participation Plan.

The Panel then continued the discussion of the topics that Chair Kracov earlier suggested it address.

The Panel discussed the issue of whether the Panel should webcast all meetings. It doesn't appear to be available in all locations.

The Panel discussed the issue of whether the IRP should have a lawyer. Chair Kracov said they originally thought the Panel would have a DTSC lawyer, but the public commented that such counsel would not be very independent. Nor would a CalEPA lawyer be viewed as independent. He said the

Panel is looking to the Office of Attorney General for legal counsel, but the public has concerns about the independence of employees of that office as well.

The Panel discussed the question of immunity. What protections do public officials have in managing staff? What other kinds of immunities do Panel members have? What can the Panel do and not do? The Panel decided to deal with these questions at a later date. He noted that Ms. Peer had provided the Panel with some written information on this subject.

The Panel discussed the issue of ex-parte communications. Chair Kracov said that due process requirements seem to indicate that Panel members cannot have confidential discussions with stakeholders. Panel Members must have an understanding of the rules.

The Panel discussed the issue of conflict of interest. Chair Kracov said that he may have clients appearing before IRP. Panel members must keep in mind any actual and perceived conflicts of interest.

The Panel discussed the issue of whether the Panel should have a vice-chair.

**Motion**: Elect Mr. Vizzier as vice chair. Panel Member Campbell moved. Chair Kracov seconded. The motion carried unanimously.

The Panel discussed the issue of staff for the IRP. Chair Kracov said the IRP should discuss items such as panel member responsibilities in working with staff.

The Panel discussed the issue of translation. Panel members agreed that meeting agendas should be translated into Spanish. Chair Kracov asked DTSC Assistant Director for Environmental Justice Ana Mascareñas for her thoughts on what should be translated. Ms. Mascareñas responded that she would get back to the Panel with best practices.

**Motion**: Post available meeting webcasts on the IRP website. Chair Kracov moved. Panel Member Campbell seconded. The motion carried unanimously.

The Panel discussed the issue of document submissions from the public and the DTSC. Panel members agreed that all written documents submitted at public meetings or to the entire Panel would be posted on the website. However, email messages would not be posted in most cases. They agreed to make DTSC IRP Liaison Christopher Law the conduit for website postings for the time being. Ms. Peer said Panel members individually should feel free to talk to members of the public. She also clarified that the Bagley Keene Open Meeting Act does not require the Panel to post communications on the website. Ms. Peer added that communications are not confidential. Chair Kracov said protocols should be set up on how the Panel maintains and disseminates communications, and the Panel should advise the public that communications with Panel members

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are not confidential. DTSC Legislative Director Josh Tooker stated that DTSC staff has been posting received documents that are addressed to the entire Panel.

**Motion**: Continue current practice of posting on website all documents submitted at public meetings or mailed or emailed and addressed to full Panel. Vice Chair Vizzier moved. Panel Member Campbell seconded. The motion carried unanimously.

Panel Member Campbell brought up the issue of public comment length. The Panel agreed to keep the length up to the discretion of the chair for the time being.

Ms. Brostrom commented that it is important to allow a reasonable amount of time for members of the public to speak and that three minutes seems too short. She said it is more important to hold meetings in the communities than it is to webcast the meetings.

The Panel discussed the issue of media inquiries. Panel members agreed to give Chair Kracov the discretion to handle media inquiries.

The Panel discussed the issue of meeting minutes. Who will take them once the Panel hires its staff?

**9. IRP Reporting requirements**

Chair Kracov summarized the IRP's reporting requirements in SB 83 and suggested a formal work plan to set out the Panel's work in the coming months.

The Panel agreed to submit a simple, placeholder report to meet the January 10, 2016 Health & Safety Code Section 57014(h) requirement for recommendations and a more substantive report with recommendations for the Health & Safety Code Section 57014(f) progress report that is due on January 28, 2016.

The Panel also agreed to draft the suggested work plan and recognized that Panel members may have to do so without staff help.

**10. Future Meeting Schedule and Agenda Items**

The Panel agreed tentatively to hold future meetings on January 13-14, February 10, and March 9, 2016. The Panel will revisit future meeting dates at its next meeting on December 18, 2015.

Chair Kracov suggested the following agenda items for the January meeting: DTSC's budget, staff organization chart, EnviroStor, and reporting to the Panel.

Public Comments:

Ms. Brostrom, speaking on behalf of Delores Mejia, requested that substantial time be set aside for public comments at future meetings.

***Chair Kracov adjourned the meeting for closed session at approximately 4 p.m. to discuss personnel matters.***

**11. Closed Session**

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

The Panel reconvened at 4:10 p.m. Chair Kracov announced that there was nothing to report from the closed session.

Chair Kracov announced that the next meeting would be at the Caltrans building in Los Angeles, 10 a.m. to 5 p.m.

**13. Adjournment**

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

Chair Kracov announced that the meeting was adjourned at 4:11 p.m.

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