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To: Gideon Kracov, Chairman, Arezoo Campbell and Michael Vizzier
Independent Review Panel

Comments on the Department of Toxic Substances Control's Clean-up Program

The Independent Review Panel was created by Senator Kevin De Leon because the Legislature lost confidence in the Department of Toxic Substances Control (DTSC) to fix its own problems. Recommendations will be made by the panel to Senator De Leon regarding steps that must be taken to make DTSC an organization that upholds its legislative and regulatory mandates. Thank you for volunteering to be on the panel.

In this correspondence I will discuss the following points:

1. **The management structure at DTSC is broken. People working in the many field offices are working independently without adequate leadership. Communication is inadequate. Each office has its own culture and standards. The facilities and cleanup sites are concentrated in areas of the state suffering with inadequate staffing and resources. The executive leadership team is in Sacramento.**
2. **Clear, consistent mandatory standards for cleanup of sites should be established. Training to reinforce those standards should be done.**
3. **DTSC has laws and regulations with significant authority, monetary and criminal penalties. These laws and regulations are not adequate enforced and are underutilized. The Department must have an aggressive legal team focused on maximum reliance on California's laws and regulations to bring violators into compliance. The legal team must work closely with the programs.**

DTSC Management Structure

DTSC has offices in Sacramento, Berkeley, Fresno, Los Angeles, Orange County, San Diego and Imperial County. The Program Directors are in the Headquarters, at the Cal/EPA building (ivory tower'ish) and are Career Exempt Employees serving at the pleasure of the Governor. In general, inspections, enforcement and cleanups are done

by the staff in offices throughout the state. If a project becomes controversial it might be moved to Headquarters. This is demoralizing for staff that worked on the project in the field office. It also impedes access to documents, the files are shipped to Sacramento. Each field office has its own culture and managers. Communication between the seven offices and Headquarters is difficult.

The retirement of a number of experienced and knowledgeable managers has impacted all the offices. The highest level of management in the field office is Supervisory Hazardous Materials Specialist II; they serve as Branch Chiefs. A number of experienced and knowledgeable people have retired in the last 3-4 years and many of the Branch Chiefs are likely to retire in the near future. In an organization where the executive leadership changes with a new administration (sometimes more frequently) the managers in the field offices ensure consistency and stability in the work.

The organization at DTSC is very different from the Regional Water Quality Control Boards. Each of the Water Boards has an Executive Director and a Board. At one point each of the major DTSC regional field offices, Sacramento, Berkeley, Los Angeles and Orange County had a Regional Administrator. The Regional Administrators were on the DTSC executive staff. They were held accountable for the work in the Regional offices.

During the Wilson administration the Regional Administrator positions were eliminated and executive management of the major programs was transferred to Sacramento Headquarters. It was the wrong thing to do. Each geographical area has its own environmental and political challenges. The program managers in Sacramento often cannot understand or manage the work in the field offices. Community representatives mistrust people coming from Sacramento. Sometimes people in the LA office feel like the poor cousins but Los Angeles is a big place.

During a recent meeting Jane Williams asked several people to provide introductory remarks. At Jane's request I spoke last as the most senior person. I choose to share insights related to my experience as a Branch Chief in DTSC's Enforcement Program. This is a summary of my comments;

> A company with serious hazardous waste violations is also violating other environmental laws. Environmental agencies need to work together to address all environmental violations.
>
> A small lie is evidence of a willingness to lie and the possibility that there is or will be additional dishonesty.

> The executive management of a company dictates the priorities of that organization. If the management minimizes compliance with laws and regulations the employees will behave accordingly.

The leadership of a government organization has a greater responsibility. They communicate the organizations priorities in many different ways. At one point the Hazardous Waste Program Director told the inspectors to be more lenient with the companies they inspected. The comment clearly reflected his lack of support.

The recent conflict regarding e-mails that are racist and reflect contempt for community members is in part due to the failure of the leadership of DTSC to maintain a zero tolerance for this behavior. Recently the Consumer Watchdog reported additional racist remarks made by a supervisory toxicologist and a first line manager in the DTSC Cypress Office. Their comments were outrageous. The comments cast doubt on the validity of the work they've done on a number of important sites. You heard about Wildomar on December 18, 2015.

Early in my work in Los Angeles, the Regional Administrator provided guidance on setting priorities to his staff. Angelo Bellomo elegantly stated our priority was protecting the environment. When we were making decisions about what to do first we should identify our most important work within that priority. I have relied on that guidance over the many years I've done environmental work.

You may find my remarks simplistic but the failure of DTSC management to clearly identify and effectively communicate the right priorities is a major element of the erosion of DTSC's effectiveness.

There is no consistent message.

A particularly difficult time began in January 2006 when Arnold Schwarzenegger appointed Maureen Gorsen as the Director of the Department of Toxic Substances Control. Early in her administration a legal review web page described Maureen Gorsen's plans for DTSC:

> The toxics department director is planning significant internal staffing changes this summer to key enforcement and permitting divisions to address longstanding concerns that these areas are severely lacking in efficiency. Shakeups within these divisions are seen as important not only for their impacts on industry and environmental issues, but also because they are likely to draw controversy and resistance from within the department.

The key phrase in the quote, "are likely to draw controversy and resistance from within the department."

Director Gorsen almost immediately began reorganizing, restructuring, and dismantling programs. She attempted to utilize a variety of management techniques, personality

evaluations, 360 degree management reviews, team management approaches, etc. For the Enforcement Program the most damaging steps included severely restricting referrals to the CA Attorney General's arguing budgeting problems made this necessary and redirecting limited hazardous materials specialist vacancies originally designated for technical staff to the Department's External Affairs Office utilizing the vacancies to hire public relations personnel.

She essentially dismantled the Department's Schools program and sidelined and demoralized several long standing and experienced managers. At one point a number of experienced toxicologists retired at the same time in protest. She described the Department's senior level management team as "the lead in the middle" during an external advisory committee meeting in the Chatsworth office. Much of the work assigned to managers was essentially busy work that made it difficult for them to do their primary work. She viewed with contempt work described as core work. The Department's priorities shifted erratically with little or no consistency creating confusion and demoralizing the staff. Unfortunately the harm done during Gorsen's administration still affects DTSC today.

Reorganization of limited resources does not insure more will be accomplished. It never worked very well. Staff in Sacramento trying to work on projects in the field offices has never worked very well. The staff should be in the locations with the highest environmental concerns. Toxicological and geological resources are critical component

Technical support is vital to DTSC's success. DTSC needs a stronger toxicological program or must rely more on the Office of Health Hazard Assessment for this support. Independent toxicological support would contribute significantly to ensuring greater integrity.

Clear, mandatory standards for cleanup of sites should be established. Training to reinforce those standards should be done.

The Voluntary Cleanup Program was created during difficult economic times in the early 1990's when Pete Wilson was the governor. The Department of Toxic Substances Control was facing staffing reductions. A number of DTSC staff received layoff notices and the Department's executive management team explored options for getting additional funding and avoiding those layoffs.

The streamlined program was created to address clean up of low-risk sites and put the contaminated properties back into productive use. Corporations, real estate developers and local and state agencies would enter into Voluntary Cleanup Program agreements to restore properties quickly and efficiently, rather than having their projects compete for DTSC's limited resources with other low-priority hazardous waste sites.

Unfortunately the program was seriously flawed from the beginning. Competition for the Department's limited staffing resources continued to be problematic. This was due in part to the inability of DTSC to hire additional staff. The new program was staffed by already overworked employees asked to assume additional responsibilities.

The Voluntary Cleanup program was created for low risk properties. The definition of a low risk site was arbitrary. The funding allocated for California's Superfund Program was running out. A report published in 1984 by the Commission of State Government and the Economy predicted that it would take 46 years to clean up 93 sites listed on California's Superfund list. It the list grew to 200 sites, an outcome anticipated by the Hazardous Waste Branch of the California Department of Health Services, the Superfund program would have to be extended to the year 2084. The Department's web page now estimates that 90,000 properties in California require clean up. The web page indicates that about 125 sites are cleaned up every year.

When the program began lines may have been drawn to differentiate the numerous "low priority" sites from the sites that posed an immediate and serious threat to public health. Many of those higher priority sites were also identified as Superfund sites. Extensive work on those sites was underway. The sites identified at that time would remain high priority sites ranked on California's Superfund list. The massive volume of work, the difficulty in setting priorities and continuing limited staff resources have created a situation where the lines have blurred. The definition of a low risk site is unclear. It is important to understand that sites have to be properly characterized before levels of risk can be accurately defined. There does not appear to be any clear policy regarding sites that pose more serious risks. Instead communities, developers and local governments constantly compete for limited resources.

When a developer enters the Voluntary Cleanup Program they want one thing, a **No Further Action Letter** from the Department. They want to minimize the cleanup costs. Soil contaminated with hazardous waste is expensive to excavate, transport and dispose or treat at a permitted facility. Developers have a motive for minimizing the amount of soil characterized as hazardous waste. Often properties are inadequately characterized.

DTSC project managers must have clear requirements regarding the steps necessary to insure a site is adequately characterized. Clear, mandatory guidance that requires complete site characterization is critical.

Averaging sample results is also difficult, composited samples are inaccurate. Properties often have areas of concentrated soil contamination and areas when the contamination is less concentrated. One technique to solve this problem is to mix contaminated soil with less contaminated soil resulting in contamination levels that fall

below regulatory standards. This enables disposal of the soil at a non-hazardous disposal site. Without adequate regulatory oversight this is the most likely outcome. The people living next to the piles of removed soil fear migration of this soil through dust dispersion. If the property is adequately characterized the need for storage and handling of excavated soil is minimized.

Clear standards must be utilized for any site requiring soil remediation. Companies remediating sites must follow clearly defined standards and the project managers overseeing the work must understand and enforce those standards. DTSC oversight of cleanups must be enhanced.

A peer review step may be considered. Project managers working on voluntary cleanups would work with the company to develop cleanup proposals acceptable to DTSC. When those documents are completed they would then be reviewed by a peer review team. This team would provide comments on the cleanup proposal. This would enhance the quality of the work.

Ecology Control Industries in Los Angeles County unincorporated area in the Harbor Gateway Torrance and Normandie

I have enclosed Del Amo Action Committee comments on a Ecology Control Industries voluntary cleanup of soil impacted by DDT, industrial activities and demolition of buildings on the property during a period of 40-65 years (1950-present) , mysterious PCB contamination and contamination from the removal of 17 underground storage tanks, several were leaking when they were removed. Currently the property is owned by a hazardous waste transporter and emergency response contractor.

Reports on the underground tank removal reviewed at the Los Angeles Regional Water Quality Control Board indicated that contaminated soil excavated when the tanks were removed was put back in the hole created by the excavation with the permission of the LA Department of Public works project manager. The tank removal happened in the early 1990's. Removal of soil piles containing DDT took place in 2005-2006. A soil vapor treatment system was installed under the direction of the Los Angeles Regional Water Quality Control Board in the mid-1990's with approval to turn off the system granted in the late 1990's. The DDT contamination in the soil came from storm water runoff from the Montrose Chemical facility. The largest DDT manufacture in the country.

The enclosed correspondence should help to demonstrate the inadequacies of the current DTSC Voluntary Cleanup Program. It was interesting to hear similar horror stories during the December 18, 2015 meeting.

DTSC allowed a second excavation of DDT contaminated soil in the fall of 2015. The USEPA took over the cleanup in response to concerns expressed by the Del Amo Action Committee. This excavated soil is still in piles on the property or in dust in the adjacent community and/or in storm water runoff.

A developer is anxious to see the cleanup completed so that they can build homes on the nine acre site.

DTSC has laws and regulations with significant authority and monetary and criminal penalties. These laws and regulations are not adequate enforced and are underutilized. The Department must have an aggressive legal team focused on maximum reliance on California's hazardous waste laws and regulations to bring violators into compliance. The legal team must work closely with the programs.

I offer the following example. Southern California inspectors took samples on the property of a company across the street from Exide. Samples taken from soil in flower boxes at the company had 57,000 parts per million of lead (the level of lead regulated as hazardous waste is 1,000). Samples from the roof of the building and at other locations on the property were also significantly elevated. I recommended the issuance of violation notices and enforcement at Exide for illegal releases of lead. The legal office refused to support my recommendation arguing that it might be difficult to prove the lead came from Exide. Exide did remove the lead under an order issued by permitting but they did not pay any fines or have any record of violations.

Current legal resources are limited and must be enhanced and more effectively integrated with all of DTSC's programs. Attorneys who know the law and are willing to be aggressive are essential. The DTSC Strategic Plan for 2014 -2018 identifies as a guiding principle "actions and decisions should be legally defensible." What is needed is a legal team with the courage to aggressively enforce California's laws and regulations.

One legal mechanism available to DTSC and underutilized is the ability to make a determination of Imminent and Substantial Endangerment (I & E). This determination enables DTSC to order compliance with the law and remediation to stop an imminent hazard. Failure to comply with the order enables DTSC to impose a $25,000 per day penalty. In July 1993 DTSC published a policy on the use of a determination of Imminent and Substantial Endangerment. A team including the project manager, the first line supervisor and an attorney are responsible for the decision to issue the I & E Order. The policy describes when an I & E order is appropriate:

If a reasonable inference can be made that taking an immediate action could significantly reduce continued or potential hazardous substance migration from the site through, air emissions, surface water runoff, groundwater migration or subsurface gas

migration. Endangerment means a threatened or potential harm and does not require a showing of a present or actual harm. Imminent refers to the imminence of risk of harm, not actual harm and may be proven by showing that a chain of events that may result in harm has been set in motion. For example, a release has resulted in a contamination plume which may be moving toward as yet uncontaminated drinking water aquifer. An emergency does not need to exist for an endangerment to be imminent. For example, the endangerment may still be imminent after completion of a remedial investigation or unsuccessful negotiations with the RP (s).

Although the I & E Order provides a vehicle for getting critical work done quickly, I doubt if the Department has utilized this authority to solve a serious environmental problem for many years. A company receiving an order has the option of requesting an administrative hearing. This option discourages the reluctant to issue the orders. The ability to understand the responsibly to take whatever steps are necessary to remedy serious environmental harm is overshadowed by the fear of failing to make persuasive arguments during a hearing. This coupled with a dispassionate toxicologist and an ultra cautious legal team provides a serious impediment.

I'm sure if you discussed this with DTSC managers they would offer a lengthy list of the reasons this regulatory authority is seldom used. Department enforcement staff often spends extensive time predicting the legal arguments a company might raise if an order was issued. Every rock is turned to look for pitfalls in violations. This undermines the willingness to take enforcement and is a symptom of a lack of courage to do the right thing. I would have issued the order to Exide and responded to their arguments when they were raised.

In fact enforcement personnel are encouraged to negotiate settlements in lieu of filing orders and taking enforcement. Settlement of a case with appropriate penalties and compliance is acceptable unless unreasonable compromise or time wasting settlement negotiations are required. In conducting enforcement a willingness to pursue the violations through final orders and other legal remedies must be present. Enforcement staff is seriously undermined if the legal office and executive management do not support more aggressive legal remedies when settlement negotiations fail to result in acceptable settlements.

I know that DTSC employees many people who are dedicated to their work and are frustrated by their inability to do more. I also know that the people working at DTSC are demoralized and wish they had the opportunity to provide their thoughts regarding how DTSC can be a stronger and more effective organization. The Independent Review Panel should solicit comments from current and former employees of the Department of Toxic Substances Control (DTSC). These comments could be received through panel meetings in the regional offices, staff interviews and/or an invitation for

written comments. Employees should be asked to submit comments without fear of retaliation.

If the panel members found it useful I would be happy to go to the two Southern California DTSC offices and talk with employees in those offices regarding their recommendations for improvement for DTSC. I would request their input in writing and then I would spend time in the offices conducting interviews and encouraging written comments. I would then summarize the comments in a manner that did not identify the individuals making those comments. My goal would be to make that process as useful to your work as possible. Also, I am in contact with a number of retired DTSC managers and employees. I would also ask them for their comments. I am certain this work would be useful.

When the Polluter Pays

Is it possible that the erosion of DTSC is in large part to the link between DTSC, s work and the fees paid by the companies DTSC regulates? Is it difficult to do the right thing when a company is paying you for the service you provide? Inspection and Enforcement programs can't be operated like a bounty program (definition of bounty; a monetary gift or reward, typically given by a government, in particular). That is one of the reasons I wanted to talk about the 25 million dollar Com Cast settlement on December 18, 2015. DTSC's share of the settlement is going to upgrade the DTSC lab, to the enforcement program for equipment and to reimbursement of DTSC's costs. While DTSC is developing a progressive Supplemental Environmental Policy (SEP), it does not appear that any of the money from the Com Cast settlement, certainly one with one of the highest dollar settlements DTSC has reached, is going to SEP's.
I suggest there are inherent conflicts when funding is so directly linked to the companies DTSC regulates. Permitting of commercial hazardous waste companies is one example. Gaining a permit for a hazardous waste treatment or storage facility takes several years. Companies seeking permits from DTSC pay for those permits through fees. DTSC permitting staff are engaged in a protracted process of reviewing permit applications, CEQA documents etc. Permit denials are seldom seriously considered. Corrective Action needed to mitigate contamination on a RCRA facility through a RCRA Corrective Action process is also required. Mitigation can be seriously delayed and is not adequately considered as part of the permit review process.

As I mentioned in my oral comments, there are no new hazardous waste treatment facilities. All the facilities California currently relies on are old and antiquated. When I supervised the Los Angeles enforcement program the inspectors did not rely on the permits because the permits were outdated and ambiguous. They enforced laws and regulations. A careful review of the permitting process and its effectiveness in insuring safe facilities is necessary.

As an individual working in the Los Angeles area for over thirty years I am obligated to point out that the Los Angeles area has the highest number of hazardous waste generators in the state; approximately 20,000. The majority of California's oil refineries are located in Los Angeles. Most of these refineries were built in the early 1900's. World War II resulted in explosive growth and significant changes in Los Angeles. Both the Jordon Downs and Del Amo/Montrose communities experienced significant industrial expansion as a result of World War II. Both communities were rural farming communities in the 1930's. Jordan High School adjacent to the Jordon Downs housing community was built in the 1920's. Factories and manufacturing facilities were created in both the Jordon Downs area and the Harbor Gateway area during World War II. The area also saw the development of numerous military facilities. California has over one third of the military facilities in the country. The aero-jet industry brought additional industries and pollution.

During a Los Angeles Environmental Justice Symposium on December 14, 2015 a representative of the Los Angeles CUPA asked me a question regarding Jones Chemical, the company receiving 6 -8 tank cars of chlorine a week located next to the now closed Montrose Chemical Facility. He wanted to know if Jones Chemical was there before the residential community; this apparently to justify the location of an acutely dangerous facility next door to a Boys and Girls Club and a residential community. He implied the people who moved there should have known what was next door. Of course they don't. They didn't when they moved in and they don't know now. The Harbor Gateway includes a patch work of LA County unincorporated areas LA City and incorporated cities (Torrance, Carson, etc.). The Del Amo Site (previous location of a synthetic rubber plant) is located in the LA County area. The Montrose Site is in the City of Los Angeles. Land use planning in these areas is essentially non-existent.

On December 18, 2015, you heard from people suffering from the environmental contamination from all of this.

Thank you for asking me to submit written comments. I know you are all working hard to make the work of the Independent review panel as meaningful and effective as possible. Please do not hesitate to contact me with any questions or comments you may have.

Sincerely,

Florence Gharibian