

Example of a parkway in Los Angeles. “Ron’s Parkway Garden Recap: October, 2010” by LAGreenGrounds is licensed under CC BY 2.0 https://www.flickr.com/photos/62590725@N05

We are UCLA Law students enrolled in the Frank G. Wells Environmental Law Clinic, a class in which students work on behalf of community and environmental groups to help advance client goals through legal advocacy. This semester, we worked with Communities for a Better Environment, a community-based environmental justice organization that works in heavily polluted urban areas, to help protect public health from environmental harms caused by the Exide battery recycling facility. The Exide facility has been wreaking havoc in neighborhoods in East LA and Southeast LA for decades, leaving residences and public spaces extremely contaminated with lead and other toxins.

The California Department of Toxic Substances Control (DTSC), the agency responsible for holding polluters like Exide accountable for the contamination they cause, let Exide break rules and pollute far beyond allowable levels without a permit for years. (The Wells Clinic has been involved, off and on, in proceedings involving Exide for almost 15 years, beginning with a collaboration with community-based environmental justice advocates in 2006 to document the facility’s history of malfeasance in a DTSC permitting proceeding.) Now that the facility has been shut down and Exide has gone bankrupt, DTSC is managing the cleanup of Exide’s contamination, a process that has been beset by challenges and has not satisfied

local residents. Our work this semester has given us a glimpse into DTSC's inadequate handling of the current cleanup stage: removing lead and other heavy metals from residential parkways.

On April 2, we submitted a comment letter on behalf of Communities for a Better Environment, urging DTSC to reevaluate the process by which it arrived at its proposed cleanup goals for residential parkways impacted by the Exide facility in Vernon, which could leave lead levels up to ***four times*** what the State deems safe for residential use. Instead, DTSC should guarantee that all impacted parkways will be cleaned up to lead levels of no more than 80 mg/kg, California's standard for residential use.

Residential parkways are the patches of grass between sidewalks and the street, where residents let their children play, grow fruiting trees, plant gardens, walk dogs, and place mailboxes. Residents have been waiting for years for these spaces to be cleaned. DTSC is neither clearly communicating to the community the extent of health risks caused by the contaminated parkways nor giving residents a sufficient voice in determining cleanup plans.

To begin the parkway cleanup process, DTSC published two reports detailing the levels of lead and other heavy metals in residential parkway spaces. DTSC found lead levels in excess of California's residential standard in over 6,000 of the parkways it investigated. Nonetheless, DTSC's reports propose two possible cleanup scenarios—and one of them, "Cleanup Scenario #2," would leave parkways with levels of lead of 318 mg/kg, nearly four times the residential standard. Even proposing such a cleanup scenario is offensive to the residents of the affected neighborhoods, who have the right to use their parkways without having to worry about severe health impacts such as lead poisoning. The proposal highlights the disparity between what the State views as acceptable in low-income communities of color as opposed to other neighborhoods.

Even worse: DTSC is justifying its proposal based on a survey on community parkway use with a meager response rate of ***only 3 percent***. This survey exemplifies the insufficiency of DTSC's level of engagement with the community. The survey was primarily disseminated online, despite technology and internet access issues that the community faces, and the agency made little effort to raise awareness about the survey. The exact survey questions were changed mid-way through the data collection process, making the results unreliable for comparison. And the survey only asked what residents use their parkways for now, instead of

asking how residents would like to use their parkways. Parkway contamination has stymied community efforts to beautify neighborhoods by planting trees and gardening, so a survey that doesn't ask how the community wants to use parkways in effect forecloses community visions for these spaces.

Only after we worked with Communities for a Better Environment and community members to point out these serious oversights did DTSC reopen the survey. DTSC acknowledged that its outreach has been lackluster, admitting at one point during the public comment period that it never considered the survey response rate acceptable, despite having relied upon it to propose Cleanup Scenario #2. DTSC needs to offer paper, as well as online, surveys, and needs to canvas affected neighborhoods outside of typical work hours to make sure community residents know about the survey and why it's important. And DTSC should revise the survey itself to make sure it takes into account the community's desired parkway uses, not just current uses. Regardless of the survey responses, DTSC should clean the parkways up to levels safe for residential use.

The parkways survey is just one example of DTSC's poor community engagement. Throughout this process, even when DTSC has published information or held public meetings for residents, critical information has remained inaccessible. One of two public meetings was held during work hours on a weekday, when most community residents could not attend. DTSC's reports on the contamination and proposed cleanup plans were a combined 140+ pages long, using highly technical jargon and complicated cross references to appendices. Even if a resident had the time to read hundreds of pages of scientific information, the odds that anyone without a graduate-level scientific background could understand that information and process its ramifications are low. The public meetings simply repeated dry, technical statistics with little clarification. When DTSC did use more understandable graphics to convey information, they were clearly biased toward Cleanup Scenario #2, downplaying health risks and centering cost and implementation timeframe, despite the fact that DTSC's actual reports didn't clearly present any cost comparison. DTSC chose to present information in ways that obscured the reality: Residents in affected neighborhoods are facing a health risk when they use their parkways, and DTSC's favored cleanup proposal would unfairly leave them with contamination levels that simply shouldn't be permissible in residential neighborhoods.

DTSC needs to restore every affected parkway to the level of lead which is safe for unrestricted residential use: 80 mg/kg. And just as importantly, the agency needs to go back to the drawing board and reassess how it engages, educates, and protects

community members as it crafts its next cleanup proposal. This community has been burdened by Exide's pollution for far too long and should not be forced to sacrifice its visions for the future of the parkways by a half-hearted cleanup process.

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