

*Sent via E-mail*



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Communities for a Better Environment  
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California Department of Toxic Substances Control  
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***RE: Comments on Draft Human Health Risk Assessment and Investigation Report for the Exide Parkways Cleanup***

Dear Mr. White:

On behalf of the members of Communities for a Better Environment, we thank you for the opportunity to comment on DTSC's draft Human Health Risk Assessment (HHRA) and Investigation Report (SIPR) for the Exide Parkways Cleanup.

The Exide facility in Vernon has contaminated and wreaked havoc on neighborhoods in East Los Angeles and Southeast Los Angeles for years. The handling of this environmental crisis has been troubling from the start, and we believe that DTSC's recent reports are an extension of that problematic response. Now, community members are waiting for their parkways to be cleaned but they are not being effectively engaged in the cleanup process or being made aware of the extent of the health risks posed by the current levels of parkway contamination. Our concerns are severalfold.

First, Cleanup Scenario #2 proposed in the HHRA is simply unacceptable. This cleanup scenario would remediate only about ten percent of contaminated parkways. Even in the small fraction of parkways that this scenario would cover, DTSC would leave lead levels of 318 mg/kg, a commercial cleanup goal nearly **four times higher** than the level the State deems safe for unrestricted residential use. This makes no sense in a residential neighborhood, particularly because DTSC has promised to remediate the residential properties immediately adjacent to these parkways to the 80 mg/kg level. Residents should not be forced to live with such high levels of lead in spaces right next to their homes, and that they use and travel through every day. Community members deserve to be safe using their parkways in any manner and at any frequency they wish.

Second, the data collection processes and methodology by which DTSC arrived at the Cleanup Scenario #2 proposal were seriously flawed. Cleanup Scenario #2 was purportedly based on community survey responses regarding parkway use, but the survey had a response rate of only three percent. DTSC has already admitted, at an Exide Advisory Group meeting on March 11, 2021, that the agency never considered the survey adequate to justify the Cleanup Scenario #2 proposal. Nonetheless, DTSC proceeded with

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releasing a HHRA that proposes leaving high levels of lead contamination in residential neighborhoods.

Finally, DTSC has failed to properly disseminate information about the Parkways Cleanup process or to engage with the community about current and desired parkway uses. The reports and meetings thus far have left residents with more confusion and questions than answers. DTSC needs to do more to make information about the Parkways Cleanup accessible to community members and to ensure community voices are heard, and respected, during the process.

All contaminated parkways in the Preliminary Investigation Area (PIA) should be cleaned up to the unrestricted residential standard of 80 mg/kg. We respectfully request that DTSC revise the HHRA to incorporate additional community feedback it receives from the reopened survey process and eliminate Cleanup Scenario #2, which is especially unjustified given the lack of communication with and involvement of the affected communities.

**I. No Proposed Cleanup Scenario Should Leave Soil with Levels Higher Than the 80 mg/kg Unrestricted Residential Use Standard**

The HHRA’s proposed Cleanup Scenario #2 would leave parkways with lead levels of up to 318 mg/kg. This cleanup scenario is presented as the more cost-effective option and the HHRA suggests it is “likely acceptable” to community members.<sup>1</sup> To the contrary, community members are not supportive of a cleanup scenario that would leave lead concentrations in parkways above those approved for unrestricted residential use. In reality, DTSC’s proposal of Cleanup Scenario #2 raises serious equity concerns and highlights the disparity between what the State views as “acceptable” in low-income communities of color as opposed to other neighborhoods.

As a general matter, Cleanup Scenario #2 is less thorough and less safe than Cleanup Scenario #1, the alternative that would clean up contaminated parkways to the standard for unrestricted residential use. Even after completion, Cleanup Scenario #2 leaves parkways with lead contamination levels of 318 mg/kg. That means parkways will contain lead concentrations nearly *four times higher* than the 80 mg/kg level the State approves for unrestricted residential use.<sup>2</sup>

Parcels that contain lead contamination of 318 mg/kg or lower would not be remediated at all under Cleanup Scenario #2, despite the fact that residents would still be subjected to lead concentrations at levels that are, in some cases, multiple times higher than what is allowed for unrestricted residential use. The HHRA acknowledges that Cleanup Scenario #2 would remediate only 899 parcels, whereas Cleanup Scenario #1 would remediate

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<sup>1</sup> HHRA p. 54. One criterion the HHRA designates for each cleanup scenario is “Community Acceptance.” The HHRA labels Cleanup Scenario #1 as “Acceptable” and Cleanup Scenario #2 as “Likely Acceptable,” a tacit acknowledgment that Cleanup Scenario #2 is less than optimal and will be so perceived by the affected communities.

<sup>2</sup> <https://dtsc.ca.gov/faq/what-are-acceptable-concentrations-of-lead-in-soil-in-california/>

6,245.<sup>3</sup> The 5,346 parkways that Cleanup Scenario #2 does not address still contain lead at levels higher than unrestricted residential use criteria.

The difference in the amount of time it would take to complete these two remediation proposals only underscores the inadequacy of Cleanup Scenario #2. The HHRA concludes that it would take over six years to ensure that PIA parkways are remediated to safe levels for unrestricted residential use, but Cleanup Scenario #2 would take a mere 60 weeks—just over one year—to complete, leaving over 85% of contaminated parcels unremediated.<sup>4</sup> The HHRA also admits that Cleanup Scenario #2 provides less reduction of toxicity, mobility, and volume of tainted soil than Cleanup Scenario #1.<sup>5</sup>

Community members should not be forced to accept a hurried and haphazard cleanup that leaves them with parkways far more contaminated than the State would permit in wealthier, whiter communities. We believe that every community member deserves to be able to use their parkways in an unrestricted manner. Residents should be able to come and go as they please, walk their pets, let their children play, and simply live in these spaces without having to fear the health consequences of doing so. This basic right to unrestricted use must extend to even the most sensitive community members including children, pregnant women, and the elderly. Residents should have the ability to beautify their neighborhoods for their own enjoyment and to preserve the value of their properties without facing concerns about handling and disposing of contaminated dirt. Accordingly, 80 mg/kg should be the baseline cleanup goal for all parkways in the PIA.

## **II. The HHRA Based Cleanup Scenario #2 on Extremely Low Survey Response Rates and Qualified Data**

Beyond the equity issues inherent in proposing a cleanup scenario that leaves lead contamination many times higher than unrestricted residential levels, we are also deeply concerned that DTSC appears to justify that scenario based on a poorly executed community survey and qualified sampling data.

### *A. DTSC Relied on Surveys with Only a Three Percent Response Rate*

Perhaps most startling is DTSC's reliance on a survey with only a **three percent response rate** to justify a proposal to leave the great majority of the parkways in the PIA unremediated, and all parcels under-remediated.

According to the HHRA, based on the extremely low amount of data collected through the survey, DTSC has determined that community members only use the parkways for a couple of hours a day, a lower level than the assumed amount used for calculating safe levels for unrestricted residential use. Adjusting assumptions to account for much less use, the HHRA estimates that leaving lead contamination at 318 mg/kg would still be "safe." Aside from the equity issues raised above, there are multiple problems with this approach.

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<sup>3</sup> HHRA p. 63

<sup>4</sup> Id.

<sup>5</sup> HHRA p. 51

First, the extremely low response rate means that survey results cannot possibly be truly representative of community parkway uses. Indeed, they are not. Residents frequently garden in the parkways; eat fruit from trees that grow on the parkways; use the parkways as outdoor play spaces for children for multiple hours a day (including at homes where groups of children are cared for, even when those homes are not registered as day cares); and cross them as they enter their homes, tracking contaminated soil inside with them each time they do. A high school student has a swing on a tree on the parkway. The type, intensity, and duration of parkway uses simply were not covered by the handful of survey responses DTSC received.

Second, the survey—as initially drafted, and even now—only takes into account current parkway uses, never asking community members about desired prospective parkway uses. Residents in the PIA want to use the parkways differently than they do now, including by planting trees to improve both aesthetics and air quality, and by planting community gardens of edible vegetables and fruits (a concept which has been supported by local municipalities). Cleanup Scenario #2 would foreclose those uses; vegetables planted in the parkways would be unsafe to eat, and tree planting organizations would continue to assert, as they have in the past, that they cannot plant in these communities because of concerns about the handling and management of contaminated soil.

Cleanup Scenario #2 locks residents into future uses of the parkways that are incompatible with the neighborhood visions they have, while disingenuously claiming that is “acceptable” to the community. This is reminiscent of residents being told in the past that it would not make sense to fully remediate Exide contamination on school grounds because students do not spend all their time at school. This offensive logic deprives residents of using their communal spaces in the ways they could have if not for Exide’s negligence.

*B. Over a Quarter of the Data in the SIPR was Qualified in Some Way*

According to the HHRA, approximately 27.6% of the data collected during the soil investigation, which was then relied upon to conduct the HHRA, was qualified. It is unclear from either the SIPR or the HHRA the extent to which the qualified nature of that data impacted the final results of the HHRA. Given that such a significant portion of the samples were affected, DTSC needs to be transparent about these limitations of the study and explicitly explain why the final results of the HHRA can still be trusted given discrepancies in the data.

**III. DTSC’s Engagement with Affected Community Members Has Been Inadequate**

The HHRA’s Cleanup Scenario #2 proposal is all the more disturbing because DTSC purports to use “Community Acceptance” as a criterion for evaluating proposed cleanup options despite a failure to meaningfully engage the community in this process.<sup>6</sup>

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<sup>6</sup> HHRA p. 54

*A. The HHRA and SIPR are Inaccessible to the Average Person and Leave Many Important Safety-Related Questions Unanswered*

The sheer length and technicality of the SIPR and HHRA make them completely inaccessible to the average person. The reports themselves total well over 140 pages and include highly technical and scientific jargon. Key information regarding fetal lead levels and cancer risks is buried in charts and equations that are difficult to read and understand. Much of this information needs to be cross-referenced in different appendices and tables that are only available as separate documents, making it extremely challenging to view the report and the supporting data and information at the same time. Furthermore, none of the documents explain what the projected costs would be for each proposed cleanup scenario; accordingly, members of the public have no way to effectively compare all the facts.

Expecting a layperson without a technical background to understand the gravity and key takeaways of the SIPR and HHRA is entirely unreasonable. DTSC should do more to make the information in these reports accessible to community residents by providing summaries and infographics that explain, in an easy-to-understand manner, the health impacts of lead and other contaminants of concern, comparisons of cleanup proposals, and how residents can understand whether the parkways by their properties are impacted.

*B. Efforts to Disseminate the Community Survey Have Been Inadequate to Date*

Neither the SIPR or the HHRA discuss any community outreach efforts that were made to disseminate the survey or encourage responses. It is also unclear from the reports how the survey was initially disseminated, and why. As a result of comments at the February 17, 2021 public meeting on the Parkways Cleanup, the community survey has been reopened online, but at a March 11, 2021 Exide Advisory Group meeting, DTSC officials acknowledged that door-to-door canvassing and paper survey outreach efforts have been limited, at best, and stated that DTSC never believed the low survey response rate was acceptable.

While we appreciate DTSC's reopening of the survey, community members need to be made aware of the survey and its importance. Community members should be provided with non-electronic ways to participate, as some members of the community lack reliable Internet access. Door-to-door canvassing should take place, including outside regular work hours. Reopening the survey on its own is insufficient unless coupled with additional outreach initiatives and assurance that the entire community has access to the survey. And regardless of the survey results, we do not believe that cleanup to levels higher than 80 mg/kg would be justified under any circumstance.

*C. DTSC's Public Meetings Have Not Sufficiently Presented the Reports or Engaged the Community*

DTSC's public meetings to address the Parkways Cleanup have not effectively communicated information about the cleanup process or adequately involved the community.

First, public meetings have not been well-publicized or held at convenient times. DTSC advertised February 17 and March 18 Parkways Cleanup public meetings on its website, but efforts to inform the community about these meetings, especially in non-electronic formats, have been minimal. The February 17 meeting was held during regular business hours on a workday. A March 11 Exide Advisory Group meeting that addressed aspects of the Parkways Cleanup was not clearly advertised online and was also held during regular business hours. Daytime meetings like the February 17 and March 11 meetings simply are not accessible to the majority of working community members. At the March 18 meeting, multiple community members commented that information about the public process and the meetings was challenging to find and that community members were not aware the meetings were happening. At that same meeting, DTSC staff asked participants to share information about the Parkways Cleanup process with their neighbors, placing the burden to disseminate this information back on an already overburdened community. It is DTSC's job, not community members', to make sure the public knows about and is able to participate in the Parkways Cleanup process.

Second, these meetings did nothing to break down and explain the complex information that was presented in the SIPR and HHRA. Instead, the presentations used highly technical terms and did not explain what this information meant for the everyday lives and futures of community members. The clearest graphic used, a chart comparing Cleanup Scenarios #1 and #2, was clearly biased and obscured the facts. In a row labeled "Cost," the chart showed five dollar signs for Cleanup Scenario #1 against Cleanup Scenario #2's one dollar sign, despite the fact that the HHRA never concretely compares cost projections. Similarly, the chart showed five check marks for Cleanup Scenario #2's "Implementability" as compared with one check mark for Cleanup Scenario #1, again despite any clear information in the HHRA about why that would be the case. Both scenarios received an equal number of check marks for "Overall Protection of Human Health and the Environment" and "Compliance with Applicable or Relevant and Appropriate Requirements," even though there are significant differences in the public health and environmental outcomes associated with the two scenarios and Cleanup Scenario #2 fails to comply with unrestricted residential use criteria. This graphic seemed designed to lead the public to the conclusion that Cleanup Scenario #2 is the logical choice, completely eliding the implications of leaving high levels of lead contamination present in parkways while stressing cost and ease of agency implementation.

Many community members expressed frustration and confusion after the meetings, walking away with more questions than answers. DTSC has never concretely discussed the risks of undertaking particular activities, like playing or gardening, on the parkways. Utilizing infographics, labels, color-coding, and other similar tools would all be easy ways to communicate the most pertinent information. Yet thus far, DTSC has failed to share key public health information in clear ways, and its use of summary graphics has been misleading, as discussed above. When one community member did attempt to understand complex information related to residential cleanups and expressed concern over a year ago, DTSC downplayed the severity of the problem and told the member that there was "nothing to worry about".



Finally, as they participated in the public meetings via Zoom, participants could not see each other and had no way to tell how many other individuals were participating in the meetings. Unlike in-person meetings, where members of the public would be able to see the other participants, DTSC's online public meetings felt isolating and eliminated the sense of solidarity community members can feel when they see other interested members of the public in the room. Although we appreciate that COVID-19 has necessitated some changes to the format of public meetings, DTSC easily could have selected a Zoom format that allowed participants to see each other or gauge participation level, or simply could have told participants how many people were at the meetings. The failure to do so altered the power dynamic at these meetings, leaving participants without the sense of support they would normally feel from others in the community when expressing their concerns publicly, and potentially chilling comment as a result.

#### **IV. Conclusion**

The SIPR and HHRA represent an inexcusable attempt to justify inequitable standards for parkways in the PIA, based on community survey results and data that were poorly gathered and that are not reflective of community needs or desires. Throughout the Parkway Cleanup process, DTSC has failed to meaningfully engage community members, has downplayed the risks of existing contamination and the agency's cleanup plans, and has disingenuously claimed community buy-in for an approach that would lock PIA residents into unsafe levels of contamination in their neighborhoods for years to come.

DTSC should improve community outreach and engagement through a renewed community survey effort that solicits a high response rate and takes into account not just current, but desired, parkway uses. DTSC should also do more to clearly communicate the real risks and costs associated with leaving lead contamination in place. Regardless of the new survey's results, DTSC should abandon Cleanup Scenario #2 in favor of cleaning parkways to the 80 mg/kg level for unrestricted residential use. Like all Californians, the residents of the PIA deserve to be safe when they walk across, play on, garden on, and otherwise enjoy their parkways.

Very truly yours,



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