

# Botany Mercury Independent Review Panel

## TERMS OF REFERENCE

### 1 Scope

#### 1.1 Purpose

The NSW Environment Protection Authority (EPA) has been directed by the Minister for the Environment to undertake an independent review of the environmental and health impacts from historic mercury emissions from Orica's former Chlor Alkali Plant at Matraville.

The Botany Mercury Independent Review Panel ('the Panel') will aim to ascertain if there are communities and/or individuals at risk and, in so doing, assist in reassuring the community that appropriate actions are or have been taken through current and legacy projects managed by Orica and regulated by the EPA at the Matraville site. The Panel inform and oversee an independent review of the environmental and health risks associated with the historical emissions of mercury by Orica.

#### 1.2 Goals & Outcomes

In relation to the historical operation of the former Chlor Alkali Plant at Matraville, the Panel will:

1. Oversee a comprehensive independent review and analysis of the available data on the emission and distribution of mercury or mercury contaminated material;
2. Determine other information (e.g. submissions from members of the public) that may be available about potential community exposure to mercury originating from the former Chlor Alkali Plant;
3. Determine what further information (e.g. environmental sampling) is needed to assess the potential health risks to the community that are attributable to mercury emissions from the former plant;
4. Determine the appropriate criteria for risk assessment and environmental testing types, methodologies and locations to assist in determining the health risk including any seasonal variation, staged testing regime and appropriate quality assurance requirements;
5. Ensure that the appropriate environmental testing and analyses is conducted;
6. Oversee a health risk assessment, including any necessary clinical testing, to identify any significant routes and significant doses of exposure including the identification of susceptible populations to protect health;
7. Determine if there is a significant public health risk and the level of such health risk potential to the community associated with mercury release during the plant's operation from 1945 until 2002;
8. Determine if there are any significant sources of community exposure to mercury that are not currently being managed and controlled;
9. Ensure that the Data and Information Review and Environmental Testing Reports, with recommendations, are provided within 6 months of commencement, and that subsequent Health Risk Assessment Reports are provided in a timely manner by selected experts;
10. Ensure the investigation is conducted in an open and transparent manner and is communicated to the community;
11. Actively reassure the community that appropriate actions are being taken by Orica at the Matraville site; and
12. If in the conduct of the Panel's work it is established that other hazardous substances need to be investigated, this will be done.

### 1.3 Success Measures

Success will be measured by the following (see also Appendix 1: Independent Review Stages Indicative Timeline):

1. Steering Panel members confirmed – end February 2013;
2. Steering Panel first meeting and agreement on Terms of Reference – mid-March 2013;
3. Steering Panel prepares Scope of Works for Independent Review – end March 2013;
4. Agreement by the Panel members on the scope of works – mid-April 2013;
5. Procurement process to engage suitable expert(s) including presentations by applicants to the Steering Panel – April to end-May 2013;
6. Engagement of suitable expert(s) to undertake the review agreed to by the Panel members – end-May 2013;
7. A completed Stage 1 – Independent Data and Information Review Report and recommendations, including environmental testing types, methodologies and locations, in accordance with the scope of works provided to the Steering Panel – within one month of commencement of the review by selected experts;
8. Steering Panel completes evaluation of the Stage 1 – Independent Data and Information Review Report and recommendations from independent experts – within two weeks of receipt of report;
9. Evaluation by the Panel of findings and recommendations from the Stage 1 - Independent Data and Information Review Report, to be communicated to the community via the EPA website and a Community Forum – within one week of completing the Stage 1 evaluation;
10. Steering Panel carries out recommendations of the Stage 1 – Independent Data and Information Review Report including procuring independent specialists to implement Stage 2 – Environmental Testing Regime to identify any significant routes and significant doses of exposure including the identification of susceptible populations as recommended by the report – within one month of completing the Stage 1 evaluation;
11. A completed Stage 2 - Environmental Testing Regime Report and recommendations provided to the Steering Panel – within one month of commencement by selected experts;
12. Evaluation by the Panel of findings and recommendations from the Stage 2 - Environmental Testing Regime Report – within two weeks of receipt of report;
13. Evaluation by the Panel of findings and recommendations from the Stage 2 - Environmental Testing Regime Report to be communicated to the community via the EPA website and a Community Forum – within one week of completing the Stage 2 evaluation;
14. If recommended by the Steering Panel following consideration of Stages 1 and 2, Steering Panel procures independent specialists to conduct Stage 3 Human Health Risk Assessment for Public Health Concerns – within one month of completing the Stage 2 evaluation;
15. A completed Stage 3 Human Health Risk Assessment for Public Health Concerns Report and recommendations provided to the Steering Panel – within one month of commencement by selected experts;

16. Evaluation by the Panel of findings and recommendations from the Stage 3 Human Health Risk Assessment for Public Health Concerns Report – within two weeks of receipt of report;
17. Evaluation by the Panel of findings and recommendations from the Stage 3 Human Health Risk Assessment for Public Health Concerns Report to be communicated to the community via the EPA website and a Community Forum – within one week of completing the Stage 3 evaluation;
18. If Stage 3 indicates a significant risk to human health, makes recommendations about population-based testing for mercury exposure and/or makes arrangements for clinical assessment for mercury exposure/poisoning of population groups deemed to be at significant risk on the basis of the human health risk assessment then Steering Panel procures independent specialists to conduct Stage 4 – Health Risk Assessment for Individuals – within one month of completing the Stage 3 evaluation;
19. A completed Stage 4 – Health Risk Assessment for Individuals Report and recommendations provided to the Steering Panel – within one month of commencement by selected experts;
20. Evaluation by the Panel of findings and recommendations from the Stage 4 – Health Risk Assessment for Individuals Report – within two weeks of receipt of report;
21. Evaluation by the Panel of findings and recommendations from the Stage 4 – Health Risk Assessment for Individuals Report to be communicated to the community via the EPA website and a Community Forum – within one week of completing the Stage 4 evaluation;
22. A report outlining all the completed stages of the Independent Review and recommendations completed by the Steering Panel – within one month of completing the final evaluation; and
23. Development of an action plan by Orica for the implementation of any necessary recommendations of the Independent Review Report – within one month of completing the Independent Review evaluation.

## **2 Authorities & Accountabilities**

### **2.1 Chairperson**

The EPA nominated Chairperson is Mr Mark Gifford, Chief Environmental Regulator. The Chairperson will be responsible for the overall functioning of the Panel, compliance with these Terms of Reference, review of the Terms of Reference, and providing Panel outcomes to the community when complete.

### **2.2 Accountability & Reporting**

The Panel through the Chairperson will provide the Independent Review Report and make recommendations to the EPA. Details of reporting, including the frequency and type of reports to be produced and received, will be assessed by the Panel.

## **2.3 Variation of Terms of Reference**

Changes to the Terms of Reference may be initiated by the Chairperson and will be considered following a request from members of the Panel. Changes to the Terms of Reference will seek a consensus from the members with final approval of the Chairperson.

# **3 Membership**

## **3.1 Members**

Members of the Panel, as nominated by the Environment Protection Authority confirmed by the organisation members, include:

- Mark Gifford, EPA Chief Environmental Regulator (Chairperson)
- Greg Sheehy, Manager Sydney Industry, Environment Protection Authority
- Professor Mark Ferson, Public Health Unit Director, South Eastern Sydney, NSW Ministry of Health
- Dr Klaus Koop, Director Environment Protection Science, Office of Environment and Heritage
- Cathy McMahon, Principal Planner, City of Botany Bay Council
- Dr Talebul Islam, Coordinator Waste Management, Randwick City Council
- Professor Alison Jones, Dean, Graduate School of Medicine, University of Wollongong
- Emeritus Professor Chris Fell, independent science expert
- Mr Ross Salter , Community Member
- Ms Lynda Newnam, Community Member

The representatives are expected to represent their organisations, including ensuring appropriate two-way communications with relevant staff and management. If required, membership will be periodically reviewed, at a timeframe determined by the Chairperson.

Nominations for alternate representatives will be permitted in advance. In the case of Professor Alison Jones it is noted that it is not possible to have an alternate member.

## **3.2 Chairperson**

Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority.

## **3.3 Executive Officer**

The EPA will provide on officer to undertake the role of the Executive Officer. The Executive Officer will be responsible for the administration and operation of the Panel, including organising meeting logistics, circulating papers, tracking action items and similar. This person will also be a point of contact for operational issues related to the Panel.

### **3.4 Quorum and Ratification**

Quorum will be two community members and the Chair (or nominees) and Professor Alison Jones, unless otherwise agreed by the Panel.

Decisions may be ratified out of session.

## **4 Operation**

### **4.1 Internal Communication**

All Panel members will conduct themselves in a positive manner. Discussion should be focussed on issues aimed at restoring the community confidence in the remediation works and addressing the community's concerns regarding the management of mercury associated with Orica's former Chlor Alkali Plant.

The preferred approach to decision making is that this will be by consensus. However, in the event that this is not possible, the Chairperson will hold the casting vote.

### **4.2 External Communication**

All public discussion of the Panel is to be sensible and limited to the basic purpose and goals of the Panel. If more detailed information is externally requested, such as the outcomes of conclusions and recommendations of the Panel, then this is to be released only by the Chairperson. Community forums will take place at key points as determined by the panel.

### **4.3 Public Website**

Publicly accessible web information will be hosted via the EPA website. This will ensure that key information is available to the wider community.

The website will contain copies of:

- The Terms of Reference of the Panel
- Scope of Works of the Independent Review
- List of available documents to be considered under the review provided by:
  - Orica;
  - Environment Protection Authority;
  - Summary of Panel meetings;
  - NSW Ministry of Health; and
  - other parties as appropriate.

Each member organisation website shall provide links back to this website.

#### 4.4 Standard Meeting Procedures

The Panel will meet as required, by face-to-face, tele- or video-conference as determined by the members. The structure and content of each meeting will be determined by an agenda, approved by the Chairperson, circulated prior to each meeting.

Agendas, Orders of Business and Non-verbatim notes including Acton Items will be circulated to the panel for approval. A meeting outcome summary with high level statements and actions will then be made available to the public on the EPA Orica webpage and for linking to on community sites.

#### 4.5 Frequency

It is generally anticipated that the Panel will need to convene 3 weeks from the first meeting of the 14<sup>th</sup> March 2013 and then as appropriate as determined by the Chair.

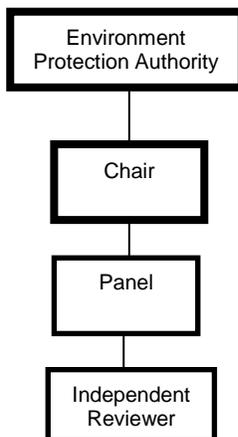
#### 4.6 Time and Location

Meetings will generally be hosted by City of Botany Bay Council at Botany Town Hall, Corner Edward St and Botany Rd, Botany and occur at 12:30pm until 2:30pm.

From time to time the Chair will approve the relocation of the meeting, where required.

#### 4.7 Final Decision-Making

The process for decision-making is represented below. The Independent Reviewer will provide a report and recommendations (if any) to the Panel. Final decisions regarding the implementation of any or all recommendations from the Panel rest with the EPA.



#### **4.8 Funding of Independent Review**

Orica has agreed to fund the Independent Review. This funding does not include funds for other separate reviews by the Panel members or the independent engagement of alternate experts by Panel members during the course of this review.

The independent Reviewer shall provide an estimate of cost of the work prior to commencement.

The Panel shall review and approve the costs for the Independent Reviewer and any variations.

#### **4.9 Meeting Expenses**

Costs / budget will be a standing item on the Agenda.

In accordance with '*Classification And Remuneration Framework for NSW Government Boards and Committees Classification and Remuneration Framework for NSW, 2012*' Group C – Advisory Boards, Councils and Committees Ministerial Councils, Ministerial Boards of Advice and Management Advisory Entities, C1-I Committees which have been established for the purpose of consultation, advice or liaison with local communities in relation to social, economic, environmental or industry issues and/or the deployment of community resources or assets at a local level. Steering Panel members are entitled to a daily sitting fee of \$220 (50% for half day) where appropriate.

#### **4.10 Cessation of the Independent Review**

The cessation of the Independent Review will occur when the Review recommendations/ findings have been provided to the panel or at another time determined by the Chairperson.

#### **4.11 Cessation of the Panel**

The cessation of the Panel will occur at a time determined by the Chairperson.

## 5 Additional Information

### 5.1 Definitions

**Clinical Testing** – testing of an individual patient for the purpose of assessing that individual's risk, diagnosis or progression of disease.

**Environmental Testing** – the use of analytical chemistry and other techniques to study the environment to monitor and investigate levels of pollutants in the atmosphere, soil, surface and ground waters and other specific settings, to identify any significant routes and significant doses of exposure including the identification of susceptible populations and environmental receptors using established methodologies and criteria.

**Population testing** – testing of defined groups of individuals in a standardised and reproducible manner in order to assess the extent of exposure to mercury in the populations represented by those groups. Its purpose is not to test for toxicity (i.e. disease caused by exposure) in individuals.

**Significant** – if in the steering panel's judgement exposure could result in a potential or real health impact.

# Appendix 1: Independent Review Stages Indicative Timeline

