



## **Information Gathering and Stakeholder Participation**

Beginning with the IRP's first meeting on November 18, 2015, and including its most recent meeting on December 9, 2016, the Panel has convened 20 public meetings to discuss its work and hear testimony from stakeholders, subject matter experts, elected officials, and representatives of DTSC as well as CalEPA.

The IRP has made an effort to maximize public access to, and participation in, those meetings. The Panel held seven of its meetings outside of Sacramento, often in communities near sites with hazardous substance releases or permitted hazardous waste facilities. Meeting materials are posted on the IRP's website in advance of meetings in compliance with the Bagley Keene Act, and notices of the postings are sent via email to individuals who have requested to be added to the IRP EList. When technically feasible, the Panel offers live webcasts of its meetings on the CalEPA webcast portal and posts webcasts of previously held meetings on the IRP website. Stakeholders have the ability to submit public testimony via email whenever there is a live webcast, and IRP staff read their comments out loud during the meetings. The IRP has heard special presentations from numerous stakeholders, including the People's Senate and the California Chamber of Commerce at its public meetings. The IRP also has heard special presentations on the Exide Technologies site cleanup and residential cleanup activities. Meeting agendas are translated into Spanish. The IRP normally hires Spanish translators during meetings if a member of the public requests this service by an advance deadline date.

In addition to gathering information at public meetings, the IRP has made numerous information requests of the DTSC. The IRP also welcomes written comments from the public. In addition, the IRP surveyed a cohort of stakeholders about DTSC programs in August of 2016. All of this information is posted on the IRP website.

The IRP wishes to thank everyone who has participated in this public review process, including DTSC Director Barbara Lee and her staff. The Panel recognizes that the Department has devoted considerable time and effort to informing the IRP about its programs.

## **IRP Work Plan**

The IRP approved a work plan on April 7, 2016. This plan devotes two or three months to intensive study and discussion of each of the following six topics: permitting, enforcement, public outreach, fiscal management, site mitigation, and source reduction/consumer products. As mentioned above, the IRP is required to review and make recommendations on the first four of these topics. The panel deems the last two topics to be also important and worthy of consideration under its statutory mandate to make recommendations for improving the Department's programs.

The plan calls for the IRP to make recommendations and suggest metrics to evaluate DTSC's performance on each of the six topics. It also calls for the IRP to include those recommendations and metrics in its reports that are due every 90 days by statute on DTSC's progress. Each review of a particular topic, therefore, is expected to culminate in submitted recommendations and metrics on that topic. The plan envisions the IRP completing this review of the six topics by July of 2017.

The plan then calls for the IRP to devote much of its time between June and October of 2017 to evaluating data gathered on the metrics for each topic. The final months of 2017 are to be spent working on final IRP recommendations based on the metrics and DTSC's progress to date. The IRP commits to submitting those final recommendations on or before December 31, 2017.

### **IRP Reports**

The IRP submitted its first annual report at the time of the submission of the Governor's budget for FY 2016-17. This document did not include recommendations because the IRP did not have sufficient time to systematically review DTSC's programs between its first meeting and the January 10, 2016 deadline for the Governor's budget. Instead, the IRP included initial recommendations in its first 90-day report. This report, submitted on January 28, 2016, addressed five topics: budget, permitting, enforcement, public outreach, and fiscal management. After providing background information, the report made recommendations to the Governor and Legislature, recommendations to DTSC, and information requests to the DTSC for each topic.

The IRP submitted subsequent 90-day reports on April 21, July 26, and October 24 of 2016. The April 21 report addressed DTSC's permitting efforts. This report also included initial recommendations and information requests on DTSC's site mitigation program. The July 26 report addressed DTSC's enforcement efforts. The October 24 report addressed DTSC's public outreach. All three reports included recommendations for the Governor and Legislature, recommendations for DTSC, suggested metrics for DTSC, and information requests of DTSC.

All of these reports are posted on the IRP's website.

As per its work plan and statutory mandate, the IRP intends to submit similarly organized reports on fiscal management by January 22, 2017, site mitigation by April 21, 2017, and source reduction/consumer products by July 20, 2017.

### **Key Themes to a Strong and Efficient DTSC**

The IRP finds that the task of managing hazardous waste and protecting California's people and environment from the harmful effects of toxic substances depends on a strong and efficient DTSC. The IRP further believes there are four key themes to achieving a strong foundation for the Department's long-term organizational strength and efficiency: (1) continuity in executive leadership, (2) stable fiscal resources, (3) a focus on human resources, and (4) increased transparency/accountability. Most of the IRP's recommendations relate to these four themes, which the panel wishes to highlight in this report.

*Continuity in Executive Leadership*—DTSC has experienced significant turnover in its leadership in recent years. The Department has had five directors since 2010. Of its 14 executive leadership team positions, seven are staffed by individuals hired in 2016. The IRP believes this turnover in personnel has been damaging to institutional memory and continuity. The IRP also believes it is essential for the current Director and the leadership team to have longevity in office. The IRP notes that 13 of the 14 executive positions at DTSC were filled at the time of this report. The IRP applauds the Governor's Office for appointing these positions and is hopeful

that DTSC now has a strong and stable team in place. This is more important than ever, given the challenge presented to the Department by the Exide Technologies site.

*A Focus on Human Resources*—A strong and stable leadership team is not enough. DTSC has 1,034 authorized employees working in different locations and on many different levels and programs.

The IRP believes there is room for improvement when it comes to the Department's human resources. Responding to a Public Records Act request, DTSC in 2015 uncovered racist and derogatory emails sent by two staff members. In February of 2016, a group of minority scientists asserted in a letter to CalEPA Secretary Matt Rodriguez that they were confronted by a workplace culture of racial bias and low pay for their minority-dominated work classification. Several DTSC staff members have come forward to tell the IRP that employees sometimes lack the resources and training to do their jobs properly, that they are working independently and without adequate leadership in many field offices (depending on the culture of a particular office), and that recent retirements of experienced and knowledgeable managers have negatively impacted some offices.

Director Lee ordered an investigation when the offensive emails were uncovered. In addition to launching an internal investigation, DTSC requested outside review by the Office of the Attorney General. Based on the investigations, DTSC took disciplinary action against the two responsible individuals. Director Lee reported to the IRP on January 13, 2016 that DTSC was taking several actions to strengthen its commitment to supporting diversity and fostering cross-cultural understanding, including: developing an all-staff survey, creating an organizational culture task group, reaching out to consultants for assistance, and updating the Department's diversity training.

DTSC Chief Deputy Francesca Negri, who was chief of human resources at the Department of Motor Vehicles prior to serving as chief of its Division of Procurement and Contracts from 2010 to January of 2016, will oversee these organizational excellence efforts. The IRP believes it is essential for the Chief Deputy Director to be given the authority and necessary resources to improve staff morale, training, supervision, evaluation, accountability, and cultural sensitivity—from top to bottom, throughout DTSC and all its field offices. Ms. Negri presented to the IRP on these efforts on December 9, 2016, where she identified that \_\_\_\_\_.

The IRP intends to ensure that DTSC follows through on these efforts.

*Stable Fiscal Resources*—DTSC's funding history between FY 1991-92 and FY 2013-14 declined in real dollars by 26 percent, even though legislative mandates increased substantially during that period. More recently, however, the Legislature has made significant investments in DTSC's programs. The Legislature approved all of DTSC's budget change proposals for FY 2016-17. The Department's budget increased from \$234,847,000 in FY 2015-16 to \$280,364,000 in FY 2016-16. This represents a 19 percent increase, although it should be noted that an increase in the budget for the Exide Technologies residential cleanup of \$37,291,000 accounts for 82 percent of it. The IRP applauds the Legislature and its leadership for these investments in DTSC. The IRP also recognizes the Department's obligation to wisely administer the massive General Fund investment that the state has made for the Exide Technologies cleanup.

Looking into the future, a projected shortfall in DTSC's Site Remediation Account (SRA) is of special concern. DTSC has estimated the demand for funding for state-only orphan sites to be between \$15 and \$20 million annually the next few years. The Department currently receives a \$10.503 million appropriation for site remediation on both the orphan sites and federal National Priority List (Superfund) sites. Superfund demand is expected to fluctuate and in some years come close to or exceed the current appropriation. Unless the SRA is increased, there is a strong chance that little or no funding would be available for orphan sites in some years. AB 2891 (Chapter 704, Statutes of 2015) partially addressed this issue by expressing its intent that funds deposited in the account be appropriated each year to the SRA in an amount that is sufficient to pay for estimated costs for direct site remediation at both Superfund sites and state orphan sites. However, future funding is not guaranteed, as the state's fiscal health is always an unknown over the long term.

While there are budgetary deficiencies that must be addressed, the IRP believes that DTSC's budget is now relatively robust. It must remain stable moving forward.

*Increased Transparency/Accountability*— DTSC has been making changes that are likely to improve accountability and transparency in the future. Work plans for its various programs have components that emphasize transparency. The Legislature created an Assistant Director of Environmental Justice in statute in 2015 and a new Office of Environmental Justice and Tribal Affairs in 2016, and the IRP is strongly supportive of these efforts. In September of 2016, Director Lee announced that the Governor had approved the establishment of a separate Office of Public Participation, and since then the Governor has appointed a Deputy Director to lead the new office. DTSC created a new, eight-member Exide team currently located in the Chatsworth Regional Office, but expected to relocate to an office closer to the Exide Technologies facility in Vernon. DTSC signed an agreement in August of 2016 to resolve a civil rights complaint about its 2014 decision to approve a permit to expand the Kettleman Hills hazardous waste landfill; in addition to provisions intended to improve public health and environmental quality for the people in Kettleman City, the agreement sought to enhance the transparency and rigor of the Department's compliance with civil right laws. A massive effort over the past few years to improve procedures for the recovery of cleanup costs from responsible parties should make DTSC more accountable to California's taxpayers.

Nevertheless, a widespread perception clearly exists that DTSC is insular and in need of increased accountability. As The People's Senate stated in a March 27, 2015 letter to Director Lee, "DTSC makes decisions behind closed doors, with little transparency, oversight, or meaningful opportunity to appeal."

The IRP has attempted to open the curtain by encouraging public comment, asking questions, requesting information, and prodding with recommendations. However, the IRP will sunset on January 1, 2018. The panel therefore recommends that the Governor and Legislature consider the creation of: (1) a permit appeals board to decide on all hazardous waste facility permits that DTSC does not timely process within three years of expiration; and (2) an oversight board or other structural changes within the Department to improve accountability and transparency.

## Annual Report Recommendations

The recommendations in this report are a compendium of those recommendations to the Governor and the Legislature that the IRP previously made in its 90-day reports during 2016. They are divided into two tables. Table I lists those that already were fully or significantly adopted by the Governor and the Legislature. Table II lists those that have not yet been adopted. The tables indicate the report submission date in which each recommendation was made and provide brief status information for each recommendation. Both tables divide the recommendations into various topics being reviewed by the IRP. (Note: several recommendations that appeared under the budget topic in the January 28, 2016 initial report have been merged into other, appropriate topic sections.)

As noted above in this report, during the course of 2016 the IRP also made recommendations to DTSC and suggested performance metrics for the Department. That information is not included in this annual report, but is updated regularly and available online on the IRP's website.

**TABLE I**  
**IRP Recommendations to Legislature and Governor: Already Adopted**

| IRP Recommendation   | Date of IRP Recommendation | Action/Resolution   |
|--|----------------------------|---|
| <b>Permitting</b>  |                            |   |
| Require that DTSC obtain full cost recovery connected with its Hazardous Waste Facility Permit decisions. The DTSC reports that the DTSC's existing HSC section 25205.7(d) fee collection for permitting statute does not ensure that it achieves full cost recovery connected with its Hazardous Waste Facility Permit actions. | 1/28/2016                  | SB 839 (Committee on Budget & Fiscal Review) eliminated the flat fee option. It also required the reimbursement agreement to provide for the reimbursement of the costs incurred in reviewing and overseeing corrective action and required applicant to pay these costs and to pay all costs incurred by DTSC to comply with CEQA. |
| Augment the Hazardous Waste Control Account to fund necessary permanent positions to achieve the goal of DTSC making 16 permit decisions a year and processing 90 percent of permit decisions in a 2-year period or less.  | 4/21/2016                  | Approved in the 2016 Budget Act.  |

## Enforcement

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| <p>Support AB 1858 (Santiago), which requires the DMV to establish an Unlicensed Automobile Dismantling Task Force to investigate the occurrences of unlicensed vehicle dismantling.</p> | <p>7/26/2016</p> | <p>Chaptered version of AB 1858 (Santiago) required DMV to collaborate with other state agencies and to review and coordinate enforcement and compliance activity related to unlicensed and unregulated automobile dismantling. It did not establish formal task force.</p> |
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## Public Outreach

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| <p>Provide position authority and funding to strengthen the role of the Assistant Director for Environmental Justice and Tribal affairs, including more staffing and resources.</p> | <p>1/28/2016</p> | <p>Legislature approved funding for 6 positions to create Office of Environmental Justice and Tribal Affairs in the 2016 Budget Act.</p> |
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## Fiscal Management

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| <p>Support the Governor's 2016-2017 budget proposal for DTSC.</p>  | <p>1/28/2016</p> | <p>Legislature approved all budget change proposals for DTSC in the 2016 Budget Act.</p>  |
| <p>Increase the DTSC's SRA funding to address the projected shortfall for orphan site cleanup and transition of federal sites to state operations and maintenance oversight.</p> | <p>1/28/2016</p> | <p>AB 2891 (Committee on Environmental Safety &amp; Toxic Materials) expressed intent of the Legislature that funds be appropriated each year to the Site Remediation Account in an amount that is sufficient to pay for estimated costs for direct site remediation at both federal Superfund orphan sites and at state orphan sites, and that not less than \$10,750,000 be appropriated in the Annual Budget Act each year to the account for direct site remediation costs. The bill also required DTSC to include those estimated costs in a report submitted to the Legislature with the Governor's budget each year.</p> |

## Site Mitigation

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| Support Gov. Brown's proposed \$176.6 million appropriation to fund expedited and expanded testing and cleanup of residential properties, schools, daycare centers, and parks impacted by the former Exide Technologies facility in Vernon. | 4/21/2016 | SB 93 (De León) and AB 118 (Santiago) transferred the \$176.6 million as a loan from the General Fund to the Toxic Substances Control Account for DTSC to use for this purpose. The funds are available until June 30, 2018. Funds recovered from responsible parties are to be used to repay the loan. |
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**TABLE II**  
**IRP Recommendations to Legislature and Governor: Not Yet Addressed**

| IRP Recommendation | Date of IRP Recommendation | Action/Resolution |
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### Permitting

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| Require that DTSC require as part of Hazardous Waste Facility Permits that adequate financial assurances be set aside for corrective action for existing hazardous waste releases at the site, not only for post-closure equipment decommissioning. Investigate whether current Health & Safety Code Sections 25200.10(b) and 25245 et seq. should be amended to ensure that adequate financial assurances be set aside during Hazardous Waste Facility Permit issuance to pay for corrective action for existing hazardous waste releases at the sites that DTSC is permitting. This is consistent with the April 2006 LAO Report: "Financial Assurances: Strengthening Public Safety of Waste Facilities and Surface Mines." | 1/28/2016 | Pending  |
| Consider whether to create a Permit Appeals Board to hear, and decide on all Hazardous Waste Facility Permits that the DTSC does not timely process within 3 years of expiration. Consider whether establishing such a Permit Appeals Board would increase transparency and reduce backlogs. A possible legislative vehicle for this could be pending SB 654 (De León).  | 1/28/2016 | Pending. |

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| <p>Fund Technical Assistance Grants to allow public participation before a draft Hazardous Waste Facility Permit is prepared. This can assist in transparency of permitting decisions and allow community questions and concerns to be raised early in the process.</p>   | <p>1/28/2016</p> | <p>Pending. AB 1400 (Santiago) would have required DTSC to grant request from member of public for a technical assistance grant for getting assistance relating to, and information about, a pending hazardous waste facilities permit if DTSC received the request within 1 year of the submission of the hazardous waste facilities permit application.</p>  |
| <p>Require DTSC to review each permitted hazardous waste facility's financial assurances every five years.</p>  | <p>4/21/2016</p> | <p>Pending. AB 1205 (Gomez) would have required DTSC to review financial assurances once every 5 years. If the review found them to be inadequate, the bill would have required DTSC to notify the facility and would have required the latter to update and adopt adequate assurances within 90 days.</p>   |
| <p>Require DTSC to respond within certain time periods to hazardous waste permit application submittals, require applicants to submit application information on a timely basis, and establish accountability mechanisms, such as deemed approval of the submitted information or the initiation of permit denial proceedings, if these event deadlines are not met by DTSC or the applicant.</p> | <p>4/21/2016</p> | <p>Pending. SB 654 (De León) would have required facilities to submit part A &amp; B applications 2 years before permit expiration. Would have provided that, when a complete application had been submitted before the end of a permit's fixed term, the permit would be extended for a period not to exceed 36 months until the renewal application was approved or denied and the owner or operator had exhausted all rights of appeal.</p> |
| <p>Amend HSC section 25200 to give DTSC specific authority to require fence line monitoring by permit holders in certain cases.</p>   | <p>4/21/2016</p> | <p>Pending. AB 1400 (Santiago) would have required DTSC to require facility operator, as a condition for a new hazardous waste facilities permit, to install monitoring devices or other equipment at the fence line to monitor for potential releases from the facility into the surrounding community.</p>   |
| <p>Give hazardous waste facility permit applicants a reasonable assurance of application costs and include some mechanism to hold DTSC accountable for those assurances, even in fee-for-service scenarios.</p>   | <p>4/21/2016</p> | <p>Pending</p>   |

## Enforcement

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| <p>Include inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and hazardous waste generators in statute. The frequencies should be based on facility compliance history, quantity of waste, toxicity risk, and proximity to sensitive habitats and populations at risk, including disadvantaged communities.</p> | <p>7/26/2016</p> | <p>Pending. AB 1102 (Santiago) would have required DTSC to inspect a hazardous waste land disposal facility no less than once per month, a permitted and operating hazardous waste facility no less than 4 times per year, and a permitted hazardous waste facility no less than 2 times per year.</p> |
| <p>Increase the maximum penalties for violations of HSC section 25189 to make them equivalent to the federal maximum penalties for similar violations, with an inflation allowance.</p>  | <p>7/26/2016</p> | <p>Pending</p>   |

## Public Outreach

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| <p>Create an oversight board or consider other structural changes at DTSC to improve accountability and transparency.</p>  | <p>10/24/2016</p> | <p>Pending</p> |
| <p>Provide additional funding to the newly established Office of Public Participation for sufficient staffing necessary to adequately address all necessary public outreach needs of DTSC.</p>   | <p>10/24/2016</p> | <p>Pending</p> |
| <p>Consider amendments to HSC section 25358.7 et seq. to address CAG transparency, conflicts of interest, funding, funding disclosure, membership, and technical expertise.</p>  | <p>10/24/2016</p> | <p>Pending</p> |
| <p>Create a statewide lead taskforce to make recommendations on the sharing of information, leveraging of resources, and establishing of a comprehensive surveillance program on lead toxicity. The taskforce should include representatives from: DTSC, Department of Public Health (DPH), Office of Environmental Health Hazard Assessment, Cal/OSHA, air quality management districts, regional water quality control boards, county environmental health departments, worker safety advocates, labor organizations, healthy housing organizations, and impacted communities.</p> | <p>10/24/2016</p> | <p>Pending</p> |

### Fiscal Management

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| Provide position authority and funding to DTSC to maintain the 14.0 limited-term cost recovery staff positions through 2018 or make them permanent. | 1/28/2016 | Pending |
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### Site Mitigation

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| Require the DTSC to prioritize the Exide Technologies residential cleanup based on mapping data on metal levels in blood and soil.  | 4/21/2016 | Pending |
| Require collaboration between national, state, and local agencies to better make available and use data, including blood data, to address lead contamination in California communities. | 4/21/2016 | Pending |

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