

*These draft recommendations and data requests are for consideration by the DTSC Independent Review Panel during its April 7, 2016 meeting for possible inclusion in the IRP's April 27, 2016 report to the governor and the Legislature pursuant to Health & Safety Code Section 57104(f).*

## **Site Mitigation**

Section 57014(d) of the Health and Safety Code requires the DTSC Independent Review Panel (IRP) to make recommendations for improvements to the department's programs. The IRP believes that review of DTSC's Site Mitigation Program and recommendations for program improvements are warranted. This document provides a brief overview of the Site Mitigation Program and makes preliminary recommendations for improvements as well as relevant data requests of the department. The Panel intends to use the requested data as well as information from the public and other sources to review the Site Mitigation Program on a thorough basis during the first four months of 2017.

### **Program Summary**

An estimated 90,000 properties throughout California are contaminated or believed to be contaminated with some level of toxic substances.

Some of these are "brownfields," sites that often sit idle or underused and contribute to urban blight and sprawl. DTSC's Brownfields and Environmental Restoration Program cleans up or oversees approximately 220 hazardous substance release sites at any given time and completes an average of 125 cleanups each year. Expediting site mitigation is an important goal of the program, and several "brownfields" initiatives support that effort.

The Voluntary Cleanup Program and the California Land Reuse and Revitalization Act (CLRRA) Program encourage responsible parties to clean up contaminated properties by offering economic, liability, or efficiency incentives. The former allows motivated parties who are able to fund the cleanup of low-priority, hazardous waste sites to move ahead at their own speed to investigate or remediate their sites under DTSC oversight. The latter allows innocent landowners, bona fide purchasers, and contiguous property owners to qualify for immunity from liability from certain state statutory and common laws for pollution conditions caused by a release or threatened release of a hazardous material if certain conditions are met. Those conditions include entering into an agreement for a specified site assessment and response plan. The program's enabling statute, Health & Safety Code Section 25395.60 et seq., is scheduled to sunset on Jan. 1, 2017.

DTSC also encourages property owners to investigate and clean up contamination, if found, through low-interest loans. However, funding is extremely limited for DTSC's Investigating Site Contamination and Cleanup Loans and Environmental Assistance to Neighborhoods Program, which provides loans for this purpose.

The State Superfund, overseen by the DTSC's Brownfields and Environmental Restoration Program, covers sites for which there are no cleanup options through the responsible party and which threaten the people or the environment of California. In its January 28, 2016 Initial Report to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f), the IRP recommended an increase in DTSC's Site Remediation Account funding to address the projected shortfall for orphan site cleanup and transition of federal National Priorities List cleanup sites to state maintenance oversight.

Additionally, DTSC works to ensure that all new, existing, and proposed school sites are environmentally safe. State laws require all proposed school sites that will receive state funding for purchase or construction to go through the DTSC's environmental review. This process ensures that new school sites are uncontaminated, or if previously contaminated, that they have been cleaned to a safe level. Last year, the DTSC assessed, investigated, or cleaned up more than 450 different school sites in California to ensure that the state's need for new schools is met and children are fully protected.

The DTSC also is currently investigating, cleaning up, or providing technical assistance at more than 160 current or former military installations. This task presents some unique challenges, which include addressing residual unexploded ordinance, chemical and biological munitions, and other toxic substances that remain on the properties. California has one-third of the closing military bases in the country and more than 1,000 former defense sites.

The DTSC's Brownfields and Environmental Restoration Program has 331.75 authorized positions, including staff at Berkeley, Chatsworth, Cypress, Sacramento and San Joaquin branch offices.

One high-profile DTSC site mitigation operation is the 15-acre, former Exide Technologies lead-acid battery recycling facility in Vernon, about five miles southeast of downtown Los Angeles. DTSC ordered Exide to suspend operations in the spring of 2014. Exide reached an agreement with federal officials in March 2015 to shut down, demolish, and clean up the site, and to spend \$38.6 million on closure costs as well as provide approximately \$26 million in financial assurances for this effort. On December 8, 2015, the DTSC issued a public notice on a draft closure plan for the Exide site that underwent public comment until March 28. Soil investigations reveal that up to 10,000 residential properties within a 1.7-mile radius of the facility may be potentially affected by Exide Technologies' lead contamination. The cost to investigate and remediate all these properties is unknown. Exide has paid \$9 million that DTSC has spent on cleaning residential properties in the initial assessment areas. There will be three payments totaling \$5 million between November 2018 and March 2020 for cleanup. Exide is required to make additional payments in the coming years. In August 2015 the governor approved \$7 million in emergency funding to test up to 1500 residential properties, continue cleanup on the most impacted properties, and conduct an environmental review. In February 2016 the Administration proposed a \$176.6 million spending plan to fund expedited and expanded testing and cleanup. At its meetings to date, the IRP has received extensive public comment from concerned residents of Southeast Los Angeles County about the Exide site. At its February 10, 2016 meeting, DTSC provided the IRP with a presentation on the status of the closure and corrective action plans, including funding for them.

The IRP has received public comment from individuals residing in the vicinity of the Santa Susana Field Laboratories in Simi Valley, Riverside Agricultural Park, Jordan Downs in Los Angeles, and many other communities. Concerns have been expressed about site mitigation activities in their communities with regard to fugitive dust emissions, the accuracy of sampling relied on for “No Further Action” letters, and disposal of radioactive waste above background level, among other health and environmental issues. Concerns have also been expressed that site mitigation seems to be a lower priority in disadvantaged communities.

**Recommendations to the Governor and Legislature to Improve Site Mitigation:**

The Legislature should 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 within a 1.7-mile radius of the former Exide Technologies facility in Vernon.

The governor and Legislature should support SB 820 (Hertzberg), pending legislation that would remove the January 1, 2017 sunset for the California Land Reuse and Revitalization Act.

**Recommendations to the DTSC to Improve Site Mitigation:**

DTSC should convene relevant regulatory agencies and publish a strategy by January 1, 2017 on how, in appropriate cases, to require fence line/aerial deposition monitoring during site mitigation in situations where there are adjacent sensitive receptors.

DTSC should publish, on its website, an easy-to-read matrix of clean-up standards and sampling levels to enhance transparency of mitigation at particular sites that are subject to public concern and inquiry by July 1, 2017.

DTSC should provide raw data for site mitigation to the public upon request, once the data are verified, by July 1, 2017.

**Data Requests to the DTSC Regarding Site Mitigation**

DTSC should provide IRP with an oral presentation on disposal requirements for radioactive waste that is above background levels at the Panel’s February 2017 meeting. The presentation should incorporate information from the state Department of Public Health, where appropriate, and include a discussion of the disposal of radioactive and mixed waste from the Santa Susana Field Laboratories in Simi Valley.

DTSC should provide IRP with an oral presentation on sampling and analysis methods used for site characterization and mitigation at the Panel’s February 2017 meeting. The presentation should include the criteria and methods used for “no further action” determinations. The presentation also should include results of follow-up sampling at Riverside Agricultural Park in 2015, why the department concluded that 66 acres were safe to build residential homes at Ag

Park in 2014, and why the DTSC and US EPA investigations came to different conclusions about levels of PCB contamination at the site.

DTSC should provide the Panel with an update on the status of the Exide Technologies facility closure and cleanup, including funding for the efforts by January 1, 2017.

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