

Department of Toxic Substances Control

Cost Recovery Questions and Answers

How much money has DTSC spent on cleanups since 1987?

Altogether, the department has spent more than \$1.4 billion since 1987 overseeing the cleanup of contaminated properties by other parties or cleaning up contaminated properties itself.

How much of the cleanup costs have not been recovered?

The department has unresolved response costs of about \$184.5 million, some of them dating back 26 years.

Has the department tried to recover any of that money?

DTSC has sent invoices for \$45 million of those costs but not yet received payment. \$37.3 million is tied up in litigation, bankruptcy, or other legal considerations.

What about the rest?

DTSC has not billed for \$102.7 million because it has not evaluated if these costs are recoverable from responsible parties.

Who is financially responsible for the cleanups?

State and federal law gives DTSC the authority to recover its “response costs” from “responsible parties” – those parties responsible for the contamination. Sometimes these responsible parties do not have the money to pay, refuse to pay or simply cannot be found.

What if there is no viable responsible party?

Despite the absence of a responsible party, DTSC has an obligation to clean up contaminated properties that pose an imminent and substantial endangerment to human health or the environment.

Why does DTSC spend money on cleanups when there is a possibility the money will not be recovered?

Not only do DTSC’s cleanup efforts protect the health and safety of Californians, but DTSC’s efforts facilitate the reuse and redevelopment of previously contaminated properties and avoid more costly cleanups “downstream,” which would result, for example, if contamination has spread from soil to groundwater over time.

Why didn't DTSC's billing keep up with its cleanup efforts?

For years, DTSC prioritized the cleanup of contaminated properties over the process of pursuing responsible parties for reimbursement of DTSC's response costs. It lacked an effective system for evaluating whether costs are recoverable from responsible parties.

How long has DTSC known about this uncollected money?

The problem was identified as early as 1992, and was raised multiple times in the years since then. Yet past DTSC administrations did little to address the problem

When did the current administration learn there was a problem?

Debbie Raphael became Director in May 2011 and learned of the uncollected costs in a December 23, 2011 Financial Integrity and State Managers' Accountability (FISMA) Letter.

What did the current administration do when it learned there was a problem?

Director Raphael took action to address the problem: First, she directed her staff to research the extent of the unrecovered costs. Because the information stretched back 26 years, it took considerable time to fully understand the extent of this problem. Second, she immediately began taking steps to correct the problems by forming a Cost Recovery Team and ensuring that a viable system of collecting costs was in place.

Has the new system reduced unbilled costs or increased collections?

Yes. During the last 18 months, the Cost Recovery Team has both reduced unbilled costs and increased the department's collection rate:

- Total unbilled costs for the period July 1987 through June 2010 are 39 percent lower today than they were at the end of 2011, when the Cost Recovery Team began working on this.
- From 2010 to 2011, the team increased its collection of invoiced cleanup costs by 17 percent. The department incurred about the same amount of costs in fiscal years 2010 and 2011.

Why is DTSC releasing this information now?

Since late 2011, DTSC has reported our progress through the FISMA process. The latest FISMA, released today (May 30, 2013), represents the completion of a review summarizes the extent of the problem as well as the steps under way to fix the problem.

What is a Financial Integrity and State Managers' Accountability Letter?

It is a report that the Financial Integrity and State Managers' Accountability Act of 1983 requires departments to file every two years, reviewing their systems of internal control. DTSC has filed additional FISMA letters since identifying the cost recovery backlog in December 2011.

What did the December 2011 letter say?

It said that \$70 million in potential recoverable costs had not been invoiced since 2004. It also said 60 percent of those costs (about \$42 million) represented cleanup sites considered “orphans,” where no financially viable responsible party had been identified to invoice.

What has the team discovered about the problem?

As the Cost Recovery Team dug into the backlog, it discovered that it is larger and dates back farther than previously known. They also identified the root of the problem: the lack of a comprehensive and robust cost recovery process that clearly outlines the roles and responsibilities of its staff with respect to cost recovery.

What has been done to fix the problem?

Director Raphael immediately created a Cost Recovery Team to address the issue. The team implemented a number of measures to improve the immediate effectiveness of the cost recovery process and that have already resulted in increased collections:

- A new billing procedure that requires a responsible party to pay for costs leading up to an agreement, not after the agreement is executed, as was previously the case.
- A centralized process for issuing collection letters that increased the consistency and frequency of when letters are sent. The department has issued more than 1,200 collection letters since November 2012 using this new process.
- New project management and billing reports that will improve cost recovery by:
 - Identifying past-due invoices more easily
 - Increasing transparency of cost recovery billing data
 - Assisting staff in researching unbilled costs, invoiced costs, receipt of payment, overdue invoices and billing status.
- Automatic email alerts that will notify project managers and the Cost Recovery Unit when key documents that affect billing are uploaded to EnviroStor, DTSC’s database for environmental cleanups and permitted facilities.

What additional steps are you taking?

Director Raphael is taking additional steps to address the problem and create a robust, effective system for recovering these costs. She has directed the Cost Recovery Team to develop a comprehensive set of new cost recovery policies and procedures to ensure that we are covering costs going forward. These new measures will assist the Cost Recovery Team in pursuing collection of unresolved costs from Responsible Parties to the maximum extent possible.

Will all of the money be recovered?

Addressing the unbilled and uncollected costs is a tall order. There are thousands of sites, many of which do not appear to have a responsible party or the responsible party has gone bankrupt or lacks the resources to pay for DTSC's response costs. In addition, many of the claims are old, and we will not be able to recover on them. So DTSC likely will not get back the full \$184.5 million. But the department will try to recoup as much of the costs as possible.

When will we know that DTSC is back on track in its recovery of cleanup costs?

When the department is back on track, cost recovery will be part of our day-to-day work, and all employees in the department will recognize that timely cost recovery is a central part of DTSC's mission to protect human health and the environment. We will post regular progress reports on our website.