



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

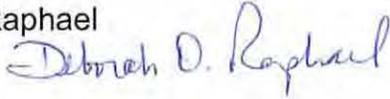
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Edmund G. Brown Jr.
Governor

MEMORANDUM

TO: Matthew Rodriguez
Secretary for Environmental Protection
California Environmental Protection Agency

FROM: Deborah O. Raphael
Director 

DATE: October 17, 2013

SUBJECT: REVIEW OF INTERNAL CONTROL SYSTEMS

In accordance with the Financial Integrity and State Managers' Accountability (FISMA) Act of 1983, the Department of Toxic Substances Control (DTSC) submits this report on the review of our systems of internal control for the biennial period ending December 31, 2013.

BACKGROUND

The Department of Toxic Substances Control (DTSC) was established to protect California against threats to public health and degradation to the environment and to restore properties degraded by past environmental contamination. Through its statutory mandates, DTSC regulates management of hazardous wastes, cleans up existing contamination, and prevents pollution by working with businesses to reduce their hazardous waste and use of toxic materials.

To help achieve its mandates, DTSC has 941 authorized positions, including scientists, engineers, toxicologists, chemists, geologists, attorneys, criminal investigators, and administrative staff. DTSC employees are geographically located in eight offices throughout the state and in two environmental chemistry laboratories located in Berkeley and Los Angeles. In Fiscal Year 2012-13, DTSC had an operating budget of approximately \$200 million. Revenues to support operations come from a variety of

sources, including special taxes and fees, Federal grants, California's General Fund, and fines and penalties.

DTSC is organized around three core programs and six support entities, which are described below:

- Brownfields and Environmental Restoration Program – Chapters 6.5, 6.8, 6.82/6.83, and 6.85 of division 20 of the California Health and Safety Code provides authority for the cleanup and restoration of contaminated sites throughout the State, including corrective action sites and legacy landfills (e.g., Stringfellow Acid Pits and the BKK Landfill), the Santa Susana Field Lab, military bases, former industrial properties, and contaminated school sites.
- Hazardous Waste Management Program – Chapter 6.5 of division 20 of the California Health and Safety Code provides authority for permitting hazardous waste facilities (approximately 120) in California that treat, store, and dispose of hazardous waste; overseeing the hazardous waste generator program; and conducting inspections and taking enforcement actions to ensure compliance with hazardous waste laws and regulations.
- Safer Products and Workplaces Program – Overall program authority is established in article 6.9 of chapter 6.5 of division 20 of the California Health and Safety Code. This program was established in early 2013 and is primarily responsible for implementing the statutory requirements of article 14, of chapter 6.5 of division 20 of the California Health and Safety Code as provided by Assembly Bill 1879 (Ch. 559, Statutes of 2008) and Senate Bill 509 (Ch. 560, Statutes of 2008), which require DTSC to establish a program that identifies and prioritizes chemicals of concern in consumer products, evaluates alternatives, and specifies regulatory responses to reduce chemicals of concern in products. The program is also responsible for providing health and safety support and consultation for DTSC staff relative to their office and field activities.
- Environmental Chemistry Laboratory (ECL) – The ECL provides DTSC and other agencies within Cal/EPA with expertise and laboratory capacity in the areas of analytical chemistry and biochemistry. The ECL serves as California's reference laboratory for the identification and measurement of concentrations of toxic chemicals in many different media including air, water, soil, hazardous waste streams, and biological or human tissues. The laboratory also conducts research on toxic materials, develops analytical methods for new contaminants of concern, and consults with field staff on analytical results.
- Office of Communications – This office is primarily responsible for all internal and external communication. In addition, the office administers the Departmental public participation program. Public participation is designed to establish a dialog with impacted communities, provide information in a manner comprehensible to

the layperson, and ensure responses to questions and concerns from members of these communities are provided.

- Office of Administrative Services – This office is responsible for providing administrative support services for DTSC, including accounting, human resources, budgets, procurement, fleet administration, file management, training, and contract development.
- Office of Environmental Information Management (OEIM) – This office supports DTSC’s information technology needs, including software and hardware acquisition, standardization, and training. OEIM also provides network and user support services and develops and supports various information technology applications critical to DTSC’s core programs and support functions.
- Office of Legal Affairs – This office provides three critical functions for DTSC through three sub-offices. The Office of Legal Counsel provides legal advice and representation for DTSC. The Office of Criminal Investigations investigates alleged criminal violations of hazardous waste laws and develops cases for referral to State and local prosecutors. The Office of Planning and Environmental Analysis provides technical support to DTSC programs to ensure compliance with the California Environmental Quality Act.
- Office of Legislation – This office is responsible for coordinating, analyzing, and recommending actions on legislation and federal legislative proposals impacting DTSC. The office also serves as the primary liaison between DTSC’s programs and the California Legislature and external interest groups.

RISK ASSESSMENT

DTSC utilized a variety of instruments to assess its risk control environment for this FISMA report. For example, DTSC used the strategic planning process as well as contracting for external review of program functions to identify risk. Specifically, DTSC evaluated risk exposure within its information technology and permitting programs through comprehensive assessments conducted by Gartner Group and CPS HR Consulting, respectively.

DTSC identified four categories as high risk for the Department.

1. Cost Recovery
2. Site Cleanup
3. Permitting and Enforcement
4. Environmental Chemistry Laboratory

Cost recovery constitutes the only open issue from the 2011 FISMA review. DTSC continues to make progress on implementing adequate controls for risks associated with cost recovery.

EVALUATION OF RISKS AND CONTROLS

In early 2012, DTSC launched an initiative to systematically identify issues that adversely impact the efficiency and effectiveness of the Department. This initiative impacted every program and office within DTSC and included input from DTSC staff. Since this effort addresses core issues of the Department, it is called “Fixing the Foundation.”

Through an iterative model of assessment, action, and evaluation, the Fixing the Foundation effort has identified eight general categories consisting of a total of 30 distinct issues that constitute risk to the Department. Each risk is addressed through a work plan. Additional categories, risks, and associated work plans are added when identified. The Department will use the same work plan governance process for all its initiatives.

The Fixing the Foundation efforts, corrective actions, schedules and status data are posted on DTSC’s Web site. Posting the Fixing the Foundation efforts online provides a conduit for transparency and helps ensure accountability.

Although only risks assessed as “high” are reported on in this FISMA cycle (attachment), the entire list of categories, assessed risk, associated work plans, and resolution status can be found on DTSC’s Web site at:

http://www.dtsc.ca.gov/upload/Fixing_the_Foundation_WP.pdf.

VACANT POSITIONS

As statutorily required, DTSC is in compliance with Government Code section 12439. DTSC works with the State Controller’s Office to re-establish any positions abolished per Government Code provisions and annually submits a justification to the Department of Finance requesting that abolished positions be re-established.

CONCLUSION

DTSC continues to identify opportunities for strengthening its process of internal controls and monitoring. The four categories involving 10 distinct risks identified in this report are a high priority for the Department. The Department is implementing corrective actions as specified in the attachment and in the associated links, and will be reporting the progress of these actions in another six months.

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DTSC has additionally developed work plans to address moderate to low risks identified during the risk assessment process. These risks will also be subject to ongoing action and periodic internal review.

If you have any questions regarding this report, please contact Sara Benson, Chief of Financial Planning at (916) 324-2993 or by email at Sara.Benson@dtsc.ca.gov.

Attachment

cc: Director of Finance	FISMAhotline@dof.ca.gov
Legislature	deanna.hansen@asm.ca.gov
State Auditor	MargaritaF@auditor.ca.gov
Governor's Office	Adrian.Mata@gov.ca.gov
State Library	FISMA@library.ca.gov
State Controller's Office	SCOaudFISMA@sco.ca.gov
State Treasurer's Office	FISMA.Reports@treasurer.ca.gov
Attorney General	OPRA@doj.ca.gov

Attachment
High Risk Categories and Actions

Risk Category #1: Cost Recovery	
<p>Risk: Comprehensive Cost Recovery Procedures</p> <p>DTSC's invoicing practices have been complicated, unclear and inconsistent, which contributed to the accumulation of unbilled and billed but uncollected costs of hazardous waste cleanup activities.</p>	<p>Action: Continue developing a set of comprehensive policies and procedures to maximize DTSC's recovery of past, present and future cleanup costs.</p> <p>Work Plan and schedule: http://www.dtsc.ca.gov/upload/2a_Admin_Comprehensive_Cost_Recovery_Procedures_WorkPlan.pdf</p>
<p>Risk: Billing Collections Backlog</p> <p>As of April 2013, DTSC accumulated an estimated \$185 million in unbilled and uncollected costs. Costs recorded as unbilled in the Cost Recovery Billing System (CRBS) have historically not followed the same process as invoiced and not collected (Accounts Receivable), for which specific guidelines are set forth in the State Administrative Manual (SAM).</p>	<p>Action: Continue to improve efforts to evaluate unbilled and uncollected costs, and pursue collection of incurred costs to the maximum extent possible.</p> <p>Work Plan and schedule: http://dtsc.ca.gov/upload/2b_Admin_Cost_Recovery_Billing_Collections_Backlog_WorkPlan.pdf</p>
<p>Risk: Cost Recovery Billing System</p> <p>The Cost Recovery Billing System (CRBS) software application is no longer supported by the manufacturer. This places DTSC at risk if the CRBS fails and is unable to create and mail invoices to responsible parties in a timely manner. Additional functionality such as generating collection letters and electronic invoicing and payments are not available as part of the current CRBS. Developing a replacement system with additional functionality for cost recovery has been delayed by restrictions imposed by Budget Letter 08-05, Moratorium on Developing Administrative Information Technology Systems (Fi\$Cal).</p>	<p>Action: Replace DTSC's current cost recovery billing system with the State Financial Information System (Fi\$Cal).</p> <p>Work Plan and schedule: http://www.dtsc.ca.gov/upload/2c_OEIM_Cost_Recovery_Billing_System_WorkPlan.pdf</p>

Risk Category #2: Site Cleanup

<p>Risk: Orphan Site Funding</p> <p>DTSC anticipates that within the next two to three years, the amount of funding needed to cover Federal Superfund match obligations and the State's orphan funding needs will exceed the current annual appropriation. If that occurs, DTSC will need to assess which projects will not be funded and work will either need to stop or be reduced on those projects.</p>	<p>Action: Continue to determine the number of current and potential sites, project costs and secure adequate funding to cover Superfund match and state "orphan" site cleanup efforts when no viable responsible party can be identified.</p> <p>Work Plan and schedule: http://www.dtsc.ca.gov/upload/3a_BERP_Orphan_Site_Funding_WorkPlan.pdf</p>
<p>Risk: Financial Assurance for Cleanup Sites</p> <p>The regulatory requirements and policies regarding financial assurance have changed over time and in some cases need updating. The Brownfields and Environmental Restoration Program is reviewing these requirements and policies and updating how it applies requirements to ensure public money is not used to pay for long-term cleanup projects where responsible parties file for bankruptcy or refuse to fund work.</p>	<p>Action: Review existing financial assurance guidance for accuracy and consistency, audit current sites to ensure adequate financial assurance cost estimates and make improvements to current financial assurance tracking system.</p> <p>Work Plan and schedule: http://www.dtsc.ca.gov/upload/3b_BERP_Financial_Assurances_for_Cleanups.pdf</p>
<p>Risk: Institutional Controls Tracking</p> <p>Final cleanup agreements often allow residual contamination to remain on-site requiring long-term stewardship (LTS). LTS refers to engineering and legal activities used to control and manage residual contamination. Risks to long-term stewardship activities include: outdated policies and procedures; no performance metrics tracking system; limited funding mechanisms to recoup clean-up costs; and the value added of the tracking system used to monitor planned activities on sites where LTS is in place.</p>	<p>Action: Continue reviewing and updating policies and documents associated with LTS activities, convene a workgroup to determine potential additional funding sources for LTS, incorporate LTS performance metrics into DTSC Envirostor data system and provide training to staff on LTS requirements and processes.</p> <p>Work Plan and schedule: http://www.dtsc.ca.gov/upload/3c_BERP_Institutional_Controls_Tracking_WorkPlan.pdf</p>

Risk Category #3: Permitting and Enforcement

<p>Risk: Process Efficiency, Consistency and Transparency in the Hazardous Waste Facility Permitting Process</p> <p>There is significant variability and complexity in the types of permits DTSC issues. Consistent practices and/or guidance for processing these permits is either not available or is outdated.</p>	<p>Action: Continue efforts to ensure the Office of Permitting issues hazardous waste permits that are protective, timely, legally defensible and enforceable.</p> <p>Work Plan and schedule: http://www.dtsc.ca.gov/upload/4a_HWMP_Enforcement_Efficiency_Consistency_Transparency_WorkPlan.pdf</p>
<p>Risk: Closure Cost Estimates</p> <p>Typically, DTSC reviews facility closure cost estimates on a 10-year cycle or longer, potentially leaving many facilities with financial assurance mechanisms that may not be adequate to cover the actual cost of closure or post-closure maintenance care. The issue is further complicated by the backlog of permit renewals for which closure cost estimates have been delayed. Permitting's capacity to address these risks are dependent upon the availability of future resources to process and render permit decisions on these continued permits.</p>	<p>Action: Continue work on maintaining financial assurance at all permitted facilities that reflect the actual cost of closure and post-closure work, and update the estimates every five years.</p> <p>Work Plan and schedule: http://www.dtsc.ca.gov/upload/4i_HWMP_Closure_Cost_Estimates_WorkPlan.pdf</p>
<p>Risk: Hazardous Waste Tracking System Data Base</p> <p>DTSC faces multiple risks in regulating California's hazardous waste, among them are: an aging Hazardous Waste Tracking System (HWTS), loss of staff resources dedicated to managing the hazardous waste processes and data, managing the conversion of growing quantities of raw data into information used to ensure the safety of Californians, inaccurate reporting of hazardous waste activities by transporters, and the looming implementation of a Federal HWTS that may or may not meet California's hazardous waste management needs.</p>	<p>Action: Implement a replacement HWTS for historical information and California waste tracking, while planning the implementation of the Federal HWTS scheduled for October 2015.</p> <p>Work Plan and schedule: http://www.dtsc.ca.gov/upload/4k_OEIM_HWTS_WorkPlan.pdf</p>

Risk Category #4: Environmental Chemistry Laboratory (ECL)

Risk: Environmental Chemistry Laboratory Sample Quality, Work Prioritization, and Outdated Equipment

Supporting the science-based decision making processes of its customers is at the core of the ECL's mission. The ECL must better optimize its practices, educate its clients, and upgrade and sustain its laboratory equipment to maintain pace with evolving regulatory structure and environmental science.

Action: The ECL is updating its quality management system, training staff and clients on analytical methods and the interpretation of lab reports and developing a life-cycle funding program for replacing obsolete laboratory equipment.

Work Plan and schedule:

http://www.dtsc.ca.gov/upload/7a_ECL_Sustainable_Funding_and_Sample_Quality_Prioritization_WorkPlan.pdf