Matthew Rodriquez
Secretary for
Environmental Protection

Department of Toxic Substances Control

Deborah O. Raphael, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

Edmund G. Brown Jr.
Governor

MEMORANDUM

TO: Matt Rodriquez
Secretary for Environmental Protection
California Environmental Protection Agency

FROM: Deborah O. Raphael Deborah O. Raphael
Director

DATE: May 30, 2013

SUBJECT: TWELVE AND EIGHTEEN MONTH FOLLOW-UP ON DTSC's 2011 FISMA INTERNAL CONTROL REVIEW

In accordance with the Financial Integrity and State Manager's Accountability (FISMA) Act of 1983, the Department of Toxic Substances Control (DTSC) submits this 12- and 18-month status report on its 2011 FISMA Internal Control Review.

REPORTABLE HIGH RISK AREAS AND STATUS

The 2011 FISMA Internal Control Review revealed three areas posing significant risk to DTSC. Two of the three previously identified risks concerned a potential deficit in a primary support fund and insufficient funding to implement legislation concerning Green Chemistry. These risks were reported in DTSC's six month status report as resolved and do not require additional reporting. The following is a status report on the third risk identified:

The Department has millions of dollars in costs incurred that required further investigation before they can be invoiced.

DTSC Corrective Action Plan

In its last update, DTSC indicated that it had formed a new cost recovery team to improve the cost recovery process and address unbilled costs. That team developed a formal corrective action plan and reported its progress to the Director.

The cost recovery team has implemented several improvements intended to address DTSC's unbilled and uncollected cost backlog, including, but not limited to:

- Implementing a centralized process for issuing collection letters. Over 1,200 collection letters have been issued since November 1, 2012.

- Revising our Voluntary Cleanup Program application to require the responsible party to pay for costs to prepare and negotiate DTSC voluntary cleanup agreements.
- Developing new project management and billing reports to identify past-due invoices, increase transparency of cost recovery billing data, and assist staff in researching unbilled costs, invoiced costs, receipt of payments, overdue invoices, and billing statuses.

As of May 24, 2013, DTSC has reduced its total unbilled costs by 39% for the period July 1987 through June 2010 as compared to total unbilled costs reported on September 15, 2011[1]. DTSC has increased the amount of costs billed by 11% for costs incurred in FY 2011 as compared to costs incurred in FY 2010 and increased costs collected by 17% for costs invoiced in FY 2011 as compared to costs invoiced in FY 2010. (DTSC incurred about the same amount of costs in FY 2010 and FY 2011.)

Twelve Month Status

In its 2011 FISMA Internal Control Review, DTSC reported that it had $70 million in unbilled costs for the period July 2004 through June 2010 (as reported on October 31, 2011). Since then, DTSC has taken a more comprehensive look at its billing system and now reports that it has approximately $140 million in unbilled costs and $45 million in billed, but uncollected costs for the period July 1987 through December 2012 (as of April 24, 2013).

As a result, DTSC has determined that the scope and complexity of the issues surrounding its cost recovery efforts require a more comprehensive review and action plan. DTSC identified the root of the problem as its failure to develop a comprehensive cost recovery system that clearly outlined the roles and responsibilities of management and staff. In order to address this issue, DTSC developed a work plan that allows DTSC to create and implement a comprehensive cost recovery policy and procedures that clearly define the roles and responsibilities of all DTSC staff for all facets of the cost recovery process. Through this work plan, DTSC anticipates maximizing recovery of past, present, and future oversight costs. The work plan consists of four phases that address approximately 30 cost recovery policy areas:

- **Phase I:** By September 30, 2013, DTSC will issue cost recovery procedures (Departmental Procedures Memoranda (DPMs)) that clearly outline the roles and responsibilities of DTSC Site Mitigation program, administrative, legal, and support staff with respect to cost recovery. Procedures will address the following cost recovery policy areas: Pre-Agreement Cost Recovery; Site Code Origination; Invoicing; Collection Letters; DTSC Form 1479; Site Discovery; Orphan Sites; Potentially Responsible Party (PRP) Searches; State Orphan Funds; National Priority List (NPL) Sites; Suspension/Termination of Site Work; Health & Safety Code/State Administrative Manual (SAM) Compliance; No Further Cost Recovery Action (NFCRA) Determinations; Orders; Voluntary Cleanup Agreements; Administrative Site Management; Daily Logs; Schools; Liens; Site Certification; Site Closure; Payments; Invoice Disputes; Ability to Pay Determinations; Bankruptcy; Payment Agreements; Land Use Restrictions; Operation and Maintenance (O&M); Office of Legal Counsel Referrals for Cost Recovery; and Attorney General Referrals for Cost Recovery. Training for appropriate DTSC staff regarding the DPMs will occur at the end of this process.

[1] Calculations exclude BKK and Stringfellow sites.

- **Phase II:** Using the previously developed cost recovery procedures (DPMs from Phase I) as a foundation, DTSC will develop and issue an official comprehensive Site Mitigation cost recovery policy no later than June 1, 2014. The comprehensive cost recovery policy will be established in accordance with DTSC's Policy Document Guidelines, DTSC-OP-0001.
- **Phase III:** DTSC will develop and complete training regarding its comprehensive Site Mitigation cost recovery policy and procedures for appropriate DTSC staff no later than July 31, 2014.
- **Phase IV:** DTSC will establish performance metrics to evaluate the effectiveness of DTSC's comprehensive Site Mitigation cost recovery policy and procedures, including an evaluation of response costs incurred by DTSC and recovered from responsible parties no later than July 31, 2014. Performance metrics will be posted to DTSC's website.
- **Phase V:** DTSC will review and update its comprehensive Site Mitigation cost recovery policy as follows: (1) a one year review and update to be completed no later than June 1, 2015; and (2) a three year review and update to be completed no later than June 1, 2018, and every three years thereafter. DTSC also will prepare an annual report documenting the effectiveness of its comprehensive Site Mitigation cost recovery policy.

DTSC has also developed a work plan outlining its comprehensive evaluation of both its unbilled and billed, but uncollected costs, with the goal of initiating collection efforts for all unbilled and billed, but uncollected costs to the maximum extent possible. Pursuant to this plan, DTSC has begun the process of evaluating the statute of limitations (SOL) for sites with unbilled costs over $5,000 and a compilation of the data will be completed shortly. Once the data is compiled, DTSC will make a determination concerning the next steps for each site (e.g., bill, responsible party search, litigation or write-off) based on the SOL. DTSC staff also continues data cleanup activities, which include, but are not limited to, reconciling payment and settlement data in the Cost Recovery Billing System with CalSTARS and making adjustments as appropriate; researching past NFCRA determinations to ensure that they have been properly adjusted in the billing system; and evaluating sites that have been placed on HOLD due to bankruptcy or ongoing negotiations/litigation to ensure that the billing status is accurate and that adjustments have made to the billing system as appropriate. Similar steps will be taken with respect to billed, but uncollected costs.

Due to the scope and complexity of the issues identified in the course of this review, DTSC will be identifying and redirecting staff full time to address the workload demands of the plan. DTSC has already begun the process of redirecting some resources and is in the process of conducting a workload assessment to ensure successful execution and completion of the work plan. The Director has established a Special Assistant position to oversee cost recovery. The Special Assistant will assume his role starting May 31, 2013, and will report directly to the Director. The Special Assistant will direct the work of staff assigned to executing the unbilled and uncollected cost work plan, as well as work related to DTSC's development of a comprehensive cost recovery policy and procedures.

CONCLUSION

The significant risk area identified in this report continues to be a very high priority for DTSC. DTSC's efforts to institute appropriate controls will be reported on in the next FISMA Internal Control Review.

If you have any questions regarding this report, please contact Sara Benson, Chief of Financial Planning, at 916. 324.2993 or by e-mail at sbenson@dtsc.ca.gov.

cc: Ana J. Matosantos, Director
Department of Finance
FISMAhotline@dof.ca.gov