

Department of Toxic Substances Control

2015 SLAA REPORT

March 16, 2016

Matthew Rodriquez, Secretary
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95814

Dear Mr. Rodriquez,

In accordance with the State Leadership Accountability Act (SLAA), the Department of Toxic Substances Control submits this report on the review of our systems of internal control and monitoring processes for the biennial period ended December 31, 2015.

Should you have any questions please contact Andrew Collada, Deputy Director, Admin Services, at (916) 327-1192, andrew.collada@dtsc.ca.gov.

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 over 1,000 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 Pasadena. DTSC's Fiscal Year 2015-16 operating budget is \$208.1million. 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, 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., Exide, Stringfellow Acid Pits and the BKK Landfill), the Santa Susana Field Laboratory, military bases, former industrial properties, and contaminated school sites.
- **Hazardous Waste Management Program (HWMP)** – 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. HWMP performs Emergency Response functions per Chapter 6.8 of the California Health and Safety Code and is the Certified Unified Program Agency (CUPA) for Imperial and Trinity Counties, as well as part of the Cal EPA CUPA Audit Team that audits all CUPAs on their hazardous waste generator program. The Office of Criminal Investigations is also housed under this program where it investigates alleged criminal violations of hazardous waste laws and works with DTSC's Office of Legal Affairs to develop cases for referral to State and local prosecutors. HWMP also houses the Policy and Program Support Division which includes among other projects hazardous waste characterization, manifest oversight, EPA ID number issuance, rulemaking and special projects.
- **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 requires DTSC to establish a program that identifies and prioritizes chemicals of concern in consumer products, evaluate alternatives, and specify 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.

DTSC has six entities that support the core programs. They are described below:

- **Environmental Chemistry Laboratory (ECL)** – The ECL provides DTSC and other agencies within CalEPA 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, consumer products, and biological or human tissues. The laboratory also conducts research on toxic materials, develops analytical methods for new contaminants of concern, and provides technical support to field staff on analytical results.
- **Office of Communications** – This office is primarily responsible for DTSC's internal and external communication. The office administers DTSC's public participation and community outreach program that serves as the principal intermediary with the public during site cleanup and other regulatory action. The Media Relations Branch handles inquiries about DTSC's work and assists staff with providing timely, accurate and understandable information to media outlets and their audiences.
- **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, information security 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 two critical functions for DTSC through two sub-offices. The Office of Legal Counsel provides legal advice and representation for DTSC. The Office of Planning and Environmental Analysis provides technical support to DTSC programs to ensure compliance with the California Environmental Quality Act.
- **Executive Office** – This Office provides oversight and support to DTSC in the following areas:
 - The Office of Legislation 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.
 - The Office of Civil Rights administers DTSC's Equal Employment Opportunity Program consistent with state and federal law.
 - The Office of Environmental Justice is responsible for ensuring the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

RISK ASSESSMENT PROCESS

DTSC's risk assessment process combines systematic activities with significant internal and external input. In early 2012, DTSC created a path for addressing risk by launching its Fixing the Foundation (FtF) initiative. This initiative involved a thorough assessment of risks that threatened DTSC's ability to conduct its mission. In April 2013, DTSC published 36 work plans consisting of 187 specific action items

to eliminate or mitigate risks. The FtF initiative also outlined actions to accomplish strategies contained in DTSC's 2014-2018 Strategic Plan. High risk elements contained in the FtF work plans were included in DTSC's report of internal control systems (FISMA) for the period ending December 2013. In July 2014, DTSC produced 20 work plans after once again reviewing its risk exposure. These work plans addressed new issues and continued action on incomplete elements from the FtF initiative. DTSC continued its cycle of risk assessment, monitoring and action in July 2015 with the introduction of 11 new work plans.

Work plans are the manifestation of significant internal and external assessment. DTSC's leadership team meets regularly to assess risk exposure and impact. Deputy Directors continually survey their staff to solicit evolving and emergent risks.

DTSC has benefited and is applying recent and ongoing external review of risk exposures that could potentially impact its mission. In October 2013, CPS HR Consulting published their Permitting Process Review and Analysis report describing ways to improve the permitting program at DTSC. In August 2014, the California State Auditor published their report highlighting 11 recommendations to improve DTSC's cleanup cost recovery program. An Independent Review Panel (IRP) was established by SB 83 (Statutes of 2015, Chapter 24) to: (1) advise DTSC on issues related to its reporting obligations; (2) make recommendations for improving DTSC's programs; (3) advise DTSC on increasing the levels of environmental protection by its programs; and (4) report its findings to the Governor and the Legislature. The IRP will focus on, but is not limited to, making recommendations regarding improvements to the department's permitting, enforcement, public outreach, and fiscal management programs.

EVALUATION OF RISKS AND CONTROLS

Operations- Internal- Program/Activity—Changes, Complexity

Hazardous Waste Permits are issued for 10-year periods. Some DTSC permits are out of date and are operating on a continued status. Facilities with continued permits are held to the standards in the original permit as well as current regulations and statutes. However, these continued permits do not have the advantage of the most recent technologies, practices and safeguards to prevent hazardous waste releases. DTSC is improving its processes and received limited-term funding to make decisions on some of its continued permits. As projected, more facilities are now operating with continued permits because the number of permits set to expire outstrips the resources available to complete necessary reviews. DTSC expects to receive 57 renewal applications for expiring permits in the four-year period beginning in Fiscal-Year 2015-2016. The Hazardous Waste Permit backlog and the risk posed by continued permits will continue without permanent additional resources.

DTSC has undertaken a sustained effort to better manage the number of continued permits by performing a more timely review of permit applications and making more timely permitting decision. In 2014, DTSC temporarily redirected six positions from the Brownfield and Environmental Restoration Program and the HWMP Policy and Program Support Division to assist in this effort. DTSC also received eight limited-term positions and \$1.2 million in fiscal year 2014-15 to improve the permitting process. In fiscal year 2015-16, DTSC received permanent positions with limited-term funding to provide mission-critical support for permitting activities. With these resources DTSC committed to make decisions on 17 of the 24 continued permits by the end of June 30, 2016 and is on track to complete that work.

DTSC is executing a comprehensive work plan designed to strengthen its hazardous waste facilities permitting program. The initiative involves 86 action items that will make the program more protective and timely by enhancing enforcement, using more transparent standards and consistent procedures, incorporating early public involvement in decision-making, and identifying and addressing environmental justice concerns early in permitting actions. All work plan action items will be complete by the end of calendar year 2016.

Operations- External- Funding—Sources, Levels

Periodically, expenditures in DTSC's two major funds, the Hazardous Waste Control Account (HWCA) and the Toxic Substances Control Account (TSCA), have exceeded revenues from fees, taxes, and cost recovery. When expenditures exceed revenues, it depletes the reserves resulting in anticipated negative fund balances. A negative fund balance means that DTSC will be unable to adequately perform cleanup, hazardous waste oversight, enforcement, permitting, Safer Consumer Products and its other core mission areas.

Increasing obligation to pay for cleanup at sites where there is no responsible party has been a major drain on DTSC's TSCA fund. Both U.S. EPA and DTSC have identified sites which represent an immediate threat to public health and environment and/or for which no viable responsible parties have been identified to address these projects. U.S. EPA's list is referred to as the National Priority List (NPL) and DTSC's list is referred to the State Orphan Site List. Annually, DTSC's budget contains a line item that covers cleanup activities for both NPL and State Orphan sites. For FY 14/15 roughly \$10.2 million was allocated to cover NPL and State Orphan sites. Each year the amount increases (\$9.2 million in FY 12/13). Federal regulations require the State to provide a 10 % match for the construction of a final remedy and initial operation and maintenance costs at NPL sites. After a specific time period, then the State assumes 100% of the costs to operate that system. This same funding allocation covers the State Orphan sites where DTSC must cover 100% of cleanup costs.

It is anticipated that within the next 2-3 years, the amount of money needed to cover our NPL match obligations and State's orphan funding needs will be more than what is currently appropriated annually. If that occurs then DTSC will have to make the difficult decision as to what projects will not be funded and work will either need to stop or slow down. Long term demands on the TSCA fund also places other TSCA funded activities at risk. Specifically, California's Safer Consumer Products program, which is entirely funded by TSCA, may have insufficient funding if projected TSCA demands are not met.

DTSC continues to establish controls to monitor expenditures, cost recovery billings, and fee revenues for both funds to ensure DTSC is able to implement corrective action measures as needs arise. DTSC prioritizes its work and resource commitments to compensate for anticipated structural deficits and continues to work with the Department of Finance to evaluate options for meeting the demands on the TSCA and HWCA including fee reform, fee for service enhancements and other measures to cover anticipated TSCA and HWCA shortfalls.

DTSC will create a work plan by June 30, 2016 outlining the steps to further strengthen controls to mitigate this risk. DTSC created a work plan in April 2013 that addressed an immediate shortfall that occurred then. The new work plan will stress longer term solutions.

DTSC formalized steps for pursuing those potentially responsible for paying for cleanup and its processes for designating sites as orphans. In late 2014, DTSC published 27 Department Procedural Memoranda (DPM) that outlined cost recovery procedures and responsibilities at every step in the cleanup process. These steps will help the department recover a greater share of its response costs.

Operations- External- Funding—Sources, Levels

Exide Technologies (Exide) is closing its hazardous waste management facility located at 2700 South Indiana Street, Vernon, California. A closure plan is being circulated for public comment. Exide is required to establish financial assurances to address its closure/post-closure obligations. The closure/post-closure cost estimate of the facility has been established at \$38,660,000. Although not anticipated at this time, the State could be required to pay for some of the cleanup if Exide becomes unable to meet its legal responsibilities.

DTSC has identified approximately 10,000 residential properties, and there are an undetermined number of industrial facilities, which it believes may have been impacted by contaminants from operations at 2700 South Indiana Street, Vernon, California. This includes operations by Exide and prior facility operators since 1922. There may be other contributing sources of contamination which are currently being investigated by DTSC. These properties are in addition to residential properties already being

addressed by Exide pursuant to an order issued in HWCA No. 2014-6489, as amended. DTSC is currently conducting remedial investigations to determine the extent of contamination and the need for a response action. Legal liability for the offsite residential and industrial contamination has not been established and will likely require litigation against one or more potentially responsible parties. Even if liability can be established, the parties who may be liable may be financially unable to address their legal responsibilities. Therefore, the State could be required to pay for some of the cleanup.

Closure/Post Closure - As of January 1, 2016, Exide has established financial assurances to secure its obligations including a financial guarantee bond of approximately \$11,158,854 and trust fund created in the amount of \$8,250,000. Additional deposits into the trust fund of \$3,250,000 each are due on November 1, 2017 and March 31, 2018. Pursuant to an order dated March 12, 2015, in administrative action HWCA No. 2014-6489, In the Matter of Exide Technologies, Exide will not seek reimbursement for its closure or post-closure expenditures from these funds so that the principal in those financial assurances will not be reduced as Exide incurs closure/post-closure expenses.

Offsite Residential Remedial and Corrective Action - DTSC is currently authorized to spend \$7,000,000 from the Toxic Substances Control Account (TSCA) to address contaminated residential properties around the closed Exide facility. While legal liability for the contamination has not been established, Exide is required to evaluate all residential properties impacted by the facility pursuant to a Residential Corrective Measures Study. Exide is also obligated to provide funds into a trust fund, in favor of DTSC, to pay for response actions required by DTSC's approval of the Residential Corrective Measures Study.

Offsite Industrial Remedial and Corrective Action - While legal liability for the contamination has not been established, there is a 2002 Corrective Action Consent Order which compels Exide Technologies to undertake investigations in accordance with DTSC-approved investigation work plans. The administrative order, HWCA No. 2014-6489, as amended, also establishes the process whereby one potentially liable entity, Exide, is required to evaluate all offsite industrial locations impacted by the facility pursuant to an Industrial Off-Site Corrective Measures Study. Exide Technologies is also obligated to provide funds into a trust fund, in favor of DTSC, to pay for response actions required by the Industrial Off-Site Corrective Measures Study.

Onsite Remedial and Corrective Action - There is a 2002 Corrective Action Consent Order that compels Exide to undertake investigations in accordance with DTSC-approved investigation work plans. Stipulation and Order Docket No. HWCA No. 2014-6489, requires Exide to submit an On-site Corrective Measures Study by December 31, 2016, and to deposit funds into a trust fund, in favor of DTSC, to pay for response actions required by the DTSC-approved On-site Corrective Measures Study.

Control D Update - DTSC received Exide's Soil Resource Conservation and Recovery Act Facility Investigation Report (RFI Report) on February 19, 2016. DTSC completed an initial review of the Soil RFI and issued a comment letter identifying insufficiencies. DTSC received Exide's Ground Water RFI Report on May 11, 2016. DTSC's review of that report is ongoing.

Operations- External- Funding—Sources, Levels

In 2013, Safer Consumer Products (SCP) regulations established an entirely new programmatic framework to protect human health and the environment from exposure to harmful chemicals in consumer products. Rather than immediately banning or restricting the use of harmful chemicals, SCP identifies the product-chemical combination to be evaluated, after which each manufacturer conducts and submits an analysis of alternatives that could prevent exposure and harm. This Alternatives Analysis (AA) considers a broad range of chemical, environmental, and economic factors throughout the life cycle of the product. DTSC evaluates the analyses prepared by the manufacturers and develops an appropriate regulatory response. The SCP regulations permit a wide range of responses (e.g., further

research, providing information to DTSC or consumers, requiring product design changes or restricting the sale of products containing chemicals of concern). SCP is the only program in the world to use this approach.

The SCP program was established through redirection of existing resources and curtailing of Pollution Prevention efforts. No budget augmentation was given to support full implementation of the regulations. To date, program resources have been adequate to build the capacity to address the first two of the four steps of the regulations. Tools have been developed for managing the Candidate Chemicals List; the program issued its first three-year Priority Products Work Plan; staff have developed tools to research and identify Priority Products, i.e., product-chemical combinations which may cause harm, for possible regulation; and we have begun to issue guidance for the Alternatives Analysis process.

DTSC must complete establishing processes and procedures necessary to perform all aspects of the regulations and add the staff to implement the regulations. Appropriate expertise is needed to initiate the latter stage regulator processes and finalize the infrastructure needed for the program – namely to manage the Alternative Analysis, Regulatory Response, and compliance and enforcement functions of the program. The structural deficit in the department's major revenue funds poses a risk of inadequate resourcing for continuing to build and implement the program.

There are limited opportunities within the SCP regulations structure to generate fees to support the program. DTSC has allocated sufficient funding for initial phases of the program. This incremental process will continue until long term stable funding is provided. Without additional resources we will slow implementation of the regulations to manage workload within existing resources. This will primarily be accomplished by naming fewer Priority Products.

Operations- Internal- Technology—Inadequate Support, Tools, Design, or Maintenance

The need to have a replacement plan supported by predictable funding for outdated lab equipment was identified as an Objective (4.6) in DTSC's Strategic Plan. ECL has over 200 pieces of laboratory equipment in its two labs in Berkeley and Pasadena. Over half of the items are beyond their useful life expectancy. As instruments age they become less reliable, threatening the scientific validity and legal defensibility of the resulting data. Also, as additional toxic threats to human health and the environment are recognized, ECL will lack the ability to detect and measure new chemicals at the concentrations to which people may be exposed.

DTSC will create a work plan by June 30, 2016 outlining the steps and schedule to address this risk area. Completion of elements of this work plan will be reported in upcoming Corrective Action Plans.

Operations- External- Staff—Recruitment, Retention, Staffing Levels

DTSC's Environmental Scientists, Research Scientists, Associate and Staff Toxicologists, Chemists and Staff Chemists, and industrial hygienist salaries are not at parity with similar professional classifications in local and federal government agencies and the private sector. Additionally, these classifications are paid much less than DTSC engineers and geologists working side by side with scientists. According to studies conducted by the California Department of Human Resources and the California Association of Professional Scientists, starting salaries for environmental scientists lag an average of 16% behind local and federal agencies. DTSC's maximum salaries for journey level scientists lag 33% behind those same agencies. The salaries for DTSC associate (master's degree) and staff (doctoral degree) toxicologists salaries lag by as much as 40% and 30% respectively. A 2012 study showed that 37% of the scientists and 60% of the toxicologists and research scientists are over age 60 and could be expected to retire in as soon as five years. Similar percentages exist for geologists and engineers. Because the salaries are not competitive with federal and local government and the private sector, many highly-qualified science and engineering professionals may not pursue employment with the State and may choose, instead, to work elsewhere.

Current pay inequity introduces additional risk for the implementation of California's Safer Consumer

Products regulations. The regulations went into effect October 2013 to create framework for regulation of hazardous chemicals in consumer products. The SCP framework is unlike any other chemical regulation nationally or internationally. As such, the program has been hiring staff with new skill sets relevant to these unique regulations. Disciplines such as chemical exposure analysis, green chemistry methodologies, and emerging predictive toxicology tools are new to the department and to state service more generally. This means that the SCP program will need to attract candidates who are not already in state service. Reasonable salaries will be critical for recruitment. If the disparities in technical salaries are not addressed, California's ability to realize the goals of its innovative approach to addressing toxic chemicals regulation could be severely compromised.

DTSC continues to work with the California Department of Human Resources (CalHR) to ensure that CalHR is aware of issues involving pay. These issues are handled by CalHR through the collective bargaining process with the two employee unions involved, California Association of Professional Scientists (CAPS) and the Professional Engineers in California Government (PECG). The contracts signed between these unions and the State are for three years. In the final year of the contract is when the negotiations (e.g. bargaining) between the state and unions occur for the next contract. CAPS has not signed a contract with the Administration. The last salary offer by the administration (a 15% raise over three years) was rejected by CAPS rank and file members. Although the parties have resumed negotiations, CAPS has requested that a mediator be brought into the matter.

ONGOING MONITORING

Through our ongoing monitoring processes, the Department of Toxic Substances Control reviews, evaluates, and improves our systems of internal controls and monitoring processes. The Department of Toxic Substances Control is in the process of formalizing and documenting our ongoing monitoring and as such, we have determined we partially comply with California Government Code sections 13400-13407.

Roles and Responsibilities

As the head of Department of Toxic Substances Control, Barbara Lee, Director, is responsible for the overall establishment and maintenance of the internal control system. We have identified Terri Hardy, Deputy Director, as our designated agency monitor(s).

Frequency of Monitoring Activities

DTSC's risk monitoring activities are timed to support annual work plan updates. Work plans are used by DTSC to outline strategies and actions to address assessed gaps in organizational performance and risk exposures. DTSC's strategic planning cycle and risk monitoring activities precede and inform work plan development. Work plans for the coming fiscal year are produced by July 1 of each year. DTSC executive staff meet at least quarterly to review work plan progress, make work plan changes and address emergent risks. DTSC also integrates external review and audit opportunities into its risk monitoring and work plan development cycle. DTSC is using this State Leadership Accountability Act cycle to better institutionalize the structure and frequency of its risk planning, prioritizing and monitoring activities.

Reporting and Documenting Monitoring Activities

Monitoring results are shared with management as part of the work plan development cycle. DTSC provides access to its work plans to staff and management through a Planning and Performance page on its Intranet. It has historically provided public access to its work plans on its public Website. DTSC did not post its July 2015 work plans but plans to resume this in the future. DTSC will use the new SLAA guidance to better institutionalize its risk reporting and documenting.

Procedure for Addressing Identified Internal Control Deficiencies

DTSC's work plan cycle has proved effective as a platform with which to address control deficiencies. Work plans create universal visibility where internal and external stakeholders can work together to reduce risk exposure through effective controls. DTSC periodically reviews and updates its work plans and carries unresolved deficiencies forward as needed.

CONCLUSION

The Department of Toxic Substances Control strives to reduce the risks inherent in our work through ongoing monitoring. The Department of Toxic Substances Control accepts the responsibility to continuously improve by addressing newly recognized risks and revising risk mitigation strategies. I certify our systems of internal control and monitoring processes are adequate to identify and address material inadequacies or material weaknesses facing the organization.

Barbara Lee, Director

cc: Department of Finance
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