Department of Toxic Substances Control: Performance Improvement Initiatives

Merit Oversight

The Department of Toxic Substances Control (DTSC) regulates hazardous waste management, cleans up or oversees the cleanup of contaminated hazardous waste sites, and promotes the reduction of hazardous waste generation. In light of concerns about the department’s execution of these responsibilities in recent years, the Legislature has held numerous hearings to monitor the performance of DTSC’s programs, established an Independent Review Panel (IRP) to provide oversight of the department, and approved additional funding and positions for DTSC to address deficiencies in some of these programs.

In this web post, we discuss the department’s progress to date in addressing these deficiencies, focusing on those programs that have received additional funding and personnel resources. These programs include (1) Hazardous Waste Management Program, (2) Exide Facilities Contamination Cleanup Program, (3) Site Mitigation and Brownfields Reuse Program, and (4) Office of Strategic Planning and Development. Specifically, for each of these programs, we (1) provide a brief program description; (2) summarize the resources that were approved by the Legislature to address identified deficiencies; (3) include data on outcomes achieved to date, where available, and projected future outcomes; and (4) provide questions for legislators to ask DTSC in future budget and policy hearings to determine the degree to which the department is improving program performance. We do not describe all of the resources approved by the Legislature for DTSC over the past several years, but instead focus on the larger
budget requests that were approved primarily based upon the department’s intent to use the resources to (1) achieve measurable performance goals or (2) produce specified deliverables, such as a strategic program development plan. We also provide a brief description of the IRP established by the Legislature to provide oversight over many of the same programs for which additional resources have been provided.

Hazardous Waste Management Program—Facility Permitting Backlog

*Program Summary.* The Hazardous Waste Management Program [http://www.dtsc.ca.gov/HazardousWaste/index.cfm](http://www.dtsc.ca.gov/HazardousWaste/index.cfm) issues permits to facilities that manage waste that is toxic, corrosive, reactive, or ignitable. DTSC issues hazardous waste permits with a ten-year term, and each permit establishes specific conditions that a facility must meet in order to operate. California has 118 permitted facilities that manage hazardous waste with a total of 127 permits (some facilities have more than one permit). Given the number of permits and permit term, the department must process an average of about 13 permit renewal decisions per year in order to prevent a backlog of permit renewal applications from developing. If a facility submits a renewal application on time, the law allows the facility to continue operation under its expired permit (referred to as a continued permit). Facilities operating under a continued permit are held to the standards established in the original permit. They are not required to implement the most recent technologies, practices, and safeguards to prevent releases of hazardous waste into the environment that have been developed since the original permit was approved. In the spring of 2016, DTSC had 30 permitted facilities—roughly one-quarter—operating under “continued permits” with pending permit renewal applications. Some of these permits had been continued for more than five years.

*Resources to Address Facility Permitting Backlog.* To address the backlog of continued permits, the Legislature approved in the 2016–17 budget plan $3.6 million to convert 8 previously approved limited-term positions to permanent status and to provide 15 additional permanent positions. These additional resources were intended to eliminate the existing backlog of permit applications and complete most future decisions on permit renewals within two years of permits becoming continued.
Projected Program Performance. Figure 1 displays both past and projected performance for making permitting decisions and reducing the backlog of permits continued more than two years past expiration. As shown, the number of annual permit decisions is projected to increase from 3 in 2012–13 to about 16, and the number of permits continued more than two years past expiration is projected to decrease from 27 in 2014–15 to between 6 and 15 in future years.

Figure 1

Permitting Program—Past and Projected Performance

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<td>13</td>
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<td>Total permit decisionsb</td>
<td>16</td>
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<td>Permits continued more than two years past expiration</td>
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<td>10</td>
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aEstimated.
bIncludes: (1) new permits, (2) permit renewals, and (3) class 3 permit modifications—the most complex type of permit modification for the Department of Toxic Substances Control to review. Excludes less complex workload such as closure verifications and review of: (1) class 1 permit modifications, (2) class 2 permit modifications, and (3) emergency permits and variances.

Legislative Oversight Questions:

- Is the department on track to completing the number of permitting decisions projected in the current fiscal year, and have your projections for future permitting decisions changed? If the department is not reaching its targets for completing permitting decisions, why is this happening?
- How many permits are projected to be continued more than two years past expiration in the current year, and have your projections for the number of permits that will continue beyond two years past expiration in the future changed?
- What is the projected timeframe for reducing the number of permits continued more than two years past expiration down from 18 in 2015–16 to zero?
Hazardous Waste Management Program—Enforcement Enhancement Initiatives

Program Summary. The Hazardous Waste Management Program <http://www.dtsc.ca.gov/HazardousWaste/index.cfm> is also responsible for administering DTSC’s enforcement program through its Enforcement and Emergency Response Division (EERD) and the Office of Criminal Investigations (OCI). EERD has regulatory authority to enforce hazardous waste laws through administrative and civil enforcement. EERD staff conduct inspections of hazardous waste generators and transporters, as well as of treatment, storage, and disposal facilities. EERD staff also provide technical training and support to local agencies (under the Certified Unified Program Agency system) that perform hazardous waste regulatory functions on behalf of the state. In conjunction with DTSC’s Public Participation Branch, EERD coordinates with community action and environmental justice groups throughout California on hazardous waste issues. Working in collaboration with EERD, OCI investigates complaints of illegal handling of hazardous waste and participates in environmental initiatives focused on high-priority illegal activities.

Funding to Review Enforcement Program and Address Environmental Violations in Vulnerable Communities. The 2015–16 budget included two proposals related to improving DTSC’s hazardous waste enforcement activities. First, the Legislature approved $1.4 million in two-year funding and 11 positions to conduct a review of the department’s hazardous waste management enforcement program. Specifically, DTSC proposed to conduct a thorough assessment of its enforcement program, including (1) evaluating workload and processes for inspections, investigations, and enforcement activities and (2) developing, revising, and standardizing policies and guidance documents for enforcement staff. The department also proposed to conduct a statewide assessment of its public engagement efforts to improve transparency and community participation. Second, the 2015–16 spending plan included $2.1 million and 11 positions for three years to evaluate and implement approaches to address hazardous waste violations in vulnerable communities. The proposal focused on improving inspection and enforcement in two areas: hazardous waste transportation and the metal recycling industry.

by UC Davis researchers recommended that DTSC (1) establish a more direct and visible connection between public input and decisions made to increase transparency and accountability; (2) engage in earlier, more systematic and sustained interaction with impacted communities; (3) build greater capacity for effective public engagement for both DTSC and stakeholders; and (4) increase access to data and information relevant to decision making. In addition, DTSC identified the following two performance goals in its proposal for reducing hazardous waste violations in vulnerable communities: (1) conduct an additional 30 to 40 hazardous waste transporter inspections in the first year and (2) conduct an additional 40 to 45 inspections of metal recyclers during the first two years.

**Legislative Oversight Questions:**

- What specific steps has DTSC taken or plan to take to streamline the enforcement process?
- What metrics has DTSC established to evaluate performance of its inspection and enforcement activities?
- What has DTSC done to improve its incorporation of community engagement into setting inspection and enforcement priorities? What metrics does DTSC use to measure the improvement?
- Did DTSC conduct an additional 30 to 40 hazardous waste transporter inspections in the first year? If the department did not reach its targets for conducting additional inspections, why not?
- Did DTSC conduct an additional 40 to 45 inspections of metal recyclers last year, and is it on track to do so this year? If the department did not reach its targets for conducting additional inspections, why not?
- What effect has the increase in the number or inspections of hazardous waste transporters and metal recyclers had on reducing the number of environmental violations in vulnerable communities?

**Exide Facilities Contamination Cleanup Program—Lead Contamination Cleanup**

**Program Summary.** In 2000, Exide Technologies purchased a lead-acid battery recycling facility in the City of Vernon that had been operating since 1922. The facility ceased operations in 2014 when DTSC notified Exide that its application for a new permit would be
denied. Testing indicated that releases of lead dust from the facility contaminated areas up to 1.7 miles from the facility and impacted thousands of properties including private residences, parks, and schools.

**One-Time Resources to Address Exide Facility Contamination.** In 2015–16, the Legislature approved increases in spending for the cleanup of properties contaminated by Exide Technologies. In August 2015, the Legislature approved $7 million of emergency funding from the Toxic Substances Control Account (TSCA) to (1) test approximately 1,000 properties in the community surrounding Exide, (2) develop a comprehensive cleanup plan, and (3) begin cleanup of the highest priority sites. In addition, Chapter 9 of 2016 (SB 93, de León) authorizes a loan of up to $177 million from the General Fund to TSCA to use for activities related to the lead contamination in the communities surrounding the Exide facility. The Governor’s 2017–18 budget assumes that about $96 million of that loan will be spent by the end of the budget year. (To the extent that DTSC recovers costs for investigation and cleanup from the parties responsible for the contamination, these funds will be used to repay the loan from the General Fund.) The Legislature has expressed its preference that the local community be consulted in the cleanup process.

**Projected Program Performance.** DTSC estimates that it will investigate 8,500 properties for lead contamination from the Exide facility, and 2,500 properties will be remediated by October of 2019.

**Legislative Oversight Questions:**

- How many properties surrounding the Exide facility have been investigated and sampled, and how many properties are pending investigation and sampling?
- What is the estimated timeframe for completing investigation and sampling activities of the properties surrounding the Exide facility?
- How many properties contaminated by the Exide facility have been remediated, and how many properties are pending remediation?
- What is the timeframe for completing the remediation of properties contaminated by the Exide facility?
- How does DTSC assess the level of community involvement in Exide-related cleanup activities? What is the level of community involvement?

**Site Mitigation and Brownfields Reuse Program—Cost Recovery Backlog**
Program Summary. Under the Site Mitigation and Brownfields Reuse Program (<http://www.dtsc.ca.gov/SiteCleanup/index.cfm>), when DTSC incurs costs for the investigation and remediation of contaminated sites, the department is authorized by law to recover its costs from potentially responsible parties (PRPs). In 2013, DTSC identified that its cost recovery efforts had been impeded by various factors, including a lack of statutory authority to require PRPs to provide financial information and a lack of resources to perform cost recovery activities. The Bureau of State Audits (BSA) released a report (<https://www.bsa.ca.gov/pdfs/reports/2013-122.pdf>) in August 2014 that made 11 recommendations, including that the Legislature give DTSC the authority to require financial information from PRPs. According to BSA, the lack of such information hindered DTSC’s ability to make an informed decision whether to pursue a PRP for response costs, which impacted DTSC’s ability to ultimately recover these costs. Chapter 459 of 2015 (AB 276, Committee on Environmental Safety and Toxic Materials) allowed DTSC to require a PRP to provide information regarding its ability to pay for a response action at a hazardous waste site.

Funding to Address Cost Recovery Backlog. As part of the 2014–15 budget plan, the Legislature approved $1.6 million and 14 limited-term positions to improve the department’s ability to identify PRPs and recover costs from them. At the time, the department estimated that the cost recovery backlog included around $26 million in unbilled or uncollected costs that were recoverable. As part of the 2016–17 budget plan, the Legislature approved $180,000 and two positions to implement Chapter 459.

Projected Program Performance. As a result of Chapter 459, DTSC estimated the number of completed ability to pay cases would increase by 25 annually. Figure 2 shows the number of ability to pay cases completed every year from 2012–13 through 2015–16 and the number of cases projected to be completed in 2016–17 and 2017–18.
Figure 2

Cost Recovery Program—Past and Projected Performance

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<td>14</td>
<td>22</td>
<td>25</td>
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*a* Last full year of ability to pay reviews prior to implementation of Chapter 459 of 2015 (AB 276, Committee on Environmental Safety and Toxic Materials).

*b* Includes six months of Chapter 459 implementation.

*c* Estimated.

**Legislative Oversight Questions:**

- What progress has the department made in increasing the number of ability to pay cases completed? How has your projections for completing ability to pay cases in the current and budget years changed?
- In the current year, what is the percent of total estimated recoverable funds that DTSC estimates it will be able to collect?

Strategic Development Team Established to Create a Culture of Change, Accountability, and Transparency

**Program Summary.** In recent years, the Legislature has held numerous hearings to discuss deficiencies in DTSC’s programs. During these hearings, the department acknowledged a need to implement internal reforms to institutionalize continuous improvement and to address the issues raised at the hearings.

**Establishment of Office of Strategic Planning and Performance.** In 2016–17, the Legislature approved a request for the conversion of five limited-term positions to permanent positions and $747,000 in ongoing funding to establish an Office of Strategic Planning, Performance, and Analysis within DTSC.

**Projected Program Performance.** The office is responsible for developing and implementing performance management strategies, including metrics, to improve the efficiency and accountability of DTSC’s programs. This is being done in order to provide program oversight and promote a systemic culture of change, accountability, and transparency. The office is preparing an initial scoping plan that identifies and prioritizes program areas and support services that will be evaluated for performance improvement. The Voluntary Cleanup Program will...
be the first program evaluated. (The Voluntary Cleanup Program allows PRPs who are able to fund the cleanup of a contaminated site to move ahead at their own speed to investigate and remediate their contaminated site under DTSC’s oversight.) In its first year, the strategic development team is focusing on three main deliverables for the Voluntary Cleanup Program:

- **Statutory Program Review.** The office will identify the statutory authority and regulations that mandate the program’s activities, performance standards, and other obligations. Also, it will identify statutes that are not fully implemented and statutes that are no longer needed in light of current conditions. This information will form the basis for a baseline program evaluation.
- **Baseline Program Evaluation.** The office will perform detailed analyses of work processes, existing performance metrics, and other quality measures. It will identify the program or service areas where improvements can be most productively made.
- **Strategic Program Development Plan.** Finally, the office will provide the overall performance improvement plan that will include expected outcomes, tools, methods, specific deliverables, and milestones.

After the first year, the office will continue to perform program reviews on additional program areas prioritized in the scoping plan. It will also expand its functions to provide implementation and support training for DTSC staff, conduct periodic reviews of various improvements implemented in prior years, and document progress and shortfalls of programs in meeting their performance goals. According to DTSC, it will post reports periodically on its website.

**Legislative Oversight Questions:**

- For the Voluntary Cleanup Program, what is the status of the (1) statutory review, (2) baseline program evaluation, and (3) strategic development plan?
- When will the strategic development team begin to post periodic reports on performance metrics for the Voluntary Cleanup Program to DTSC’s web site?
- Through the scoping plan, has the strategic development team identified DTSC program areas, in addition to the Voluntary Cleanup Program, that will undergo a statutory review and baseline evaluation? If so, how are these program areas being prioritized in the scoping plan for future review and evaluation?
- When will the strategic development team begin to perform a baseline evaluation and draft a strategic development plan for other programs in addition to the Voluntary Cleanup Program?
Legislature Established IRP in 2015

In addition to the funding provided for the above activities, the Legislature authorized Chapter 24 of 2015 (SB 83, Committee on Budget and Fiscal Review) to establish within DTSC a three-member IRP <http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Independent-Review-Panel.cfm> to provide oversight over the department. Specifically, the IRP is tasked with reviewing and making recommendations regarding improvements to the department’s permitting, enforcement, public outreach, and fiscal management. In addition to requiring the panel to annually submit recommendations at the time of the Governor’s budget, the IRP is required to make recommendations for improving DTSC’s programs and report quarterly to the Governor and the Legislature on the department’s progress in improving program performance. In December 2016, the IRP issued a report <http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/DTSC-Independent-Review-Panel-Annual-Recommendations-Pursuant-to-HSC-Section-57014-h.pdf> containing a compendium of the recommendations it had made in its quarterly reports during 2016. The compendium shows that of a total of 23 IRP recommendations, 7 have been adopted by DTSC and 16 have not yet been implemented. The IRP will end on January 1, 2018, unless the Legislature extends its mandate.

Conclusion

Over the past few years, the Legislature has approved funding and personnel resources to address specific deficiencies in DTSC’s programs. Even with these new resources, DTSC’s own projections show that for some programs it will be years before the deficiencies are fully remedied. Therefore, it will be important for the Legislature to continue to oversee DTSC’s progress and hold DTSC accountable for producing results over the next several years. Hence, we think that the questions listed above will continue to be just as relevant over the next several years as they are now. In asking these questions, the Legislature should expect the department to provide data and/or deliverables to support their responses. In addition, in cases where the department is not achieving its performance goals, the Legislature may wish to consider further oversight measures. These could include holding hearings to determine the reason for the lack of progress and whether funding and personnel continue to be justified. It could also include having an independent entity—such as the Bureau of State Audits—conduct program reviews to better understand why the program
continues to underperform. In our view, such continued oversight is necessary to ensure that the department continues to improve its performance in several key programs.