**Hazardous Waste Management Program**

**Office of Criminal Investigations**

**Workload Analysis for FY 2018-19**

Key Findings

**Background**

The Office of Criminal Investigations (OCI) in the Hazardous Waste Management Program investigates the most serious hazardous waste crimes and conducts statewide investigations jointly with federal, state, and local law enforcement agencies. OCI works in environmental justice communities throughout California to stop active polluters from releasing toxic waste into the environment, potentially exposing our most vulnerable, impacted residents.

Penal Code §830.3(h) gives DTSC authority to have sworn peace officers, and Health & Safety Code Div. 20 Ch. 6.5 §25197(a)(3) gives OCI jurisdiction to investigate crimes of hazardous waste management laws. DTSC estimates that California has approximately 125,000 active hazardous waste generators and other polluters. Staff conduct multi-media statewide investigations, respond to complaints, and conduct hazardous waste inspections. OCI staff have expertise in law enforcement protocols; hazardous waste material handling; and toxicology, analytical chemistry, and environmental sciences. DTSC’s Environmental Chemistry Lab is partners with OCI to develop cases. It has specialized facilities to test and store samples and maintains a rigorous quality control process. Consequently, other state and local agencies rely heavily on DTSC to investigate and build defensible cases that withstand court scrutiny. OCI has the only sworn peace officers in CalEPA with the power of arrest, search, and seizure.

To meet its mission to investigate the most egregious hazardous waste violators and protect environmentally burdened communities, OCI:

* Conducted 65 high-priority metal recycling inspections of facilities located in or near some of California’s most environmentally burdened communities. OCI pursued administrative, civil, or criminal actions on 75 percent of these inspections between 2016 and 2019,
* Conducted e-waste investigations and enforcement actions from 2010 to 2015 against AT&T and Comcast resulting in over $50 million recovered in penalties for the state, and
* Closed 59 cases and referred 20 cases for prosecution in FY 2018-19. By the time these cases were settled, 17 received decisions with penalties, probations, and/or injunctions.

**Analysis**

In 2018-19, OCI operated with a budget of approximately $6 million and with 31 positions. Sixty-six percent of available employee hours were spent on enforcement actions for criminal, civil, and administrative enforcement cases, and hazardous waste investigations with local governments, statewide agencies, and other enforcement organizations. The remaining time was spent on priority programmatic operations, including maintaining equipment used in investigations, strategic planning, attending statewide coordination meetings, and training. OCI is funded by the Hazardous Waste Control Account and General Fund.

In FY 2015-16, OCI implemented a Lean 6-Sigma project to reduce the time to refer cases to prosecutors for enforcement actions. Prior to the project, only 28 percent of OCI-led cases were referred in 180 days or less. Since implementation began on January 1, 2016, OCI is now sending nearly 90 percent of open cases in 180 days or less to local, county, state, and federal prosecutors.

**Conclusion**

In 2020, the Secretary for CalEPA recently identified enforcement activities as a strategic priority for this Administration. The data, analysis, and findings from this workload study demonstrate that OCI does not have adequate resources to help CalEPA’s meet its enforcement goals. The gap in resources to achieve these goals has been estimated at 15 positions, which would enable OCI to conduct 50 to 100 more investigationsas follows:

* Increase investigations at illegal cannabis grows - there are approximately 300,000 illegal cannabis grow operations in California, some of which use banned pesticides that are considered hazardous waste when left at a grow site or illegally disposed of. OCI has found evidence of the banned pesticide Carbofuran used at many of these sites. Use of Carbofuran, which has one of the highest acute toxicities to humans of any insecticide, is illegal in the United States.
* CalEPA boards, departments, and offices (BDOs) receive complaints about potential violations of HWCLs. Additionally, OCI receives complaints that come directly to DTSC from local, state, and federal entities. Many of these complaints could potentially involve serious environmental crimes involving pollutants in various media (air, water, wastewater, and waste). OCI reviews all of these complaints to determine if they have capacity to initiate a preliminary investigation or whether they should and can be handled by another BDO or local agency. While not all of these complaints would result in a criminal investigation, failing to conduct a preliminary investigation, where OCI determines the risk of violations, the impact, and the location of those violations, puts the state at risk for ongoing violations. In FY 2018-19, OCI was only able to investigate 112 complaints based on available resources. Because of a lack of resources, OCI must frequently pass up opportunities to investigate cases that have a high risk of misdemeanor or felony violations of HWCLs or, because their caseload is too high for their resource levels, the investigations are delayed. When OCI cannot conduct a preliminary investigation, it doesn’t have the information to follow through with a full investigation when warranted, leaving the state, particularly vulnerable communities, at high risk of exposure to harmful chemicals that are being illegally disposed of or managed.
* There are approximately 25,000 stores selling metal-containing jewelry in California. When OCI inspected 28 jewelry stores in 2017 as part of the West Oakland environmental justice initiative, 21 of them (75 percent) had violations. The scale of this problem across California is significant, yet OCIs resource limitations hinder the state’s ability to pursue a meaningful number of violators.