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DTSC INDEPENDENT REVIEW PANEL DRAFT RECOMMENDATIONS
January 14, 2016

These Draft Recommendations are for discussion and consideration by the IRP during its January 14, 2016 meeting Agenda Item 7, for possible inclusion in the IRP's upcoming report to the Legislature pursuant to Health & Safety Code § 57104(f). That Report has not been drafted and likely will more fully address these recommendations. Then, throughout 2016, the IRP will issue additional reports every 90 days, as required by Health & Safety Code § 57104, including additional, more detailed recommendations and follow-up.

These Draft Recommendations are directed to the Department (DTSC) and in some instances may require Legislative action.

Permitting - Health & Safety Code §§ 57104(a) and (f)

The DTSC’s Office of Permitting is responsible for administering the Hazardous Waste Facility Permitting Program established under Chapter 6.5 of California Health and Safety Code, and Resource Conservation and Recovery Act (RCRA) authorization. The core activities of include: review of RCRA and non-RCRA hazardous waste permit applications ensuring safe design and operation; issuance/denial of operating permits; issuance of post closure permits; approval/denial of permit modifications; issuance/denial of emergency permits; review and approval of closure plans; provide closure oversight of approved closure plans; issuance/denial of variances; provide assistance to regulated industry on permitting matters; provide for public involvement provide assistance to the enforcement program on issues related to permitted facilities and provide assistance to collect permitting fees.

The DTSC permits 119 facilities with 127 hazardous waste permits. However, lengthy delays in permit decisions have resulted in a backlog of pending renewal applications. As many as 24 permits are identified as backlogged in FY14-15, *i.e.*, permits operating on ‘continued status’ for more than 5 years past expiration. This backlog is of great concern to the IRP. The DTSC estimates a future backlog as follows:

All Permit Renewal Actions	Year 14-15	Year 15-16	Year 16-17	Year 17-18	Year 18-19	Year 19-20	Year 20-21
Incoming Renewal Permit Applications	6	10	15	16	16	9	7
Permit Decisions at Current Authorized Staff Levels	9*	9	7	6	6	6	6
Continued Status Permits	37	38	45	59	69	72	73
Permits Continued > 2 Years (Goal)	27	18	14	13	17	26	36
Permits Continued > 5 Years (Backlog)	24	16	7	0	0	0	0

* Includes Exide permit denial.

Also, new legislation, SB 673 (Lara) requires the DTSC, by January 1, 2018, to establish or update criteria for use in determining whether to issue a new or modified hazardous waste facilities permit or a renewal of a hazardous waste facilities permit, and to develop and implement, by July 1, 2018, programmatic reforms designed to improve the protectiveness, timeliness, legal defensibility, and enforceability of the department’s permitting program.

IRP Recommendations to Reduce Permit Backlog

Legislature should establish a Permit Appeals Board to hear and decide all permits that the DTSC does not timely process within 3 years of expiration. The Legislature should consider whether establishing such a Permit Appeals Board would reduce backlogs. The Board could also hear permittees' appeal disputes over completeness of permit applications.

Legislature should inquire as to whether requiring DTSC to charge a "fee for service" for permitting decisions will assist in reducing the backlog.

IRP Recommendations to Improve Permits

DTSC should publish by 1/1/17 draft SB673 Regulations and adopt by 1/1/18.

DTSC should adopt through guidance or publish draft Regulations by 1/1/17 on its permit Violation Scoring Procedure (VSP), or publish draft Regulations.

Legislature should fund Technical Assistance Grants to allow public participation before draft RCRA permit is prepared.

Legislature should require that financial assurances be set aside for corrective action as part of RCRA permit issuance. This is consistent with the 2006 LAO Report recommendation. Sites should not be given a RCRA permit without being adequately characterized with funds set aside for corrective action. This could address the Exide situation, where the facility may lack solvency for corrective action. *See*, for example, SMARA financial assurance requirements, proposed SB206.

DTSC should convene regulatory agencies and publish a strategy by 1/1/17 on how, in appropriate cases, to require fence/line/aerial deposition monitoring and reporting for appropriate media (air, stormwater) as part of RCRA permit. Current rules and multi-agency regulatory oversight may not be working well (*e.g.*, Exide).

DTSC should adopt a policy by 7/1/17 that CEQA analysis of full RCRA permits must include robust analysis of least hazardous processes/equipment.

IRP Data Requests to DTSC re: Permitting

IRP should request that DTSC produce, by 3/1/16, a list of existing financial assurances for every full RCRA permit site.

IRP should request that DTSC produce, by 3/1/16, a list of how many RCRA permittees now fall within AB1075's violation categories, with specifics.

Enforcement - Health & Safety Code §§ 57104(a) and (f)

The DTSC enforces California's Hazardous Waste Control Law by monitoring hazardous waste transfer, storage, treatment, and disposal. The DTSC enforcement program consists of two divisions in the Hazardous Waste Management Program responsible for enforcing hazardous waste laws, the Enforcement and Emergency Response Division (EERD) and the Office of Criminal Investigations (OCI). In addition to enforcing hazardous waste laws, DTSC's enforcement program conducts emergency response removal actions and provides support to DTSC's Permitting Division.

DTSC is also responsible for enforcing cleanup of toxic sites, laws concerning toxics in packaging, bans on toxic substances in consumer products, and ensuring proper disposal of universal wastes, which include hazardous wastes that are widely produced by households and many types of businesses, such as electronic waste. In the future, DTSC will enforce the requirements of the Safer Consumer Products program.

DTSC's enforcement program is responsible for conducting routine and targeted compliance inspections, and civil and criminal investigations. DTSC conducts regular, routine compliance inspections of facilities with hazardous waste permits. This includes reviewing submitted data and reports, periodic physical observation, and testing/evaluation of facilities. DTSC enforcement staff also performs additional inspections at facilities that require an in-depth look. Targeted inspections may be conducted as a result of focused concerns or prior to a permit renewal.

DTSC also conducts investigations in response to complaints from the public and anonymous sources received through the CalEPA complaint system and the DTSC Hazardous Waste Alert Hotline. Depending on the nature of the complaint, DTSC may investigate the complaint or refer the complaint to a CUPA or the appropriate local, state, or federal agency.

DTSC documents the results of its inspections and investigations in reports. These reports are compiled in the Envirostor database, which allows the public to access information about environmental cleanups and permitted facilities in their communities. While the public has access to much of the information in Envirostor, this database is difficult to navigate.

When an inspection or investigation shows violations of the law, regulation, permit, or other binding requirement, DTSC issues a Summary of Violations. The Summary of Violations describes the type of each violation identified, and is the first step in the enforcement process. Depending on the nature of the violation discovered, the violation may be resolved criminally, civilly, or administratively. The resolution may consist of DTSC issuing an administrative order to the violator, a consent order, or taking other actions tracked as enforcement actions, such as issuing an Imminent and Substantial Endangerment Order or an order to suspend a facility's operations.

In order to better understand and prioritize work to benefit Environmental Justice communities, DTSC is making use of the CalEnviroScreen tool, which is a screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution. This is just one tool being used in the development of an enhanced review process for EJ communities.

Currently, DTSC is participating in a CalEPA Environmental Justice Enforcement Initiative, which focuses on specific communities that contain multiple sources of pollution and are disproportionately vulnerable to the effects of such pollution. This initiative enhances communication with community members and EJ considerations in compliance and enforcement. Last year's pilot took place in Fresno, and an LA initiative in Boyle Heights and Pacoima is currently underway.

IRP Recommendations to Improve Enforcement

DTSC should adopt by 5/1/2016 AB1071-compliant Supplemental Environmental Projects policy.

DTSC should adopt by 1/1/2017 eManifest Regulations, subject to federal requirements.

Legislature should consider whether DTSC should allow public review of draft settlements/consent decrees, in certain cases based on criteria to be developed. See, *e.g.*, section 113(g) of the Clean Air Act.

DTSC should adopt by 1/1/2016 "Improving Enforcement Performance Initiative" Workplan.

IRP Data Requests to DTSC re: Enforcement

IRP should request that DTSC produce, by 5/1/16, data on compliance with 60 day inspection report and 180 day referral requirements, including data for every site from 2014-2015 on: inspections, violations, and enforcement outcomes.

IRP should request that DTSC report, by 5/1/16, progress with data management goals from RCRA Grant Work Plan pp. 28-30.

IRP should request that DTSC report, by 5/1/16, on how environmental justice and health risk is prioritized in enforcement under AB1329, including identification of planned EJ enforcement initiatives.

IRP should request that DTSC produce, by 5/1/16, data on "cases" created in 2014-2015, including # of referrals to Attorney General.

IRP should request that DTSC report, by 5/1/16, on AB1249 Auto Shredder regulatory status.

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Public Outreach - Health & Safety Code §§ 57104(a) and (f)

Public participation is a cornerstone of DTSC's program. Statute and policy mandate a community involvement program that creates a dialog with the public when DTSC oversees a cleanup, reviews a permit application, or begins the rule making process. Moreover, DTSC recognizes that meaningful public involvement ultimately results in better environmental risk management decisions.

The role of the Public Participation program is to ensure that communities' communication needs are met, and to advise project managers and technical staff interacting with the public. This process is well-defined in law and policy but varies in practice depending on the type of action being taken, the underlying authority used for DTSC action, and the community's communication needs.

DTSC's Public Participation program has developed widely used guidance documents that outline program goals, roles and responsibilities, legal mandates, processes for decisions, and optional steps. These documents contain checklists and serve as a basis for training staff. They can be found at:

www.dtsc.ca.gov/LawsRegsPolicies/Policies/PPP/PublicParticipationManual.cfm.

DTSC established, based on new legislation, a new executive-level staff position, Assistant Director for Environmental Justice and Tribal Affairs, whose primary responsibility is to ensure that DTSC protects communities most burdened by pollution, and those most vulnerable to its effects. Since starting in July 2015, the Assistant Director has listened and learned about many concerns from EJ communities, and aims to facilitate increased and improved communication, ensure the department can improve actions at specific sites in communities, use those opportunities to identify systemic problems, and find and implement solutions. The Assistant Director has been working to develop a comprehensive EJ strategy for the department, which includes, 1) identifying any hidden biases and inequities in programs; 2) emphasizing and achieving frequent and ongoing community engagement; and 3) promoting problem solving and addressing of community concerns across the department's programs and its work.

IRP Recommendations to Improve Public Outreach

DTSC should institute, by 6/1/16, a procedure to require formal public feedback and evaluation of each public participation project that is used to evaluate the overall public participation program.

Legislature should fund positions to strengthen the role of the Assistant Director for Environmental Justice and Tribal Affairs, including more staffing and resources.

The DTSC should implement, by 1/1/17, the UC Davis public participation workplan.

DTSC should continue practice of monthly EJ accountability calls, or an equivalent mechanism.

DTSC should publish all CEQA notices in one tab on DTSC website.

DTSC should publish all full RCRA permits in one tab on DTSC website.

DTSC should publish all public enforcement action information in one tab on DTSC website.

IRP Data Requests to DTSC re: Public Outreach

IRP should request that DTSC report, by 6/1/16, on public participation budget, staffing and language skills.

IRP should request that DTSC respond, by 6/1/16, with an update on the DTSC's work and regulatory status for all sites listed in the People's Senate 7/9/15 letter to Senate Rules, and concerns expressed by People's Senate to the IRP on agency "regulatory capture."

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Fiscal Management and Budget- Health & Safety Code §§ 57104(a) and (f)

IRP believes that DTSC is committed to fundamental reform in the way it recovers the costs incurred overseeing and investigating the cleanup of contaminated sites and costs incurred performing investigation and cleanup activities. The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.”

On May 31, 2013, DTSC publicly disclosed that its unrecovered response costs were \$184.5 million at 2,700 sites. This was for the 25-year period from July 1987 through December 2012. This amounts to about 10% of the total response costs during this period.

DTSC formed a cost recovery team and began to make sweeping changes. In late 2013, DTSC issued 27 departmental procedures consisting of 276 pages of guidance. In Spring 2014, more than 400 employees were then trained on this guidance. Later in 2014, about 200 employees with primary cost recovery responsibilities received additional targeted training. DTSC is continuing its training of employees in small groups on cost recovery procedures.

In addition, DTSC sought help from the California state legislature to help eliminate the cost-recovery backlog. In 2014-15, the Legislature approved 14 limited-term cost recovery staff positions. Those positions will expire on June 30, 2016.

The State Auditor also recommended that DTSC review and ensure the accuracy of the data before putting the information into the new Statewide Financial System for California or Fi\$cal. Last December, Fi\$cal concluded it was unable to meet the Department’s unique cost recovery billing system needs. This created a significant structural challenge and DTSC is now moving forward within the state’s IT approval process.

IRP Recommendations to Improve Fiscal Management

Legislature should adopt legislation and funding to address orphan site funding and transition of federal O&M sites to State oversight.

DTSC should provide timely Health & Safety Code § 57007 Biennial Report by 1/1/17 and tie Report to DTSC “Fixing the Foundation,” including documenting compliance with goals and objectives therein.

IRP Budget Recommendations

For DTSC, the Governor’s 2016-2017 Budget proposes a total of \$217.5 million (All Funds) and 889.8 positions. The IRP supports this budget proposal. The major changes include:

- An increase of \$1.167 million and 8.0 permanent positions from the Hazardous Waste Control Account (HWCA) to ensure timely permitting actions and to help improve the clarity, consistency, protectiveness and enforceability of the permits issued.
- An increase of \$.180 million and 2.0 permanent positions from the Toxic Substances Control Account (TSCA) and \$.020 million from HWCA to implement Assembly Bill (AB) 276 (Assembly Committee on Environmental Safety and Toxic Materials, Chapter 459, Statutes of 2015). AB 276 allows DTSC to require a potentially responsible party to provide information regarding the party's ability to pay for a response action at a site where there has been, or may be, a release of hazardous waste, hazardous substances, or hazardous materials in the environment.
- An increase of \$.370 million from the HWCA to implement Senate Bill (SB) 162 (Chapter 351, Statutes of 2015) related to the management of treated wood waste (TWW). This bill provides DTSC an additional six months to complete a comprehensive evaluation and report with specified content on the compliance with and implementation of laws relating to treated wood waste.
- An increase of \$.350 million from the TSCA and extends for two additional years the 2.0 limited term positions established in fiscal year 2014-15 to provide consistency and stability in the Biomonitoring California Program.
- An increase of \$.025 million from the HWCA and \$.025 million from the TSCA to provide funding to for the Attorney General to provide legal support to the Independent Review Panel.

Legislature also should determine whether to give position authority to DTSC to maintain the 14 limited-term cost recovery staff positions.

IRP Data Requests to DTSC re: Fiscal Management

IRP should request that DTSC report, by 2/15/16, on status of Fi\$cal implementation and billing status.

IRP should request that DTSC report, by 7/1/16, on status of limited term cost recovery positions.

IRP should request that DTSC produce, by 7/1/16, data on how much collections are billed and outstanding, in all areas/programs, and solutions to barriers.

IRP should request that DTSC report, by 7/1/16, on goals and timelines in its "Cost Recovery: 1) Sustainable Cost Recovery Systems, 2) Audit Backlog Work Plan, 3) Envirostor Enhancements."

IRP should request that DTSC report, by 7/1/16, on follow-up examination by State Auditor on cost recovery.

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Site Mitigation - Health & Safety Code §§ 57104(d)

DTSC cleans-up or oversees approximately 220 hazardous substance release sites at any given time and completes an average of 125 cleanups each year. An additional 250 sites are listed on DTSC's EnviroStor database of properties that may be contaminated. Expediting cleanups is an important goal of the program, and a series of "Brownfields" initiatives support that effort. The Voluntary Cleanup Program and the California Land Reuse and Revitalization Program encourage responsible parties to clean-up contaminated properties by offering economic, liability, or efficiency incentives. DTSC also encourages property owners to investigate and clean-up contamination if found, through a combination of low-interest loans. The Investigating Site Contamination and Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN Loans) Programs provide loans to investigate and clean-up urban properties. The State Superfund covers sites for which there are no cleanup options through the responsible party and which threaten the people or the environment of California.

Additionally, DTSC works to ensure that all new, existing, and proposed school sites are environmentally safe. State laws require all proposed school sites that will receive state funding for purchase or construction to go through DTSC's environmental review. This process ensures that new school sites are uncontaminated, or if previously contaminated, that they have been cleaned-up to a safe level. Last year, DTSC assessed, investigated, or cleaned up more than 450 different school sites in California to ensure that the State's need for new schools is met and children are fully protected.

California has one-third of the closing military bases in the country and more than 1,000 former defense sites. DTSC is currently investigating, cleaning-up, or providing technical assistance at more than 160 current or former military installations statewide. This task presents some unique challenges including addressing residual unexploded ordinance, chemical and biological munitions, and otherwise toxic substances that remain on the property.

In addition, DTSC continues to have lead responsibility for cleanup and enforcement at several high profile federal Superfund sites including Casmalia Resources and Stringfellow. DTSC provides day-to-day operation at these sites from the Stringfellow on-site Pre-Treatment Plant, groundwater extraction wells and other containment systems to the monitoring and treatment systems.

IRP Recommendations for Improving Site Mitigation

DTSC should convene regulatory agencies and publish a strategy by 1/1/17 on how, in appropriate cases, to require fence-line/aerial deposition monitoring during corrective action where there are adjacent sensitive receptors. This can address concerns such as those expressed at AgPark and Jordan Downs.

DTSC should publish on DTSC website, for appropriate site specific clean ups, an easy to read matrix of clean up goals and sampling levels for corrective action, to enhance

transparency of site mitigation. This can address concerns such as those expressed at AgPark and Jordan Downs.

DTSC should provide raw data for corrective action, once verified, to public upon request. This can address concerns such as those expressed at AgPark and Jordan Downs.

Legislature should consider support of SB 820 that removes sunset for California Land Reuse and Revitalization Act.

IRP Data Requests to DTSC re: Site Mitigation

IRP should request that DTSC report, by 8/1/16, on disposal requirements for radioactive waste that is above background levels.²

IRP should request that DTSC report, by 8/1/16, on concept of “averaging” used to determine site mitigation standards, and federal guidance thereon.

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Staff E-mails - Health & Safety Code § 57104(d)

In Winter 2015, e-mails from DTSC staff were released in response to a Public Records Act request. DTSC reviewed approximately 100,000 emails and identified dozens of derogatory, racist or otherwise inappropriate emails, from certain staff. The DTSC reports that it will continue releasing emails as they become available after redacting sensitive information.

Director Lee has reported that “as soon as the emails in question were discovered, we launched an internal investigation, brought in the Attorney General's Office to perform an additional, broader investigation and then took quick disciplinary action against these two individuals.”

IRP Recommendations Concerning the E-Mails

DTSC should immediately report to IRP by 1/16, as allowed by law, on DTSC review of the e-mail issue. Describe who was tasked with investigation? What was scope of investigation? What are findings? What discipline was taken? What staff training and resources were made available?

DTSC should immediately assign staff, charged with independent review, to revisit all cases in past 5 years of “No Further Action” that involve William Bosan or Theo Johnson, and report to the IRP by 6/1/16 on the findings.