
Independent Review Panel

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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IRP Questions of DTSC on Enforcement Program May 26, 2016

The following questions were collected from members of the Independent Review Panel in response to a suggestion from DTSC Director Barbara Lee at the May 12, 2016 IRP meeting. At that meeting the director said it would help department staff prepare for upcoming public meeting discussions on the DTSC Enforcement Program if Panel members submitted program questions in advance of meetings.

Because Panel members may not collaborate on IRP business between public meetings, the following questions have not been subjected to Panel member discussion. Nor have they been subjected to significant editing by Panel support staff. For example, if a Panel member requested a "presentation" on an issue rather than a simple answer to a question, the request was retained without IRP discussion about the advisability of having question answered in a presentation format.

The IRP does not expect DTSC to respond to these questions in writing. The questions on this list are simply questions that are likely to be asked of DTSC staff at the June and July 2016 IRP meetings.

Requests for Presentations

1. Present for 5-10 minutes on SB 1249 status and timing for: (1) emergency rulemaking, (2) treatability study, and (3) contract for assessment of off-site air.
2. Give a presentation on the information historically provided on progress with data management goals and how much this information is reflected in RCRA information, the US EPA Enforcement and Compliance History Online system (ECHO), US EPA's formal enforcement reports, and CalEPA's formal enforcement reports. Presentation should include any enforcement metrics that DTSC uses in addition to those required by US EPA and CalEPA and their potential value to the Legislature and Governor's Office.
3. CalEPA should give the Panel a presentation on CalEnviroView. It is very important that the IRP understands the potential capabilities and how CalEnviroView uses information from multiple sources. The presentation should address Panel member concerns about bad or conflicting information in CalEnviroView and other databases. Will the information require considerable scrubbing? Will it ever be close to perfect?

Questions

1. Describe all the management training that supervisors get. How are their supervisory skills evaluated?
2. What are the policies to recruit and retain staff at OCI/EERD? Is compensation an issue? If so, how has DTSC

executive management addressed this?

3. What are the OCI/EERD staffing levels from 2010 to the present?
4. Is the Office of Criminal Investigations filling its vacancies?
5. What are prior supervisory/management qualifications to be an EPM-1?
6. How many employment practice grievances have been received from OCI/EERD staff in 2014, 2015 and 2016?
7. Do supervisors give regular management reports to branch chief? How are reports used?
8. Panel members have heard criticism about scientists taking the enforcement lead and that scientists instead should support/report to supervising investigators. Thoughts?
9. Describe the ongoing, yearly required training for inspectors.
10. Has the Office of Civil Rights made any formal public determinations on the hostile work environment complaints by environmental justice scientists?
11. Are permitting and enforcement staff working well together?
12. What is the status of the City of Los Angeles CUPA review?
13. Why are DTSC reports presented in fiscal year instead of calendar year?
14. Would 100 percent of inspection reports in 65 days be a useful goal?
15. Is DTSC complying 100 percent of the time with all the inspection frequencies on Page 11 of its May 12 IRP meeting presentation?
16. Does a complaint tracking system exist? Does DTSC respond 100 percent of time to complainants by letting them know the outcome of their complaints? Is there a way to enhance transparency?
17. Can DTSC provide IRP with work plans to supervisors, if they are public?
18. Page 30 of the DTSC May 12 IRP meeting presentation shows ten referrals out of 679 inspections. Page 31 shows six referrals out of 110 complaints. Are these enough to make OCI meaningful?
19. What are the outcomes from the 82 closed inspections on Page 31 of the DTSC May 12 IRP meeting presentation? Can data on them be provided?
20. What has the Enforcement Performance Management Branch done since July 2015? Does it have a written work plan?
21. What enhancements to EnviroStor are needed regarding enforcement?
22. What is the status of hazardous waste tracking system/manifesting, a subject that wasn't included in the DTSC May 12 IRP meeting presentation? What is the status of E-manifest?
23. How is the draft Violation Scoring Procedure taking into account the requirements of AB 1075?

24. Does the lab have sufficient forensic capability for complicated sites like Exide?

25. Is the Metal Recycling Initiative focusing on unpermitted sites? If not, why not? 42 inspections over 18 months doesn't sound like a lot.

26. What are the results of the Transportation Enforcement Initiative?

27. Of 300-plus cases in the chart on Page 85 of the DTSC May 12 IRP meeting presentation, three have been handled in-house, and there are only ten referrals. Is this satisfactory?

28. Has DTSC taken a position on AB 1858?

29. Has enforcement been done in Pomona yet, as requested by CCAEJ?

30. The following questions pertain to the Office of Criminal Investigations Caselog Data Report that DTSC submitted in response to the IRP request for data on cases created in EnviroStor for calendar years 2014 and 2015:

- Please define types of cases. For example, how are enforcement investigations, prosecutor assist, and toxic assist categories different from each other?
- On July 1, 2015, OCI became part of the HWMP, and 200 cases were closed. Please provide information on how many of these were closed due to lack of evidence, how many were closed due to statute of limitations, and how many were closed due to unlikely conviction. How were the documents reviewed (independently by several individuals or as a team effort)? What were the objective/subjective criteria used to make the decision on these backlog cases?
- What are the criteria used to refer cases to the attorney general or district attorney? How do civil or criminal cases differ, and is there any overlap between the two?
- Does DTSC assist and follow up on cases once they have been referred to the attorney general or district attorney? If so, to what capacity?

31. The following questions pertain to the Enforcement and Emergency Response Division Inspection/Enforcement Data for Permitted Facilities report that DTSC submitted in response to the IRP's request for data on compliance with 65-day inspection report and 175-day return to compliance/referral requirements under Health & Safety Code Section 25185(c):

- Please chart how many of the inspections reported per year pass the initial examination, and out of the inspections that do not pass, how many fail due to minor, class II or class I violations (metric).
- Once a site fails, what steps are taken to "fix the problem," and what is the length of time after the initial failure and subsequent inspection(s) to determine that the problems have been solved? This probably depends on the gravity of the failures, so please break this down to minor, Class II, and Class I violations (metric)?

32. In the information DTSC provided in response to the IRP request for data on compliance with 65-day inspection report and 175-day return to compliance/referral requirements under Health & Safety Code Section 25185(c), entitled EERD Inspection/Enforcement Data for Permitted Facilities CY 2014-April 1, 2016, data seem to indicate very few Class 1 Violations. Why so few?
33. The information DTSC provided in response to the IRP request for data on compliance with 65-day inspection report and 175-day return to compliance/referral requirements under Health & Safety Code Section 25185(c) says on Attachment 1 that five of 64 enforcement actions in 2015 were initiated within 240 days. Can this be improved? Is this number correct? What is an enforcement action?
34. Can tickets be given on spot? If not, why not?
35. If you export waste, do you not have to fill out DTSC Biennial Report? If not, why not?
36. How are complaint outcomes documented?
37. How many e-waste inspections were performed in 2014, 2015 and 2016?
38. How many No Formal Enforcement letters were issued in 2014, 2015 and 2016?
39. Do inspectors verify financial assurances? Do they verify monitoring plans?
40. Are releases to air or water being considered for inclusion in the draft Violation Scoring Procedure? If not, why not?
41. Are inspections unannounced or announced? How many inspections have occurred in 2015 and 2016 of the Clean Harbors and Kettleman Hills facilities?
42. With respect to the RCRA Grant Work Plan Report, were all 3/31/16 activities on Page 4 completed? Did DTSC comply with USEPA recommendation issue 1 recommendation a and b? Will CUPAs enter 90 percent of all Large Quantity Generators by 9/16?
43. In the information DTSC provided in response to the IRP request for a list of hazardous waste facility permit holders that currently fall within the provisions of the recently enacted AB 1075 requirement that the department consider repeating violations or noncompliance in making permit decisions, please explain the conclusion that zero facilities with an operating permit meet the criteria.
44. How many criminal complaints closed in 2014, 2015 and 2016?
45. Has the Fixing the Foundation goal of “creating an integrated hazardous waste management program” been completed?
46. Are there any regional differences in branch office enforcement performance? Do the offices have different strengths and needs?
47. Explain the penalty matrix in the regulations governing administrative enforcement so the Panel has a general understanding how penalties are established.
48. Provide more detail on multi-agency collaboration and how it is measured. Does DTSC considers it a useful metric? Could collaborating with other environmental enforcement agencies, response to complaints, and feedback to the complainant and the general public, e.g. via press releases, web page, etc. be subsets of

public outreach metrics?

49. What metrics/performance goals can DTSC offer at this time?

50. How does DTSC respond to folks who say OCI should be taken out of the department and given to CalEPA to make it more multimedia?

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