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## Enforcement Summary

The Department of Toxic Substance Control (DTSC) enforces California's Hazardous Waste Control Law by monitoring hazardous waste transfer, storage, treatment, and disposal, and taking appropriate action against violators. 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, and bans on toxic substances in consumer products, and for 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 shares its enforcement responsibility with local agencies called Certified Unified Program Agencies (CUPAs). Chapter 6.11 of California's Health and Safety Code (HSC) authorizes these local agencies to enforce California's laws as they apply to generators of hazardous waste. While CUPAs have primary authority over generators, DTSC retains oversight and can directly enforce compliance where appropriate. There are currently 83 CUPAs overseeing 83,000 generators of hazardous waste.

As the State CUPA (SCUPA) in Imperial and Trinity counties, DTSC implements the following six program areas in those counties:

- Hazardous Waste Generator and Tiered Permitting Program
- Hazardous Materials Release Response Plans and Inventory Program
- California Accident Release Prevention
- Underground Storage Tanks
- Aboveground Petroleum Storage Act

The Secretary of the California Environmental Protection Agency (CalEPA) and DTSC, along with the California Office of Emergency Services, the Office of the State Fire Marshall, the State Water Resources Control Board, conduct a program evaluation of each CUPA every three years to certify their ability to carry out their enforcement mandates.



## **DTSC'S ENFORCEMENT PROGRAM ELEMENTS**

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 and 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 may also initiate industry-wide evaluations as it did with metal recyclers in 2011 to ensure that treatment of waste by an entire sector complies with the law and is fully protective of human health and the environment.

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, some of the enforcement information may be withheld from the publicly accessible section of Envirostor due to the sensitive nature of ongoing investigations.

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. The process of filing an enforcement action involves many steps, including:

- Preparation of a detailed report;
- Collection and organization of relevant documents (such as laboratory reports of sample analysis, correspondence, records, etc.); and
- Assessing and documenting penalties.

Statutes of limitation require DTSC to file enforcement actions within a specified period of time from the date of discovery of the violation. Felony charges must be filed within three years, misdemeanor charges must be filed within one year, and civil actions must be filed within five years. Resolution of a violation also requires a return to compliance as well the payment of fines, and may include Supplemental Environmental Projects (SEPs). A SEP is a project that benefits the environment or public health beyond compliance with environmental laws. Criminal penalties may result in jail time for responsible parties.

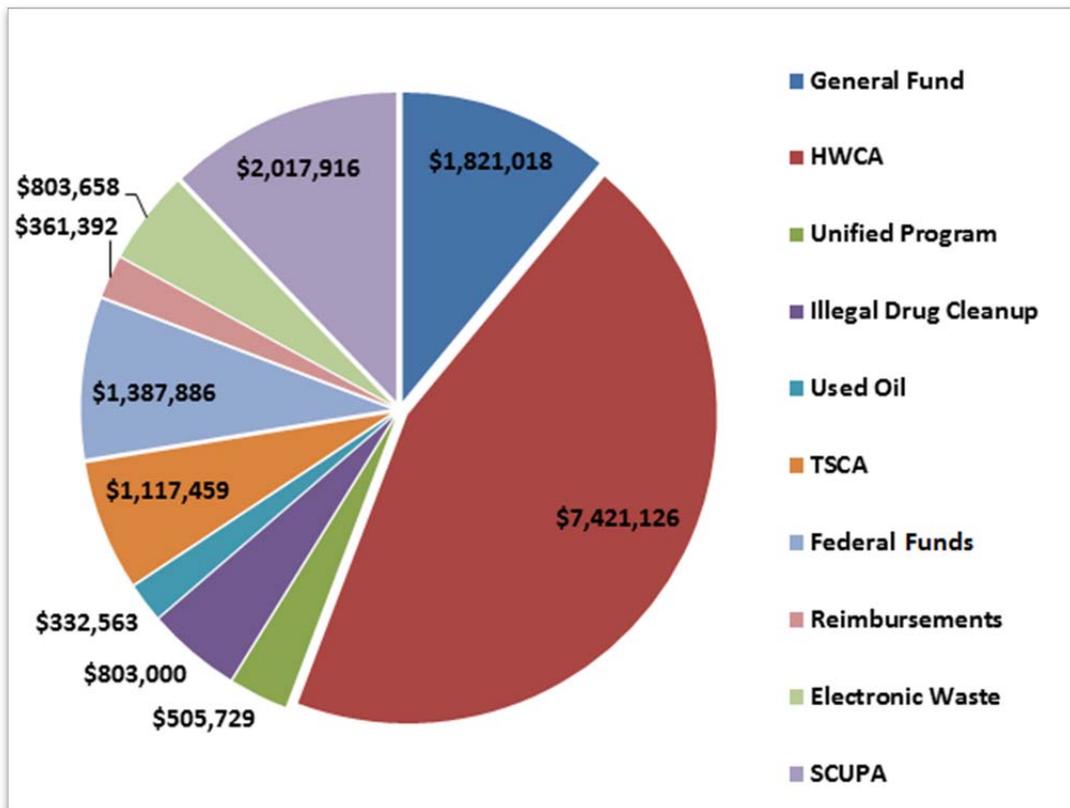


### ENFORCEMENT PROGRAM STAFFING AND FUNDING

EERD has 113 authorized positions consisting primarily of environmental scientists, 82 of which are field certified. There are an additional six environmental scientists that provide emergency response support. OCI has 33 authorized positions including 15 sworn criminal investigators and 15 environmental scientists, including the branch chief. Both groups have support staff such as office technicians and analysts.

DTSC’s enforcement program is funded from a variety of sources, illustrated in Chart 1, below. The majority of the funding comes from the Hazardous Waste Control Account. Other funding sources include the Unified Program Account for oversight, assistance and training of CUPAs; the Illegal Drug Lab Cleanup Account; the California Used Oil Recycling Fund for inspection of used oil recycling, storage and transporters; the Toxic Substances Control Account for consumer product enforcement; Federal Funds for inspection and enforcement regulated by the Resource Conservation and Recovery Act (RCRA); reimbursements for work related to out-of-state used oil transfers and recycling facilities; the Electronic Waste Recovery and Recycling Account of the Integrated Waste Management Fund for electronic waste inspections and enforcement; the State Certified Unified Program Agency Account for inspection, outreach, permitting, and enforcement in Imperial and Trinity Counties; and the General Fund for emergency response actions.

Chart 1: Enforcement Funding Sources





### DTSC’S EERD INSPECTIONS PROGRAM

DTSC conducts routine inspections of hazardous waste transporters (899 registered as of December 2, 2015), permitted facilities (119 facilities holding 127 permits), and e-waste collectors (475) and recyclers (47).

As illustrated in Chart 2, below, inspection frequencies are based on the type of activity the facility performs. Federally owned or operated facilities and hazardous waste landfills are inspected annually. However, DTSC is conducting more frequent inspections than is required of the two most active landfills, Kettleman and Buttonwillow, due to the significant volume of waste and to address the concerns of the communities. All other facilities with a full permit are inspected every two years. Facilities with a standardized or state-only permit are inspected at a frequency from one to three years and facilities with a post-closure permit are inspected every three to five years, depending on the results of their latest groundwater inspection.

Chart 2: EERD Inspection Frequencies

Facility Type	Frequency
<b>Operating Federal Facility with HW Permit (11)</b>	Every year
<b>Operating HW Landfills (3)</b>	Every year
<b>Operating treatment or storage facility with a HW Permit (47)</b>	Every 2 years
<b>Operating treatment or storage with a Standardized or State only HW Permit (32)</b>	Every 1 - 3 years.
<b>Facility with HW Post Closure Permit (30)</b>	Every 3 – 5 years.

The number of routine inspections is around 400 per year. Chart 3, below, has been revised since it was presented at the December 8<sup>th</sup>, 2015 Independent Review Panel meeting, and shows the number of inspections, Class 1 violations found during inspections, enforcement actions, and penalties assessed. The revision reflects corrections to inaccurate data in the Envirostor database. EERD is in the process of adding additional analysis staff dedicated to quality assurance of data in Envirostor to prevent a reoccurrence of this error.



Chart 3: EERD Inspection Statistics

Fiscal Year	Inspections	Inspections with Class I Violations	Enforcement Actions	Penalties
2012/2013	399	33	69 71	\$ 2,209,494.00
2013/2014	402 401	35 28	62 63	\$ 1,795,766.00
2014/2015	402	35 52	46	\$ 2,706,462.00
<b>Totals</b>	<b>1203 1202</b>	<b>103 113</b>	<b>177 180</b>	<b>\$ 6,711,722.00</b>

As a RCRA-authorized state agency, DTSC is expected to conduct inspections based on the RCRA Compliance Monitoring Strategy. The majority of DTSC’s required inspection frequencies come from this policy. HSC Section 25185 requires DTSC or the CUPA performing the inspection to send a copy of a completed inspection report to the hazardous waste operator within 65 days of the date of inspection. The previous five years of data indicate that 87% of inspection reports are sent to operator within 65 days. DTSC also has a specific policy based on the RCRA Civil Enforcement Policy that guides inspectors in preparing, conducting and concluding inspections. In addition, DTSC and the CUPAs are required to prepare administrative penalties in accordance with regulations found in Title 22, California Code of Regulations.

HSC Section 25180.2 requires DTSC to prioritize enforcement actions in environmental justice communities. DTSC has also committed to a series of environmental justice related activities through its RCRA Work Plan, and participates in CalEPA’s Environment Justice Initiative.

### IMPROVING DTSC’S ENFORCEMENT AND EMERGENCY RESPONSE DIVISION

As part of Fixing the Foundation, DTSC’s enforcement program completed initial tasks to improve DTSC’s efficiency and consistency in enforcing state hazardous waste laws. Actions taken make the enforcement program’s information and processes more accessible to the public; establish priorities for the enforcement program; help to ensure that CUPAs properly and effectively implement the hazardous waste program; and share publically available hazardous waste permit facility enforcement data through the EnviroStor public web site.



DTSC's Fixing the Foundation report also called for resolving coordination gaps between permitting and enforcement. As part of the Permitting Enhancement Work Plan, the enforcement program helped develop guidance on how the two programs will:

- Determine the compliance status and compliance history review for permitting decisions.
- Develop permit conditions.
- Interpret requirements and permit conditions.
- Prepare and conduct compliance inspections (guidance is pending finalization).

DTSC is now undertaking its Improving Enforcement Performance Initiative. The Initiative identifies five goals to improve the enforcement program and DTSC is developing a work plan to implement them. Under this Initiative, DTSC will: 1) More clearly define the inspection and enforcement process; 2) Create a formal review process for case management; 3) Communicate how the inspections and enforcement processes work to stakeholders and the community, 4) Engage the community to help set priorities; and 5) Set clear metrics to evaluate and help strengthen the program.

This work will also complete a revision of existing inspection and enforcement related policies, including new guidance documents related to inspections. The new policies will be reflected in a checklist and inspection report formats in order to streamline processes, and EERD is planning a pilot project to electronically prepare and complete inspection reports in the field with the SCUPA program. When the new policies and procedures are in place, additional training will be provided to ensure staff understands DTSC enforcement guidance and policy, and that the enhanced procedures are followed.

DTSC initiated two specific projects that will enhance transparency and accountability of its enforcement program. On January 1, 2015, DTSC started a pilot project to solicit public comments on proposed negotiated enforcement settlements. DTSC extended the pilot project period to December 31, 2015, because no respondents volunteered to participate during the original pilot project trial period. The trial period has been further extended to June 30, 2016, and staff is evaluating other mechanisms and authorities to achieve better public participation in the resolution of violations. DTSC will also evaluate the practicality and options for making fines and penalty calculation information public after engaging with staff from the Office of Legal Counsel and the Office of the Attorney General.

The second project addresses facility compliance history. HSC Section 28186.3 requires DTSC to evaluate a facility's compliance history when evaluating applications to modify or renew the permit. In order to make the evaluation more rigorous, consistent, and transparent, DTSC has developed a working concept for a Violation Scoring Procedure (VSP). The concept has been presented to environmental justice groups, industry representatives, and legislative staff to solicit discussion and input. DTSC is using this input to draft regulations and will begin the formal rulemaking process next year.



### DTSC’S OFFICE OF CRIMINAL INVESTIGATIONS

OCI has broad jurisdiction to investigate hazardous waste crimes. It conducts statewide investigations of businesses with multiple locations and responds to complaints. The investigations attempt to uncover potential criminal activity, the motive, knowledge or intent to commit the violation, as well as the level of threat to human health or the environment.

For example, DTSC’s OCI conducts hazardous waste sting operations where investigators contact unlicensed haulers on Craigslist or through the yellow pages to see if they would remove and transport hazardous waste. In these cases, investigators stage a scene with various types of hazardous waste to be removed. Once the haulers leave the facility with the hazardous waste, they are issued a citation or booked into jail.

This year, DTSC received funding to conduct an “Enhanced Enforcement in Vulnerable Communities Initiative” focused on metal recycling and hazardous waste transport in communities identified using CalEnviroScreen. This initiative was spurred in part from community input regarding the Pomona Industrial Zone. The resources in this initiative allow DTSC to double the number of hazardous waste transporter inspections conducted annually, undertake comprehensive inspections of metal recyclers located within vulnerable communities, and refer cases for prosecution. The proposal also provides additional support for prosecutors on referrals and policy staff in development of regulatory requirements.

Chart 4 presents an overview of cases in the three prior fiscal years. In reviewing these statistics, it is important to bear in mind that these are often multi-jurisdictional cases and the penalties received by DTSC can vary substantially from case to case, depending on the number of agencies involved and their respective roles. In addition, these cases may take years to resolve. Both of these factors make trends difficult to identify from plain reading without more in-depth analysis.

Chart 4: Overview of OCI Case Statistics

Fiscal Year	Cases Opened	Cases Closed	Cases Referred	Cases Resolved	Criminal Convictions	Civil Cases Resolved	Penalties
2012/2013	136	147	6	20	5	15	\$1,278,488.00
2013/2014	67	111	14	16	23	8	\$1,932,368.00
2014/2015	48	85	5	19	17	14	\$11,401,898.00
<b>Totals</b>	<b>251</b>	<b>343</b>	<b>25</b>	<b>55</b>	<b>45</b>	<b>37</b>	<b>\$14,612,754.00</b>



## IMPROVING INVESTIGATIONS

OCI recognized that it had a backlog of unresolved cases and took steps to reduce the backlog and improve its case management. First, OCI completed a Lean Six Sigma process which indicated that cases



took an average of 400 days from the date of the initial investigation to a referral to the District Attorney or the Attorney General. Then, in February 2015, the Lean Six Sigma project started to analyze the best ways to address the backlog of cases. The recommendations include using a case tracking system with a step rating system, using a matrix to evaluate value and complexity to prioritize caseload, and identifying metrics to evaluate performance. The Lean Six Sigma process also provided a target goal for OCI to file 95% of cases within six months.

## PROPOSED PERFORMANCE METRICS

As mentioned already, DTSC is undertaking a comprehensive initiative to improve its enforcement program. This effort will include establishing performance targets and metrics. Some of the metrics identified include the numbers of:

- Inspections performed per reporting cycle by category.
- Investigations conducted and cases referred.
- Violations city by class and other categories.
- Cases resolved by Category.

DTSC is examining the usefulness of metrics based on the time elapsed between:

- The date of inspection and completion of inspection reports.
- First observation/notice and issuance of Summary of Violation.
- Case initiation and referred.

The Department will also track settlement values such as total fines assessed and the value of Supplemental Environmental Projects implemented; while these are important indicators, it is inappropriate to establish targets in these areas because that can be construed as a “quota” for enforcement and can undercut the successfulness of cases.

The Department is developing a proposal is to track compliance rates for permitted facilities across facility types, as well as for other regulated entities. Lastly, DTSC is evaluating tools to overlay the above enforcement data for comparison in CalEnviroScreen.