Permitting Summary

The Department of Toxic Substance Control's (DTSC) Permitting Division, a division of the Hazardous Waste Management Program, protects Californians and the environment from toxic harm by making timely, enforceable, and protective permit decisions for the operation of hazardous waste facilities in accordance with all applicable laws and sound science.

The Permitting Division reviews applications for permits under the Resource Conservation and Recovery Act (RCRA), as well as non-RCRA hazardous waste permit applications, to ensure safe design and operation in accordance with regulations. A hazardous waste permit granted by DTSC allows a facility to transfer, treat, store, or dispose of hazardous waste. Presently there are 119 permitted facilities. A few of these facilities have more than one permit for a total count of 127 permits.

Applications are reviewed for both administrative and technical completeness. An application is accepted as technically complete if it demonstrates the facility meets all applicable requirements for protection of public health and the environment. When an application is found to be technically complete, and the facility's compliance record is reviewed, DTSC prepares a draft permit for public comment and proposes approval. At any point in the process if DTSC finds that the facility does not meet applicable standards, it can deny the permit application. Either an approval or denial by DTSC is considered a permit decision.

In addition to granting or denying permits, the Permitting Division supports DTSC's enforcement program to ensure compliance with the permit conditions, processes permit modifications when necessary, oversees compliance schedule items, and reviews monitoring data. Lastly, the Permitting Division works closely with the U.S. Environmental Protection Agency (EPA) to fulfill reporting obligations as required by RCRA and the Government Performance and Results Act (GPRA).

THE PERMITTING PROCESS

A DTSC-issued permit is required for all facilities that receive hazardous waste from off-site generators for treatment, storage, and disposal. Some facilities that treat hazardous waste that they generate onsite may be subject to a lower-tier permit issued by a Certified Unified Program Agency (CUPA), a local enforcement agency certified by the California Environmental Protection Agency.

In general, DTSC issues permits for the more complex and large facilities, such as Class I landfills, large treatment facilities, and for sites managing RCRA hazardous waste. The full RCRA permit is a

comprehensive permit tailored to the facility requirements and complexities. Facilities that manage non-RCRA (or California-only) hazardous waste, such as used oil, are required to submit an application for a standardized DTSC permit.

DTSC permit applications must address many requirements beyond hazardous waste laws and regulations. For example, the process must adhere to the California Environmental Quality Act (CEQA) requirements, which involves a comprehensive review of impacts of the facility on public health and environment. In addition, DTSC's permitting process requires transparency by providing community members an opportunity to provide input and to review the draft permit decision.

Permit decisions are made on several types of permits:

- **Operating permits** – Operating permits are issued to facilities that are engaged in the treatment, storage, or disposal of hazardous waste and are not in closure or post-closure. These include landfills, treatment facilities, recycling facilities, and storage facilities. It also includes everything from used oil transfer facilities to precious metal recycling facilities, and commercial hazardous waste operations.
- **Post-closure permits –** Post-closure permits are issued in situations where hazardous waste remains on-site after the closure of a facility and requires long-term monitoring to ensure there is no migration of the waste that could impact public health or the environment. An example of a situation warranting this type of permit is a closed landfill.
- **Permit modifications** – Permit modifications include anything that would require a change in the permit that has been issued by DTSC. A modification ranges from simple changes such as a change in the name of the facility's emergency coordinator or more significant changes such as a change in the type or volume of waste treated.
- **Emergency Permits** – An emergency permits is issued where treatment or handling of a hazardous waste is required at a location that has no permit, or in conditions that were not otherwise permitted. For example, an emergency permit may be issued to allow the destruction of explosives found during police activities.

In order for a facility to gain authorization to treat, store, transfer, or dispose of hazardous waste, its permit application must include a detailed description of the facility's activities, units, equipment, operation plans, recordkeeping system, procedures for response to accidental release of toxic substances or other emergencies, site-specific environmental setting, and training. The application will also contain engineering and structural specifications, closure plans, closure cost estimates, and the mechanism for financial assurance in the event of closure. Ultimately the applicant must demonstrate the ability to manage the waste in a protective manner.

The objective of the permit is to establish enforceable limits on the types and quantities of hazardous waste the facility can accept, the permitted activities with that waste, and to establish conditions that assure safe and protective operation of the facility. A DTSC permit is valid for up to ten years.

When a facility ceases hazardous waste operations, DTSC must review and approve a detailed Closure Plan to decontaminate, disassemble, and dispose of the equipment and waste. After closure, samples are collected to confirm that the waste and associated contaminants have been successfully removed.

In addition to processing new and renewal permit applications to result in permit decisions, the permitting staff performs additional critical activities:

- Emergency Permits
- Permit Modifications.
- Closure oversight projects.
- Permit Oversight and Maintenance Activities

Other support activities performed by permitting staff include:

- Development of guidance documents
- Assistance in preparation of regulatory development packages
- Regulatory Analysis of Federal HW Rules
- U.S. EPA Grant/Annual Work Plan Activities
- State Outreach/Guidance/Policy Development/Implementation Activities
- State Legislative Activity
- Training

In FY 14-15, DTSC:

- Completed 8 permit decisions*
- Issued 48 emergency permits
- Completed 8 permit modifications
- Oversaw 3 closure projects

*In addition, in February 2015 DTSC informed Exide that their permit application would be denied, and the facility entered closure; so that permit is no longer on the backlog list.

The above additional critical activities and support activities constitute more than half of the workload of the permitting staff.

PERMITTING DIVISION STAFF

The Division has a total of 49.5 positions. There are 8 management positions: 1 Division Chief, 2 Branch Chiefs and 5 supervisors. There are 7 administrative support positions: 5 office technicians and 2 program analysts. There are 34.5 technical staff permit writer positions as described below.

In FY14-15, as part of a sustained effort to provide more timely review of permit applications, DTSC secured 14 temporary positions. These included 6 positions redirected from the Brownfields and Environmental Restoration Program and the Policy and Program Support Division to the Permitting Division. Also DTSC received 8 two-year limited-term positions – 6 in the Permitting Division and 2 in other support programs . The temporary positions will expire or be redirected back to the originating program by June 30, 2016, if they are not made permanent. In addition to the 12 temporary permit writer positions, there are currently 4 permit writers allocated to the Exide Project. This means that by June 2016, the Permitting Division will have only 18.5 permit writers available to work on permits, including 2 positions dedicated to closure cost estimate reviews.

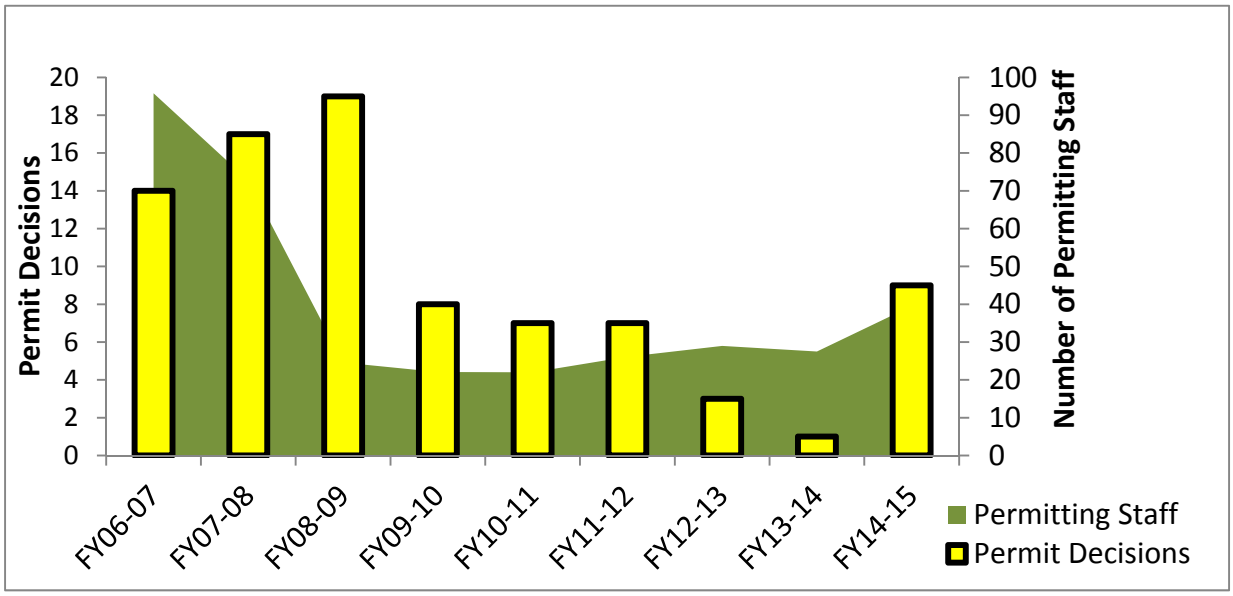
An assessment of DTSC's Permitting Division by CPS HR Consulting in 2013, discussed below in more detail, identified the need for additional staff "to avoid significant increases in permit processing time, and a reduction in the number of toxic waste facilities operating without a permit." Since the CPS report was issued, DTSC has redirected staff from cleanup and hired limited-term positions in order to reduce its permitting backlog. The Department is evaluating its resources in order to resolve this staffing shortage.

The Permitting Division closely coordinates with other internal DTSC support services to ensure the quality of each permit decision. For example, permitting staff consults with the Office of Legal Affairs for the latest federal and state law provisions and toxicologists and geologists assist with the technical review of the permit application. The DTSC's Office of Communications performs the outreach and involvement of the public in the permit decision process. Enforcement staff is engaged to ensure that the permitting documents clearly articulate enforceable requirements; they also perform the compliance history assessment, which is critical in the overall permit decision.

As stated above, each permit decision must comply with CEQA. DTSC staff responsible for conducting CEQA analyses is significantly involved in the permitting effort. Under CEQA, proposed hazardous waste operations are reviewed for impacts to aesthetics, noise, biological resources, and air and water quality, and other factors. As part of this process, DTSC receives public input on the CEQA analysis to be sure it has identified and addresses community concerns.

Chart 1, below, shows the historical levels of staffing and the associated number of permit decisions. Around FY07-08, there was a significant reduction in permitting staff due to reorganization of the Department. This reduction of permitting staff is correlated to the decrease in permit decisions in subsequent years. Because a permit application requires two to five years to process, much of the technical review is accomplished in years prior to the year when the permitting decision is made. For example, FY08-09 shows a high volume of permit decisions because much of the work was completed in prior years, coupled with the fact that less complex permits were issued during that timeframe.

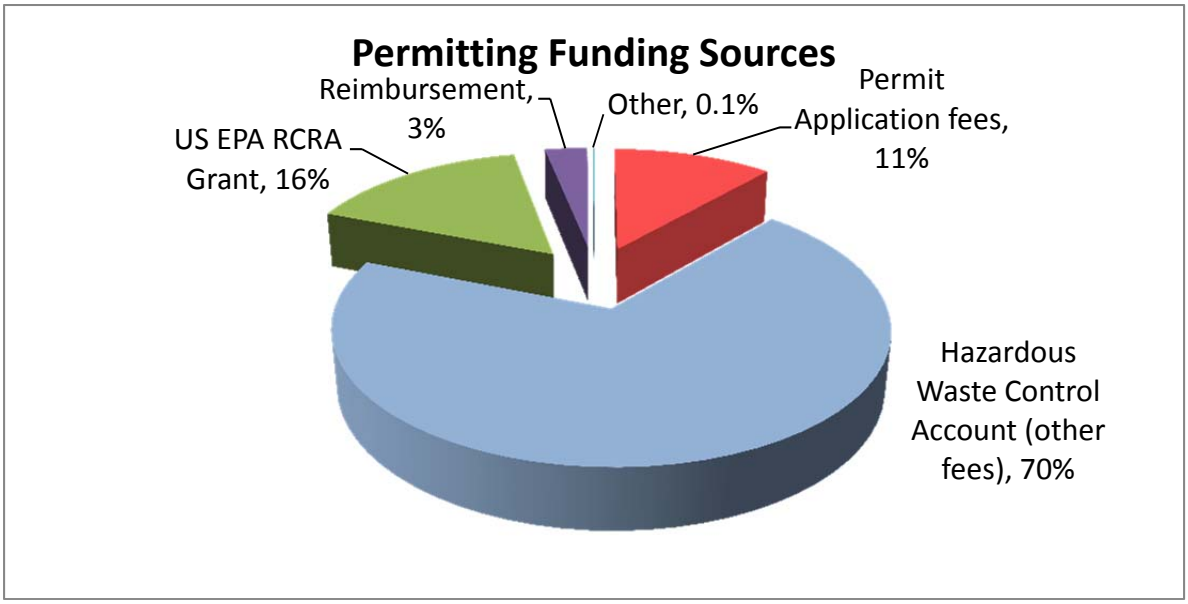
Chart 1: History of Staff Levels and Permit Decisions



PERMITTING FUNDING SOURCES

The majority of the funding for the Permitting Division budget is from the Hazardous Waste Control Account and the EPA RCRA Grant. Permit application fees comprise only 11% of the total funding for the Permitting Division.

Chart 2



The applicant can choose to pay on a reimbursement basis as a fee for service or on a flat fee basis for DTSC staff to process the permit applications. Almost all applicants choose the flat fee. However, the flat

fee does not cover the Permitting Division's full costs to review the applications which must then come from other funding sources in the department.

IMPROVING THE PERMITTING PROCESS

In 2012, DTSC implemented the Fixing the Foundation Initiative. DTSC had received complaints from the public about its permitting program and held meetings with the public and stakeholders to identify and understand concerns about the program.

DTSC commissioned CPS HR Consulting, a non-profit corporation established under the California Joint Powers Authority that provides human resources consulting services to government and non-profit clients, to conduct an external review of the permitting program in order to benefit from an independent, objective perspective on the areas needing improvement. The study found:

- Permitting decisions were not timely, taking upwards of four years to complete on average.
- The permitting program restructuring from FY08-09 had resulted in a lack of management structure. This was considered a factor in the poor performance of the program.
- The program lacked consistent processes for making permitting decisions.
- Training was lacking.
- There was a lack of clarity around when to deny or revoke a permit.
- There was a lack of performance metrics.

As a result of the Fixing the Foundation initiative, strategic planning work, input from stakeholders, and the CPS review, DTSC established the following improvement goals for the permitting program:

- Improve the timing for permit decisions.
- Reduce and eliminate the permit backlog.
- Increase the transparency and accountability of the decision making process.
- Permits must be enforceable and protective.
- Improving the public participation process.
- Improving program for reviewing and ensuring adequate financial assurances.

ADDRESSING THE PERMITTING BACKLOG

Federal and state law allows facilities with expired permits to continue to operate if the facility has submitted an application for renewal that is administratively complete in advance of the permit expiration date. These types of permits (i.e., expired permits for a facility that has submitted an administratively complete application for a permit renewal) are referred to as "continued permits." Permits on a continued status for more than five years are considered part of the "backlog."

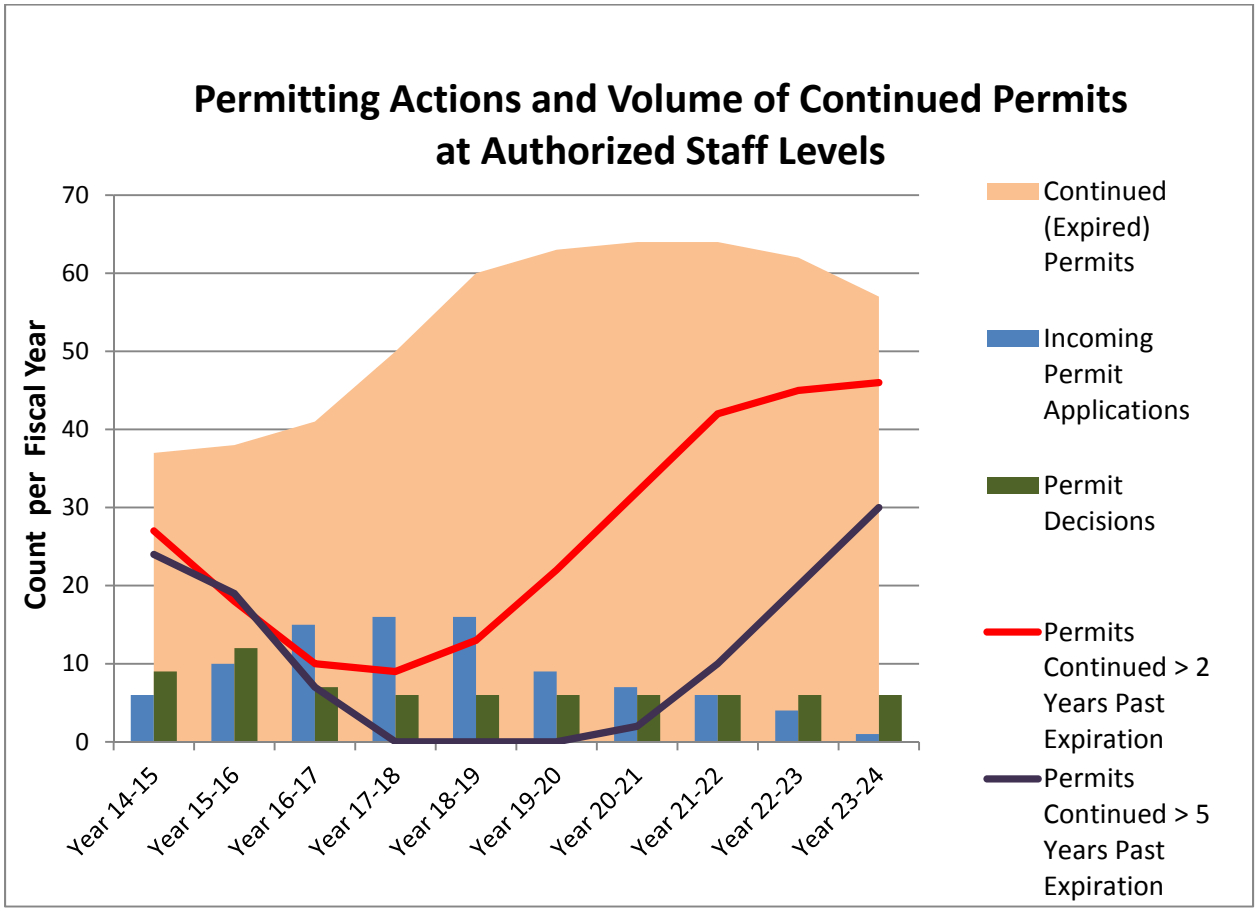
Chart 3 below shows the progress of DTSC's backlog reduction program. There were 24 backlogged permits in FY14-15. DTSC has been reducing that backlog each year and is committed to eliminating the backlog of permits by FY17-18.

Chart 3: Backlog Reduction Initiative

	FY14-15	FY15-16	FY16-17	FY17-18	FY17-18
Permits > 5 Years Past Expiration (Backlog)	24	19	7	0	0
Backlog Reduction	5	12	7	0	0

Although good progress has been made, as illustrated in Chart 4 below, showing all permit renewal actions, DTSC expects the volume of incoming permit applications to increase in the upcoming years. However, at authorized staffing levels the number of permit actions will remain around 6 per year.

Chart 4

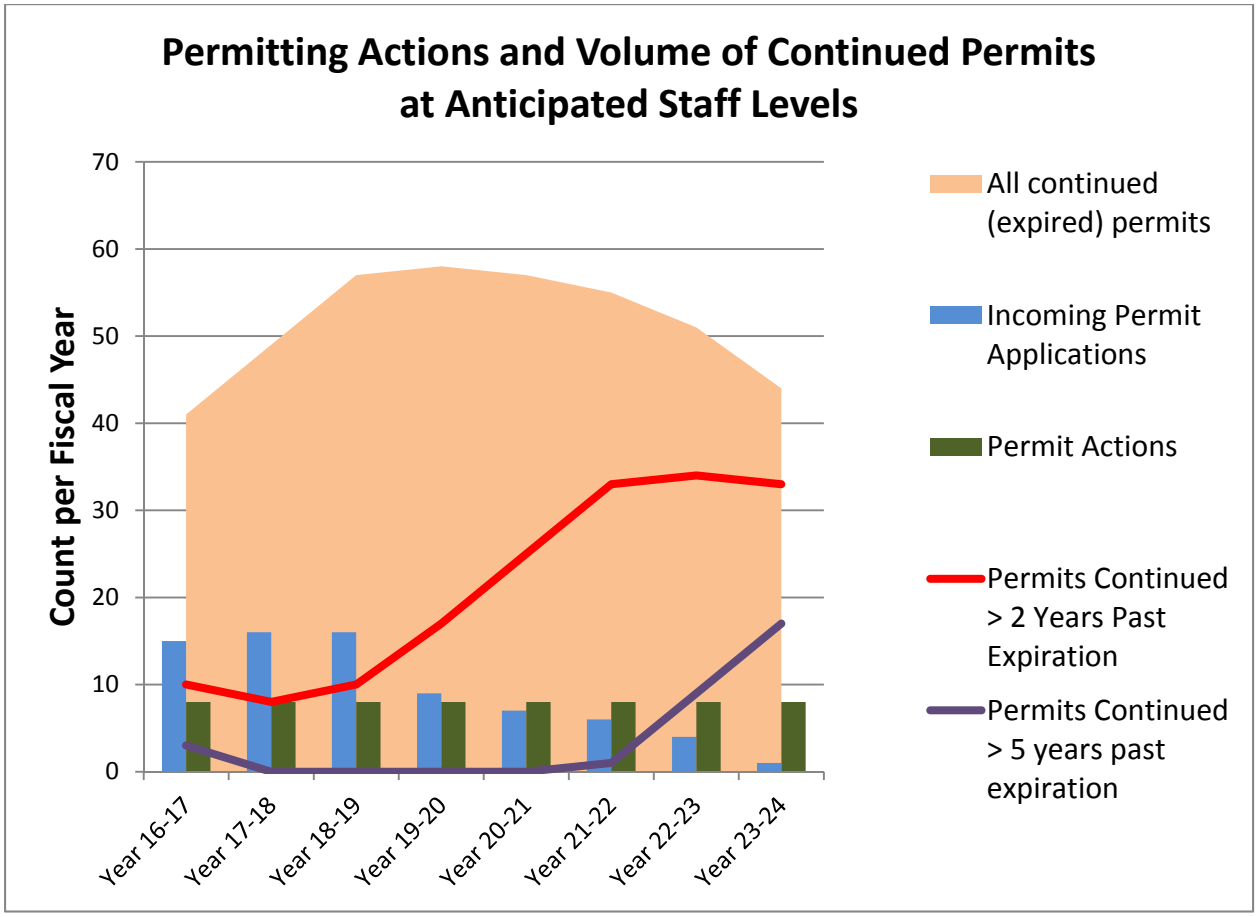


DTSC received 8 limited-term positions to assist processing 17 of the 24 backlog permits by June 30,' 2016, and anticipated completing the remaining seven permits by the following year. If these eight

limited-term positions became permanent, it would allow DTSC to complete that work. DTSC is evaluating staffing resources required to act on future expiring permits.

The Governor's Proposed Budget for FY16-17 proposes that a total of 8 limited-term positions be converted to permanent in the Permitting Division and support programs, which would bring the number of permit writers to 23.5. Chart 5 below reflects the anticipated performance at this level of additional resources.

Chart 5



CLOSURE COST ESTIMATE REVIEW

Another important part of the backlog reduction initiative is the review of all closure cost estimates older than five years. A permitted facility is required to maintain financial assurance to close its operation so that taxpayers are not burdened with the cost of closure in the event a facility becomes insolvent. The Fixing the Foundation strategic plan called for DTSC to review all closure cost estimates for our permitted facilities every five years to make sure that the current site conditions and costs for closure are accurately reflected in the financial assurance.

In FY14-2015, the Department received 2 two-year limited term employees to review closure cost estimates at 40 permitted facilities that had not been updated in over five years. To date, DTSC has completed 43 closure cost estimate reviews, of which 19 reviews were of estimates more than 5 years old, and 24 reviews were undertaken as part other permit actions, to efficiently use permit resources when the permit was under review. There remain 21 facilities with closure cost estimates more than 5 years old that will be completed by June 30, 2016. Work will continue in subsequent years to regularly perform the five-year reviews of closure cost estimates. Going forward, updates to cost estimates for closure and post-closure work will be performed during permit renewal.

PERMITTING ENHANCEMENT WORK PLAN

In early 2014, DTSC developed a Permitting Enhancement Work Plan (Work Plan) to significantly upgrade and strengthen the Department's permitting program and to ensure that the problems of the past do not resurface in the future. The Work Plan serves as a comprehensive roadmap to guide DTSC's efforts to improve the permitting program's ability to issue protective, timely, and enforceable permits using more transparent standards and consistent procedures. The Department received $699,000 and 5 limited-term positions to implement this Work Plan as part of its FY 14-15 budget and will complete the Work Plan by June 30, 2016.

There are 86 actions in the Work Plan, all of which are designated to improve the protectiveness, timeliness, legal defensibility, and enforceability of DTSC's permitting program. To date, DTSC has completed 65 of the original 86 action items (77%). In addition, DTSC has not stopped at the boundaries of the original Work Plan and has identified 9 additional improvements needed for the permitting program. Implementation of these additional items will extend the Work Plan in to FY16-17; 4 of these additional items have already been completed.

As part of the Work Plan, DTSC conducted Lean Six Sigma reviews of its permitting processes. Lean Six Sigma is a data-driven process that combines 2 business methodologies to reduce waste and improve quality. DTSC engineers in 2014 took the first step toward shortening the permitting timeframe by applying Lean Six Sigma to reduce the most complex and time-consuming phase: technical review.

Since 2016, DTSC has completed 3 Lean Six Sigma projects on the permit review process. The first project identified that the consistent use of a technical review checklist would result in 80 percent of technical permit reviews being completed within 13 months. The second Lean Six Sigma project identified that the consistent use of the administrative review checklist would make this process more efficient. These recommendations have been implemented and Permitting is already seeing improvements in the processing time and quality.

A third Lean Six Sigma project focused on reducing the deficiencies in permit applications. The result was to provide early guidance to the facility applicant so that the permit application better aligns with regulatory requirements. This early applicant guidance is now in development. The Permitting Division is also developing a model "Notice of Deficiency" (NOD) template to improve the quality and clarity of the

NODs sent to the applicant, as well as a process to hold a pre-application meeting with the applicant to clearly communicate DTSC's expectations for permit application content.

In addition, DTSC has mapped, for the first time, the entire permitting process and memorialized it in the form of a baseline flow chart that staff can work from and incorporate future improvements. A large group of DTSC staff members further refined the flow chart at a fall 2015 workshop to incorporate improvements from Work Plan deliverables.

DTSC is working with the UC Davis Extension Collaboration Center to develop a plan to modernize its public participation processes as they relate to permitting and site cleanup, and to develop a new engagement strategy to address the needs and concerns of residents early in the process, particularly in disproportionately burdened environmental justice communities.

DTSC is also developing a new process that requires closer coordination between permitting and enforcement teams to ensure that the compliance record of a facility is carefully considered in a rigorous, consistent and transparent way as part of the permitting decision. This new Violation Scoring Procedure aims to establish a structured process for evaluating a facility's compliance history. DTSC has held several meetings with the public and stakeholders to solicit input on this procedure.

PERFORMANCE METRICS

DTSC is continuing its effort to establish clearer performance standards and compliance conditions through the use of performance metrics. This is an ongoing effort intended to result in more clearly enforceable and protective permit conditions.

Beginning in FY 15-16, the Permitting Division embarked on a Performance Management Approach similar to that used by the DTSC Cleanup Program. One of the essential elements to the implementation of this Performance Management Approach is the development of an Annual Work Plan. The Annual Work Plan specifies due dates for major milestones in the Permitting Process on Permitting Projects, tracks completion of permitting activities, increases communication between staff and management on permit progress, and measures planned vs. completed milestones as a performance measure of the Permitting Program. In addition, the Permitting Division has developed "operation plans" that set up work performance expectations of supervisors and staff and describe the resources, workload, internal processes and tracking performance for each of the 4 permitting units.

Currently the Permitting Division is evaluating the time elapsed during the various phases of the permitting process. This includes the measuring the time spent on administrative review, technical completeness, and proposed and final permit decisions. DTSC is also looking at the time between financial assurance reviews.

The Permitting Division also measures the number of permit decisions it makes annually, the number of continued status permits that remain expired for more than two years, the number of continued status

permits that remain expired more than five years, and the number of permit modifications, closure projects, and emergency permits issued.