

**Department of Toxic Substances Control
Enforcement Program Performance
FY 2015-16**

July 12, 2016

Part I – Review of Enforcement Program Elements Performance Compared to Goals

General

Enforcement of DTSC’s Hazardous Waste Management Program includes routine inspections, focused inspections, and specialized investigations into potential criminal activity. These Enforcement Program activities are performed by staff in the Enforcement and Emergency Response Division, and the Office of Criminal Investigations. Staff in both divisions conducts inspections or investigations in response to environmental complaints received from the public. In addition, DTSC implements the Certified Unified Program Agency (CUPA) program in Imperial and Trinity counties. DTSC also participates in the California Environmental Protection Agency’s (CalEPA) evaluation of local CUPA programs, and enforces the Toxics in Packaging Prevention Act.

Overview of Inspections, Investigations and Complaints

Based on currently available data, in FY 2015-16, DTSC’s Enforcement Program met or exceeded federal inspection targets under the RCRA Grant, and met or exceeded nearly all state inspection targets (ranging from 96% to 203% completion rate). Inspection data are provided by program area below.

Inspections: Permitted Treatment, Storage and Disposal Facilities

Pursuant to its delegated authority under the federal Resource Conservation and Recovery Act (RCRA), and the requirements of California’s Hazardous Waste Control Law, DTSC Enforcement staff inspects RCRA and non-RCRA permitted facilities that treat, store and dispose of (onsite) hazardous waste. DTSC’s RCRA grant includes required inspections for RCRA facilities, and DTSC establishes targets for non-RCRA facilities. In FY 2015-16, DTSC committed to inspect a total of 35 RCRA facilities, and conducted 55 inspections (157% of target), including 9 federal facilities DTSC inspected on behalf of U.S. EPA Region IX.

Inspections: Covered Electronic Waste

E-waste that is regulated under Public Resources Code (PRC) Section 42479 is referred to as Covered Electronic Waste (CEW). PRC Section 42479(b)(2)(A) requires annual inspection of all CEW recyclers. There are 54 CEW recyclers, and DTSC inspected 53 of them in FY 2015-16 (98% of target).

There are currently 441 CEW collectors. Neither the statute nor the implementing regulations specify inspection of CEW collectors; however, the MOU between DTSC and CalRecycle establishes a goal for DTSC to inspect each CEW collector approximately once every five years. In FY 2015-16, DTSC set a target to inspect 75 CEW collectors, and inspected 72 of them (96% of target).

Inspections: Hazardous Waste Transporters

DTSC enforces statutes and regulations governing the transportation of hazardous wastes pursuant to Health and Safety Code (HSC) Section 25180. The statute does not specify any requirements for routine inspection. Routine inspections typically involve a comprehensive review of the transporter company, including the company’s compliance with manifest requirements. In FY 2015-16, under a focused initiative to improve hazardous waste transportation compliance in vulnerable communities, DTSC set a goal of inspecting 34 Transporters and inspected 69 (203% of target).

Inspections: Border Enforcement

Pursuant to HSC Section 25180, DTSC inspects shipments of hazardous wastes at Ports of Entry and in the California border area and reviews import-export notifications. U.S. Customs and Border Protection restricts transport of hazardous waste from Mexico into California to two ports of entry (Otay Mesa and Calexico), and restricts the days and times for border crossing. DTSC inspects all hazardous waste transporters that cross during the prescribed times. In FY 2015-16, DTSC inspected 2,909 northbound shipments across the U.S. – Mexico border, and participated in a special investigation of 125 southbound shipments over 3 days. The following table provides a breakdown of the inspections:

	RCRA and non-RCRA HW	American Products returned	Universal Waste	Non-regulated materials
Northbound Total	231	368	208	2,102
Otay Mesa	224	208	137	1,356
Calexico	7	160	71	746
Southbound Total				125

Complaint Response

DTSC receives environmental complaints from the Department’s complaint hotline, and the CalEPA Environmental Complaint System, which, among other things, considers complaints from the community-based reporting tool used by the IVAN (Identifying Violations Affecting Neighborhoods) network. DTSC monitors the complaint reporting system and conducts a preliminary evaluation of the information provided. If there is enough information to conduct an investigation, DTSC will investigate the complaint or refer the complaint to the agency with the clearest jurisdiction to respond. This may be another board, department or office within CalEPA, or may be another agency, such as

U.S. EPA, or a local CUPA or air district. In FY 2015-16, DTSC received 531 complaints. Of those, 409 were referred to agencies outside of CalEPA. Another 51 complaints were referred within CalEPA. DTSC’s Enforcement and Emergency Response Division (EERD) retained 33 complaints, and 26 additional complaints were investigated by DTSC’s Office of Criminal Investigation (OCI). Six complaints are still in screening review and one has just passed the screening and is awaiting assignment to an investigator. There were 5 complaints that did not have sufficient information to investigate or were duplicate complaints.

Investigations

OCI primarily investigates alleged criminal violations of the Hazardous Waste Control Law and pursues a wide range of both felony and misdemeanor cases. In addition, OCI coordinates multi-media environmental investigations with other Cal/EPA agencies and participates with regional, State, and federal task forces, including the Offices of the Attorney General and U.S. Attorney, District Attorneys and Circuit Prosecutors. In FY 2015-16, OCI initiated 112 new investigations, referred 12 cases for prosecution and settled 3 cases. OCI closed 225 cases (due to insufficient evidence, statutes of limitation, etc.). OCI began a new initiative investigating metal recyclers and conducted 12 investigations in that sector.

Overview of State-implemented Certified Unified Program Agency (SCUPA) Programs

DTSC implements consolidated environmental regulation for two local counties: Imperial and Trinity. The consolidated programs include: hazardous waste generator and tiered permitting; hazardous materials release response plans and inventory programs; regulation of above-ground and underground storage tanks; and the California Accidental Release Prevention Program (CalARP).

The SCUPA program for Imperial exceeded all annual inspection targets (107% to 181%) except for Underground Storage Tank inspections (91%). Triennial inspections in Imperial County ranged from 92% to 98% completion rate, except for inspections of facilities subject to CalARP (73%). The SCUPA program for Trinity County exceeded all annual inspection targets (100% to 250%). Triennial inspections in Trinity County ranged from 85% to 100% completion rate.

Imperial CUPA regulated universe: 836 businesses

Annual inspection requirements (July 1, 2015 – June 30, 2016)

Required Target	Completed
279 Hazardous Materials	375 (134%)
217 Hazardous Waste	255 (118%)
61 Aboveground Storage Tank	65 (107%)
85 Underground Storage Tank	77 (91%)
16 CalARP	29 (181%)

Tri-Annual inspection requirements (July 1, 2013 – June 30, 2016)

Required Target	Completed
836 Hazardous Materials	743 (93%)
651 Hazardous Waste	585 (92%)
184 Aboveground Storage Tank	171 (98%)
85 Underground Storage Tank	247 (96%)
49 CalARP	36 (73%)

Trinity CUPA regulated universe: 139 businesses

Annual inspection requirements (July 1, 2015 – June 30, 2016)

Required Target	Completed
43 Hazardous Materials	62 (144%)
19 Hazardous Waste	22 (116%)
12 Aboveground Storage Tank	14 (117%)
7 Underground Storage Tank	7 (100%)
2 CalARP	5 (250%)

Tri-Annual inspection requirements (July 1, 2013 – June 30, 2016)

Required Target	Completed
123 Hazardous Materials	110 (89%)
54 Hazardous Waste	52 (96%)
41 Aboveground Storage Tank	35 (85%)
7 Underground Storage Tank	7 (100%)
5 CalARP	5 (100%)

Unified Program Agency Evaluations

HSC Section 25404.4 requires that the Secretary of CalEPA periodically review the ability of each CUPA to carry out the requirements of the chapter. The required process is defined in Title 27 of the California Code of Regulations, Article 8, Section 15330. The goal is to assess whether the CUPA is effectively implementing all of the Unified Program elements, and is continually improving to meet the intent of the law: coordination, consolidation, and consistency of all Unified Program elements. During the evaluation if a CUPA is not currently achieving success meeting the requirements prescribed in the statute and regulations, the state offers guidance and assistance for improvement.

In the fall, a team made up of senior staff from each state agency with Unified Program responsibilities (CalEPA, OES, OSFM, DTSC, and SWRCB) conducts an assessment of each CUPA. The assessment uses a spectrum of performance measures and criteria to identify

the CUPAs selected for a more detailed evaluation, and a schedule for those evaluations, for the next year. All CUPAs receive a detailed evaluation on a triennial basis.

Evaluation procedures include a site visit to the CUPA to examine local program procedures, their documentation, and may include observations of the CUPAs inspectors in the field. CUPAs are evaluated as “Meeting or Exceeding Standards,” “Satisfactory with Improvement Needed,” or “Unsatisfactory with Improvement Needed.”

In FY 2015-16, CalEPA identified 21 CUPAs for detailed evaluations. DTSC’s EERD staff participated in all 21 evaluations. As part of those evaluations, DTSC is required to accompany each CUPA on at least one field investigation of a regulated facility to assess the CUPA’s inspection and enforcement performance in the field. In FY 2015-16, DTSC performed a total of 31 field evaluations (147% of target).

Toxics in Packaging

Pursuant to HSC Sections 25214.11 through 25214.26, California limits cadmium, lead, mercury, and hexavalent chromium in product packaging. These restrictions are very far-reaching, and include ANY packaging or packaging component sold in California. The laws affect all manufacturers, distributors, and resellers, regardless where the packaging was made, distributed from, or sold from; if it is eventually sold or distributed in California, then these laws apply.

The statutes do not provide for any routine inspection of packaging; however, DTSC has authority to enforce the law. In FY 2015-16, DTSC undertook one comprehensive assessment of multiple food and beverage packaging. The assessment included advanced laboratory analysis and findings should be released in FY 2016-17.

Part II – Enforcement Program Enhancement Initiative

DTSC identified broad goals for improving its Enforcement Program as part of its Strategic Plan (2014-2018). The Strategic Plan set three objectives for improving enforcement, specifically:

- Objective 2.3: Improve effectiveness, efficiency, and consistency in enforcing California’s hazardous waste laws; and make DTSC’s enforcement program’s information and processes more accessible to the public.
- Objective 2.4: Improve public confidence in DTSC’s enforcement decisions by establishing clear guidelines for decision points that ensure enforcement actions result in timely resolution with appropriate penalties and corrective actions.
- Objective 2.5: Develop and apply criteria and processes to prioritize work within the hazardous waste enforcement and permitting programs, including the

use of tools such as new environmental screening methods and Geographic Information System (GIS) technology.

In the FY 2015-2016 budget, the Department received resources to develop and implement a plan to improve its enforcement processes and outcomes.

1. Clearly define the inspection and enforcement process. Identify areas for streamlining and barriers to an efficient inspection and enforcement program.
 - Perform an extensive review of the inspection and enforcement process and identify areas for improvement;
 - Create a clear and detailed improvement plan; and
 - Identify barriers to process improvement that require regulatory or statutory changes and draft language to make those changes.
2. Establish clear metrics to evaluate performance in inspection and enforcement activities.
 - Develop workload, tracking, and performance metric reports in EnviroStor to provide data to develop clear and consistent workload standards; and
 - Update EnviroStor system documentation and training manuals to ensure long-term success of the system.
3. Create a formal review process for enforcement case management.
 - Draft/update policies, procedures, and guidance;
 - Identify technical guidance and training for staff to implement process improvements; and
 - Develop procedures or establish a workgroup to review enforcement cases for consistency and precision.
4. Clearly communicate the inspection and enforcement process to stakeholders and the community.
 - Evaluate and initiate enhancement efforts on the public EnviroStor website to improve program transparency on DTSC's enforcement efforts.
5. Incorporate community engagement in setting inspection and enforcement priorities.
 - Develop an effective communication strategy for engaging neighborhoods close to inspection and enforcement cases; and
 - Identify and develop analytical tools to prioritize DTSC's enforcement efforts.

In September of 2015, the Enforcement Program held a scoping meeting to conduct a baseline assessment of legal mandates and authorities, inspection types and frequencies, enforcement actions, coordination efforts, environmental justice challenges and opportunities, data management needs, program metrics, and potential regulatory actions needed. The Enforcement Performance Management Branch also held a cross-program workshop with staff from the legal office, public participation, and environmental justice and tribal affairs, and then engaged EERD Branch Chiefs to identify guiding principles for EERD. These include:

1. Improve program efficiency and effectiveness while maintaining quality.
2. Develop and utilize tools and pathways that support and sustain a robust enforcement program.
3. Promote and support continuous program improvement.
4. Establish and use clear and meaningful metrics that clearly and accurately represent EERD's work, and provide a means for effective performance management.
5. Implement and maintain a data management system that ensures that the type, quantity, and quality of data produced supports program objectives.
6. Communicate, coordinate, and collaborate consistently with internal and external agencies.
7. Develop and update guidelines to ensure program uniformity and transparency.
8. Promote community education and engagement in program activities.

Program improvements are underway in seven specific areas: Environmental Justice; Communication; Analysis and Transparency; Efficiency; Consistency and Rigor; Sector-based Enforcement; and Data Management. Progress in each of these areas is summarized briefly below.

Environmental Justice

In cooperation with DTSC's newly established Office of Environmental Justice and Tribal Affairs, Enforcement Program staff is conducting a comprehensive evaluation of the Enforcement Program to identify gaps and develop strategies to more effectively address compliance challenges in impacted communities. This iterative effort relies on deep community engagement to provide a richer understanding of the ways in which non-compliance with environmental requirements affects communities. While the gap analysis is under way DTSC is already taking steps to improve its enforcement, and ultimately compliance by regulated entities, in impacted communities. Examples include:

- DTSC is using CalEnviroScreen to identify impacted communities and prioritize inspection and investigation efforts in those areas; for example, in FY 2015-16, EERD began enhanced inspections of hazardous waste transporters in communities identified by CalEnviroScreen as disadvantaged and impacted by multiple sources of pollution. OCI began an investigation of the metal recycling sector, which is also primarily located in impacted communities.
- DTSC established the first IVAN program through a supplemental Environmental Project in 2008 and provides extensive support for community based enforcement. In 2015-16, DTSC worked to expand the IVAN network to the Bayview Hunters Point neighborhood in the San Francisco Bay Area, and is partnering with a community-based organization in Sacramento to develop an IVAN network in the Capital region.
- DTSC actively participates in the CalEPA Environmental Justice Compliance and Enforcement Working Group. In 2013, the DTSC took part in the Working Group's first multi-media enforcement initiative in Fresno. In FY 2015-16, DTSC

participated in multi-media initiatives in Boyle Heights and Pacoima. Staff provided three California Compliance School classes for local businesses, including one in Spanish, conducted 23 inspections, and prepared 4 formal enforcement actions. Cases are still pending.

- In FY 2015-16, DTSC signed a new Supplemental Environmental Projects (SEPs) Policy. This policy encourages projects that benefit California communities most impacted by environmental harm, and demonstrates DTSC's commitment to environmental justice. The policy provides the option to allocate up to 50% of fines and penalties to a SEP with priority in impacted communities where a violation occurred. It is one of the first SEP policies in the nation to identify Native American tribes as eligible recipients of SEPs.

Communication

DTSC recognizes that successful enforcement of hazardous waste requirements depends on effective communication. The Department is taking steps to ensure that Enforcement Program staff communicates, coordinates and collaborates consistently with their colleagues in the Hazardous Waste Management Program, in other program areas within DTSC, with co-regulators, with regulated businesses, and most importantly, with the public we serve.

Internal Communication

- EERD established liaisons to support timely, clear and effective communication between Enforcement staff in the Headquarters Office and in each Regional Office.
- EERD established a liaison between Enforcement staff and staff in the Permitting Division.
- EERD is working with other program areas to identify whether liaisons or other mechanisms will best support communication goals.

External Communication

- In FY 2015-16, DTSC helped roll out the new online CalEPA Environmental Complaint System. This tool allows Californians to report an environmental problem anywhere in the state and provides environmental agencies with valuable information about potential environmental hazards and violations. Once a complaint is filed, it is routed to the appropriate state or local agencies; DTSC helps review and route complaints.
- In FY 2015-16, DTSC offered three California Compliance School classes for businesses in the communities where the businesses are located, including one in Spanish.
- EERD is coordinating with Public Participation and Community Relations staff in DTSC's Office of Communications to establish the framework to promote community education and engagement in Enforcement Program activities. DTSC is also actively supporting expansion of the IVAN network.

- DTSC is completing a comprehensive effort to modernize its approach to public participation, including understanding community needs and developing an effective outreach and engagement work plan; early and continuous public engagement; a customized approach for communicating with community members and stakeholders; and increased access to data and information relevant to decision-making through the use of social media, electronic platforms, and community networks and community based groups. The effort has been undertaken with contractors from UC Davis and is built on extensive engagement with DTSC stakeholders. The strategies developed through this effort will be built into (and tailored to) the Enforcement Program.

Analysis and Transparency

DTSC is taking concrete steps to develop analytics and metrics to better characterize work done by the Department, and to make that information available to the public.

Examples of this include:

- Developing compliance analytics. In FY 2015-16, Enforcement staff collaborated with DTSC's Office of Legal Counsel on a draft quantitative approach for measuring and comparing compliance to allow assessment of compliance across diverse industry sectors and facility types. The draft is undergoing final review and should be available for public discussion in September of 2016.
- Making inspection and enforcement data available online. In 2014, information was added to the website and to EnviroStor to provide access to inspection data and reports for permitted facilities, Summaries of Violation, and enforcement settlements. Further enhancements are currently under development to provide inspection and enforcement performance metrics online. When the compliance analytics methodology is final, DTSC will also provide compliance outcomes online.
- Throughout FY 2015-16, DTSC implemented a pilot project to provide public comment on draft settlement agreements. Participation was voluntary on the part of facility (because the regulations do not require public comment), and DTSC was unable to secure participation. As a result, the Department is evaluating options for requiring public comment on draft settlement agreements, including, for example, when a sector or facility has poor compliance history, or a low compliance index as compared to other sectors or facilities. Mandatory public comment would likely require regulatory changes.

Efficiency and Effectiveness

DTSC has successfully implemented structured analyses of program elements using Lean Six Sigma (L6S) methods to increase efficiency and eliminate waste in its processes. In addition to improving processes, L6S evaluations also yield measurable performance metrics and fact-based performance goals.

- OCI L6S on Case Referral. The analysis phase of this project was completed in summer 2015 and provided a baseline analysis of OCI case management and backlog of unresolved cases. The project established a goal for OCI to refer 95%

of cases within 180 days. OCI developed case management policies and tracking and report function in EnviroStor. Implementation began in January, 2016.

- EERD L6S on Administrative Enforcement Cases. The analysis phase of this project began in February 2016 and is set to complete at the end of July 2016. A key outcome so far is the detailed mapping of the enforcement process. The project goal is to reduce the time needed for EERD to complete enforcement actions for administrative cases where the calculated penalties are less than \$75,000, with a target of completing 90% within 180 days.
- EERD L6S on the Penalty Workgroup. In FY 2015-16, EERD required all penalty calculations to be reviewed by the multi-disciplinary Penalty Workgroup, in order to establish consistency. To improve the efficiency and effectiveness of the process, DTSC is proposing a L6S on this process for the next GoBiz cycle.
- Legal Office L6S. DTSC's Office of Legal Affairs is developing L6S project concepts and hopes to propose one for the next GoBiz cycle.

Consistency and Rigor

DTSC is developing and updating regulations, policies, and guidelines to ensure its enforcement program consistently delivers the best compliance possible with available resources. Examples include:

- Violation Scoring Procedures – DTSC is developing regulations that will create a transparent and accountable approach, using objective criteria, to evaluate a facility's compliance history. The evaluation will inform permitting decisions, including the degree of non-compliance that can lead to revocation of a permit or denial of a permit application. The Violation Scoring Procedures will ultimately be embodied in regulations that will apply to operating permitted treatment, storage, and disposal facilities. DTSC met with stakeholders to discuss draft concepts throughout FY 2015-16 and expects to propose regulatory language by January of 2017.
- In FY 2015-16, EERD required all penalty calculations to be reviewed by the multi-disciplinary Penalty Workgroup. A L6S project is expected to improve the efficiency and effectiveness of the penalty calculation process. Preliminary analysis also suggests that regulatory changes may be needed to achieve some of the desired improvements in consistency and rigor. Regulatory changes will be considered based on information developed during the L6S analysis.
- Update the Policy on Implementing Quarantine Authority - Update completion target date of July 15, 2016.
- Update the Policy on Referrals to California Compliance School - Update completion target date of July 15, 2016.
- Update the Policy on Sharing Administrative Penalty Calculation Information - Update completion target date of July 15, 2016.
- Update the Policy on Inspection - Update completion target date of August 31, 2016.

- Update the Policy on Enforcement Response - Update completion target date of August 31, 2016.
- Update the Policy on Complaints - Update completion target date of September 30, 2016.
- Update the Policy on Collecting Overdue Administrative Penalties - Update completion target date of December 31, 2016.
- Update the Policy on Guidelines for Calculating Economic Benefit of Noncompliance - Update completion target date of December 31, 2016.
- Develop a Data Management Policy - Completion target date spring 2017.
- Develop Department Procedural Memoranda that establish “roles and responsibilities” for EERD and other DTSC programs - Completion target date spring 2017.

Sector-based Enforcement

- Metal Recyclers – DTSC developed this initiative in response to stakeholder concerns, as well as EERD experience in the Fresno EJ Enforcement Initiative, regarding the metal recycling industry’s compliance with environmental laws. OCI conducted 12 inspections in FY 2015-16 and plans to complete 30 inspections by the end of June 2017. The metal recycling facilities selected for inspection are located in communities with high cumulative environmental impacts. The result of these inspections will be higher compliance rates, reduction of environmental impacts to communities and development of compliance tools and strategies for this industry.
- Mercury Thermostats - The Mercury Thermostat Collection Act of 2008 required the Department of Toxic Substances Control (DTSC) to adopt regulations in 2013 that establish annual performance goals for the collection of mercury containing thermostats. The goal of the Act and regulations is to keep mercury containing thermostats out of the solid waste stream. An annual report from the Thermostat Recycling Corporation (TRC) for most of the manufacturers is filed annually. The 2013 and 2014 reports showed that thermostat manufacturers failed to meet the annual performance goals. The manufacturers were notified of the violations and a settlement was reached with most of the manufacturers with payment of a penalty for the 2013 and 2014 reporting periods. The 2015 report was submitted and manufacturers continue to fall short of the annual performance goal. Further enforcement actions are pending.
- Transporters - Two additional inspection staff were added in July 2015 to perform additional transporter inspections. Through review of manifest data in FY 2015-16 EERD identified compliance issues among asbestos removal contractors with the transporter storage limits. EERD plans to focus a portion of the scheduled transporter inspections in FY 2016-17 on transporters of asbestos waste and will also increase outreach and compliance education opportunities in that industry.

- Future Sector Focus - DTSC uses CalEnviroScreen to help prioritize complaint response and will continue to expand use of this tool as we identify future sectors for focused compliance efforts. In addition, DTSC will coordinate with organizations like the CalCUPA Forum, the California Air Pollution Control Officers Association, and the California District Attorneys Association to identify common issues and concerns with industry sectors. DTSC is also exploring the use of other sources of data (compliance analytics, California Environmental Reporting System data, biomonitoring, and others) to help identify focus areas by industry and geography for inspection and enforcement activities.

Data Management

In FY 2015-16 the Enforcement Program staff worked with the Department's Office of Environmental Information Management to add tracking to Envirostor of specific code sections for violations found. In addition the teams collectively identified data quality reviews and reports that will be run automatically by EnviroStor, including specific data elements to be incorporated. Programming is underway. Going forward EERD will assess enhancements needed to ensure that the type, quantity, and quality of data produced meets or exceed program objectives.

- Implement a data driven approach to prioritization of enforcement efforts - Full utilization of available databases such as EnviroStor, HWTS, CERS, and ECHO.
- Employ rigorous QA/QC procedures, including multi-level reviews.
- Establish clear and meaningful metrics that adequately represent EERD's work and provide a means for effective performance management, and develop data tracking and reporting to support optimum program performance.
- Better utilize technology and software platforms (such as tablets and field-support software) to improve inspection data capture and report generation.