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DTSC'S RESPONSE TO IRP REQUEST REGARDING STATE AND COUNTY HAZARDOUS WASTE MANAGEMENT PLANS

In its April 21, 2016 quarterly report to the Governor and Legislature, the IRP requested that DTSC provide an update on the status of the state and county hazardous waste management plans mandated by Assembly Bill No. 2948 (Stats. 1986, ch. 1504 (Tanner) (AB 2948)) and recommend any advisable changes to Health and Safety Code section 25135. The legislation dates back to 1986 and limited information from that era is still available. However, from the available information DTSC has been able to retrace its implementation efforts and the evolution of relevant hazardous waste management strategies, as described below.

AB 2948 required the Toxic Substances Control Program of the Department of Health Services (the predecessor to DTSC) to prepare and adopt a state hazardous waste management plan by November 1, 1989 (later extended to November 30, 1991). The plan was to be reviewed annually and revised based on new information at least once every three years. The statute required that the state hazardous waste management plan "be prepared in conjunction with," and "take into account," hazardous waste management plans adopted by counties and regional councils of governments.

A Biennial Report for 1988 – 1990 prepared by DTSC's predecessor explains that after the enactment of AB 2948 in 1986, the Toxic Substances Control Program invested significant effort into developing the mandated county and state plans. As many as 17 staff positions were added to work with the counties to develop their plans and as many as 5 staff positions were added to focus on statewide planning efforts. The Biennial Report also noted the following actions regarding state and county plans:

- 1) guidelines developed to assist counties in developing their plans;
- 2) technical assistance provided to county and regional governments to assist in county plan preparation;
- 3) policies developed for local governments to use in siting hazardous waste facilities;
- 4) distribution of more than \$8.5 million directly to local governments to fund their planning efforts;

- 5) preparation of California's first Capacity Assurance Plan (mandated of each state by U.S. EPA);
- 6) preparation of a framework for integrating the county plans into the Statewide Plan;
- 7) convening of a State Hazardous Waste Management Plan Review Committee;
- 8) identification of a projected statewide shortfall in incineration capacity for solvents and other incinerable wastes; and
- 9) establishment of a policy to target incinerable wastes for waste minimization and reduction efforts as an alternative to new facility siting.

Apparently one of the significant challenges encountered was submission of county plans that DTSC's predecessor could not approve. As a result of these challenges and related delays, subsequent legislation (including Assembly Bill No. 3206 (Stats. 1988, ch. 1389) and Assembly Bill No. 34 (Stats. 1989, ch. 7) extended the deadlines for submission and approval of county plans. The last bill to extend the deadline was Assembly Bill No. 1034 (Stats. 1993, ch. 436 (Campbell)), which extended the deadline for some Bay Area counties to re-submit their revised plans to January 1, 1994. DTSC was given until July 1, 1994 to approve or disapprove those revised plans.

DTSC has been unable to find any decision documents that reflect when or how the process of preparing these plans came to an end. However, it appears that one of the fundamental challenges DTSC faced in approving county plans was that they often incorporated "fair share" agreements between counties, which sought to limit the facility siting responsibility of counties that generated comparatively small volumes of hazardous waste. This was contrary to the original policy behind "fair share," which sought to encourage hazardous waste treatment and disposal in the area where it was generated. Instead, fair share agreements appear to have been misused to justify policies that today we recognized as contributing to disproportionate impacts by apparently preventing siting in many of the counties. In addition, many counties failed to either submit plans or to re-submit disapproved plans. It also appears that DTSC was forced to halt the review of county plans due to lack of funds during a state budget shortfall and a determination that it lacked statutory authority to continue the process.

While the statewide plan envisioned by AB 2948 was never completed, it appears that some of the information gleaned from the process formed the basis for significant changes in policy and programmatic direction. The AB 2948 planning process was intended to facilitate the siting of new hazardous waste treatment and disposal facilities to ensure that California possessed adequate capacity to manage the hazardous wastes generated by California businesses, even against the wishes of a county or its residents, if necessary. The most notable deficiency in capacity was for solvents and other incinerable hazardous wastes. Concerns about the lack of incinerators within California and nationally, and the inability to gain consensus in the siting of new facilities, forced the development of other strategies to focus on reducing the amount of wastes generated. In some respects, the difficulties encountered by the Statewide Hazardous Waste Management Planning process led to efforts to reduce incinerable wastes as an alternative to siting new facilities. This policy direction ultimately resulted in the Hazardous Waste Reduction and Management Review Act of 1989 (Sen. Bill No. 14, Stats. 1989, ch. 1218 (Roberti) (SB 14)) and the formation of DTSC's Pollution Prevention Program.

The intent of SB 14 was to reduce hazardous waste generation at its source, reducing the need to treat, store, or dispose of it either in California or elsewhere. DTSC's Pollution Prevention Program implemented requirements for California's largest hazardous waste generators to prepare and submit source reduction plans every four years and to report on the reduction in wastes they were able to accomplish through their source reduction efforts. Senate Bill number 1916 (Stats. 1998, ch. 881 (Sher)) subsequently directed DTSC to increase outreach, education, and technical assistance to businesses to reduce their generation of hazardous waste. The waste reduction efforts in the 1980's and 1990's were largely successful in reducing not only solvent wastes but other hazardous wastes as well, and as a result, reduced the need to site and construct additional hazardous waste management facilities, including incinerators, in California.

In 2012 DTSC's pollution prevention efforts were refocused upstream to implement the Safer Products and Workplaces Program. More recently, however, DTSC has re-engaged on waste reduction; in 2013, when DTSC approved the expansion of one of California's two operating hazardous waste landfills, the Department announced an ambitious goal to reduce hazardous waste disposed in California landfills by 50 percent by 2025. DTSC recognized that the generation and disposal of hazardous wastes in California present an equity issue for communities where hazardous wastes are generated and where hazardous waste landfills are operated. While hazardous waste is generated throughout California, there are only two available disposal facilities in the state. California communities where hazardous waste disposal facilities are sited can bear a disproportionate burden of the safe and legal disposal of such wastes.

DTSC established the Community Protection and Hazardous Waste Reduction Initiative (CPHWR Initiative) in 2015, a first step to reduce waste disposed in landfills. As part of the Initiative, DTSC is selecting pilot-scale projects to reduce hazardous wastes that are generated in significant quantities, can pose substantial risks or hazards to human health or the environment, and are treated or disposed in communities disproportionately burdened by multiple sources of pollution. The Initiative staff, through a stakeholder advisory committee, is engaging members of impacted communities, as well as business and industry groups, in the planning for the pilot projects. In consultation with the advisory committee, DTSC has identified four priority waste streams the pilot projects should address: 1) lead-acid batteries; 2) petroleum refinery wastes; 3) organic solvents; and 4) contaminated soils. The Initiative staff is incorporating feedback from the advisory committee members on the draft project scoping documents.

Next, DTSC is requesting information for each proposed pilot project from academia, state and federal regulatory agencies, and any other stakeholders with relevant information regarding an identified waste stream, waste reduction and management processes, or innovative technologies or approaches for each waste type. The information received will inform evaluation of potential pilot projects designed to demonstrate measurable reductions in the generation of hazardous waste. DTSC staff, in consultation with the advisory committee members, will also seek proposals from industry, stakeholders and others for pilot-scale projects for each of the identified waste types. The results of each pilot project will be incorporated into a final "Report of Findings and Recommendations," submitted to the Secretary of the California Environmental Protection Agency and legislative committees with jurisdiction over the regulation of hazardous waste by June 30, 2017.

Recommended Legislative Action

Based on the discussion above, DTSC recommends that the mandates for hazardous waste management plans contained in Health and Safety Code sections 25135 through 25135.9 be revised to create or reconstitute an advisory group to evaluate hazardous waste management issues in California and recommend coordinated strategies for addressing them. The advisory group could be similar to the Hazardous Waste Management Council that was created in 1984. Its recommendations formed the basis for AB 2948. Changes in hazardous waste management policies, priorities, and needs during the 30 years since AB 2948 was passed warrant a re-evaluation of hazardous waste management strategies, including mandatory waste reduction and equitable distribution of hazardous waste facilities.