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# Fixing DTSC's Foundation

April 2013 – April 2014

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## A Message from the Acting Director

The Department of Toxic Substances Control (DTSC) protects public health and the environment from the harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products. Our efforts have ensured that more than 600,000 students attending new schools can learn in a safe environment; more than 250,000 acres of former military bases are cleaned up and made available for economic reuse; and California's tough environmental standards are enforced at facilities that generate or manage hazardous waste throughout the State. We are committed to safeguarding communities, and we take our responsibility very seriously.

For several years, DTSC's efforts to carry out this mission were compromised by deficiencies in technical and administrative processes and procedures, from a misaligned personnel system to insufficient coordination between programs. These systemic issues resulted in a structural budget deficit; \$184.5 million in uncollected cleanup costs dating back 26 years; a growing backlog of applications to renew hazardous waste permits; and decreased stakeholder confidence and public trust in the Department. With the appointment of former Director Debbie Raphael and new momentum from Governor Jerry Brown's administration and its commitment to governing with "no more smoke and mirrors," we recognized that DTSC was in need of immediate repair. We owed the residents of California sustainable solutions that would prevent longstanding problems from resurfacing in the future.

In early 2012, after a Department-wide analysis, we launched our 'Fixing the Foundation' initiative. Through this initiative, we identified practices and procedures in need of improvement and developed detailed work plans that spell out concrete improvements. In the spirit of transparency and accountability, we publicly tracked our progress by posting updates on the Department's website. While the initiative is not complete, staff have made tremendous measurable progress in rebuilding the Department. Our programs are stronger, and so are the processes and systems that serve as our foundation.

What follows is a summary of DTSC's progress on fixing its foundation. What did we say we were going to do? What did we accomplish? What remains to be done, and why? This self-evaluation is part of our internal and external accountability and will pave the way for our next 6- and 12-month deliverables, which will be made public in the coming weeks.

April 2014 marks the end of the first year of this initiative. While this is an important milestone for the Department, it is not the end of DTSC's road to improvement. Our journey will evolve as we evaluate our needs and performance, and adjust our priorities and strategies.

These reforms are part of the very fabric of the Department, and that is how – for the long term – we will ensure DTSC meets its mission to protect public health and the environment.

Regards,



Miriam Barcellona Ingenito

Acting Director, Department of Toxic Substances Control

# DTSC's Progress on Fixing its Foundation

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## Staff Engagement

**GOAL:** Implement sustainable solutions that promote accountability and encourage frank and open-internal discussion at DTSC.

### COMPLETED ITEMS:

The work of more than 940 DTSC scientists, engineers, and specialized support staff helps ensure greater safety and protection for all Californians and the environment. It is vitally important that these staff feel engaged, use open and respectful lines of communication, and resolve differences in a constructive manner. Over the past year, nearly 100 percent of staff completed a 'Crucial Conversations' course, which provides practical tools to handle difficult situations internally and with the regulated community that can involve high stakes, opposing opinions, and strong emotions. Employees also have access to in-house facilitation, team-building assistance, refresher Crucial Conversations courses, and conflict resolution services to resolve issues safely and productively.

### KEY INCOMPLETE ITEMS:

**Establishing Crucial Conversations coaches:** DTSC is developing the criteria needed to select the most qualified Crucial Conversations coaches in each region. A comprehensive list of regional coaches will be released in September 2014.

**Holding facilitated discussions with staff:** DTSC determined that supervisors and managers would be better equipped for discussions with staff about obstacles to employee engagement after they received training on Creating a Motivated Workforce and Managing Workplace Conflict. Training was completed in June 2014, and discussions with employees will begin in August 2014.

## Cost Recovery

- GOALS:**
- Develop a set of comprehensive procedures to maximize DTSC's recovery of past, present, and future cleanup costs.
  - Evaluate unbilled and overdue costs, and pursue collection of response costs to the maximum extent reasonably possible.
  - Replace DTSC's current cost recovery billing system with the more effective state Financial Information System.
  - Incorporate cost tracking code requests and closeout processes into DTSC's EnviroStor data system.
  - Develop a Cost Recovery page in EnviroStor to enable Program, legal, Collections and the Cost Recovery Unit staff to track cost recovery-related information related to specific sites.

### COMPLETED ITEMS:

Each year, DTSC spends millions of dollars to clean up and oversee contaminated sites, ranging from former industrial facilities and landfills to dry cleaning operations that use powerful industrial solvents. Consistent with the "polluter pays" principle and as required by law, the Department is obligated to recover these response costs from responsible parties. Since 1987, DTSC has spent more than \$1.8 billion on cleanups. Of this amount, DTSC failed to properly account for about \$184.5 million in cleanup costs primarily because the Department lacked a comprehensive and clearly communicated cost recovery process. When the backlog was discovered in 2011, former Director Debbie Raphael directed staff to research the extent of the problem. She then formed a Cost Recovery Action Team and hired a Special Assistant for Program Review to implement an effective system of recovering costs.

The new system includes 27 Departmental Procedures Memoranda that clearly outline the roles and responsibilities of staff in maximizing cost recovery. The 27 procedures will form the basis for a cost recovery policy, which will be issued in 2015. Intensive training regarding the procedures is being delivered in two phases. Nearly 400 staff received Phase I training, which focused on a broad overview of basic cost recovery principles. Phase II, which

will be tailored for individual programs, will be completed by the end of 2014.

The Cost Recovery Action Team also created a Legacy Backlog Work Plan to evaluate and take action on unbilled and overdue costs. Implementation of the plan includes continued cleanup of cost recovery data; improvement of site and data tracking; analysis of statutes of limitation of sites; systematic evaluation of the recovery potential of unbilled and billed but uncollected costs; and resolution of cases based on a prioritization scheme. DTSC is using all existing resources in its cost recovery efforts. Given the size of the backlog and the urgency of the issue, the Department also requested – and the administration included in its 2014-2015 Budget – \$1.618 million and 14 two-year limited-term positions to maximize its recovery of past, present, and future cleanup costs. This request was approved by the Legislature.

Since June 2012, the \$184.5 million backlog has been reduced by nearly \$22.3 million. DTSC has sent out 2,400 collection letters to recalcitrant responsible parties and has referred 16 cases totaling \$47 million in unrecovered costs to the Attorney General's Office. DTSC's Office of Legal Affairs is in settlement negotiations with several sites. Due to the complexity of the problem, the unreliability of data contained in the current billing system, and limited technological capabilities, it is difficult to definitively determine the total monetary progress that the Department has made. Given that a number of cases are in litigation, are considered "orphan" – with no viable responsible party – or are associated with liens and bankruptcies, it is unlikely the entire backlog amount will be recovered. The Cost Recovery Action Team continues to make substantial progress in recovering costs to the maximum extent possible. In August 2014, it will establish performance metrics and publish the first of quarterly updates, assessing DTSC's progress in evaluating unbilled and uncollected costs and initiating collection efforts. These updates will ensure that the Department's work and progress are public and transparent.

#### **KEY INCOMPLETE ITEMS:**

**Replacing the Cost Recovery Billing System:** DTSC did not replace the antiquated Cost Recovery Billing System (CRBS) with upgraded technological infrastructure for two significant reasons: 1) Modifications to CRBS are risky due to the system's age and limited supportability; 2) The administration determined it was more appropriate to wait until July 2015 to replace CRBS with the new statewide Financial Information System for California (Fi\$Cal.) DTSC is working with Fi\$Cal to ensure the new system will sufficiently meet the Department's

unique financial management, business, and cost recovery needs.

**Creating a cost recovery page in EnviroStor:** A draft version, initial testing, and feedback solicitation of a cost recovery page in DTSC's EnviroStor Data Management System are complete. Staff turnover and shifting departmental priorities, however, delayed the start of implementation until July 2014; implementation will be followed by documentation and training.

**Incorporating more information into EnviroStor:** Incorporation of cost tracking code requests and closeout processes into the EnviroStor database – which helps track charges such as labor and contracts to a specific site or billable party – was not completed during the original timeframe. Due to the scope of this project, DTSC decided to begin with a three-month pilot in the Office of Criminal Investigations. Piloting the change will ensure that Department-wide implementation is successful.

With revamped and standardized procedures and policies, robust performance metrics, a modernized IT infrastructure, and a team dedicated to the cost recovery effort, DTSC will ensure that shortcomings of the past do not follow the Department into the future.

## Site Cleanup

- GOALS:**
- Seek adequate funding to cover federal Superfund match and state “orphan” site cleanup efforts where no viable responsible party can be identified.
  - Ensure that public money will not be used to pay for long-term cleanup projects where the responsible party files for bankruptcy or refuses to fund work, by improving the Financial Assurance (FA) system within the Site Cleanup program.
  - Ensure that long term monitoring and tracking of cleanup and corrective action projects effectively protects the public and the environment.
  - Take quick and effective enforcement actions on cleanup efforts when responsible parties underperform during cleanup projects.

### COMPLETED ITEMS:

Thousands of properties throughout the State – including former industrial properties, school sites, military bases, small businesses, and landfills – have been identified as contaminated by hazardous substances. Some of these are “brownfield” sites that sit idle or underused, contributing to urban blight and sprawl. DTSC’s Brownfields and Environmental Restoration Program (cleanup program) is responsible for cleaning up and restoring contaminated sites throughout the state.

When DTSC or the U.S. Environmental Protection Agency (US EPA) discovers contaminated properties that pose a threat to public health or the environment, but for which there is no known viable responsible party, the cleanup costs for these sites are borne by taxpayers. These properties are referred to as federal National Priority List (NPL) sites or State orphan sites. Sites on the NPL, also known as the federal Superfund list, are the nation’s worst hazardous substances sites. Under federal law, California is required to pay at least 10 percent of the costs to design and implement a final cleanup remedy. At each of these sites, the State is required to take over responsibility and pay 100 percent of the long-term operation and maintenance costs. State orphan sites are not on the NPL but are contaminated by hazardous substances and pose a risk to the environment and public health. Each year, DTSC discovers more of these sites than it has the resources to clean up and restore. DTSC

anticipates that within the next two to three years, the amount of money needed to cover DTSC's federal NPL match obligations and the State's orphan funding needs will exceed what is currently appropriated annually. If this occurs, DTSC will have to make the difficult decision of choosing which projects to defund, and work will either slow down or stop entirely. There are no additional resources in the Department's existing budget to meet this need. So, while DTSC evaluates the possibility of other funding options, it is also closely reviewing remedies at all State orphan and federal Superfund sites to be sure that the deployed technologies are the most economically efficient, sustainable, and capable of meeting remedial action objectives of being protective of public and environmental health.

DTSC is also improving the financial assurance system within its cleanup program. Financial assurance refers to the requirement that owners and operators of hazardous waste facilities maintain financial resources to adequately pay for closure, post closure (maintenance and monitoring), third party liability, corrective action, and proper decommission and decontamination at facilities. Public money should not be used to pay for long-term cleanup projects where the responsible party files for bankruptcy or refuses to fund work. So, over the past year, the cleanup program identified sites with existing, inaccurate, outdated, and nonexistent financial assurance and has drafted an Action Plan to implement revised financial assurance programs as sites reach their appropriate cleanup and corrective action stage. DTSC will also develop revised Financial Assurance Policy and Procedures by August 2014.

The final cleanup of a site can allow residual contamination to remain onsite, requiring long-term stewardship and "institutional" controls to manage this contamination and protect public health and the environment. Institutional controls include administrative or legal activities, such as land use covenants that limit what can happen on a given property to prevent human exposure to contaminants. Factors that have hampered these protections include outdated policies and a lack of tracking via performance metrics. DTSC drafted a policy and procedure for the implementation and management of land use covenants, and corresponding training will be completed in September 2014. The Department also updated the templates associated with operation and maintenance agreements. Cleanup program staff partnered with Information Management to add a new performance metric called "Long Term Stewardship" to its EnviroStor Data Management System page. These changes are designed to improve the Department's institutional controls tracking and ensure the integrity of cleanups.

DTSC has also instituted new procedures to take quick and effective enforcement actions against responsible parties who are underperforming on cleanups. It is critical that DTSC is able to move from enforcement against responsible parties to partnership when they are willing and capable of site cleanup. The reverse also is true when a responsible party cannot fulfill ordered or approved actions competently or expeditiously. Over the past year, DTSC established criteria to identify 'Priority One' sites that pose a substantial threat to human health and the environment, and implemented immediate, effective, and enforceable actions at these sites.

**KEY INCOMPLETE ITEMS:**

**Improving financial assurance:** The cleanup program did not fully implement its Financial Assurance Action Plan within the original schedule because of scope changes associated with other departmental priorities. The Action Plan will be revised and will enable the cleanup program to complete approximately 40% of its financial assurance work by December 2014, 80% by June 2015, and the remainder either completed or in enforcement by December 2015. The overarching Financial Assurance Policy and Procedure will be completed by August 2014. The land use covenant policy, procedure, and template are in final review.

**Training staff:** The cleanup program developed guidance for identifying Priority One sites and was able to train staff on its application. Training was given by branch chiefs on the use of enforcement tools to address sites where progress was slow or halted. Comprehensive enforcement training, however, is being developed in conjunction with the Office of Legal Counsel, which is facing a number of competing programmatic priorities. It will be completed by the end of 2014.

**Deploying additional enforcement tools:** A work plan for the deployment of additional enforcement tools is not needed, because upon further review, the program's existing enforcement tools were deemed adequate. Instead, staff are working with the Office of Legal Affairs to identify outdated Policies and Procedures – which will be revised and finalized by the end of 2014.

## Hazardous Waste Management Program

### *Creating an Integrated Hazardous Waste Management Program*

**GOAL:** Fully integrate the new Hazardous Waste Management Program.

#### **COMPLETED ITEMS:**

One of DTSC's primary responsibilities is to ensure that hazardous wastes generated and handled in California are managed safely and legally to prevent harm to public health and the environment. Permitting, inspection, compliance, corrective action, and enforcement programs must ensure that entities that manage hazardous waste follow federal and State requirements.

In the process of building its Fixing the Foundation work plans, DTSC conducted an extensive evaluation of the impediments that impact its ability to meet its mission. The Department identified challenges such as poor communication, unclear roles and responsibilities, and an absence of unified goals and priorities between the Office of Permitting, the Enforcement and Emergency Response Division, and the Policy and Program Support Division. As a result, the Hazardous Waste Management Program (HWMP) was established to integrate these important and interdependent functions, improve DTSC's services, and enable the Department to better accomplish its mission. DTSC continues to develop a unified and multi-functional HWMP. Cross-training between programs has been implemented and will continue. The HWMP Communication Plan and Transition Leadership Workgroup were designed to create clear, consistent, and direct communication channels between programs. Bi-monthly meetings between HWMP management provide a venue to discuss inter-program coordination issues as well as mitigate organizational structure, morale, and staff-management divides between HWMP's core programs. While these efforts were initiated over the past year and show initial success, much remains to be done.

#### **KEY INCOMPLETE ITEMS:**

**Establishing the HWMP Policy Decision Team:** Increased workload, coinciding deadlines, and staff turnover affected DTSC's ability to establish the HWMP Policy Decision Team to prioritize and resolve policy issues and provide guidance to HWMP staff. This team will be

chartered by January 2015. However, HWMP continues to implement its work plan commitments by completing established action items, creating new ones where performance gaps are identified, and creating mechanisms for rapid action on outstanding issues. DTSC will repeat its formal cycle of evaluation of impediments that impact its ability to meet its mission in January 2015. This evaluation will gauge whether the goals for creating an integrated HWMP were achieved.

### *Ensuring that Hazardous Waste is Properly Managed*

- GOALS:**
- Ensure that Certified Unified Program Agencies (CUPAs) properly and effectively implement the hazardous waste program.
  - Ensure groundwater monitoring at local disposal facilities is protective of human health and the environment.
  - Implement a new information technology system that improves the availability and usability of hazardous waste management data.

**COMPLETED ITEMS:**

Every year, more than two million tons of hazardous waste are shipped in California. This waste accounts for approximately 450,000 separate shipments, each of which must be accompanied by a hazardous waste manifest. This federally mandated document provides a detailed record of the shipment, as well as documentation that the hazardous waste has reached its destination. A DTSC contractor manually enters this information into the Hazardous Waste Tracking System (HWTS) in order to track waste from its point of generation to its ultimate destination. DTSC and other agencies use this data to provide critical evidence in enforcement actions and identify potential violations and mismanagement of hazardous waste. This system, which was created in 2002, is outdated and unsupported. System failure would disrupt DTSC's operations and create significant public health and environmental risks. To resolve this problem, the Governor requested – and the Legislature approved – \$1.4 million in the 2014-15 Budget to rebuild and improve the stability and capability of the Department's HWTS. With an upgraded system, DTSC expects to be able to conduct more

enforcement actions and inspections; reduce the use of unregistered transporters; decrease the number of manifests with uncorrected errors; and, generate more sophisticated reports. Coupled with a federal e-Manifest program, which is included in President Obama's 2015 budget, this improvement will enhance the ability for DTSC and other regulatory agencies to verify that hazardous wastes are safely and legally managed.

DTSC also has requested \$381,000 and 3.5 two-year limited-term positions in the 2014-2015 Budget to correct errors in data submitted on hazardous waste manifests and update data in the system. DTSC estimates that approximately 10 percent of manifests contain errors that result in poor data and difficulty in monitoring hazardous waste. This additional funding will allow DTSC to identify errors on manifests submitted to the Department, and obtain and incorporate correct information from manifest users into the tracking system. This effort, in conjunction with an updated HWTS, will allow DTSC and other agencies to verify that hazardous waste has reached the appropriate destination and to ensure generators, transporters, and receiving facilities comply with manifesting and reporting requirements.

Another critical activity in DTSC's mission to protect public health and the environment is the monitoring of groundwater at facilities with hazardous waste land disposal units, such as landfills, surface impoundments, and land treatment units. Limited resources and competing priorities have historically challenged the Department's ability to provide consistent oversight of these monitoring activities in the past. Over the past year, HWMP ranked regulated land disposal facilities subject to groundwater inspections. The Groundwater Monitoring Workgroup is in the process of notifying facilities of monitoring requirements, requesting samples, field testing newly developed tools, and conducting inspections. The workgroup completed its Guidance on Groundwater Audit Inspections (Audit), which includes specific details about the steps of and roles and responsibilities of those involved in the Audit process. This new approach to groundwater compliance inspections will augment DTSC's regulatory presence at facilities and increase the Department's ability to focus on prioritized facilities so that those sites that pose a greater risk to human health and the environment have proportionally increased oversight.

DTSC is also working with CalEPA to evaluate and improve the performance of local CUPAs in hazardous waste management activities. The Department is determining how changes to evaluations and other actions can improve the performance of CUPAs in addressing oversight for generators and businesses that treat hazardous waste. CalEPA has reestab-

lished the CUPA Working Group, which includes a representative from DTSC. The group is surveying best management practices among CUPAs and identifying areas that need attention.

#### KEY INCOMPLETE ITEMS:

**Rebuilding the Hazardous Waste Tracking System:** The work plan to rebuild the HWTS was not finalized within the original timeframe due to the pending 2014-15 Budget Change Proposal. The work plan will be developed starting in July 2014; implementation will begin in October 2014 and end in October 2015. Additionally, it is too early to determine whether DTSC can or will place US EPA's e-Manifest data into its system, or operate them separately. The Department is in regular contact with US EPA about its design and system build, and will make a decision as US EPA's efforts progress.

**Briefing the Joint Cleanup Council on DTSC's groundwater monitoring inspections:** The original groundwater monitoring work plan called for a briefing of the Joint Cleanup Council regarding DTSC's inspections approach. This council no longer meets; therefore, this item is no longer relevant.

**Improving CUPA oversight:** DTSC needs time to coordinate with CalEPA and the newly re-established CUPA Working Group before it can change its oversight of the CUPA program's hazardous waste management activities. In the meantime, CUPAs continue to be reviewed once every three years.

### *Improving DTSC's Permitting Process:*

- GOALS:**
- Improve efforts to ensure hazardous waste permits are protective, timely, legally defensible, and enforceable.
  - Improve public confidence in permit decisions.
  - Establish clear priorities for the permitting program.
  - Maintain a strong Financial Assurance program at all permitting facilities that reflects the actual cost of closure and post-closure work, and update the estimates every five years.

**COMPLETED ITEMS:**

DTSC's Office of Permitting provides technical review and makes decisions on applications from facilities that want to store, treat, or dispose of hazardous waste in California; it also specifies the proper management of hazardous waste at these facilities. For several years, the performance of the permitting program has been the subject of much scrutiny and concern among various stakeholders. Extensive departmental analysis and a 2013 review by an outside contractor found several issues with the program, such as unclear standards for denying or revoking permits; the need for earlier and more meaningful engagement with communities; and the absence of standard processes that resulted in lengthy delays in decisions and a backlog of 36 permits with pending permit renewal applications. Additionally, cost estimates for closure and corrective action at 40 permitted facilities have not been updated in more than five years.

The permitting program is an integral part of the State's effort to safely and legally manage hazardous wastes, and DTSC takes this responsibility very seriously. As a result, the Budget Act of 2014 includes \$1.2 million and eight two-year limited-term positions to: 1) Reduce the backlog of permit applications to ensure that permits are up-to-date and provide for current safety equipment and monitoring techniques, and 2) Update outdated financial assurance cost estimates at facilities.

Several improvements have been made within the Office of Permitting over the past year. A realigned team structure is enabling supervisors and senior staff to fulfill appropriate management and leadership roles. An internal electronic library houses all guidance documents, training manuals, and model permits to create a shared and consistent understanding of the permitting process. Regular meetings encourage communication among staff, branch chiefs, and supervisors. The permit process now includes the concept of scoping meetings between DTSC and applicants to ensure that a complete application is submitted and the permit process is clear to the applicant. The EnviroStor database – which allows the public to quickly access vital information about permitted facilities – is undergoing expansion and improvements to better manage and track projects and increase access to records such as updated financial assurance information. Essential training has been identified and is underway. And a permit process flow chart, which will serve as a decision matrix tool to assist staff in completing permit decisions, has been created and is being further developed.

**KEY INCOMPLETE ITEMS:**

A number of permitting action items outlined in the Fixing the Foundation work plans remain incomplete, in part due to workload issues, limited staffing, and a major reorganization effort. Addressing the deficiencies within the permitting program in a fragmented and piecemeal approach would be ineffective. Instead, DTSC created a comprehensive roadmap in 2014 – the Permitting Enhancement Work Plan – to guide improvements to the Department's ability to issue protective, timely, and enforceable permits using more transparent standards and consistent procedures. The new work plan addresses key deficiencies highlighted in the internal and external reviews of the program and is aligned with the Department's Strategic Plan. It clearly defines processes to reduce the average permit processing time while maintaining quality and protectiveness. It establishes performance metrics, improves data management, and calls for reliable support from other departmental units, such as the Office of Legal Affairs, Enforcement, and Public Participation. The work plan also calls for updated and transparent permitting standards; enhanced enforcement actions; and public access to information about the Department's progress. It also reflects DTSC's commitment to developing a new and more effective engagement strategy to identify and involve stakeholders earlier in the permitting process, particularly in impacted communities facing multiple sources of pollution. This includes developing an enhanced review procedure for facilities in these overburdened communities, including environmental health concerns and potential mitigation measures. The goal is to include environmental justice and community concerns earlier in the permitting process.

Some of the tasks outlined in the work plan are already underway. DTSC was selected to participate in the Lean Six Sigma pilot project, which is sponsored by the Governor's Office of Business and Economic Development and CalHR. DTSC's Lean Six Sigma project, which is a portion of Goal 1 in the work plan, seeks to reduce the technical review time (as opposed to the total permit review time) to 13 months for 90 percent of all permit applications. This streamlining will help DTSC achieve its overall goal of reducing the total permitting process time from 4.3 years to 2 years. The skills acquired during this pilot and the lessons learned will be built upon in the larger effort, which will enhance DTSC's ability to issue timely, equitable, and enforceable permits that are protective of human health and the environment.

While the previously mentioned budget augmentations are intended to address histori-

cal issues that DTSC has grappled with for a number of years, this work plan reflects the Department's commitment to closely evaluate and improve the permitting process to prevent the same problems from reappearing in the future. The 2014-15 State Budget includes five two-year limited-term positions and \$699,000 to implement DTSC's Permitting Enhancement Work Plan and provide significant upgrades to DTSC's hazardous waste facility process.

The following table reflects the alignment between incomplete Fixing the Foundation permitting action items and new Permitting Enhancement Work Plan:

Fixing the Foundation	Permitting Enhancement Work Plan
4b. Coordinate with DTSC's Office of Environmental Information Management to determine the steps and timeline to enhance internal and public EnviroStor databases.	Goal 10: Address data management needs. Action 1: Expand and improve permitting EnviroStor. Action 2: Upgrade EnviroStor capabilities to improve project management and track requests for support services.
4d. Enforcement to review all draft permits, provide input on a timely basis, establish a process to resolve disagreements, and track permit status and progress through EnviroStor.	Goal 4: Coordinate intra-departmental support during the permitting process. Action 1: Establish clear triggers that permitting will use to involve other DTSC programs, such as Enforcement.  Goal 6: Enhancing Enforcement Action 1: Require reviewers of draft permits (such as Enforcement) to certify that they have reviewed draft permits for clarity and specificity necessary to draft accurate CEQA project description and enforce permit conditions.
4d. Establish a practice/policy to determine if the permit application should be denied after three Notices of Deficiency (NODs.)	Goal 5: Update permitting standards to increase protections for human health and the environment. Action 5: Create a team from Permitting, Office of Legal Affairs, and Enforcement to draft guidance that details how Notices of Deficiency (NODs) fit into the statutory and regulatory requirements to initiate denial or revocation of a permit.
4d. In recognition of tendencies in the regulated industry to rely on DTSC as a facilitator to assist them in processing a permit application, we will establish guidelines and training to clarify our role and responsibilities as regulators in overseeing permit decisions.	Goal 6: Enhancing enforcement Action 2: Formally articulate the objectives and purposes of the permitting program based on law and ensure that these objectives are disseminated and understood by the permitting staff.

Fixing the Foundation	Permitting Enhancement Work Plan
<p>4d. Hold workshops for communities when a facility's permit application is initially submitted (new permits and modifications) to gauge community interest at critical facilities.</p>	<p>Goal 7: Inform the public of progress in processing permits.            Action 3: Review the current process for consolidating community and stakeholder feedback. Incorporate any needed revisions to the process for communicating how public recommendations are reflected in the final decision.            Action 4: Implement a community workshop process as a communications and training tool to educate community members and other stakeholders about the permitting process.</p> <p>Goal 8: Identify and address environmental justice concerns early in the permitting process.</p>
<p>4f. Coordinate dedicated assistance from subject experts (attorneys, environmental planners, public participation specialists, toxicologists and geologists) to ensure timely support, especially on time sensitive projects.</p>	<p>Coordination is included in several portions of the work plan. For example:            Goal 1, Action 1: Coordinate with CEQA and Public Participation much earlier in the Permitting process.            Goal 4: Coordinate intra-departmental support during the Permitting process.</p>

### *Enhancing Enforcement:*

- GOALS:**
- Improve the efficiency and consistency in enforcing state hazardous waste laws, and make the enforcement program's information and processes more accessible to the public.
  - Establish clear guidelines on key decision points within the enforcement process to ensure enforcement actions result in timely settlements with appropriate penalties and corrective actions.
  - Establish clear priorities for the enforcement program.
  - Share all enforcement data with the public through the EnviroStor public web site.

**COMPLETED ITEMS:**

DTSC's Enforcement and Emergency Response Division (EERD) monitors the transfer, storage, treatment, and disposal of hazardous waste, regulating more than 100,000 entities to prevent the release of hazardous waste and ensure its safe handling. It conducts inspections

and takes enforcement actions against violators to ensure compliance with hazardous waste regulations and laws. And it provides emergency response for hazardous materials-related emergencies throughout the State.

Over the past year, EERD has made several improvements within its program. In light of limited available resources, EERD developed an annual work plan that targets and prioritizes activities based on state mandates, available funding sources, and the greatest potential for public health and environmental protection benefits. For example, the program is using CalEnviroScreen – CalEPA's environmental health screening tool – to help prioritize activities such as complaint responses and inspections in communities that are disproportionately burdened by multiple sources of pollution. EERD participated in CalEPA's 2013 Environmental Justice and Enforcement Workgroup and conducted 30 inspections of hazardous waste facilities and cleanup sites in the Fresno area to address a variety of environmental pollution burdens in this impacted community.

In an effort to increase transparency and public access, DTSC launched user-friendly enhancements to its EnviroStor Data Management System public website in April 2014. The site now provides detailed inspection data on permitted treatment, storage, and disposal facilities, including summaries of violations, inspection reports, and enforcement settlements.

#### **KEY INCOMPLETE ITEMS:**

**Establishing clear guidelines to ensure timely settlements and appropriate penalties:** Due to workload and staffing issues, EERD was unable to finalize guidance pertaining to ensuring timely settlement negotiations and maintaining appropriate penalty amounts while ensuring timely compliance. This guidance will be completed in August 2014. In the meantime, a feedback loop to the Penalty Working Group has been established. In a memo issued during the past year, members of the group were informed of the outcomes of cases for which they calculated penalties. This information will allow them to more effectively consider future fine calculations and review penalties for consistency and alignment with DTSC's administrative penalty determination regulations.

**Resolving issues between permitting and enforcement:** Implementation of a process for issue resolution between the Office of Permitting and EERD when permit language or conditions are unclear or viewed differently by both programs was not completed within the

original timeframe. Unanticipated issues such as legislative hearings, unfilled supervisory positions, and major training and policy development initiatives were challenges. An Internal Guidance Memo has been drafted and is being circulated for comment by HWMP management and senior staff. The memo addresses a number of issues to ensure coordinated, consistent, and timely communication between the Office of Permitting and EERD. These issues include sharing inspection and permit review schedules and timeframes for comment and conflict resolution on draft permits. This memo will be finalized in August 2014. Additionally, coordination and processes for issue resolution are reflected throughout the Permitting Enhancement Work Plan.

**Soliciting public comment on proposed enforcement settlements:** The timeline for an initiative to implement a pilot project to solicit public comment on proposed negotiated enforcement settlements was extended due to the need for support from the Office of Legal Affairs and the Office of the Attorney General, and to ensure that the scope of community engagement within the Department is expanded as effectively as possible. The project is scheduled to be piloted starting in September 2014.

## Administrative Services

- GOALS:**
- Adhere to personnel allocation guidelines, ensuring that DTSC staff members perform duties consistent with their classifications, and that all personnel appointments are consistent with California Department of Human Resources (CalHR) policies and guidelines.
  - Ensure administrative policies and directives are current.
  - Provide timely and useful staff performance appraisals.
  - Develop an examination plan that meets DTSC's operational needs.
  - Create a training plan that provides staff members with the skills they need to succeed in their jobs and careers.
  - Ensure Regional Administrative Officers maintain file rooms in a manner consistent with DTSC's records retention schedule, maximize utilization of space, and are properly secured.
  - Ensure that DTSC managers and staff are trained so that their decisions are free from conflicts of interest or the appearance of conflicts of interest.

### COMPLETED ITEMS:

The Office of Administrative Services provides the Department with vital support services, including accounting, human resources, training, budgets, and records management. Over the past year, the office has made notable improvements in several areas.

In 2012, CalHR completed its human resource quality review of DTSC's position allocation function. CalHR found DTSC had misused the Staff Services Manager series and had a misallocation error rate of 59 percent. Based on this review, CalHR rescinded DTSC's delegation to appoint individuals to the Staff Services Manager Services series without first receiving CalHR approval; ordered DTSC to correct the misallocations identified in the review; and subjected DTSC to random reviews. DTSC received a "red" status because the allocation error rate exceeded 20 percent.

Over the past year, the Department undertook several steps to regain delegation for the Staff Services Manager series. For example, HR implemented position allocation processes

and standards; instituted training for managers and supervisors that addressed some of the issues identified in the CalHR review; and submitted and received approval for correcting misallocations identified in the review. Based on these and other efforts, CalHR restored DTSC's delegation to the Staff Services Manager series and updated DTSC's "red" status to "yellow."

The Office of Administrative Services also accomplished the following:

- Updated or is in the process of updating administrative policies and procedures and instituted a structure to ensure that they are current and continuously updated.
- Restructured the training office to provide a variety of courses for analysts and simple access to technical training through "Toxics University."
- Inaugurated manager and supervisor training on core supervisory competencies involving progressive discipline, labor relations, recruitment, and duty statements, among others. In addition to training in these core skills, managers received training in other areas such as emotional intelligence, conflict resolution, and employee motivation. DTSC also participated in a leadership academy offered by California State University, Sacramento. Additionally, as a Department-wide commitment to accountability, all DTSC employees will receive Performance Appraisals by the end of 2014.
- Implemented a new examination plan to ensure that most examinations administered by DTSC are offered online on a continuous basis. This helps to ensure that examination lists are current, which improves the applicant pool for vacant positions.
- Instituted a speaker series to provide DTSC staff an opportunity to learn about the programs and initiatives of the Department.

## KEY INCOMPLETE ITEMS

**Ensuring administrative policies and directives are current:** DTSC drafted and completed an internal review of key policies. DTSC is awaiting final approval by CalHR.

**Replacing the learning management system:** A learning management system is a software application that administers, documents, tracks, and reports on the delivery of training

courses taken by staff. Technical issues concerning the software platform delayed procurement. Administrative Services expects to have a new learning management system in place by the end of 2014.

**Managing records:** The file rooms housed at DTSC's regional offices have nearly 30 years of documents that need to be organized, labeled, and converted into electronic format. DTSC estimates there are approximately 13,700 "bankers boxes" containing nearly 3.4 million files and 34.2 million pages. Based on the scope and complexity of this project, the deadline for completing the project has been extended until additional resources are identified and secured.

## Budget/Financial Sustainability

**GOAL:** Ensure DTSC maintains a balanced budget in its two major special funds.

**COMPLETED ITEMS:**

In May 2011, DTSC faced a structural imbalance in its two main funds, the Toxic Substances Control Account (TSCA) and the Hazardous Waste Control Account (HWCA.) The deficit between revenues and expenditures was depleting the reserves in the two accounts. If left unattended, both funds would have had negative fund balances that would have seriously disrupted the Department's operations.

To mitigate this structural budget deficit, DTSC tightened its financial belt. It eliminated 72 positions and reduced operating expenditures. These efforts brought DTSC's expenditure authority in line with projected revenues, and both HWCA and TSCA have healthy fund balances. A balanced budget minimizes disruptions to the Department's operations should revenues decrease. Fiscal responsibility and sustainability provide DTSC the flexibility to fund one-time or limited-term, high priority projects that are instrumental to the mission of the Department.

## Environmental Chemistry Lab

- GOALS:**
- Clarify priorities, develop stable funding, and update quality management system for DTSC's Environmental Chemistry Lab.
  - Replace and update laboratory equipment.

**COMPLETED ITEMS:**

The Environmental Chemistry Lab (ECL) provides DTSC and other boards and departments within CalEPA with expertise and laboratory capacity in the areas of analytical and environmental chemistry. DTSC's scientists use both existing procedures and new analytical methods to identify and measure concentrations of toxic chemicals in various media, including air, water, soil, and human tissue.

While the lab is a critically important resource for the Department, certain factors have hampered its ability to optimize its performance. Some field staff, for example, were not aware of sample requirements; what information different analyses provide; how to interpret lab reports; and the limitations of certain analytical methods. As part of the Fixing the Foundation initiative, ECL developed and initiated targeted training for field staff to address these issues. Survey feedback on the training given so far has been very positive.

Over the past year, ECL undertook several actions to increase efficiency. It developed a Standard Operating Procedure to ensure that the proper fund, program, and activity are charged for lab services and that costs are properly recovered. After determining that its mobile lab platform and obsolete instruments were not of use to DTSC programs, ECL transferred the equipment to the Air Resources Board to support their Emergency Response function and other monitoring activities. ECL has strived to improve its sample quality to meet the data quality objectives of DTSC's projects and will develop an online system for customers to schedule work and track the status of sample analyses.

In addition to improving the lab data that serves as the foundation of accurate, science-based decision-making, ECL is clarifying its work prioritization. Historically, the lab processed sample requests on a first-come-first-serve basis rather than aligning its workload with the urgency of projects, such as criminal investigations, enforcement, and environmental justice initiatives. Over the past year, ECL met with core programs so that staff could understand

both how to use and recognize the value and limitations of the lab's services. Along with training for field staff, strategic work prioritization will help the lab better meet the needs of the Department and continue to provide scientific leadership to DTSC and its sister agencies.

**KEY INCOMPLETE ITEMS:**

**Providing online resources for field staff:** ECL did not provide online resources for field staff on sample quality within the Fixing the Foundation timeframe. Additional training and feedback, which will be completed in October 2014, are necessary prerequisites to designing and expanding online resources. In the meantime, the lab's SharePoint site – DTSC's internal web platform – is being updated to increase functionality and usefulness for staff.

**Creating an online system for customers:** ECL did not develop and implement an online system that would provide customers with ready access to the status of sample analyses and scheduling/capacity information. It is more strategic and efficient for this system to be implemented as part of the planned update to DTSC's Laboratory Information Management System (LIMS.) The lab is working with the Office of Environmental Information Management to develop a Feasibility Study Report for database replacement.

## Office of Communications

- GOALS:**
- Provide the public with clear information, building trust in department decision-making and an understanding of how DTSC's work benefits the public and the environment.
  - Make DTSC's web site and social media tools useful and accessible.

**COMPLETED ITEMS:**

The Office of Communications is DTSC's primary source for all internal and external affairs. The office also has the important responsibility of administering a public participation program to establish an ongoing dialogue with the public, particularly impacted and disproportionately burdened communities. The program ensures there is two-way communication between community members and DTSC staff so that community concerns are heard, addressed, and taken into account when final project decisions are made.

Public trust and confidence in DTSC's decision-making depends, in part, on the availability of clear and useful information for the public about the Department's work. Therefore, over the past year, DTSC has begun updating its website and social media tools and sending its stakeholders a weekly synopsis of its key work. The Office of Communications launched a quarterly tracking report that monitors media interest in DTSC's outreach efforts. The office is currently meeting with key programs to replace outdated information on the Department's website and develop current and accurate content.

The Office of Communications also developed and delivered training related to risk assessment, management, and communication. This workshop was designed to equip staff with the necessary skills to communicate information to community members about potential risks to public safety and the environment.

An important accomplishment for the Department is the development of a process to update DTSC's public participation policy and guidance, which is more than a decade old. DTSC sought the assistance of CPS HR Consulting, a non-profit public agency, to conduct a review and analysis of the Department's public participation program; identify outdated processes and procedures; and recommend changes. The new guidance, which will be finalized in December 2014, will be more accessible and user-friendly. It also will reflect DTSC's expanded outreach and environmental justice assessment tools, such as improved com-

munity assessments and expanded document translation, which came about from efforts associated with the permit applications of the Chemical Waste Management, Inc., facility in Kettleman Hills and the Clean Harbors facility in Buttonwillow. It will also outline when and how public engagement is integrated into the Department's workflow and decision-making process. Ultimately, the new policy will improve and reinforce DTSC's commitment to early, robust, and meaningful public participation.

### KEY INCOMPLETE ITEMS

**Cleaning up outdated and inaccurate content on DTSC's website:** The task of identifying and removing outdated and inaccurate documents is more complex and extensive than originally anticipated and will require additional time to complete. This is why several action items within this work plan remain incomplete. The Office of Communications will develop and distribute to programs a schedule and metrics for revising or removing outdated documents by August 2014. In the meantime, the office is continuing to work with web contributors and key program representatives to standardize web pages according to the Governor's Office standards.

**Providing media policy training:** The Office of Communications trained executive staff on DTSC's media policy in the past year. Due to shifting workload priorities and limited staff capacity, training for key program managers was delayed until October 2014.

**Updating DTSC's public participation guidance:** The office put the completion of its public participation policy and guidance on hold in anticipation of recommendations from the aforementioned CPS Review. The policy and guidance will be completed in December 2014.

## Safer Consumer Products

- GOALS:**
- Implement the Safer Consumer Products Regulation, reducing chemicals of concern of concern that could result in adverse public health and environmental impacts.
  - Develop a data system that supports the Safer Consumer Products Regulation.

### COMPLETED ITEMS:

The Safer Consumer Products regulations, which took effect on October 1, 2013, seek to establish a more protective and economically viable approach to reducing toxic chemicals in consumer products; create new business opportunities in the emerging safer consumer products economy; and reduce the burden on consumers and businesses struggling to identify what is in the products they buy or manufacture. Instead of banning the use of a chemical without knowing the availability or safety of alternatives, this pioneering initiative provides a deliberative, science-based process for manufacturers to answer two questions: 1) Is this chemical necessary? And 2) Is there a safer alternative?

Over the past year, DTSC has made significant progress in implementing the Safer Consumer Products program. Several years after California passed its 2008 Green Chemistry legislation, DTSC adopted the landmark regulations; posted an informational list of Candidate Chemicals that the Department identified as having the potential to cause significant harm to people or the environment; and most recently, announced three draft “Priority Products” that contain one or more of these chemicals. The Department is hosting workshops for these products and for a three-year work plan to engage the public and stakeholders. The final list of Priority Products will not be official until a rulemaking process is complete, which could take up to one year. Manufacturers will then be required to conduct “Alternatives Analyses” to determine if feasible safer ingredients are available, after which DTSC will determine and implement an appropriate regulatory response. DTSC is utilizing the scientific and technical expertise of the Green Ribbon Science Panel (GRSP) in its effort to finalize an Alternatives Analysis guidance document to assist manufacturers.

The Department continues to make strides in shaping and implementing the Safer Consumer Products regulations, and strives to develop a meaningful, practical, and defensible program that will limit Californians’ exposure to hazardous chemicals.

**KEY INCOMPLETE ITEMS:**

**Developing a data system that supports the Safer Consumer Products regulations:** DTSC is in the process of designing a data system that will provide for better data and document management; convenient communication with manufacturers and stakeholders; and automation of activities that would otherwise have to be done manually – thereby saving the Department time and money. Since the Safer Consumer Products regulations are relatively new and unprecedented, business processes to implement the regulations are still under development. Therefore, an adjustment of the schedule and scope of the original data system development work plan was needed. To mitigate the risks associated with designing an automated data system for a new and evolving program, the project will be implemented in three stages to align with the phases of the regulations. To date, a project manager and team have been established; the Feasibility Study Report has been approved; and a project plan, business process flowcharts, and document system requirements have been developed. In the meantime, an interim data and document management plan has been identified and is being implemented to meet short-term program needs.

**Finalizing the Alternatives Analysis guidance documents:** The first and second stage Alternatives Analysis guidance documents were not finalized within the Fixing the Foundation timeframe. Ongoing collaboration with the GRSP prompted the program to strategically and tactically incorporate feedback from the GRSP into the guidance documents to ensure that broad scientific input is taken into consideration while developing guidance. In addition, DTSC determined that a formal work plan for the GRSP – as originally indicated in Fixing the Foundation – is no longer necessary. The panel will be convened on an as-needed basis as program needs arise.

**Creating additional programmatic work plans:** Detailed work plans for key program initiatives and projects have not been finalized. Following the appointment of the new Deputy Director, the Safer Products and Workplaces Program established a renewed Operational and Program Plan for 2014, and additional work plans that are reflective of the program's needs and gaps are in development.