

# Independent Review Panel

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Gideon Kracov, J.D., *Chair*  
Mike Vizzier, *Vice Chair*  
Dr. Arezoo Campbell, *Member*



Edmund G. Brown Jr.  
Governor

May 16, 2016

The Honorable Lois Wolk  
Chair, Senate Budget & Fiscal Review Subcommittee 2  
State Capitol, Suite 5019  
Sacramento, CA 95814

## **RE: Support for Department of Toxic Substances Control 2016 Spring Finance Letters**

Dear Senator Wolk:

At its public meeting on May 12, 2016, the DTSC Independent Review Panel (IRP or Panel) agreed to support, as explained below, all five of the following 2016 spring finance letters submitted by DTSC: (1) Enhanced Permitting Capacity and Support, (2) Office of Environmental Justice and Tribal Affairs, (3) Strategic Program Development, (4) Argonaut Mine Tailings Site Dam Repair/Retrofit, and (5) Replacement of Laboratory and Investigative Equipment.

### **Enhanced Permitting Capacity and Support**

The DTSC's spring finance request for Enhanced Permitting Capacity and Support (3960-002-SFL-BR-2016-xx) would provide an augmentation of \$2,403,000 to the Hazardous Waste Control Account and 15 permanent positions to sustain timely permitting actions, mitigate the incidence of hazardous waste facilities operating for extended periods of time on expired permits, and improve the quality of permits issued.

This request is consistent with a recommendation made in an IRP report to the Governor and Legislature. In the Panel's April 21, 2016 report, the IRP recommended that the Governor and Legislature improve the DTSC's permitting program by augmenting the Hazardous Waste Control Account to fund necessary permanent positions to achieve the goal of making 16 permit decisions a year and processing 90 percent of permit decisions in a two-year period or less. DTSC had previously reported to the IRP that meeting these goals, which would reduce the current backlog and address the unusually high number of expected applications that are expected through FY 2018-19, would require an additional 15 positions in addition to making various efficiency improvements to the permitting process that have already begun.

This finance letter also proposes to eliminate the option to pay a flat fee for a permit application in lieu of a fee for service. The proposal to eliminate the flat fee option for permit applicants is consistent with a recommendation in the IRP's January 28, 2016 report. It recommended that the Governor and Legislature improve permitting by requiring DTSC to obtain full cost recovery connected with its hazardous waste facility permit decisions. According to DTSC testimony at IRP public meetings, existing fee collection statutes allowing permit applicants to opt for flat fees result in many applicants paying fees that are substantially lower than the department's permitting costs. This is unfair to other applicants, who may end up paying higher fees than they otherwise would

have to pay. The IRP elaborated upon that suggestion in its April 21, 2016 report by recommending that any legislation requiring fee for service for permitting provide a mechanism for reasonable assurance of application costs and a mechanism to hold DTSC accountable. It made that recommendation because the regulated community expressed concerns to the IRP about the timeliness of DTSC decision-making when it comes to permitting, a problem that was mentioned in the same report.

#### **Office of Environmental Justice and Tribal Affairs**

The DTSC's request for the Office of Environmental Justice and Tribal Affairs (3960-002-SFL-BR-2016-GB) would provide an augmentation of \$441,000 from the Toxic Substances Control Account and \$440,000 from the Hazardous Waste Control Account and six permanent positions to create an Office of Environmental Justice and Tribal Affairs.

This proposal is consistent with a recommendation in the IRP's January 28, 2016 report. In it the Panel recommended that the Governor and Legislature provide position authority and funding to strengthen the role of the DTSC assistant director for environmental justice and tribal affairs, including more staffing and resources. The Panel strongly believes that doing so would enhance engagement with impacted communities, allow DTSC to identify and address program gaps that may contribute to unequal environmental protections, improve transparency, and broaden access to DTSC programs.

#### **Strategic Program Development**

The DTSC's request for Strategic Program Development (3960-006-SFL-BR-2016-GB) would provide an augmentation of \$374,000 from the Hazardous Waste Control Account and \$373,000 from the Toxic Substances Control Account and convert five positions from limited term to permanent positions for ongoing strategic program development.

DTSC received temporary spending authority and five limited-term positions for FY 2014-15 and FY 2015-16 to implement its Permit Enhancement Work Plan. Although implementation is scheduled to be complete by June 30, 2016, Gov. Brown signed legislative measures last year that call for additional program improvements. In addition, the Legislature conducted several oversight hearings on the department and its key programs during the last 12 months, and DTSC Director Barbara Lee's confirmation hearing last year highlighted a number of areas where further improvements should be made. The IRP believes that the request for the Strategic Program Development budget augmentation and the conversion of the limited-term positions to permanent positions are needed to sustain the recent improvements and address recent and future mandates for improvement.

The IRP also recommended at its May 12, 2016 public meeting that the Legislature should ensure that DTSC's strategic program development process is transparent, with a role for external DTSC stakeholders, and done in collaboration with a defined role for the IRP.

#### **Argonaut Mine Tailings Site Dam Repair/Retrofit**

The request for Argonaut Mine Tailings Site Dam Repair/Retrofit (3960-009-SFL-BR-2016-GB) would provide a one-time augmentation of \$14,325,000 from the General Fund to design and construct a remedial action to retrofit the Eastwood Multiple Arch Dam at the Argonaut Mine Tailings Site in Jackson. DTSC has asserted its authority to take interim and long-term removal and remedial measures to prevent the release of arsenic-contaminated mine tailings into the City of Jackson and the Jackson Creek watershed. The IRP believes this one-time augmentation is necessary to fund DTSC's emergency response actions.

#### **Replacement of Laboratory and Investigative Equipment**

The request for Replacement of Laboratory and Investigative Equipment (3960-008-BR-2016-GB) would provide a one-time augmentation of \$2 million from the Hazardous Waste Control Account to

procure laboratory and investigatory equipment used for conducting investigations and testing of wastes and other substances for hazardous characteristics in support of criminal, civil, and administrative enforcement of hazardous waste laws, cleanups, and safer products. An enforcement and settlement action, *The People of the State of California v Comcast Communications LLC*, would be the original funding source. The IRP believes that the equipment purchase would be an appropriate use of this action, as it would enhance DTSC's capabilities to identify and measure chemicals of concern to the public.

### **The IRP**

SB 83 (Committee on Budget and Fiscal Review, Statutes of 2015) established the IRP to review and make recommendations regarding improvements to the DTSC's permitting, enforcement, public outreach, and fiscal management pursuant to Health & Safety Code Section 57014. There are three Panel members: an appointee of the Speaker of the Assembly, and appointee of the Senate Committee on Rules, and an appointee of the Governor. The IRP is tasked with submitting reports to the Governor and the Legislature every 90 days and at the time of submission of the Governor's annual budget. SB 83 sunsets the IRP on January 1, 2018. Information about the panel, including its submitted reports, can be found on its website at:

<https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Independent-Review-Panel.cfm>.

The Panel respectfully appreciates that the state has many budget priorities and finite resources and that the Legislature is reviewing overall state budget issues, not just the DTSC's. The Panel understands its role and defined jurisdiction and very much appreciates your consideration of this letter. Please contact the IRP's program analyst, Larry Rohlfes, should you have any questions or need more information. He can be reached at (916) 327-4493 or [Larry.Rohlfes@dtsc.ca.gov](mailto:Larry.Rohlfes@dtsc.ca.gov).

Sincerely,



Larry Rohlfes (on behalf of Gideon Kracov, Chair)  
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Legislation/MS 22C

cc: Senator Jim Nielsen  
Senator Fran Pavley  
Senator Mark Leno, chair, Senate Budget and Fiscal Review Committee  
Governor Edmund G. Brown, Jr.  
DTSC Director Barbara Lee  
DTSC Independent Review Panel Liaison Chris Law  
DTSC Independent Review Panel Chair Gideon Kracov  
DTSC Independent Review Panel Vice Chair Mike Vizzier  
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