

Legislative Mandates 2015

*A compilation of new mandates and statutory
changes affecting DTSC programs*



December 2015

**Department of Toxic Substances Control
Barbara A. Lee
Director**

INTRODUCTION

This publication serves to inform Department of Toxic Substances Control (DTSC) staff of new legislatively mandated activities and important statutory changes resulting from legislation enacted in the second half of the 2015–2016 Legislative Session.

Some of the described changes are provided for information only, such as noting new or revised requirements or procedures that affect applied standards or the way DTSC operates. Other changes describe more direct requirements, such as mandates upon DTSC to develop regulations, prepare a report, establish a new program, or modify an existing program.

The descriptions provided in this publication are not binding. Staff should consult the actual bill language (which can be accessed through the Internet links provided) for exact changes to the statutes.

Bills with an urgency clause take effect on the date they are chaptered; bills without an urgency clause take effect on January 1, 2016. Bills may also specify that their provisions take effect at a later date or designate a specific date by which an activity must be completed.

Questions about specific implementation plans and activities should be referred to the affected programs identified in this publication. Questions regarding the information in this publication can be referred to any of the legislative staff in DTSC's Office of Legislation (see below). Suggested changes to this publication are also welcome.

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INDEX OF BILLS AFFECTING DTSC PROGRAMS BY BILL NUMBER

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Legend

Admin	Administrative Services
OEIM	Office of Environmental Information Management
Cleanup	Brownfields and Environmental Restoration Program
CUPA	Certified Unified Program Agency
ECL	Environmental Chemistry Lab
ESTM	Committee on Environmental Safety and Toxic Materials
HWMP	Hazardous Waste Management Program
Legal	Office of Legal Affairs
SCP&W	Safer Consumer Products and Workplaces Program
Budget	Committee on Budget and Fiscal Review
EJ	Office of Environmental Justice

SUMMARIES OF BILLS AFFECTING DTSC





AB 273 (ESTM) Chapter 456, Statutes of 2015 – Hazardous waste and substances: corrective action: liability

AFFECTED PROGRAM(S): Admin

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| <input type="checkbox"/> New Program or Requirements | <input checked="" type="checkbox"/> Additional Requirements for an Existing Program |
| <input type="checkbox"/> Information Only | <input type="checkbox"/> Report to the Governor/Legislature |

Link to Legislation:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB273

Summary:

AB 273 modifies the interest rate charged by the Department of Toxic Substances Control (DTSC) on invoices to seven (7.0) percent per year until June 30, 2021, and ten (10.0) percent per year thereafter, except that local governments would continue to be charged the seven percent rate. The bill also clarifies DTSC's authority to recover the costs of all remedial actions by reconciling inconsistencies in underlying statutes.

Specifically, this bill:

- Changes the interest rate DTSC can charge on overdue invoices to 7 percent until 2021 and 10 percent after that.

Departmental Mandate(s):

- None



AB 274 (ESTM) Chapter 457, Statutes of 2015 – Oversight costs: uncollectable accounts

AFFECTED PROGRAM(S): Admin, Legal

New Program or Requirements

Additional Requirements for an Existing Program

Information Only

Report to the Governor/Legislature

Link to Legislation:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB274

Summary:

AB 274 authorizes the Department of Toxic Substances Control (DTSC), until January 1, 2019, to write off “uncollectible accounts,” of \$5,000 or less, for which the cost to pursue recovery of that money would exceed the value of the uncollectible account.

Specifically, this bill:

- Allows DTSC to write-off uncollectible accounts of \$5,000 or less, if the cost to recover the amount is larger than the amount itself.

Departmental Mandate(s):

- None



AB 275 (ESTM) Chapter 458, Statutes of 2015 – Hazardous substances: liability recovery actions.

AFFECTED PROGRAM(S): **Admin, Cleanup, Legal**

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|--|---|
| <input type="checkbox"/> New Program or Requirements | <input checked="" type="checkbox"/> Additional Requirements for an Existing Program |
| <input type="checkbox"/> Information Only | <input type="checkbox"/> Report to the Governor/Legislature |

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB275

Summary:

AB 275 clarifies the statute of limitations applicable to a cost recovery action by the Department of Toxic Substances Control (DTSC) to recover response costs incurred through actions taken through the State Superfund Act, Health & Safety Code, or the Hazardous Waste Control Act. AB 275 also creates an express statute of limitations applicable to cost recovery actions by DTSC when operation and maintenance is required as part of a response or corrective action. AB 275 deletes the requirement that the Toxic Substances Control Account pay for any portion of a judgment in excess of the aggregate amount of costs or expenditures apportioned to responsible parties by a court of law.

Specifically, this bill:

- Allows courts to apportion all cleanup costs (including orphan share costs) at a site among any remaining viable responsible parties.
- Clarifies that the three-year statute of limitations does not begin upon certification that an initial removal action is completed if operation and maintenance follows; instead, the three-year statute of limitations begins upon certification that the operation and maintenance has been completed.
- Allows the Department to collect costs otherwise precluded because of ambiguity about the statute of limitations.

Departmental Mandate(s):

- None



AB 276 (ESTM) Chapter 459, Statutes of 2015 – Department of Toxic Substances Control: response actions: cleanup ability information

AFFECTED PROGRAM(S): Admin, Cleanup, Legal

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| <input type="checkbox"/> New Program or Requirements | <input checked="" type="checkbox"/> Additional Requirements for an Existing Program |
| <input type="checkbox"/> Information Only | <input type="checkbox"/> Report to the Governor/Legislature |

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB276

Summary:

AB 276 allows the Department of Toxic Substances Control (DTSC) to require a potentially responsible party to provide information regarding the party's ability to pay for a response action at a site where there has been, or may be, a release of hazardous waste, hazardous substances, or hazardous materials in the environment.

Specifically, this bill:

- Allows DTSC to require a party that is managing or has managed hazardous waste, including those that have applied for a permit, to provide information to DTSC regarding the ability of that party to pay for or perform a cleanup.
- Allows DTSC to issue an order directing compliance with a request for information.
- Allows DTSC to disclose the financial information under certain circumstances to authorized representatives, contractors, or government agencies.
- Requires a party providing the specified information to DTSC to identify all of the information that is considered a trade secret and impose penalties for failure to comply with the measures protecting information.
- Requires a party who has, or may have, information relevant to the ability of a party to pay for or perform a cleanup, to transmit that information to DTSC; and
- Imposes penalties if a person intentionally or negligently fails to provide the required information or makes false statements.

Departmental Mandate(s):

- None



AB 1071 (Atkins) Chapter 585, Statutes of 2015 – Supplemental Environmental Projects

AFFECTED PROGRAM(S): HWMP, Legal, EJ

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|---|--|
| <input checked="" type="checkbox"/> New Program or Requirements | <input type="checkbox"/> Additional Requirements for an Existing Program |
| <input type="checkbox"/> Information Only | <input type="checkbox"/> Report to the Governor/Legislature |

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1071

Summary:

AB 1071 requires each board, department, and office within the California Environmental Protection Agency that has enforcement authority, to establish a policy on the use of supplemental environmental projects that benefit disadvantaged communities. These supplement environmental projects may be voluntarily undertaken in a settlement action in order to offset a civil penalty.

Specifically, this bill:

- Requires the Department of Toxic Substances Control (DTSC) to adopt a supplemental environmental project policy that benefits disadvantaged communities.

Departmental Mandate(s):

To adopt a supplemental environmental project policy pursuant to AB 1071, DTSC’s policy must include:

- A public process to solicit potential supplemental environmental projects from disadvantaged communities;
- Allow the amount of a supplemental environmental project to be up to 50 percent of the enforcement action brought under the jurisdiction of the department;
- An annual list of supplemental environmental projects that may be selected to settle a portion of an enforcement action under the jurisdiction of the department; and
- A consideration of the relationship between the location of the violation and the location of the proposed supplemental environmental project.



AB 1075 (Alejo) Chapter 460, Statutes of 2015 – Hazardous waste: enforcement

AFFECTED PROGRAM(S): HWMP, Legal

New Program or Requirements

Additional Requirements for an Existing Program

Information Only

Report to the Governor/Legislature

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1075

Summary:

AB 1075 creates a new definition of violation and noncompliance and requires the Department of Toxic Substances Control (DTSC) to consider three or more incidents of violation or noncompliance within a five-year period as a compelling cause to deny, suspend, or revoke a hazardous waste facility permit, registration, or certificate. The bill authorizes DTSC to temporarily suspend a permit, registration, or certificate if DTSC determines that the conditions may present an imminent and substantial endangerment to the public health or safety of the environment. AB 1075 increases the penalty for certain violations under Chapter 6.5 if a person has been found liable or convicted of two or more previous violations within any consecutive 60 months.

Specifically, this bill:

- Requires DTSC to consider, except under specified circumstances, three or more violations of, or noncompliance with, specified provisions for which a person or entity has been found liable or has been convicted, with respect to a single hazardous waste facility within a 5-year period, as compelling cause to deny, suspend, or revoke a permit, registration, or certificate applied for by, or issued to, that person or entity.
- Authorizes DTSC to temporarily suspend any permit, registration, or certificate prior to a hearing if the department determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment. The bill repeals the requirement that the hearing be held without delay and completed as soon as possible.
- Imposes upon a person who is subject to the imposition of those civil or criminal penalties, an additional civil penalty of not less than \$5,000 or more than \$50,000 for each day of each violation, if the person has been found liable for, or been convicted of, two or more previous violations of certain of these hazardous waste-related provisions within any consecutive 60 months.

Departmental Mandate(s):

- AB 1075 requires DTSC to consider three or more incidents of violation or noncompliance for which a person or entity has been found liable or has been convicted with respect to a single facility within a five-year period, as a compelling cause to deny, suspend, or revoke

the permit, registration, or certificate. However, the compelling cause to deny only applies to violations/noncompliance associated with a new definition created by the bill.

Specifically, the bill requires consideration of a violation or noncompliance to be one:

1. That creates a significant risk of harm to the public health or safety of the environment resulting from acute or chronic exposure to hazardous waste or hazardous waste constituents and that threat makes it reasonably necessary to take action to prevent, reduce, or mitigate that exposure;
2. Of any order issued by DTSC to the applicant or holder of the permit; or
3. Of a Federal or state felony conviction for violations of the Hazardous Waste Control Law.



SB 83 (Committee on Budget and Fiscal Review) Chapter 24, Statutes of 2015 – Public resources.

AFFECTED PROGRAM(S): Admin, HWMP, EJ

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| <input type="checkbox"/> New Program or Requirements | <input type="checkbox"/> Additional Requirements for an Existing Program |
| <input type="checkbox"/> Information Only | <input checked="" type="checkbox"/> Report to the Governor/Legislature |

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB83

Summary:

SB 83 is a budget trailer bill. Part of the bill creates within the Department of Toxic Substances Control (DTSC) an independent review panel, comprised of three members, to review and make recommendations regarding improvements to DTSC’s permitting, enforcement, public outreach and fiscal management. The bill also established an Assistant Director for Environmental Justice within DTSC.

Specifically, this bill:

- Creates the Independent Review Panel within DTSC comprised of 3 members, one each appointed by the Governor, Speaker of the Assembly, and President Pro Tempore of the Senate. The Independent Review Panel shall report to the Governor and Legislature 90 days after the panel is initially appointed and every 90 days thereafter, on the department’s progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management.
- Establishes the position of Assistant Director of Environmental Justice with DTSC. The Assistant Director will serve as ombudsperson and outreach coordinator for disadvantaged communities where hazardous materials and hazardous waste facilities are located, and provide information and assistance to communities on permitting, enforcement, and other department activities in the major languages spoken in those communities.

Departmental Mandate(s):

- DTSC is to provide two support staff to the Independent Review Panel.



SB 162 (Galgiani) Chapter 351, Statutes of 2015 – Treated wood waste

AFFECTED PROGRAM(S): **HWMP**

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|--|---|
| <input type="checkbox"/> New Program or Requirements | <input checked="" type="checkbox"/> Additional Requirements for an Existing Program |
| <input type="checkbox"/> Information Only | <input checked="" type="checkbox"/> Report to the Governor/Legislature |

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB162

Summary:

SB 162 extends the sunset date for the provisions governing the management and disposal of treated wood waste to December 31, 2020, eliminates restrictions placed on the Department of Toxic Substances Control (DTSC) in its adoption of regulations pertaining to treated wood waste management, and requires DTSC to conduct a comprehensive evaluation of compliance with the standards adopted by DTSC and produce a report on its findings by January 1, 2018.

Specifically, this bill:

- Updates the information required to be posted by wholesalers and retailers of treated wood and treated wood-like products.
- Removes limitations for treated wood waste regulations adopted by DTSC, extends the operation of these provisions regarding treated wood waste to December 31, 2020, and repeals the language concerning the continued operation of treated wood waste regulations. By extending the operation of a crime, the bill imposes a state-mandated local program. The bill requires, on or before January 1, 2018, DTSC to prepare, post on its Internet Web site, and provide to the appropriate policy committees of the Legislature, a comprehensive report with specified content on the compliance with, and implementation of, these laws relating to treated wood waste.
- Provides that no reimbursement is required by this act for a specified reason.

Departmental Mandate(s):

- The bill requires, on or before January 1, 2018, DTSC to prepare, post on its Internet Web site, and provide to the appropriate policy committees of the Legislature, a comprehensive report with specified content on the compliance with, and implementation of, these laws relating to treated wood waste.



SB 489 (Monning) Chapter 419, Statutes of 2015 – Hazardous waste: photovoltaic modules

AFFECTED PROGRAM(S): **HWMP**

New Program or Requirements

Additional Requirements for an Existing Program

Information Only

Report to the Governor/Legislature

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB489

Summary:

SB 489 provides the Department of Toxic Substances Control (DTSC) with the statutory authority to adopt regulations to designate end-of-life photovoltaic modules (that are classified as hazardous waste) as universal waste and subject those modules to universal waste management standards.

Specifically, this bill:

- Authorizes DTSC to adopt regulations to designate end-of-life photovoltaic modules that are identified as hazardous waste as a universal waste and subject those modules to universal waste management. The bill also authorizes DTSC to revise the regulations as necessary. Because a violation of these regulations would be a crime, this bill would impose a state-mandated local program.
- Provides that no reimbursement is required by this act for a specified reason.

Departmental Mandate(s):

- None



SB 612 (Jackson) Chapter 452, Statutes of 2015 – Hazardous materials

AFFECTED PROGRAM(S): CUPA, HWMP

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|--|---|
| <input type="checkbox"/> New Program or Requirements | <input checked="" type="checkbox"/> Additional Requirements for an Existing Program |
| <input type="checkbox"/> Information Only | <input type="checkbox"/> Report to the Governor/Legislature |

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB612

Summary:

SB 612 removes universal waste from the calculation used by hazardous waste generators to determine their generator status. The bill also requires the Department of Toxic Substances Control (DTSC) to adopt regulations to mirror the statutory changes dealing with the hazardous waste counting provisions, and it makes numerous technical changes to the statutes relating to the Certified Unified Program Agencies.

Specifically, this bill:

- Exclude universal wastes from the hazardous wastes to be counted by a generator to determine its regulatory status.
- Require DTSC to adopt regulations incorporating the change associated with removing universal waste from counting towards a generator’s status.
- Makes technical changes to CUPA statutes that include:
 - o Requiring any additional map requirements required by a CUPA to be adopted through a local ordinance by the local government(s) within the CUPAs jurisdiction, and for the CUPA to notify the Secretary of the California Environmental Protection Agency within 30 days of the ordinance’s adoption;
 - o Changing the definition of "aboveground storage tank" to include a tank or container that has the capacity to store 55 gallons or more of petroleum, including drums, intermediate bulk containers, totes, mobile refuelers, oil-filled operational equipment, and oil-filled manufacturing equipment, and that is substantially or totally above the surface of the ground and a tank in an underground area;
 - o Revising the exception to the hazardous materials business plan and inspection requirements to require that the tank facility be operated by, instead of located on, the farm, nursery, logging site, or construction site and requires that the hazardous materials business plan address best management practices to prevent petroleum releases; and
 - o Changing the definition of "storage" and "store" for purposes of the regulation of the storage of hazardous substances in underground storage tanks, to exempt

storage that is in compliance with specified alternative laws for the regulation of hazardous materials.

Departmental Mandate(s):

- DTSC must adopt regulations incorporating the change associated with removing universal waste from counting towards a generator's status.
- As the CUPA for Trinity and Imperial Counties, DTSC must now:
- Certify to the Office of Emergency Services every three years that it has conducted a review of its area plan and has made any necessary revisions or that no substantial changes have been made.



SB 673 (Lara) Chapter 611, Statutes of 2015 – Hazardous waste

AFFECTED PROGRAM(S): **HWMP, Legal**

New Program or Requirements

Additional Requirements for an Existing Program

Information Only

Report to the Governor/Legislature

Link to Legislation:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB673

Summary:

SB 673 requires the Department of Toxic Substances Control (DTSC) to adopt regulations that establish or update criteria for the issuance of a new, modified, or renewed permit by January 1, 2018. The bill requires DTSC to consider several different criteria for inclusion into the regulations. In addition, SB 673 also requires DTSC to develop and implement programmatic reforms to improve its permitting program.

Specifically, this bill:

- Requires DTSC, by January 1, 2018, to adopt regulations that will establish or update criteria for use in determining whether to issue a new or modified hazardous waste facilities permit or a renewal of a hazardous waste facilities permit.
- Requires DTSC to develop and implement, by July 1, 2018, programmatic reforms designed to improve the protectiveness, timeliness, legal defensibility, and enforceability of DTSC's permitting program.

Departmental Mandate(s):

- Requires DTSC, by January 1, 2018, to adopt regulations that will establish or update criteria for use in determining whether to issue a new or modified hazardous waste facilities permit or a renewal of a hazardous waste facilities permit, and to develop and implement, by July 1, 2018, programmatic reforms designed to improve the protectiveness, timeliness, legal defensibility, and enforceability of DTSC's permitting program.