

COMMITTEE ON
ENVIRONMENTAL QUALITY

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BUDGET SUBCOMMITTEE
NO. 2 ON RESOURCES,
ENVIRONMENTAL
PROTECTION, ENERGY AND
TRANSPORTATION

NIELSEN (VICE- CHAIR)
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CALIFORNIA STATE SENATE

Bob Wieckowski, Chair

**JOINT OVERSIGHT HEARING
SENATE ENVIRONMENTAL QUALITY COMMITTEE
AND
BUDGET AND FISCAL REVIEW SUBCOMMITTEE NO. 2 ON RESOURCES, ENVIRONMENTAL
PROTECTION, ENERGY AND TRANSPORTATION**

FEBRUARY 1, 2017

**9:30 A.M.
STATE CAPITOL – ROOM 3191**

**Department of Toxic Substances Control:
Presentation of Independent Review Panel Annual Report**

BACKGROUND

Department of Toxic Substances Control

The Department of Toxic Substances Control (DTSC) is responsible for protecting public health and the environment by overseeing the state's response to releases of hazardous substances and disposal of hazardous waste. DTSC investigates, removes and remediates contamination as part of that mission.

DTSC operations fall under four major program areas:

1. **Brownfields and Environmental Restoration Program.** This program is responsible for the cleanup and restoration of contaminated sites throughout

the state; including legacy landfills (e.g., Stringfellow Acid Pits and the BKK Landfill), the Santa Susana Field Lab, military bases, former industrial properties, and school sites.

2. **Hazardous Waste Management Program.** This program is responsible for several important DTSC functions. It issues permit decisions for proposed new hazardous waste facilities and the approximately 120 existing hazardous waste facilities in California that treat, store, and dispose of hazardous waste. The program's staff conduct inspections and take enforcement actions to ensure compliance with hazardous waste laws and regulations. This program oversees the hazardous waste generator program. In addition, it provides hazardous waste management-related policy support, regulatory and statutory interpretation, financial assurance, and data management support for internal and external stakeholders. The program also provides emergency response support for hazardous materials-related emergencies throughout California.
3. **Safer Products and Workplaces Program.** This program is responsible for implementing the provisions of Assembly Bill 1879 (Feuer and Huffman, Chapter 559, Statutes of 2008), and Senate Bill 509 (Simitian, Chapter 560, Statutes of 2008). Together, these statutes require DTSC to establish a program that identifies and prioritizes chemicals of concern in consumer products, evaluates alternatives, and specifies regulatory responses to reduce chemicals of concern in products. This program is also responsible for providing health and safety support and consultation to DTSC staff relative to their office and field activities.
4. **Environmental Chemistry Laboratory.** The lab provides DTSC and other agencies within Cal/EPA with scientific leadership and laboratory capacity in the areas of environmental analytical chemistry and biochemistry. Scientists identify and measure concentrations of toxic chemicals in many different media including air, water, soil, hazardous waste streams, consumer products, and biological or human tissues.

Legislative Oversight

Specific incidents across California have exposed and continue to expose glaring failings in DTSC's implementation of its core programs as well as its support programs.

The mishandling of the hazardous waste facility permitting and enforcement of first the Exide and now the Quemetco battery recycling facilities; neglected cost-recovery efforts for cleanups across the state leading to an accumulation of 1,661 projects totaling almost \$194 million in uncollected cleanup costs dating back 26 years; a growing backlog of applications to renew hazardous waste permits; delayed site remediation; failed public participation and transparency activities; and personnel issues have all led to decreased stakeholder confidence and public trust in DTSC's ability to meet its mandate to protect public health and the environment.

Over the last five years, the Legislature has conducted numerous hearings on DTSC's internal controls, its business practices, and its basic statutory obligations. In those hearings, the budget and policy committees have evaluated the following four main areas: (1) reviewing and monitoring the department's strategic plan and reorganization; (2) auditing cost recovery at the department; (3) providing staffing to improve permit backlogs and business operations; and, (4) improving enforcement at the department.

Numerous statutory changes have been made to clarify and strengthen the statute to help DTSC better achieve its mandates, and budget augmentations have been made to give DTSC the resources to reduce backlogs and address outstanding programmatic failings. However, many of the underlying concerns about transparency, accountability, and long-term stability of DTSC programs remain.

The Independent Review Panel

With the aim of identifying and addressing the continued failings of DTSC to meet its public health and environmental protection mandates, Senate Bill 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2015) established an Independent Review Panel (IRP) to review and make recommendations regarding improvements to DTSC's permitting, enforcement, public outreach, and fiscal management with the goal of resolving the outstanding operational problems within DTSC and creating strong statutory mandates and accountability in the long term.

The IRP is comprised of three individuals: an appointee of the Speaker of the Assembly with scientific experience related to toxic materials, an appointee of the Senate Rules Committee who is a community representative, and an appointee of the Governor who is a local government management expert.

The IRP additionally advises DTSC on issues related to its reporting obligations, making recommendations for improving DTSC's programs, and advises DTSC on compliance with Health and Safety Code Section 57007, which requires DTSC, along with the other California Environmental Protection Agency boards and departments, to "institute quality government programs to achieve increased levels of environmental protection and the public's satisfaction through improving the quality, efficiency, and cost-effectiveness of the state programs" and "submit a biennial report to the Governor and Legislature, no later than December 1 with respect to the previous two fiscal years, reporting on the extent to which these state agencies have attained their performance objectives, and on their continuous quality improvement efforts."

The IRP is required to report to the Governor and the Legislature every 90 days on DTSC's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management. In addition, the IRP must submit recommendations at the time of the submission of the Governor's annual budget to the Legislature.

Pursuant to SB 83, the IRP is authorized until January 1, 2018.

To date the IRP has released seven reports and conducted 16 public meetings. In December, 2016, the IRP released a thorough list of recommendations compiled from the meetings and reports conducted in the IRP's first 11 months.