

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

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## SENATE CALIFORNIA LEGISLATURE

STATE CAPITOL  
SACRAMENTO, CALIFORNIA  
95814

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

**MARCH 12, 2015**

**9:30 A.M. OR UPON ADJOURNMENT OF SESSION  
STATE CAPITOL – ROOM 112**

**Oversight (Part A):**

California Department of Toxic Substances Control

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## Joint Oversight—Department of Toxic Substances Control

### Opening Remarks:

Senator Lois Wolk, Chair, Senate Budget Subcommittee #2

Senator Bob Wieckowski, Chair, Senate Environmental Quality Committee

### Background

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.

The Governor's budget includes \$208 million (including \$27 million General Fund) and 1,005 positions for support of the DTSC. This is a decrease of \$13 million under current year expenditures.

#### EXPENDITURES BY PROGRAM (in thousands)

	Program	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
	Site Mitigation and Brownfields Reuse	\$103,004	\$133,568	\$117,342
	Hazardous Waste Management	63,904	72,597	73,615
	Safer Consumer Products	12,286	12,860	14,346
	State Certified Unified Program Agency	1,760	2,572	2,820
	<b>Total Expenditures (All Programs)</b>	<b>\$180,953</b>	<b>\$221,596</b>	<b>\$208,123</b>

#### POSITIONS BY PROGRAM

	Program	Actual 2013-14	Estimated 2014-15	Proposed 2015-16
	Site Mitigation and Brownfields Reuse	297.0	341.5	341.5
	Hazardous Waste Management	335.0	386.0	410.0
	Safer Consumer Products	58.6	56.5	64.5
	State Certified Unified Program Agency	10.8	14.7	14.7
	Administration	178.5	174.9	174.9
	<b>Total Positions (All Programs)</b>	<b>879.9</b>	<b>973.6</b>	<b>1,005.6</b>

**Major Program Areas.** DTSC operations fall under four major program areas and five support offices:

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.
5. **Office of Communications.** This office is responsible for serving as the primary source for all internal and external communication. In addition, the office is responsible for administering a public participation program designed to establish an ongoing dialogue with impacted communities. The program ensures the establishment of two-way communication between community members and DTSC staff so that community concerns are addressed and taken into account when final decisions on projects are made.
6. **Office of Administrative Service.** This office is responsible for providing DTSC with administrative support services, including accounting, human resources, training, budgets, purchasing, fleet administration, file management, and contract development.
7. **Office of Environmental Information Management.** This office supports DTSC's information technology needs, including software and hardware acquisition, standardization, and training. The office also provides network and user support services, and develops and supports various information technology applications critical to DTSC.
8. **Office of Legal Affairs.** This office provides three critical functions for DTSC. Its Office of Legal Counsel provides legal advice and representation for DTSC. Through the Office of Criminal Investigations, it investigates alleged criminal violations of hazardous waste laws and develops cases for referral to state and local prosecutors. Finally, this office houses the

Office of Planning and Environmental Analysis, which provides technical support to DTSC programs to ensure compliance with the California Environmental Quality Act.

9. **Office of Legislation.** This office is responsible for coordinating, analyzing, and recommending actions on all state and federal legislative proposals impacting DTSC. The office also serves as the primary liaison between DTSC's programs and the California Legislature and external interest groups.

### Issues for Legislative Oversight

**Previous Legislative Oversight.** Over the past three years, the Legislature has held a number of hearings on the department's internal controls, its business practices, and its basic statutory obligations. To that end, provided below are four main areas that budget and policy committees have monitored including: (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. Subsequently, emerging issues include the department's treatment of superfund sites and its ability to take over these sites and fund them on an ongoing basis.

This oversight hearing is intended to give the Senate budget and policy committees involved with oversight of DTSC an update on these issues. The department should be prepared to discuss the following issues:

**1. Hazardous Waste Management.** The DTSC regulates hazardous waste management by issuing permits; tracking the generation, transportation, and disposal of hazardous waste; coordinating cleanup of contaminated sites; and seeking recovery of funds from parties responsible for contamination. Concerns have been raised in recent years regarding how DTSC has carried out these responsibilities. For example, due to a backlog in processing applications for hazardous waste permit renewals, many facilities are operating on "continued permits." This means that these facilities have submitted permit renewal applications, but DTSC has not completed its review and approval process, which usually takes several years. While these particular facilities are allowed to continue operations under the terms of their original permit, these are frequently no longer based on up-to-date technologies, practices, and safeguards. Backlogs in continued permits are also problematic because it means that permit holders have not undergone recent assessments of their facilities to determine if they are releasing any hazardous wastes into the environment. These assessments are part of the permit approval process.

**2. DTSC Strategic Plan and Reorganization.** According to the department, 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.

In early 2012, the department embarked on its “Fixing the Foundation” initiative, which includes more than 30 different activities intended to improve its operations and restore public trust in the department. Activities include increasing cost recovery from those responsible for hazardous waste contamination, reducing permitting backlogs, strengthening enforcement, and improving the financial sustainability of its operating funds. This effort includes multiple goals at every level of the organization, from staff engagement to permitting backlogs and cost recovery. This document has provided guidance to the department as it reinvents itself.

**3. Limited-Term Positions Approved in 2014.** In 2014, the Legislature approved four proposals designed to implement certain aspects of the department’s “Fixing the Foundation” initiative. These proposals increased expenditures and positions over two years (including the budget year). In total, the budget included \$4.6 million in 2014–15 and \$3.2 million in 2015-16, from the Hazardous Waste Control Account and the TSCA, as summarized below.

**The Department of Toxic Substances Control 2014-15 Positions Approved**  
*(Dollars in Thousands)*

Proposal	2014–15 Amount	Limited–Term Positions
Address cost recovery backlog	\$1,618	14.0
Address permit renewal backlog and update cost estimates	1,191	8.0
Rebuild hazardous waste tracking system	1,364	—
Correct errors in the hazardous waste manifest data	381	3.5
<b>Totals</b>	<b>\$4,554</b>	<b>25.5</b>

The LAO, at the time of the request, noted: “While we find the administration’s proposals to be reasonable, it is important to note they will not fully address the identified problems for the long run. For example, while two of these proposals address current backlogs, they rely on limited-term positions that will not address the underlying problems that caused the backlogs to form in the first place. In fact, the administration does not anticipate that the permitting proposal will eliminate the entire backlog of permit renewals. Consequently, it is unclear whether the backlogs will begin to grow in the future after the limited-term positions expire. We would note, however, that the department reports that it is taking additional actions—such as internal administrative and process changes—that are aimed at addressing some of these problems.”

**4. State Auditor’s Recommendations for Cost Recovery Program.** In 2013, the State Auditor completed a review of DTSC cost-recovery efforts. The report, *DTSC, Its Lack of Diligence in Cost Recovery Has Contributed to Millions in Unbilled and Uncollected Costs*, illustrated systemic problems with the manner in which the department has, to date, conducted some of the fundamental statutory requirements. Highlights of the audit include:

- Long-standing shortcomings with the department's recovery of costs have resulted in unbilled, and billed but uncollected, cleanup costs (outstanding costs)—as of March 2014 the department has 1,661 projects totaling almost \$194 million in outstanding costs.
- Nearly \$142 million was unbilled and almost \$52 million was billed but uncollected.
- These outstanding costs were incurred between July 1987 and December 2013.
- The department has made progress in resolving the accuracy of information related to projects with outstanding costs. However, it may extend the target completion dates for some tasks until June 2016.
- The department may not be able to recover all of its outstanding costs due to several factors—preliminary determinations indicated that the federal and state statutes of limitations have expired for 76 projects with a total of \$13.4 million in outstanding costs.
- Despite updating its cost recovery procedures, the audit found several areas in which the department could better maximize its cost recovery efforts.
- The department has not consistently used some of its methods—such as issuing collection letters or recording liens on the properties of responsible parties to ensure that it maximizes cost recovery.

**5. Emerging Issues—Superfund Site Takeovers.** Federal law, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), requires that states provide 10 percent of the cost for construction and operation of remedies for Superfund National Priority List sites for generally 10 years. After 10 years, states are required to pay 100 percent of the operation and maintenance at those sites. The number of federal sites ready to transfer to the state for ongoing operation and maintenance is increasing. It is unclear what the cost of these transfers will be in future years.