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# Independent Review Panel

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



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

*Governor Edmund G. Brown Jr.*

## **DTSC Independent Review Panel Recommendations to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(h)**

**January 8, 2018**

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### **Executive Summary**

The Department of Toxic Substances Control (DTSC) Independent Review Panel (IRP) submits this annual report in compliance with section 57014(h) of the Health and Safety Code, which became effective on June 24, 2015 and was repealed on January 1, 2018. The IRP held its first public meeting on November 18, 2015. It has submitted eight quarterly progress reports and two annual reports to the Governor and Legislature since then. This is the IRP's final report. It makes observations and recommendations about DTSC and its programs and organizes them into what the IRP believes should be DTSC's top priorities: (1) continuity in executive leadership, (2) focus on human resources, (3) stable fiscal resources and addressing structural deficits, (4) increased transparency and accountability, and (5) reviewing governing statutes that may need review or repeal. It also lists all previous IRP recommendations and performance metrics, along with their status, by program, in the appendices.

The report shows that DTSC has made considerable progress since the IRP began meeting in November 2015. The Governor and DTSC Director Barbara Lee stabilized DTSC's leadership team. The Department worked systematically to evaluate its organizational culture and lay the groundwork for improvements. Budget augmentations from the Governor and Legislature, including funding for the Exide residential cleanup, have made a difference. DTSC focused on improving its public engagement program. The Department implemented, or is working on, most of the IRP's recommendations and has achieved, or partially achieved, many of the IRP's suggested performance metrics.

However, there is more work to be done. DTSC can expect a wave of retirements in the coming years, with a consequent loss of institutional knowledge. Structural deficits in DTSC's two major accounts require immediate attention. It is not yet certain whether DTSC's public participation and environmental justice efforts will lead to enduring improvements. The website and EnviroStor require further improvements. DTSC must better balance the quality of its work products with timeliness. DTSC's governing statutes should be reviewed to delete redundancy and give the Department more focus.

The IRP process challenged DTSC to explain publicly why it operates the way it does and to think about how it can better accomplish its mission in a climate of limited resources. In the absence of the IRP, which ceased to exist on January 1, 2018, the report concludes that the Governor and the Legislature should consider a DTSC governing board or other structural change to enhance transparency and accountability and regularly monitor the status of the IRP-suggested recommendations and performance metrics, as well as the Department's ongoing initiatives and decision-making.

See the IRP's webpage for the full report as well as other Panel reports and information at:  
<https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/Independent-Review-Panel.cfm> .

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**January 8, 2018**

The Department of Toxic Substances Control (DTSC) Independent Review Panel (IRP) submits this annual report in compliance with section 57014(h) of the Health and Safety Code (HSC), which became effective on June 24, 2015 and was repealed on January 1, 2018. The code section required the Panel to submit recommendations to the Legislature and the Governor regarding improvements to the Department's programs at the time of each submission of the Governor's budget.

This is the IRP's final report. It makes final observations and recommendations about DTSC and its programs and organizes them into what the IRP believes should be DTSC's top priorities: (1) continuity in executive leadership, (2) focus on human resources, (3) stable fiscal resources and addressing structural deficits, (4) increased transparency and accountability, and (5) reviewing governing statutes that may need review or repeal. It also lists all previous IRP recommendations along with their status, by program, in the appendices. Appendix A provides the status of recommendations to the Legislature and Governor. Appendix B provides the status of recommendations to DTSC. Appendix C provides the status of the IRP's performance metrics for DTSC.

### **Introduction**

#### **The IRP and Its Responsibilities**

Chapter 24, Statutes of 2015 (SB 83) added section 57014 to the HSC, which established within DTSC a three-member IRP to review and make recommendations regarding improvements to the Department's permitting, enforcement, public outreach, and fiscal management. The code section stipulated that IRP membership was to be comprised of a community representative, a person with scientific experience related to toxic materials, and a local government management expert. The following individuals subsequently received appointments to serve on the Panel: Dr. Arezoo Campbell (panelist with scientific experience related to toxic materials and appointee of the Speaker of the Assembly), Gideon Kracov, J.D. (community representative and appointee of the Senate Committee on Rules), and Mike Vizzier (local government management expert and appointee of the Governor).

In addition to requiring the IRP to submit recommendations at the time of each submission of the Governor's budget, HSC section 57014 stated that the IRP shall make recommendations for improving the Department's programs, advise the Department on compliance with HSC section 57007, and report to the Governor and the Legislature every 90 days on the Department's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management. The code section also stated that the Panel may advise the Department on issues related to the Department's reporting obligations. HSC section 57014 is attached to this report in Appendix D.

### **IRP Information Gathering and Stakeholder Participation**

Beginning with the IRP's first meeting on November 18, 2015, the Panel convened 28 public meetings to discuss its work and hear testimony from stakeholders, subject matter experts, elected officials, and representatives of DTSC and other state agencies.

The IRP tried to maximize public access to, and participation in, those meetings. The Panel held eight of its meetings outside of Sacramento, often in communities near sites with hazardous substance releases or permitted hazardous waste facilities, in Los Angeles, Kettleman City, Bakersfield, Chatsworth, Jurupa Valley, Vernon, Berkeley, and San Diego. Meeting materials were posted on the IRP's website in advance of meetings in compliance with the Bagley-Keene Act, and notices of the postings were sent via email to individuals who requested to be on the IRP's EList. When technically feasible, the Panel offered live webcasts of its meetings on the CalEPA webcast portal and posted webcasts of previously held meetings on the IRP website. Stakeholders could submit public testimony via email whenever there was a live webcast, and IRP's staff read their comments out loud during the meetings. The IRP heard special presentations from numerous stakeholders at its public meetings. Meeting agendas were translated into Spanish, and Spanish translators were used during meetings if a member of the public requested this service by an advance deadline date.

In addition to gathering information from stakeholders at public meetings, the IRP encouraged written comments from the public and posted them on the Panel's website. The IRP also surveyed a small cohort of stakeholders about DTSC programs in August 2016 and October 2017 and a larger stakeholder group about the work of the IRP in June 2017. The survey reports are also posted on the IRP website.

The IRP submitted over 100 requests to DTSC for written reports, formal presentations at IRP meetings, and other verbal reports at those meetings. DTSC made 25 formal presentations on Department programs and two formal presentations on the Exide Technologies closure, post-closure, and cleanup at IRP public meetings. The Panel wishes to express its special appreciation to DTSC Director Barbara Lee and her staff for devoting considerable time and effort to informing the IRP about Department and its programs.

### **IRP Work Plan**

The IRP approved a work plan in April 2016. It called for two or three months of intensive study and discussion on each of the following six topics: permitting, enforcement, public outreach, fiscal management, site mitigation, and source reduction/consumer products. SB 83 required the IRP to review and make recommendations on the first four of these topics, and the Panel

deemed the other topics to be likewise important and worthy of consideration under its statutory mandate to make recommendations for improving the Department’s programs.

The plan called for the IRP to make recommendations to the Governor and Legislature and DTSC, and to identify metrics to evaluate DTSC’s performance on each of the six topics, and to do so in the reports that were due every 90 days. The plan envisioned the IRP completing this review by July 2017. It then called for the IRP to evaluate data gathered on its recommendations and the performance metrics. Final observations and conclusions about the IRP’s recommendations and performance metrics were left for this, the final report.

### **IRP Reports**

The IRP submitted its first annual report at the time of the submission of the Governor’s proposed budget for 2016-17. This document did not include recommendations because the IRP did not have sufficient time to systematically review DTSC’s programs between its first meeting and the January 10, 2016 deadline for the budget. Instead, the IRP included initial recommendations in its first 90-day report. That report, submitted on January 28, 2016, addressed five topics: budget, permitting, enforcement, public outreach, and fiscal management. After providing background information, the report made recommendations to the Governor and Legislature, recommendations to DTSC, and information requests of the DTSC for each topic.

The IRP submitted subsequent quarterly progress reports on April 21, July 26, and October 24, of 2016 and January 20, April 21, and July 14, and October 6 of 2017. They addressed DTSC’s permitting, enforcement, public outreach, fiscal management, site mitigation, consumer products, and source reduction, respectively, with the April 21, 2016 report also including initial recommendations on site mitigation. The reports generally included program summaries, recommendations to the Governor and Legislature, recommendations for DTSC, suggested performance metrics, and information requests of DTSC. The recommendations and suggested performance metrics are listed in the three appendices to this report, along with the current status of each recommendation or metric. The IRP submitted its second annual report at the time of the submission of the Governor’s proposed budget for 2017-18. This report made several general observations about DTSC. Table I lists all IRP reports.

<b>Table I: IRP Reports</b>		
<b>Report Type</b>	<b>Date Submitted</b>	<b>Subject Matter</b>
Annual	January 1, 2016	Composition of the IRP and Its Staff
Progress	January 28, 2016	Budget, Permitting, Enforcement, Public Outreach, and Fiscal Management
Progress	April 21, 2016	Permitting and Site Mitigation
Progress	July 26, 2016	Enforcement
Progress	October 24, 2016	Public Outreach

Annual	December 27, 2016	General Observations and Compendium of Previously Made Recommendations for Governor and Legislature
Progress	January 20, 2017	Fiscal Management
Progress	April 21, 2017	Site Mitigation
Progress	July 14, 2017	Source Reduction/Consumer Products
Progress	October 6, 2017	Source Reduction/Consumer Products
Annual	January 8, 2018	Status of Previously-Made Recommendations and Final Observations

**Five Main Priorities to Improve DTSC’s Programs**

**Priority 1:**

**Continuity in Executive Leadership**

DTSC has experienced significant turnover in its leadership in recent years. The Department has had five directors since 2010. The IRP’s previous annual report noted that, of DTSC’s 15 executive leadership positions, eight were staffed by individuals hired in 2016. DTSC’s executive team was still a new team in early 2017.

In the previous annual report, the IRP stated its belief that this turnover in personnel was damaging to the Department’s institutional memory and continuity.

Some DTSC staff members agree that turnover on the executive team has been a problem, making it likely detrimental to employee morale. According to DTSC’s November 2017 Organizational Health Assessment Findings and Recommendations Report (OHA Report), the results of an employee survey taken in late 2016 identified that staff’s opinion of DTSC’s leadership was mixed. The report identified several root causes for the mixed ratings, including recent and historically high turnover rates of leadership and staff’s lack of familiarity with the new leadership team.

The report made several recommendations to improve staff’s perception of, and confidence in, DTSC leadership. One was for leadership to dedicate additional time and resources to communicating with staff. Another was to provide additional training for leaders at all levels of the Department. Other recommendations were to improve succession planning for leadership transitions and consider changing several of the positions appointed by the Governor to career executive assignment positions. The IRP wholeheartedly supports these recommendations.

As part of its recent Organizational Health Assessment project, which will be described in more detail in the Priority Two section of this report, DTSC created a Training and Development Plan to implement some of these recommendations immediately. The recommendations scheduled for Year One implementation include an expansion of the existing Leadership Development Program to encompass periodic refresher courses, acquiring professional coaching or internal mentoring for members of the executive team, and conducting 360-degree evaluations of



executive team members. Several other recommendations are expected to be implemented in subsequent years. However, DTSC acknowledges that implementation of a plan to increase communications with staff would require resources that the Department does not currently have.

In early 2017, the IRP learned about an executive-level vacancy in the Brownfields & Environmental Restoration Program that it felt should be filled immediately. The vacated position was for an assistant deputy director who had been primarily responsible for the Exide closure and cleanup, including the residential cleanup. The IRP felt a long vacancy could detract from the momentum of the cleanup at a critical time, and consequently it recommended that the Governor appoint an assistant deputy director responsible for Exide by June 1, 2017. The Governor appointed Suhasini Patel to the position on September 25, 2017 (*Appendix A, Site Mitigation Recommendation 7*). Ms. Patel has been a DTSC employee since 2007 and most recently served as an environmental program manager. This is a good example of a leadership transition that provides not only continuity, but also staff familiarity with the appointed individual. This succession practice should be implemented more often at DTSC to build trust amongst the staff and the executive team.

The IRP also recommended to DTSC that it evaluate the number of positions and vacancy levels in the Office of Criminal Investigations and the Enforcement & Emergency Response Division (EERD) to determine if they are sufficient to meet all inspection and enforcement goals. DTSC recently reported that EERD completed an initial workload study and that a more comprehensive study would be done by December 31, 2017 (*Appendix B, Enforcement Recommendation 3*). Funding would have to be provided if the results of this comprehensive analysis show that additional resources are needed.

The IRP offered one performance metric to address staff continuity in the Permitting Division: Experience less than 10 percent staff turnover during 2016-17 (*Appendix C, Permitting Recommended Performance Metric 8*). DTSC did not quite meet this metric. The Department noted that it has little control over staff turnover, but was trying to fill vacancies more efficiently when they occur.

For the first time in at least two years, DTSC has a stabilized leadership team. Director Lee has led the Department for more than three years. Of the 15 current leadership team positions, only one is staffed by a person hired in 2017, although there are two current vacancies. In the next level of leadership, the senior management level, 29 of 31 positions are currently staffed. The IRP believes that DTSC's leadership continuity is satisfactory at the present time, and it supports the Training and Development Plan.

Nevertheless, ongoing attention will have to be paid to continuity in executive leadership and in leadership throughout the Department. Fifty-four percent of DTSC's employees are 51 years or older. This means that the Department can expect a wave of retirements in the coming years and a possible loss of institutional knowledge among its division heads, branch chiefs, and mid-level supervisors and managers.

## **Priority 2:**

### **A Focus on Human Resources**

Evaluating and instituting changes to DTSC's internal culture are critical. The IRP's previous annual report asserted that there was "room for improvement when it comes to the Department's human resources." The report noted that, in 2015, DTSC uncovered racially insensitive and derogatory emails sent by two staff members. It also noted that staff members came forward to complain about the pay differential between scientists and engineers and to allege that they sometimes lacked the resources and training to do their jobs properly or were working without experienced and knowledgeable managers in many field offices, often because of recent retirements. The report noted that DTSC Chief Deputy Director Francesca Negri was overseeing efforts to address organizational culture challenges, and it stated that it was "essential for the Chief Deputy Director to be given the authority and necessary resources to improve staff morale, training, supervision, accountability, and cultural sensitivity—from top to bottom, throughout DTSC and all its field offices."

The IRP reports that DTSC has worked intelligently and systematically to evaluate its organizational culture and lay the groundwork for improvements during the past two years. This observation is based on the Panel's review and discussion of the organizational health assessments, surveys, and reports that have been conducted and presented by DTSC.

The IRP also wanted to learn firsthand about employee morale by meeting with staff members at regional offices. It was not permitted to do this. The reasons, given in early 2016, were that visits to the regional offices could disrupt work in progress and that DTSC would soon be conducting an Organizational Health Assessment to serve this purpose.

Beginning in 2016, DTSC embarked upon its Organizational Health Assessment to identify organizational strengths and weaknesses, document opportunities to improve organizational health and culture, prioritize the improvement opportunities in a multi-year roadmap, and create one-year action plans. This was done by soliciting information from staff and identifying what should be done from its perspective to improve DTSC's culture. DTSC gathered data from its employees via an online survey, focus groups, and interviews. It analyzed this information in several framework categories. According to the November 2017 OHA Report, the primary goal for the project was to create an exceptional place to work and where staff is engaged, committed, and accountable.

The report organized the findings and recommendations by the framework categories. For the stakeholder and public engagement category, employees identified several structural and procedural issues that impede them from delivering the best services to customers, mostly related to roles and responsibilities, decision-making, and processes for interacting with the public. For the employee engagement and development category, employees indicated they could benefit from more frequent and structured performance feedback as well as more training and development opportunities. For the organization and operations category, the report identified outdated and confusing policies, insufficient inter-program coordination, and lack of clear decision-making criteria as problems. For the tools and technology category, the report identified gaps in technology and less than ideal alignment between the Office of Environmental Information Management and other DTSC programs and offices as problems.

The report grouped most of the recommendations into the following multi-year implementation roadmaps and one-year action plans: (1) training and development, (2) annual performance reviews and individual development plans, (3) DTSC hiring and recruitment plan, (4) employee recognition, (5) peer mentoring, and (6) best practices for project planning and initiation checklist. Most of the one-year action plans have already been implemented or are in process of being implemented. All the action plans indicate how the results will be measured.

Among the more significant efforts to address organizational health during the past two years are the development of a DTSC Leadership Academy, the development of a DTSC Aspiring Leadership Program, and the creation of a draft employee recruitment plan. DTSC also reported to the IRP that it was on track to implement updated employee recognition and peer mentoring programs by the end of 2017.

The IRP is supportive of the OHA Report for several reasons. It emphasizes the employee perspective. It recognizes that a strong organizational culture is necessary for mission-critical success. Many of its recommendations can, and are, being implemented immediately. And, the assessment includes performance metrics for the action plans. The IRP hopes that the prioritized recommendations remain a priority and that future budgets reflect it.

In the IRP's January 28, 2015 progress report, the Panel recommended that DTSC assign staff to revisit all "No Further Action" decisions involving the two staff members who sent the culturally insensitive and inappropriate emails and to report to the public by June 1, 2016 on its findings (*See Appendix B, Public Outreach Recommendation 6*). DTSC reported to the IRP in May 2017 that it conducted reviews of many of the cases, but did not have resources to review all of them. DTSC reported to the IRP on September 11, 2017 that it referred additional cases to U.S. EPA for independent review. The Department subsequently informed the IRP that U.S. EPA conducted an examination of site-specific project files and documentation provided by DTSC and was not able to identify any critical parameters or variables in the risk-based decision-making that were omitted, inaccurate, or otherwise inappropriately applied. U.S. EPA further concluded that DTSC's Human and Ecological Risk Office has a well-established and standard operating peer-review and/or peer-consultation procedure in place that is designed to ensure quality work products. The IRP is relieved to learn that decision-making integrity apparently was not compromised and appreciates DTSC's diligence in following up on the spirit of this recommendation.

Partly in response to the attitudes expressed in the emails, and partly in response to concerns expressed by staff members who said they felt isolated or disrespected by coworkers, Director Lee conveyed her concern to the staff in February 2016 that these challenges threaten what the Department could achieve. Director Lee also informed the staff at that time that she would be forming a cross-functional, multi-cultural, and multi-level task group to: (1) assess strengths and weaknesses in attitudes and interpersonal engagement; (2) identify opportunities to support diversity, collaboration, and professionalism; and (3) foster intellectual and cross-cultural understanding within the organization and in its engagement with the public.

This task group of 16 staff members, the Diversity and Inclusion Work Group, met with professional facilitators at least once per month from September 2016 to June 2017. Its DTSC Diversity & Inclusion Report, submitted in August 2017, recommended the adoption of four key strategic goals and 58 specific strategies for diversity and inclusion in the Department. The

strategic goals were as follows: (1) establish diversity and inclusion as a framework for leadership development, employee engagement, and professional accountability; (2) create an inclusive culture, where diverse internal and external stakeholders feel heard, supported, and valued; (3) ensure that recruitment/retention and employee benefits are broad-based, inclusive, and reflective of California's diverse communities; and (4) adopt a results-oriented approach that continually reviews, analyzes, and bolsters diversity and inclusion practices. The report acknowledged that developing action plans for the recommended strategies would not happen immediately. Spokespersons for the work group also told the IRP that they recognize that the 58 strategies need prioritization. However, the report identified several strategies as feasible and practical options to pursue while DTSC leadership evaluates the recommendations. One is to form a Diversity and Inclusion Council comprised of staff members to provide input and oversight on efforts to achieve a sustainable culture of diversity and inclusion. Chief Deputy Director Negri has since invited staff members to apply to join the council.

DTSC reported to the IRP in November 2017 that it considered these recommendations when taking various actions in 2017, including: incorporating diversity and inclusion into state-mandated supervisor/manager training, updating performance appraisals for managers and supervisors to emphasize equal employment opportunity principles, updating onboarding guidance for managers and staff, drafting recruitment and succession plans, and incorporating training and development language in all advertisements.

DTSC Chief Deputy Director Negri has assured the IRP that the report's recommended strategies would be considered for incorporation into the Department's next strategic plan. She also pointed out that several of the recommended strategies integrate nicely with recommendations in the OHA Report, several of which are slated for adoption prior to finalizing the strategic plan.

The IRP applauds DTSC's effort to build a more cohesive and collaborative team and to involve staff members from all levels in this work. The IRP hopes the work group's recommendations are seriously considered, for it agrees with DTSC Environmental Scientist Ky Gress, a member of the Diversity and Inclusion Workgroup, who said at the November 15, 2017 IRP public meeting that "we all can be better" and that "this is an opportunity for DTSC to build bridges."

Both the Organizational Health Assessment and the Diversity and Inclusion Work Group recommendations are expected to inform the Department's next strategic plan, which will replace the 2014-18 plan, *Fixing the Foundation—Building a Path Forward*. The Department currently is working on this new plan and reported to the IRP in October 2017 that it would have a draft by March 2018. DTSC appears to be taking a very systematic, "bottom-to-the-top" approach to its human resource needs. In addition to considering Department-wide recommendations such as those from the Diversity and Inclusion Work Group and the OHA Report, DTSC intends to integrate program-level strategic plans and performance metrics. The plan is to be a living document that can adapt to change as needed.

The IRP applauds this effort and hopes it will be utilized, referred to, and followed to a greater degree than seems to have been the case with the current plan. DTSC reported on its initial implementation of the current plan in a 2014 report entitled *Fixing DTSC's Foundation*, but it has not released comprehensive implementation reports since then, and the plan was not mentioned in DTSC's November 2017 Process Improvements Summary for the Independent

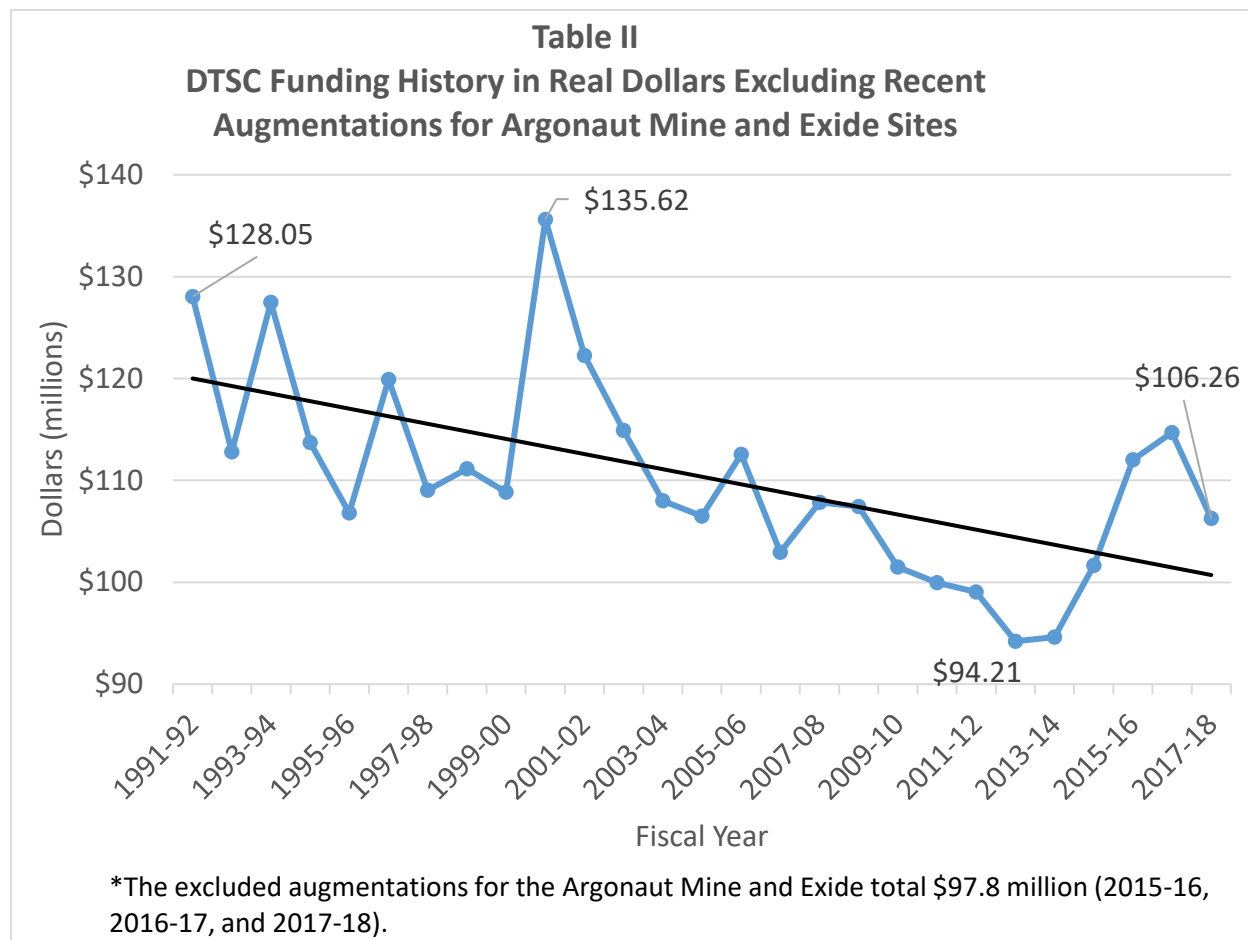
Review Panel (*Appendix B, Fiscal Management Recommendation 1*). The IRP recommends continuous monitoring of the next plan as well as frequent reports on its status, including stakeholder feedback.

**Priority 3:**

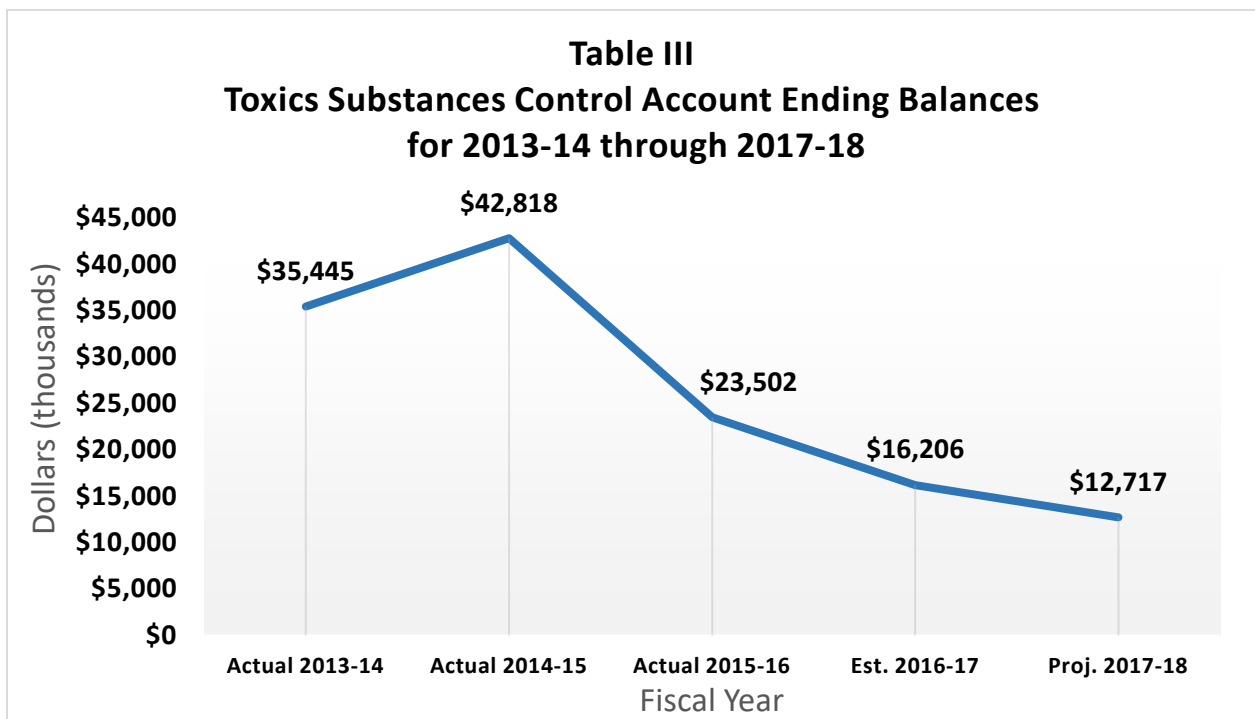
**Stable Fiscal Resources and Addressing Structural Deficits**

Funding in inflation-adjusted dollars has not kept pace with increased responsibilities during DTSC’s existence, and the Department currently faces structural deficits in its two largest funding sources. Funding must be increased and the deficits reduced.

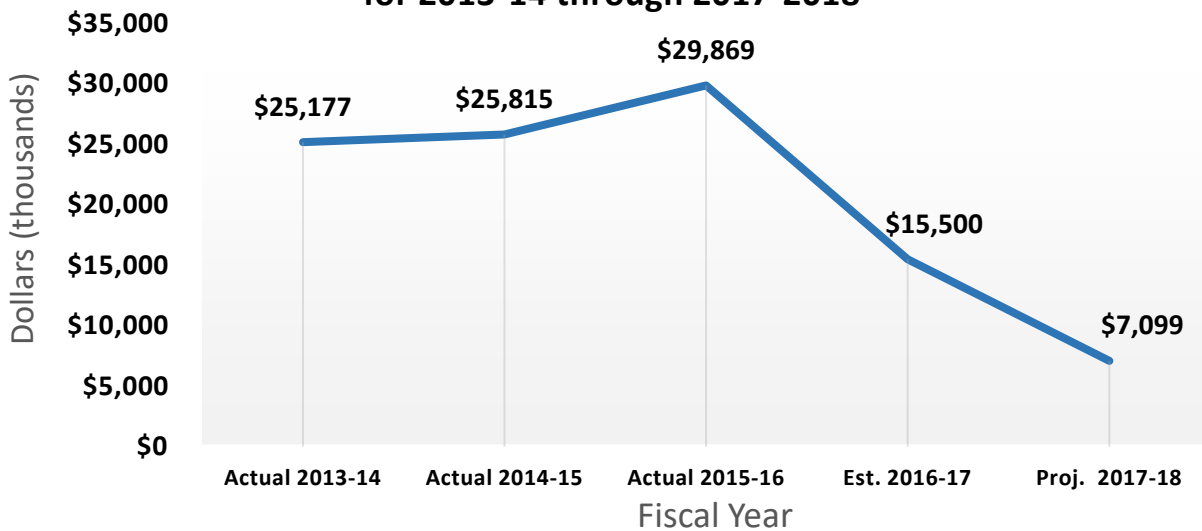
DTSC’s funding has decreased by 17 percent in inflation-adjusted dollars between 1991-92, when the Department was established, and 2017-18, if the recent special budget augmentations for cleanups at the Argonaut Mine Tailings Site in Jackson and the Exide Technologies Site in Vernon are not included (Table II). At the same time, DTSC is faced with many more mandates than it was in 1991-92. The following are examples of additional mandates since 2000: the Electronic Waste Law (2003), the Toxics in Packaging Prevention Act (2003), the Treated Wood Waste Law (2004), the Biomonitoring California Program (2006), the Green Chemistry Law (2007), the Mercury Thermostat Collection Act of 2008, the Lead-Plumbing Monitoring and Compliance Testing Law (2010), the Metal-Containing Jewelry Law (2010), and the Lead-Acid Battery Recycling Act of 2016. The Department has been doing more with less for much of its history.



Moreover, the Department’s two largest funding sources face structural deficits at the present time: the Toxic Substances Control Account (TSCA) and the Hazardous Waste Control Account (HWCA). TSCA funds cleanup programs and the Safer Consumer Products (SCP) Program, among other programs and services. HWCA funds hazardous waste permitting, compliance and enforcement, corrective action, hazardous waste technical assistance and tracking, and the Environmental Chemistry Laboratory, among other programs and services. In its 2014 report on the initial implementation of DTSC’s current strategic plan, the Department reported that TSCA and HWCA had healthy fund balances after facing a structural imbalance in 2011 and correcting it by eliminating positions and reducing operating expenditures. Unfortunately, the accounts are once again in structural deficit, with depleted reserves. This problem is expected to continue, based on projected revenues and expenditures. It requires immediate attention from the Governor and the Legislature, beginning with the 2018-19 budget. Table III and Table IV show the fiscal year-ending balances for the two funds from 2013-14 to the current fiscal year.



**Table IV  
Hazardous Waste Control Account Ending Balances  
for 2013-14 through 2017-2018**

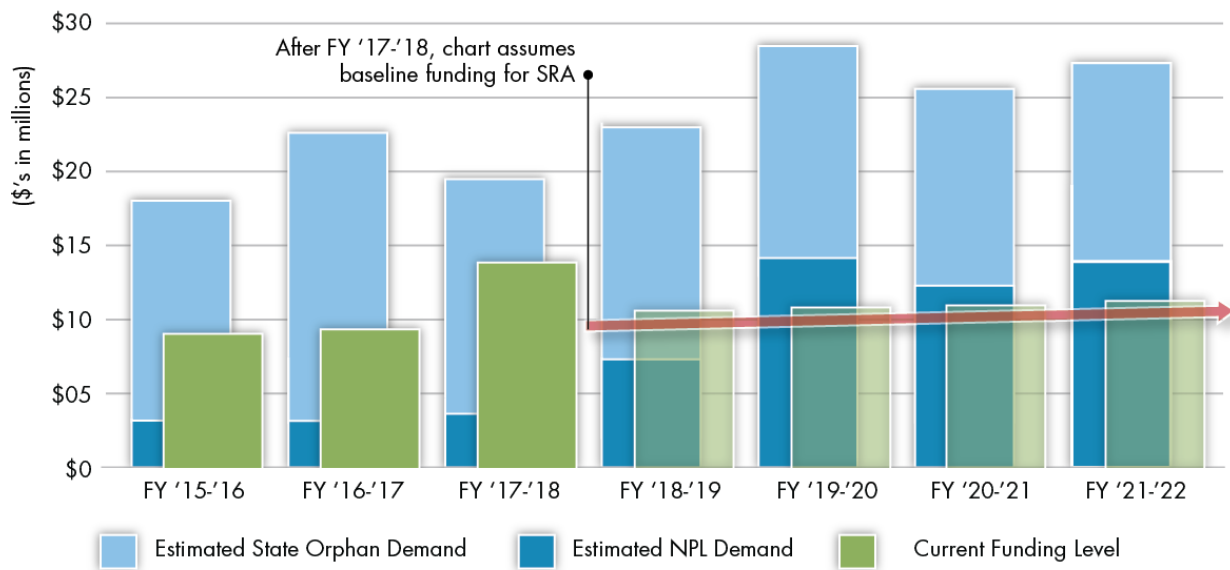


Of particular concern is the shortfall in the Site Remediation Account (SRA), which is funded by TSCA. The IRP expressed a concern in several of its reports about projected shortfalls in this account, which is used for direct remediation costs on federal Superfund Orphan sites and state Orphan sites. This money had been appropriated annually according to a fixed formula that resulted in a 2016-17 appropriation of approximately \$10.5 million. However, beginning in 2018-19, the cost of Superfund Orphan site commitments is expected to exceed the SRA appropriations that would result from the formula, leaving no money for state Orphan site cleanups (Table V). AB 2891 (Chapter 704, Statutes of 2016) consequently expressed the intent of the Legislature to appropriate sufficient funds to the SRA in future budgets and required DTSC to include the estimated costs for direct site remediation in a report submitted to the Legislature with the Governor’s proposed budget each year. To meet DTSC’s estimated needs for 2017-18, the Legislature approved an augmentation of \$3.7 million in penalty revenues from funds administered by other state agencies: the Department of Pesticide Regulation Fund, the Air Pollution Control Fund, and the Waste Discharge Permit Fund. This was a creative and welcome solution, but challenges to the SRA will increase in future years. In its January 28, 2016 report, the IRP recommended that DTSC’s SRA funding be increased to address the projected shortfalls (*Appendix A, Budget Recommendation 2*). In its April 21, 2017 report, the IRP asked DTSC to submit its required report on the estimated costs for direct site remediation on a timely basis. The Department released its first such report in May 2017 (*Appendix B, Site Mitigation Recommendation 8*).

**Table V**

# Federal Superfund Demands Compete with Orphan Site Cleanups\*

NPL/ORPHAN DEMAND - STABLE FUNDING LEVEL



\*Excludes legacy landfills

Source: DTSC 2016 Programs and Accomplishments Report

To lessen pressure on the HWCA account and address the true cost of processing permit applications, the 2016 Budget Act eliminated the flat fee option for applicants. Prior to this change, they had the option of paying either a flat fee or a reimbursement fee for the actual costs of reviewing the applications. Most chose the former. The regulated community, however, has expressed its unhappiness with the service fee requirement and a belief that it is too open-ended in favor of DTSC. One representative of a U.S. military hazardous waste facility recently asserted to the IRP that application costs had increased tenfold as a result and that the increased costs would force more facilities to close. The IRP supports full cost recovery for permit decisions (*Appendix A, Permitting Recommendation 3*). However, the IRP also recommended that applicants be given a reasonable assurance of costs and that a mechanism be created to hold DTSC accountable for those assurances, even in fee-for-service scenarios (*Appendix A, Permitting Recommendation 9*). There has been no legislative proposal to date that would address this recommendation.

AB 245 (Chapter 499, Statutes of 2017), which became effective on January 1, 2018, also may lessen pressure on the HWCA by increasing penalty revenues. This measure increased administrative and civil penalties for violations of hazardous waste control law. In its July 26, 2016 report, the IRP had recommended that the maximum penalties for violations of HSC section 25189 be increased (*Appendix A, Enforcement Recommendation 3*).

### **Funding Affects Performance**

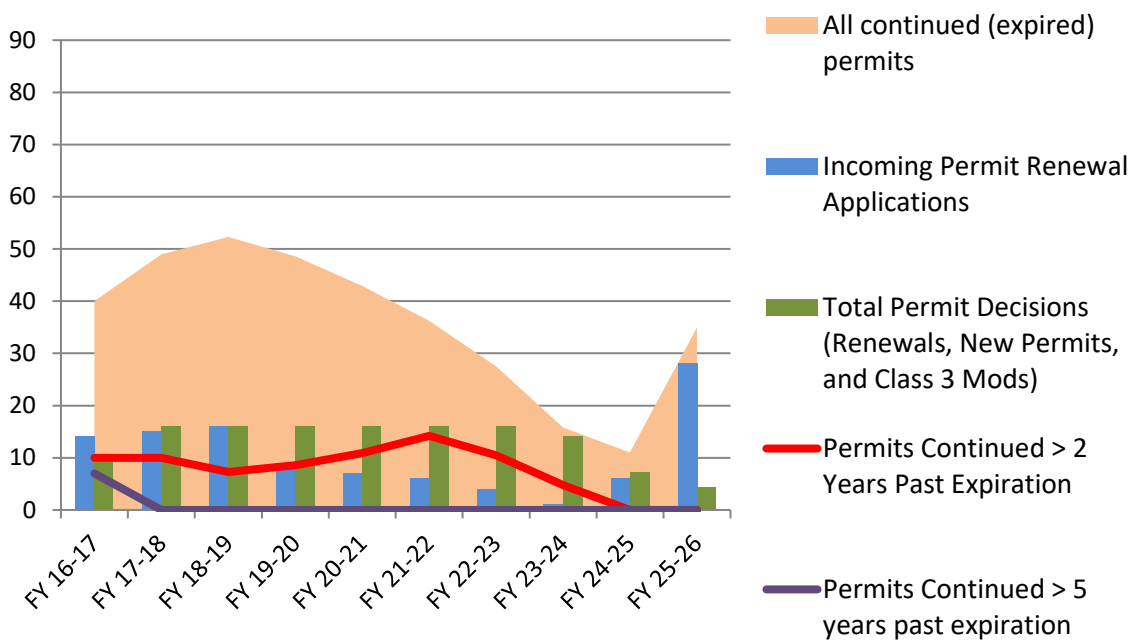
The IRP finds a clear connection between funding and performance with DTSC programs. The following examples are taken from programs the IRP reviewed:



**Permitting**—DTSC faced a serious backlog in permit applications as well as a large number of facilities that had not received a cost estimate review in more than five years when, in 2014, it requested eight two-year positions plus funding for the Permitting Division and five two-year positions plus funding for the Permitting Enhancement Work Plan. It had only made four permit decisions in 2013-14, had a backlog of 24 continued (expired) permits, and was expecting the backlog to grow during the next few years. It had only conducted four cost estimate reviews for closure or post-closure at permitted facilities in 2013-14, and at the end of that fiscal year, 40 cost estimates were identified that had not been updated in five years or more. DTSC received the requested positions and funding. It subsequently received 16 two-year positions plus funding for the Permitting Division in 2015, the conversion of eight limited-term positions to permanent status in 2016, and 15 permanent positions along with funding that same year. The 2016 allocations addressed a recommendation in the IRP’s April 21, 2016 report to fund positions sufficient to make 16 permit decisions per year and process 90 percent of decisions in a two-year period or less (*Appendix A, Permitting Recommendation 5*).

Permit decisions per fiscal year increased after 2013-14. There were eight in 2014-15, 12 in 2015-16, and nine in 2016-17. Going forward, DTSC projects 16 decisions per year at current staffing levels. Table VI shows that the projected decisions would gradually reduce the backlog of continued permits until 2024-25, when there would be no permits past expiration for more than two years.

**Table VI  
Total Permit Decisions and Volume of Continued Permits  
at Current Staff Levels Approved in 2016-17**

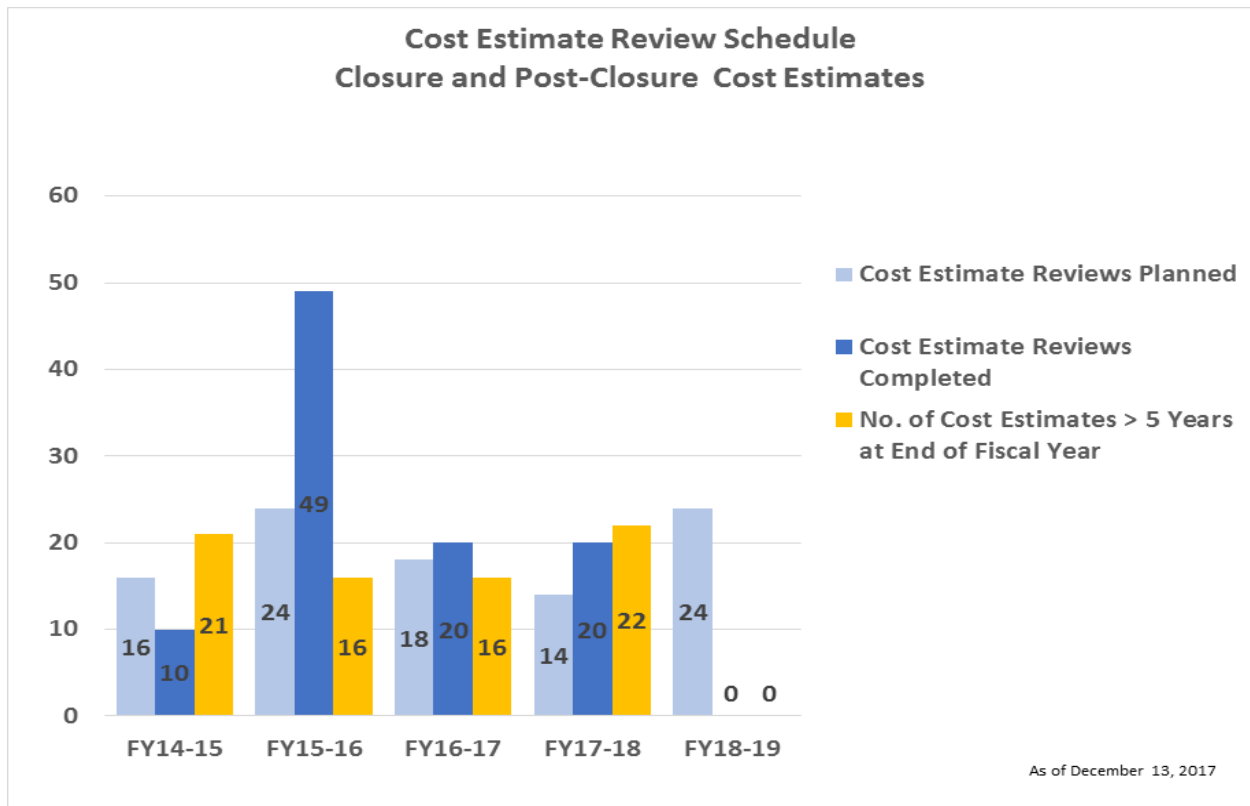


To further speed up the permitting process, the IRP recommended that DTSC be required to respond within reasonable time periods to hazardous waste permit application submittals, to require applicants to submit application information on a timely basis, and to establish

accountability mechanisms, such as deemed approval of the submitted information or the initiation of permit denial proceedings, if these event deadlines are not met by DTSC or the applicant. This recommendation has not yet been adopted. AB 248 (Reyes) of 2017 would have partially addressed this, but it was vetoed (*Appendix A, Permitting Recommendation 7*). In his veto message, Governor Brown stated, among other things, that “adding new responsibilities to the Department must be undertaken holistically while considering resources and funding available.”

Cost estimate reviews also increased after 2013-14. There were 10 completed in 2014-15, 49 in 2015-16, and 20 in 2016-17. DTSC projects 20 in 2017-18 and 24 per year beginning in 2018-19. If this can be accomplished, DTSC would reduce to zero the number of cost estimates older than five years by 2018-19. See Table VII.

**Table VII**



DTSC is not required to review a permitted hazardous waste facility’s financial assurances every five years, but the IRP believes it should be, and the Panel made that recommendation in its April 21, 2016 report. AB 1205 (Gomez) of 2015 was amended on June 20, 2016 to require the Department to review the assurances every five years, but the bill received no further action in the Senate Environmental Quality Committee. The July 12, 2017 version of AB 245 (Quirk) of 2017 would have required DTSC to review, at least once every five years, the financial assurances required to operate a hazardous waste facility and the cost estimates used to establish the amount of financial assurances required. However, these provisions were subsequently removed from the bill. (*See Appendix A, Permitting Recommendation 6.*)

In 2015-16, DTSC’s Permitting Division set short- and long-term goals and metrics to evaluate its performance. The IRP borrowed from them in recommending performance metrics for

permitting. DTSC met many, but not all, of the short-term metrics in 2016-17 and demonstrated that performance is moving in a positive direction towards the long-term goals. (See *Appendix C, Permitting Recommended Performance Metrics 1-8.*)

**Enforcement**—The IRP noted in its July 2016 report that DTSC met its federal inspection targets and came close to meeting its state inspection commitments and targets in 2015-16. The Enforcement and Emergency Response Division (EERD) is likely to improve on this record as a result of a 2015-16 budget augmentation for 11 two-year positions and funding to improve the efficiency and effectiveness of the hazardous waste Enforcement Program and conduct a statewide community assessment to increase program transparency and public accessibility. These positions expire on July 1, 2018. This effort resulted in the creation and implementation of an Enforcement Improvement Plan. DTSC also received important budget augmentations for 3.5 two-year positions and funding for hazardous waste manifest error correction in 2014-15 and 11 three-year positions plus funding for enhanced inspections of hazardous waste transporter and metal recycler inspections in vulnerable communities in 2015-16. The IRP's recommended performance metrics show improved results for the work of both EERD and the Office of Criminal Investigations in 2016-17 (*Appendix C, Enforcement Recommended Performance Metrics 1-5*). For this work to continue, sufficient resources and accountability are needed.

The IRP recommended in its July 26, 2016 report that inspection frequencies be placed in statute for permitted hazardous waste treatment, storage, and disposal facilities as well as hazardous waste generators (*Appendix A, Enforcement Recommendation 1*). AB 1179 (Kalra) of 2017 would have required DTSC to adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage and disposal facilities, hazardous waste generators, and hazardous waste transporters. AB 1179 also would have required the inspection frequency for a hazardous waste land disposal facility to be no less than two times per calendar year and, for any other permitted hazardous waste treatment, storage, or disposal facility, no less than once per calendar year. However, the bill was vetoed. The Governor's veto message, like his veto message for AB 248, stated that "adding new responsibilities to the Department must be undertaken holistically while considering resources and funding available."

**Public Outreach**—DTSC received six permanent positions and funding to create an Office of Environmental Justice and Tribal Affairs in the 2016 Budget Act. The IRP supported this proposal (*Appendix A, Budget Recommendation 4*). It is too soon to evaluate the achievements of this office, but community representatives seem unanimous in appreciating the fresh energy of these employees as well as many new hires in the Office of Public Participation. The IRP recommended additional funding for the newly established Office of Public Participation, which was created as a stand-alone office by the 2016 Budget Act, for sufficient staff necessary to adequately address all of DTSC's public outreach needs (*Appendix A, Public Outreach Recommendation 2*). This recommendation has not yet been adopted. The IRP also recommended an increase in the number of staff members in both the Office of Public Participation and Office of Communications to better engage stakeholders throughout all phases of contentious site mitigation projects, especially the early phases (*Appendix A, Site Mitigation Recommendation 4*). This recommendation also has not yet been adopted.

**Site Mitigation**—DTSC has received additional resources in recent years that it put to productive use in improving its recovery of cleanup and oversight costs (response costs) from responsible parties. In 2014, DTSC received a budget augmentation for 14 two-year positions plus funding to evaluate and act on a backlog of unbilled/uncollected costs for site cleanup work dating back to the 1980s and to ensure timely billing and collection of future cost-recoverable expenditures. The 14 limited-term positions expired on July 1, 2016, but DTSC redirected five positions to ensure that its cost recovery efforts would be adequately supported going forward. The IRP believes, however, that these five positions should be funded as new positions and not as redirected ones, because other DTSC programs may have suffered when the positions were redirected. The IRP made this recommendation in January 2017 (*Appendix A, Fiscal Management Recommendation 2*). This recommendation has not yet been adopted. DTSC also received a budget augmentation in 2016 for two permanent positions and funding to implement expanded information request authority pursuant to AB 276 (Chapter 459, Statutes of 2015), which allows the Department to require a potentially responsible party to provide information on ability to pay for a response action. By recovering response costs with improved fiscal management, DTSC protects California taxpayers, who ultimately pay for the remediation of contaminated properties when responsible parties do not.

The IRP recommended in its April 21, 2017 report that DTSC be required to conduct five-year reviews of all long-term cleanup remedies for as long as the hazardous substances remain at a site above levels that allow for unlimited use and unrestricted exposure. (*Appendix A, Site Mitigation Recommendation 5*). A budget augmentation would probably be needed if the Legislature were to adopt this recommendation.

DTSC's Site Mitigation Program will be less than successful without significant financial attention going forward. This report has already highlighted expected future shortfalls in the SRA that will impact state Orphan site cleanups if not addressed. The massive residential cleanup near the Exide site may require additional funding as well.

In March 2015, DTSC amended its November 2014 enforcement order with provisions for closing the Exide facility, including requirements for specific financial assurances for closure, on-site corrective actions, and industrial and residential off-site corrective action. Testing that year revealed that an area with an approximately 1.7-mile radius from the Exide facility, including about 10,000 properties, may be contaminated by lead from the facility. Because of concerns about the harmful effects of lead contamination in the surrounding community, the state began residential cleanup immediately.

In August 2015, the Legislature approved \$7 million of emergency funding from the TSCA to test approximately 1,000 properties, develop a cleanup plan, and begin cleanup of 50 of the highest priority sites. In early 2016, the Governor requested, and the Legislature approved, a \$176.6 million loan from the General Fund to TSCA that will be available to DTSC until June 30, 2018 to expedite sampling and cleanup in the surrounding community. In its April 21, 2016 report, the IRP recommended legislative support for the proposed loan appropriation and prioritization of the residential cleanup based on mapping data on metal levels in blood and soil (*Appendix A, Site Mitigation Recommendations 1 and 2*).

DTSC initiated cleanups of a limited number of properties posing the highest risk under Time-Critical Removal Action guidance in March 2017. DTSC approved the Removal Action Plan

(Cleanup Plan) and Environmental Impact Report in July 2017. In its April 21, 2017 report, the IRP had recommended that DTSC approve and certify the plan and report by July 1, 2017 (*Appendix B, Site Mitigation Recommendation 5*). As of November 2017, DTSC had taken soil samples from 8,345 properties and 262 properties had been remediated.

The funding is expected to allow for the sampling of approximately 10,000 sensitive, land-use properties and the cleanup of 2,500 properties with the highest concentrations of lead and the greatest potential risk to sensitive individuals within the approximately 1.7-mile radius, now known as the Preliminary Investigation Area. This includes the cleanup of daycare centers and child care facilities, parks, and schools with a representative soil-lead concentration of 80 parts per million (ppm) or higher that have not yet been cleaned up. This is the screening level set by the Office of Environmental Health Hazard Assessment for lead in residential soils. It also includes the cleanup of residential properties with a representative soil-lead concentration of up to 400 ppm if any soil sampling result of 1,000 ppm is detected. 400 ppm in bare soil in children's play areas or a 1,200-ppm average for bare soil in the rest of the yard is the U.S. EPA standard.

Additional funding may be needed if more than 2,500 properties are found to be contaminated above the cleanup goals. The enforcement order, as amended, preserved DTSC's rights against Exide for the off-site cleanup. DTSC also may, if approved by the Legislature, be able to use revenue from The Lead-Acid Battery Recycling Act of 2016, AB 2153 (Chapter 666, Statutes of 2016). AB 2153 could raise up to \$26 million per year for remediation of sites contaminated by battery recycling operations. Ultimately, DTSC asserts that it will hold Exide and any other responsible parties accountable for the costs of cleaning up the contamination. If a corrective action trust fund or funds do not have sufficient assurances to complete all of the required work, DTSC may direct the transfer of funds deposited from the corrective action trust fund for which work has been completed to a corrective action trust fund for which funding is insufficient to complete the entire work, but that amount is more than likely to be less than the budget augmentations.

To protect the state from being placed in a similar position by another permitted facility, the IRP recommended that adequate financial assurances be set aside for corrective action for existing hazardous releases as part of the permitting process. The introduced version of AB 245 of 2017 (Quirk) addressed the issue of financial assurances for corrective action, but the relevant provisions were subsequently removed from the bill (*Appendix A, Permitting Recommendation 1*).

**Consumer Products**—DTSC's innovative SCP Program has built a strong foundation for the state's green chemistry goals. However, it will have to "scale up" if it is to address the categories of chemical-product combinations covered in its first Priority Product Work Plan or make a noticeable impact on the state's toxic waste stream. This would require significantly more resources. The IRP recently asked the Legislature to periodically review the program's progress and provide necessary resources, including determining to what extent a service fee is needed, to fully fund the program (*Appendix A, Consumer Products Recommendation 1*).

**Source Reduction**—DTSC's source reduction results fell short of hopes going all the way back to the passage of the Hazardous Waste Source Reduction and Management Review Act of 1989. Beginning in 2012, DTSC de-emphasized pollution prevention and source reduction programs in

favor of its then promising Green Chemistry Initiative and because of the state's fiscal challenges at that time. The IRP believes that DTSC and the Certified Uniform Program Agencies (CUPAs) should do a better job of encouraging generators to reduce hazardous waste. Therefore, the IRP recommended that the Legislature and the Governor investigate strengthening the requirement in HSC section 25244.18 for generators to implement their source reduction reviews and plans (*Appendix A, Source Reduction Recommendation 2*). The IRP also asked DTSC to ensure that Department-provided training and resources are given to all CUPAs to assist them in evaluating large-quantity generator source reduction evaluation reviews and plans (*Appendix B, Source Reduction Recommendation 3*). These recommendations, if adopted, would require additional resources.

### **Cost Recovery Efforts**

DTSC has made significant strides in resolving its outstanding response costs, which the Department is authorized and required by HSC section 25360 to recover, from responsible parties and project proponents. This has been DTSC's biggest fiscal management issue in recent years.

On May 31, 2013, DTSC publicly disclosed that its unrecovered response costs were \$184.5 million at 2,700 sites for the 25-year period from July 1987 through December 2012. This was about 10 percent of the total response costs during those years. The Department concluded that its past cost recovery efforts were impeded by various factors, including a lack of updated cost recovery policies and procedures, technological infrastructure limitations, inadequate staff communication, and the higher priority necessarily given to cleanup. DTSC issued 27 departmental procedure memorandums (DPMs) in November 2013 to address the lack of updated cost recovery policies and procedures. Employee training on the procedures began in the spring of 2014.

A report by the California State Auditor concluded on August 7, 2014 that long-standing shortcomings with the Department's recovery of costs had resulted in millions of dollars in unbilled and billed, but uncollected, cleanup costs dating back to 1987. The report noted that the Department's spreadsheet for tracking projects with outstanding costs as of March 2014 showed that it had over 1,600 projects totaling almost \$194 million in outstanding costs, of which nearly \$142 million were unbilled, and almost \$52 million were billed but uncollected. It stated that problems with inadequate procedures, incomplete documentation, and misclassification of sites was so pervasive that the Department had not yet determined the exact amount it could recover. Furthermore, it stated that DTSC possibly would not be able to recover all its outstanding costs due to factors such as the expiration of federal and state statutes of limitations for project cost recovery and projects that were in litigation or bankruptcy.

The report observed that DTSC had made progress in resolving its outstanding costs, updating its procedures, and training its staff, but it nevertheless made several recommendations for additional improvements. Two of those recommendations were directed at the Legislature, and nine were aimed at DTSC. The Legislature addressed the State Auditor's recommendations by passing AB 276, mentioned above, and AB 273 (Chapter 456, Statutes of 2015). The latter increased the interest rate for late payments. The two measures are expected to help increase the collection rate, which had been about 80 percent according to the Department. DTSC reported at the November 16, 2016 IRP meeting that it had fully implemented all nine of the

recommendations for Department action to maximize opportunities to recover costs, to improve the accuracy of the outstanding costs in its billing system, and to ensure that it enters accurate billing data into its billing system.

In July of 2014, DTSC began implementing two cost recovery work plans. One of them, EnviroStor Enhancements for Cost Recovery, was to incorporate cost tracking code request and closeout processes into the Department's EnviroStor data system. The other plan, Sustainable Cost Recovery Systems, was to maximize the recovery of DTSC's response costs by implementing sustainable systems for cost recovery management, DPM updates, policy development, and training. DTSC reported to the IRP in November 2016 that it had addressed the objectives of the work plans—with two exceptions. One was to transfer the Department's billing activities to FI\$Cal, the state's financial information system. In January 2015, the FI\$Cal program office informed DTSC that its system would be unable to meet the unique accounts receivable billing functions of the Department's Cost Recovery Billing System (CRBS). DTSC, therefore, is pursuing improvements to its CRBS to make it compatible with FI\$Cal. DTSC reported at the IRP's October 25, 2017 meeting that it was in the third phase of a complex conversion to new billing system technology that is not expected to go online until January of 2021 (*Appendix B, Fiscal Management Recommendation 6*). The second unfulfilled objective was to use staff input, lessons learned, evolving organizational structure, and assessed priorities to update the DPMs. Although DTSC completed updates to five DPMs in February 2015, it delayed other DPM updates to allow for data systems and processes to further develop and to focus on reducing the historic backlog of unreimbursed response costs. DTSC reported at the IRP's November 15, 2017 public meeting that it was on track to finish the remaining 22 updates and create at least one additional DPM by January 2018 (*Appendix B, Fiscal Management Recommendation 3*).

DTSC reported to the IRP on November 16, 2016 that it had fully addressed 87 percent of the 1,621 backlogged sites and had fully evaluated the remaining 13 percent (211 sites). DTSC also reported that it had recovered roughly \$6.9 million of the \$90 million in costs from the 1,410 addressed sites. The unrecovered costs included write-offs, data corrections, and the results of settlement agreements. In its November 2017 Process Improvements Summary for the Independent Review Panel, DTSC reported that it had reduced the unaddressed sites from the 211 to 165. The status of the unaddressed sites was as follows: 66 were undergoing advanced searches for potentially responsible parties, insurance policies, or active negotiations with responsible parties; 58 were pending formal documentation or discovery of source contamination or waiting for U.S. EPA resolution as the lead agency; and 41 were in pending or active litigation, settlement, or bankruptcy proceedings.

The IRP asked DTSC to track cost recovery in all program areas, and the Department reported that it collected 96 percent of billed costs for HWCA and 97 percent of reimbursements for TSCA between July 1, 2016 and March 30, 2017 (*Appendix C, Fiscal Management Recommended Performance Metric 1*). The IRP asked DTSC to calculate the percent of cleanup costs that were not billed, and the Department reported that it billed 99.5 percent of costs incurred for HWCA and 98.9 percent of costs incurred for TSCA during that same period (*Appendix C, Fiscal Management Recommended Performance Metric 2*). The IRP asked DTSC to measure how often it fails to issue invoices on a quarterly basis for cleanup oversight costs, and the Department reported that it issued all invoices on a quarterly billing cycle consistent with the statutory

requirements during 2016-17 (*Appendix C, Fiscal Management Recommended Performance Metric 3*).

DTSC must, and is, improving on its history of recovering costs from responsible parties and project proponents. At the same time, however, the Department's billing procedures must be fair and clear. Business organizations, responsible parties, and project proponents have alleged to the IRP that DTSC's billing procedures result in invoices lacking justification, explanation, and transparency, leading to unnecessary disputes. They assert that DTSC frequently fails on a timely basis to engage in the meet-and-confer process before a new phase of cleanup activity, to provide cost estimates for cleanup work that DTSC expects to perform, to submit invoices, and to respond to billing disputes. They maintain that DTSC's indirect cost rate is too high and that the Department should seek public comment during the rate-setting process. They believe that DTSC often bills parties for the time it devotes to addressing fee disputes and that this practice should be prohibited if certain thresholds are met. Finally, they assert that when invoices are disputed, the billing department is not advised to halt interest charges for any unpaid amounts subject to the dispute.

At the November 16, 2016 IRP meeting, DTSC representatives acknowledged that the Department's invoices do not have as much detail as they ideally should have and that DTSC continues to evaluate its billing processes. However, they affirmed that billing disputes amount to a small portion of the Department's overall billing (28 formal disputes from approximately 4,000 invoices in 2015), that the Department is diligent about resolving them in a timely manner (an average of 30 days to resolve "typical" formal disputes), that it does not charge for staff time spent on dispute resolution, and that it waives accumulated interest if a dispute is found valid. DTSC reported to the IRP in September 2017 that the average number of days to resolve formal cost recovery billing disputes dropped from 42 days in 2015-16 to 19 days in 2016-17 (*Appendix C, Fiscal Management Recommended Performance Metric 5*). DTSC reported to the IRP in September 2017 that the percentage of cost recovery invoices that were formally disputed was 1.6 percent in 2015-16 and 2.3 percent in 2016-17 (*Appendix C, Fiscal Management Recommended Performance Metric 6*). The IRP asked DTSC to calculate the percentage of estimates required by HSC section 25269.5 that underestimate the total actual hours incurred in the next phase of site mitigation activity per year, but DTSC does not have an automated process for making this calculation. However, DTSC plans to implement the metric in 2018 with a process that will require project managers to periodically evaluate their estimates by comparing them against actual hours spent, and to adjust accordingly (*Appendix C, Fiscal Management Recommended Performance Metric 4*).

In its January 20, 2017 report, the IRP suggested that the Governor and the Legislature consider whether to amend HSC section 25269.5 to establish deadlines for the meet-and-confer process, including the preparation of cost estimates for the next phase of the site remediation activity, and a procedure for the resolution of cost estimate disputes. This recommendation has not yet been the subject of a legislative proposal (*Appendix A, Fiscal Management Recommendation 1*). The IRP's January 20, 2017 report also made several recommendations for DTSC to improve cost recovery. They were as follows: (1) continue to reduce and report the status of the 211 sites from the historic backlog of sites with unreimbursed response costs that had not yet been the subject of all possible action as of November 16, 2016; finish all DPM updates and drafting of new DPMs called for in DTSC work plans by January 2018; provide responsible parties with a clear and understandable explanation of indirect costs, and periodically evaluate the



percentage of direct to indirect costs against other state agencies to ensure consistent accounting; (4) make sure fees charged are adequate, and recommend increases to the Governor and Legislature if they are determined to be inadequate; and (5) closely monitor the development of the new billing system that will replace DTSC's current archaic and unsupported system (*Appendix B, Fiscal Management Recommendations 2-6*).

### **Concluding Observations on Funding and Cost Recovery**

If DTSC does not have appropriate resources to execute its mandates, the health of Californians and the state's environment will suffer. Recent investments made by the Governor and Legislature have made a difference. DTSC programs are performing well and getting better. Recent budget appropriations for the Department have played a strong role in this, although efficiency improvements and an overall culture of change have been important as well. DTSC especially deserves credit for its considerable work in addressing very serious and long-standing problems with the recovery of its response costs. The Department has a much better handle on its cost recovery than it did a few years ago. Still, much work remains to be done with many of DTSC's programs, and continued attention is needed. The structural deficits in the Department's two major accounts demand immediate attention. Several programs need additional funding, especially the Orphan site cleanups, the Exide residential cleanup, and the SCP Program.

### **Priority 4:**

#### **Increased Transparency and Accountability**

Transparency and accountability at the Department should be important priorities for the Governor and the Legislature. They are necessary to provide evidence of the continuation of DTSC's recent improvements and assurances that resource allocations have been good investments. Transparency and accountability are also necessary to monitor DTSC's ongoing initiatives and decision making on projects such as Exide.

### **Public Outreach and Environmental Justice**

The Department has been working on improvements to its public engagement efforts since at least late 2013/early 2014, when an internal assessment identified key areas for improvement. DTSC contracted with the UC Davis Extension Collaboration Center in 2015 for support in modernizing its public outreach and engagement strategy for impacted communities, and the Department released the center's recommendations on January 31, 2017. The Office of Public Participation is currently developing a plan to implement the recommendations in a way that reflects available funding and resources as well as legislative and regulatory requirements. This Public Engagement Work Plan is expected to reflect the recommendations selected for implementation, along with separately developed initiatives.

In its January 28, 2016 report, the IRP recommended that DTSC begin implementing the center's recommendations by January 1, 2017 (*Appendix B, Public Outreach Recommendation 1*). In its October 24, 2016 report, the IRP recommended that DTSC finalize its Public Engagement Work Plan by December 31, 2017 (*Appendix B, Public Outreach Recommendation 8*). The work plan was scheduled for completion by that date.

The Office of Public Participation is not waiting for the work plan to develop and implement improvements. It is currently testing an Enhanced Community Assessment Model to help project managers and public participation specialists customize a public engagement approach

based on the level of community interest for any project. It is working on enhanced performance metrics. It is working on an update of the Public Participation Manual. It plans to revise DTSC's guidance for community advisory groups (CAGs) by March 2018. With the Office of Environmental Justice & Tribal Affairs, the office is working on an enhanced work flow process to involve communities earlier in permitting decisions. With the Office of Communications, it plans to complete a "people's guide" by March 2018 to provide information on DTSC, its processes, and available resources.

As discussed under Priority Three, the IRP has recommended increased staffing and more resources for the Office of Environmental Justice & Tribal Affairs, the Office of Public Participation, and the Office of Communications. A recommendation to accomplish this for the Office of Environmental Justice & Tribal Affairs was adopted in the 2016 Budget Act, but recommendations for additional funding or staffing for the other two offices have not yet been adopted (*Appendix A: Budget Recommendation 4, Public Outreach Recommendation 2, and Site Mitigation Recommendation 4*).

In its October 24, 2016 report, the IRP recommended that DTSC finalize the Public Participation Manual update by December 31, 2017 (*Appendix B, Public Outreach Recommendation 8*). DTSC currently expects to finalize it by February 28, 2018. In the same report, the IRP recommended to the Governor and the Legislature that they consider amendments to the HSC to address CAG transparency, conflicts of interest, funding, funding disclosure, membership, and technical expertise (*Appendix A, Public Outreach Recommendation 3*). This recommendation has not yet been the subject of a legislative proposal.

In its April 21, 2017 report, the IRP recommended that Level 4 data packages for site mitigation analyses and decisions be provided to the public upon request. DTSC responded that it provides data packages and sampling reports to the public in response to Public Records Act requests after reviewing the data for quality assurance and redacting it to protect privacy (*Appendix B, Site Mitigation Recommendation 3*). The Panel also suggested that the Department develop written procedures to give stakeholders the opportunity to be informed and participate during the implementation of remedy decision documents. DTSC responded that it has written procedures for such public participation (*Appendix B, Site Mitigation Recommendation 4*).

An agreement between DTSC, CalEPA, and two community organizations to resolve a civil rights complaint about the Department's 2014 decision to approve a permit to expand the Chemical Waste Management Inc. facility in Kettleman Hills, announced on August 10, 2016, was an important step in the direction of transparency and accountability. In addition to provisions intended to improve public health and environmental quality for people in Kettleman City, the agreement sought to enhance the transparency and rigor of DTSC's compliance with civil rights laws. DTSC pledged to develop civil rights and language access policies, with input from community stakeholders. DTSC released its draft policies on September 25, 2017 and a draft Civil Rights Implementation Plan on November 2, 2017. DTSC said it hoped to finalize the documents by December 31, 2017.

DTSC has reported that the Office of Environmental Justice & Tribal Affairs is working with the Permitting Division to consult with communities and tribes and develop environmental justice analyses early in the permit application or renewal process. In a related recommendation made in the January 28, 2016 IRP report, the Panel asked the Governor and the Legislature to fund

technical assistance grants to allow public participation before a draft permit is prepared. This would make permitting decisions more transparent to communities. AB 1400 of 2015 would have required DTSC to grant a request from a member of the public for such a grant if the Department received it within one year of the submission of the permit application. However, the bill was not successful (*Appendix A, Permitting Recommendation 4*).

DTSC currently has a 42-member team for the residential cleanup at the Exide site. This Exide team operates out of DTSC's headquarters office in Sacramento and regional offices in Sacramento, Chatsworth, and Commerce. The Commerce Regional Office, which is only about 16 miles from the former Exide facility, opened in September 2017. The team includes nine public participation or environmental justice specialists who have been involved in efforts to get sampling access agreements, conduct various outreach activities, and assist with job readiness training programs. The IRP believes this work is an opportunity for DTSC to gain experience with updated public participation practices that could be replicated elsewhere.

Related to this observation, the IRP recommended to DTSC that it build on what it learns from the Exide cleanup by: (1) establishing long-term relationships between public outreach staff members and communities; and (2) encouraging the hiring of bilingual public outreach staff members who are from those communities or live near them. DTSC responded to this recommendation by noting that the Office of Public Participation and the Office of Environmental Justice & Tribal Affairs have established an ongoing practice of hiring bilingual staff members who are from, or live near, the communities they serve (*Appendix B, Public Outreach Recommendation 9*).

In addition to maintaining its improved dialogue with communities, the IRP believes DTSC should use surveys and other methods to measure community satisfaction of its public outreach, and it made recommendations to that effect. (*See Appendix C, Public Outreach Recommended Performance Metric 1.*) DTSC responded that it currently conducts mandated as well as nonmandated surveys to understand stakeholder needs, but public satisfaction and outreach surveys are also under development and will be reflected in a Public Engagement Work Plan that was expected to be completed by December 31, 2017.

### **Technology**

A cutting-edge website is critical for transparency in a public agency. The IRP heard complaints early on from members of the public about the EnviroStor portion of the website. EnviroStor is DTSC's online search and geographic information system for its permitting, enforcement, and cleanup activities, consisting of a secure system for internal use as well as a public interface. The complaints had to do with user-friendliness, accuracy, and updating. The IRP responded by directing several recommendations to EnviroStor (*Appendix B, Permitting Recommendations 3, 4, and 5; Enforcement Recommendation 6; Public Outreach Recommendations 3, 4, 5, and 7; and Site Mitigation Recommendation 2*). DTSC launched an enhanced EnviroStor Public Website in September 2017. The enhancements include the incorporation of CalEnviroScreen 3.0 data, improved search tools and layout for ease of access, and enhanced navigation for finding reports. In addition to system enhancements, the Department updated policies regarding the uploading of documents to make it easier for staff. Several of the IRP's recommendations have been implemented, and most of the others are under consideration or in progress.

The IRP also observed that other sections of the website needed content and organizational improvements as well as more meticulous updating. The IRP recommended, for example, that DTSC regularly update frequently asked questions and other information on specific site mitigation projects and indicate the date of the last update on website pages. DTSC responded that it continues to evaluate and prioritize improvements to the website and will implement the recommendations based on available resources (*Appendix B, Site Mitigation Recommendation 9*). In another example, the IRP recommended that DTSC update its website to reflect the status of the Pollution Prevention and Green Technology programs. DTSC has since made improvements to that website section and is working on additional upgrades (*Appendix B, Source Reduction Recommendation 2*).

DTSC's Office of Environmental Information Management (OEIM) is charged with delivering the on-time, high-quality, and secure information technology (IT) services for DTSC's programs that are crucial in achieving more transparency and accountability. IT is a quickly changing industry that requires highly skilled employees and significant investments in computer hardware and software. DTSC reported in its Process Improvements Summary that California's state agencies are faced with outdated personnel rules that restrict the ability to hire highly skilled candidates and lack incentives to attract the most qualified IT staff. It also reported that DTSC relies on 28 legacy applications that require modernization. OEIM has challenges ahead.

### **Oversight Enhances Accountability**

DTSC has a history of missing deadlines, often self-imposed deadlines that prove unrealistic. DTSC told the IRP it would begin implementing the UC Davis Extension Collaboration Center recommendations by January 1, 2017, but it was still considering them in September 2017. DTSC told the IRP that it would update its Public Participation Manual by July 2017, but it has not yet accomplished this. DTSC's budget change proposal for its Community Protection and Hazardous Waste Reduction Initiative promised a report to summarize the findings of the initiative's pilot projects by June 30, 2017, but that report has not yet been released (*Appendix B, Source Reduction Recommendation 1*). DTSC promised the IRP to provide the Panel with information on the deliverables for its recent budget change proposals by October 2017, but it did not do so until December 29, 2017, which was too late for it to be meaningfully reviewed. Section 57007 of the HSC requires DTSC to submit a biennial report to the Governor and Legislature no later than December 1, but DTSC had not done so in many years and did not release information that appears to satisfy the requirements of the statute until November 2017. This was despite the IRP's January 28, 2016 recommendation to provide the report by January 1, 2017, a recommendation the Panel made in response to its mandate to advise the Department on compliance with section 57007. (*Appendix B, Fiscal Management Recommendation 1*). Another missed statutory deadline was the SB 673 (Chapter 611, Statutes of 2015) mandate to adopt regulations establishing or updating criteria used for the issuance of a new or modified permit or renewal of a permit by January 1, 2018. DTSC had not done so as of the date of this report. The SCP Program's first Priority Product Work Plan predicted the announcement of three product-chemical combinations in 2015, more than five in 2016, and more than five in 2017; none have been announced to date. The SCP Program also has been late with a number of regulatory deadlines, including deadlines to publish the first Priority Products Work Plan, issue a subsequent plan, and release the Alternatives Analysis Guide. With respect to the SCP Program, the IRP has recommended the development of short- and long-term goals with realistic timelines and metrics, including the tracking of the program's effect on hazardous waste generation (*Appendix B, Consumer Products Recommendation 1*). The IRP also

recommended written evaluation of the program's first Priority Products Work Plan, although DTSC responded that it does not believe the plan triggers any compliance that can be evaluated (*Appendix B, Consumer Products Recommendation 3*).

The IRP acknowledges that insufficient resources play a role in missed deadlines. However, the IRP believes DTSC can do more to set realistic deadlines and consider how to achieve a better balance between work product quality and timeliness. If the Governor and the Legislature see that DTSC is doing high-quality work on time, they will be more likely to give the Department the benefit of the doubt when more resources are needed.

Despite recent improvements, community, business, and local government stakeholders in recent weeks have told the IRP that there is more work to be done when it comes to accountability. Community stakeholders have expressed dissatisfaction with DTSC's proposed civil rights and language access policies as well as the draft hazardous waste facility permitting criteria that were released in September 2017. Business stakeholders have criticized permit application service fees and charges for indirect costs on remediation projects. (*See Appendix B, Fiscal Management Recommendation 4.*) Los Angeles County has criticized elements of the Exide residential cleanup plan as well as its pace. DTSC stakeholders assigned generally low ratings to DTSC programs in IRP surveys sent out in August 2016 and October 2017. Most DTSC stakeholders seemed to feel that the IRP—notwithstanding its limited advisory authority—did add value, but that it had not made a dispositive difference in the Department, according to the results of another survey the Panel sent out in June 2017. Stakeholders emphasized that they still want to be heard and get their questions answered.

Panel members believe the IRP process made DTSC more accountable and transparent. The IRP made more than 100 information requests of DTSC, and the Department responded with approximately 4,000 pages of documentation for Panel consideration. DTSC also made more than 25 presentations at IRP meetings. The IRP was an entity that stakeholders could approach to express concerns, ask questions, and learn. However, the IRP ceased to exist on January 1, 2018. Panel members wonder where stakeholders will go the IRP's absence and who will monitor progress on the recommendations and performance metrics. One stakeholder has suggested that the IRP's legacy should be respected by keeping its comprehensive website information online and continuing the updates on the status of its recommendations going forward. The IRP agrees with those suggestions.

Efficiency improvements are a solution to the historic problem of increasing mandates for DTSC without sufficiently increasing revenues to effectuate them. Beginning in 2014, DTSC has engaged in 14 Lean Six Sigma projects through the Governor's Office of Business and Economic Development (GO-Biz), U.S. EPA, or internal initiative. Lean Six Sigma combines two methodologies into a single, integrated approach to identify process improvements. "Lean" was developed by the Toyota Motor Corporation starting in the 1950s and focuses on improving efficiencies and reducing waste, while "Six Sigma" was developed by Motorola Inc. in the mid-1980s and focuses on improving quality through the proper analysis of data and metrics. The project results have been impressive in some cases and promising in others. The IRP believes that mechanisms should be put in place to track and evaluate the results long term.

Similarly, there is a need to monitor DTSC's performance on the IRP's recommended performance metrics. The IRP concluded that DTSC generally improved its performance when

compared against them. However, many of the metrics were long-term, and a final assessment cannot yet be made. Ongoing monitoring is needed.

The Legislative Analyst's Office (LAO) appears to agree that continued oversight is needed. The LAO noted in an April 4, 2017 Budget and Policy Post that DTSC's own projections show that it will be years before some deficiencies in its programs are fully remedied. The LAO concluded that it would be important for the Legislature to oversee the Department's progress and hold it accountable for producing results during the next several years.

In conclusion, progress has been made when it comes to transparency and accountability, but continued monitoring in an open environment is needed. The IRP made two recommendations along these lines. One was to create an entity to hear and decide on all hazardous waste facility permits that DTSC does not timely process within three years of expiration. The other was to create an oversight board or consider other structural changes at DTSC to improve accountability and transparency. The first recommendation has not yet been the subject of a legislative proposal (*Appendix A, Permitting Recommendation 2*). SB 774 of 2017 (Leyva), a two-year bill that would establish the California Toxic Substances Board in the Department, would address the second recommendation (*Appendix A, Public Outreach Recommendation 1*).

It is true that not every state government agency warrants such a governance structure. However, in the IRP's respectful judgment, it is recommended for DTSC, given its large size (994 authorized positions and \$285.8 million budget), human health protection mission, and the numerous, highly engaged stakeholders in the Department's site cleanup, permitting and enforcement work for projects such as Exide. Moreover, this structure exists at other CalEPA entities.

The IRP agrees with the following observation made by the Governor in his veto messages of AB 248 and AB 1179: "Addressing the structural problems at the Department, both fiscal and administrative, will not be an easy task, but one that is achievable if the Administration and the Legislature work together."

#### **Priority 5:**

##### **Reviewing Governing Statutes That May Need Revision or Repeal**

Chapters 6.5 and 6.8 of division 20 of the HSC should be reviewed to improve their organization, eliminate unnecessary or obsolete provisions, and in some cases, strengthen provisions that are not working properly.

The gradual expansion of statutory requirements, often without clarification or necessary funding, has created a misalignment between mandated duties and resources, thus forcing DTSC at times to shift limited resources to new mandates at the expense of existing programs and clouding expectations. One prominent and relatively recent example of this is the diversion of resources from hazardous waste source reduction and pollution prevention programs to the also important Safer Consumer Products Program in recent years.

The following are several examples of code sections the IRP believes to be at least partially obsolete. One is HSC section 25197.2, which requires DTSC to establish a statewide Hazardous Waste Strike Force. The duties of this strike force are similar to those of CalEPA's deputy secretary for law enforcement and counsel as outlined in Government Code section 12812.2.

Another is HSC section 25178, which requires the posting of numerous reports on the DTSC website that were considered important to post thirteen years ago and which, in 25178(l), refers to a non-existent code section. Still another may be various provisions of the Pollution Prevention and Hazardous Waste Source Reduction and Management Review Act. A statement in the act that “the Department’s duties to implement this article are contingent upon, and limited to, the availability of funding” as well as wording such as “the Department may establish,” “the Department may provide,” and “the Department may develop” suggest that some of this work may no longer be a priority.

A comprehensive review of these and other statutes would clarify priorities and expectations, improve transparency, and better align mandates with resources. That is why the IRP made two recommendations to the Legislature to direct the California Law Revision Commission to work with DTSC to review various provisions in chapters 6.5 and 6.8 and provide necessary revisions to improve organization and eliminate unnecessary or obsolete provisions. (*See Appendix A, Site Mitigation Recommendation 6 and Source Reduction Recommendation 3.*)

HSC sections 25135 through 25135.9 are examples of statutes that are not working properly and should be replaced by a new framework. They established the requirement to produce a state Hazardous Waste Management Plan by 1991 that was to be reviewed annually and revised at least once every three years. It was to be prepared in conjunction with, and take into account, hazardous waste management plans adopted by counties and regional councils of governments. Unfortunately, some of the significant challenges encountered were the non-submission of local plans or the submission of local plans that could not be approved. These sections of law should be replaced by a new planning process. The state has an obligation to manage, treat, and dispose of its hazardous waste without shipping it to other states or countries. The responsible way to accomplish this goal is to site new facilities in such a way that disadvantaged communities do not bear a disproportionate burden. This requires planning and commensurate funding.

Statutes pertaining to the source reduction reviews and plans of hazardous waste generators are examples of laws that the Legislature should consider strengthening. CUPAs are required to inspect generators every three years, but source reduction appears to be a relatively low inspection priority, and the thoroughness of the reviews appears to be uneven at best. The IRP also heard that the CUPAs could use more training as well as encouragement to review the documents. The IRP therefore recommended that the Legislature consider strengthening the requirement in HSC section 25244.18 for generators to implement their source reduction reviews and plans, a recommendation also mentioned in the Priority 3 section of this report (*Appendix A, Source Reduction Recommendation 2*).

A review of the governing statutes would create realistic expectations and help DTSC focus on the Mission.

## **Conclusions**

DTSC made considerable progress since the IRP began meeting in November 2015. The Governor and DTSC Director Lee stabilized the Department's leadership team. DTSC worked systematically to evaluate its organizational culture and lay the groundwork for improvements. Budget augmentations have made a difference, especially in cost recovery, reducing permitting backlogs, environmental justice work, and the Exide residential cleanup. DTSC has been working on improvements to its public engagement efforts. It has made efficiency improvements. It has enhanced the EnviroStor public interface and made content improvements to its other website offerings. The Department has implemented, or is working on, most of the IRP's recommendations and has achieved, or partially achieved, many of the IRP's suggested performance metrics.

However, there is more work to be done. DTSC can expect a wave of retirements in the coming years, with a consequent loss of institutional knowledge. The Department is only beginning to consider and implement its organizational culture plans, and several cannot be implemented without additional resources. Structural deficits in DTSC's two major accounts require immediate attention. Several programs need additional funding, especially for orphan site cleanups, the Exide residential cleanup, and the SCP Program. It is not yet certain whether DTSC's public participation and environmental justice work will lead to enduring improvements. The website and EnviroStor require further improvements and fastidious content updates. DTSC must find a better balance between work product quality and timeliness. DTSC's governing statutes should be reviewed to delete redundancy and give the Department more focus.

The IRP process challenged DTSC to explain publicly why it operated the way it does and to think about how it can better accomplish its mission in a climate of limited resources. In the absence of the IRP, the Governor and the Legislature should consider a DTSC governing board or other structural change to enhance transparency and accountability and regularly monitor the status of the IRP-suggested recommendations and performance metrics, as well as the Department's ongoing initiatives and decision-making.

## **Attachments**

Attachment A: Status of IRP Recommendations to the Legislature and Governor  
Attachment B: Status of IRP Recommendations for DTSC  
Attachment C: Status of IRP Performance Metrics for DTSC  
Attachment D: Health and Safety Code Section 57014

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**Appendix A: Status of IRP Recommendations to Legislature and Governor As of December 31, 2017**

#	Recommendation	Request Date	Action/Resolution
<b>Budget</b>			
1	Support the Governor's 2016-2017 budget proposal for DTSC.	1/28/16	<b>Adopted</b> - Legislature approved all funding requests submitted by the Governor in support of DTSC in SB 826 (Leno), Chapter 23, Statutes of 2016 (Budget Act of 2016).
2	Increase the DTSC's SRA funding to address the projected shortfall for orphan site cleanup and transition of federal sites to state operations and maintenance oversight.	1/28/16	Adopted in Part - AB 2891 (Committee on Environmental Safety & Toxic Materials), Chapter 704, Statutes of 2016, expressed intent of the Legislature that funds be appropriated each year to the Site Remediation Account in an amount that is sufficient to pay for estimated costs for direct site remediation at both federal Superfund orphan sites and at state orphan sites, and that not less than \$10,750,000 be appropriated in the Annual Budget Act each year to the account for direct site remediation costs. The bill also required DTSC to include those estimated costs in a report submitted to the Legislature with the Governor's budget each year. DTSC received a \$3.7 million augmentation for direct site remediation at federal Superfund orphan sites and state orphan sites from the 2017 Budget Act.
3	Provide position authority and funding to DTSC to maintain the 14.0 limited-term cost recovery staff positions through 2018 or make them permanent.	1/28/16	<b>Not Yet Adopted</b>
4	Provide position authority and funding to strengthen the role of the Assistant Director for Environmental Justice and Tribal affairs, including more staffing and resources.	1/28/16	<b>Adopted</b> - Legislature approved funding for six positions to create Office of Environmental Justice and Tribal Affairs in SB 826 (Leno), Chapter 23, Statutes of 2016 (Budget Act of 2016).
<b>Permitting</b>			
1	As part of the Hazardous Waste Facility Permit process, require that adequate financial assurances be set aside for corrective action for existing hazardous waste releases at the site, not only for post-closure equipment decommissioning. Investigate whether current Health & Safety Code Sections 25200.10(b) and 25245 et seq. should be amended to ensure that adequate financial assurances be set aside during Hazardous Waste Facility Permit issuance to pay for corrective action for existing hazardous waste releases at the sites that DTSC is permitting. This is consistent with the April 2006 LAO Report: "Financial Assurances: Strengthening Public Safety of Waste Facilities and Surface Mines."	1/28/16	<b>Not Yet Adopted</b> - The introduced version of AB 245 (Gomez) of 2017 would have required DTSC, under specified circumstances, to request an owner or operator of a hazardous waste facility to submit for review and approval a written cost estimate to cover activities associated with a corrective action. The bill would have required the owner or operator to submit the corrective action cost estimate within 60 days of the request. The bill would have required the owner or operator, within 90 days of approval or the imposition of a corrective action cost estimate, to fund the estimate or enter into a schedule of compliance for assurances of financial responsibility for completing the corrective action. These provisions were removed from the bill on September 1, 2017.
2	Consider whether to create a Permit Appeals Board to hear, and decide on all Hazardous Waste Facility Permits that the DTSC does not timely process within three years of expiration. Consider whether establishing such a Permit Appeals Board would increase transparency and reduce backlogs. A possible legislative vehicle for this could be pending SB 654 (De León).	1/28/16	<b>Not Yet Adopted</b> - SB 654 (De León) of 2015 was never amended to provide for the establishment of a Permit Appeals Board.
3	Require that DTSC obtain full cost recovery connected with its Hazardous Waste Facility Permit decisions. The DTSC reports that the DTSC's existing HSC section 25205.7(d) fee collection for permitting statute does not ensure that it achieves full cost recovery connected with its Hazardous Waste Facility Permit actions.	1/28/16	Adopted - SB 839 (Committee on Budget & Fiscal Review), Chapter 340, Statutes of 2016, eliminated the flat fee option. It also required the reimbursement agreement to provide for the reimbursement of the costs incurred in reviewing and overseeing corrective action and required the applicant to pay those costs and to pay all costs incurred by DTSC to comply with CEQA.

4	Fund Technical Assistance Grants to allow public participation before a draft Hazardous Waste Facility Permit is prepared. This can assist in transparency of permitting decisions and allow community questions and concerns to be raised early in the process.	1/28/16	Not Yet Adopted - AB 1400 (Santiago) of 2015 would have required DTSC to grant request from a member of the public for a technical assistance grant for getting assistance relating to, and information about, a pending hazardous waste facilities permit if DTSC received the request within one year of the submission of the hazardous waste facilities permit application. Bill died in Senate Environmental Quality Committee.
5	Augment the Hazardous Waste Control Account to fund necessary permanent positions to achieve the goal of DTSC making 16 permit decisions a year and processing 90 percent of permit decisions in a two-year period or less.	4/21/16	<b>Adopted</b> - in SB 826 (Leno), Chapter 23, Statutes of 2016 (Budget Act of 2016).
6	Require DTSC to review each permitted hazardous waste facility's financial assurances every five years.	4/21/16	<p>Not Yet Adopted - AB 1205 (Gomez) of 2015 would have required DTSC to review financial assurances once every five years. If the review found them to be inadequate, the bill would have required DTSC to notify the facility and would have required the facility to update and adopt adequate assurances within 90 days. Bill died in Senate Committee on Environmental Quality.</p> <p>The July 12, 2017 version of AB 245 (Quirk) of 2017 would have required DTSC to review, at least once every five years, the financial assurances required to operate a hazardous waste facility and the cost estimates used to establish the amount of the financial assurances required. If DTSC's review found the assurances to be inadequate, the bill would have required the Department to notify the owner or operator and would have required that person to update and adopt adequate financial assurances and, if applicable, appropriate cost estimates within 90 days. These provisions were removed from the bill on September 1, 2017.</p>
7	Require DTSC to respond within certain time periods to hazardous waste permit application submittals, require applicants to submit application information on a timely basis, and establish accountability mechanisms, such as deemed approval of the submitted information or the initiation of permit denial proceedings, if these event deadlines are not met by DTSC or the applicant.	4/21/16	<p>Not Yet Adopted - SB 654 (De León) of 2015 would have required facilities to submit Part A &amp; B applications two years before permit expiration. Additionally, the bill would have provided that, when a complete application had been submitted before the end of a permit's fixed term, the permit would be extended for a period not to exceed 36 months until the renewal application was approved or denied and the owner or operator had exhausted all rights of appeal. Bill was amended to an unrelated topic.</p> <p>AB 248 (Reyes) of 2017 would have required, for a permit that expires on or before July 1, 2020, the submission of a Part A &amp; B application for a renewal at least six months before expiration. The bill would have required, for a permit that expires after July 1, 2020, the submission at least two years before expiration. The bill would have provided that if a Part A &amp; B renewal application and any other requested information had been submitted within those timeframes, the permit would be deemed extended until the application was approved or denied and the owner had exhausted appeal rights. The Governor vetoed the measure.</p>
8	Amend HSC section 25200 to give DTSC specific authority to require fence line monitoring by permit holders in certain cases.	4/21/16	<p>Not Yet Adopted - AB 1400 (Santiago) of 2015 would have required DTSC to require facility operator, as a condition for a new hazardous waste facilities permit, to install monitoring devices or other equipment at the fence line to monitor for potential releases from the facility into the surrounding community. Bill died in Senate Committee on Environmental Quality.</p> <p>The July 12, 2017 version of AB 246 (Santiago) of 2017 would have required DTSC to assess hazardous waste facilities under its jurisdiction to determine if fence-line or other monitoring to measure and record emissions is necessary or appropriate. The bill would have required DTSC, based on its findings, to adopt regulations for fence-line monitoring. These provisions were removed from the bill on September 6, 2017.</p>

9	Give hazardous waste facility permit applicants a reasonable assurance of application costs and include some mechanism to hold DTSC accountable for those assurances, even in fee-for-service scenarios.	4/21/16	<b>Not Yet Adopted</b>
<b>Enforcement</b>			
1	Include inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and hazardous waste generators in statute. The frequencies should be based on facility compliance history, quantity of waste, toxicity risk, and proximity to sensitive habitats and populations at risk, including disadvantaged communities.	7/26/16	<p>Not Yet Adopted - AB 1102 (Santiago) of 2015 would have required DTSC to inspect a hazardous waste land disposal facility no fewer than once per month, a permitted and operating hazardous waste facility no fewer than four times per year, and a permitted hazardous waste facility no fewer than two times per year. Bill died in the Senate Committee on Environmental Quality.</p> <p>AB 1179 (Kalra) of 2017 would have required DTSC to adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities, hazardous waste generators, and hazardous waste transporters. It would have required the inspection frequency for a hazardous waste land disposal facility to be no less than two times per calendar year and, for any other permitted hazardous waste treatment, storage, or disposal facility, no less than once per calendar year. The Governor vetoed the measure.</p>
2	Support AB 1858 (Santiago), which requires the DMV to establish an Unlicensed Automobile Dismantling Task Force to investigate the occurrences of unlicensed vehicle dismantling.	7/26/16	Adopted - AB 1858 (Santiago), Chapter 449, Statutes of 2016, required DMV to collaborate with other state agencies and to review and coordinate enforcement and compliance activity related to unlicensed and unregulated automobile dismantling. It did not establish a formal task force.
3	Increase the maximum penalties for violations of HSC section 25189 to make them equivalent to the federal maximum penalties for similar violations, with an inflation allowance.	7/26/16	<b>Adopted</b> - AB 245 (Quirk), Chapter 499, Statutes of 2017, increased administrative and civil penalties for violations of hazardous waste control law to \$70,000.
<b>Public Outreach</b>			
1	Create an oversight board or consider other structural changes at DTSC to improve accountability and transparency.	10/24/16	<b>Not Yet Adopted, Two-Year Bill</b> - SB 774 (Leyva) of 2017 would establish the California Toxic Substances Board in the DTSC. Ordered to inactive file on Assembly Floor.
2	Provide additional funding to the newly established Office of Public Participation for sufficient staffing necessary to adequately address all necessary public outreach needs of DTSC.	10/24/16	<b>Not Yet Adopted</b>
3	Consider amendments to HSC section 25358.7 et seq. to address CAG transparency, conflicts of interest, funding, funding disclosure, membership, and technical expertise.	10/24/16	<b>Not Yet Adopted</b>
4	Create a statewide lead taskforce to make recommendations on the sharing of information, leveraging of resources, and establishing of a comprehensive surveillance program on lead toxicity. The taskforce should include representatives from: DTSC, Department of Public Health (DPH), Office of Environmental Health Hazard Assessment, Cal/OSHA, air quality management districts, regional water quality control boards, county environmental health departments, worker safety advocates, labor organizations, healthy housing organizations, and impacted communities.	10/24/16	Not Yet Adopted - AB 247 (C. Garcia) of 2017 would have required the Office of Environmental Health Hazard Assessment, by April 1, 2018, to convene a Lead Advisory Taskforce to review and advise regarding policies and procedures to reduce childhood lead poisoning in the state. The bill would have given the task force authorization to make various recommendations to ensure that regulatory standards are protective of health. The Governor vetoed the measure.

**Fiscal Management**

<b>1</b>	Consider whether to amend Health and Safety Code section 25269.5 to establish deadlines for the meet and confer process, including the preparation of cost estimates for the next phase of the site remediation activity and a procedure for the resolution of cost estimate disputes.	1/20/17	<b>Not Yet Adopted</b>
<b>2</b>	Fund the five redirected administrative project manager positions and the redirected staff services manager position that are currently devoted to performing the administrative duties that were tasked to the technical project managers prior to FY 2014-15.	1/20/17	<b>Not Yet Adopted</b>

**Site Mitigation**

<b>1</b>	Support Gov. Brown's proposed \$176.6 million appropriation to fund expedited and expanded testing and cleanup of residential properties, schools, daycare centers, and parks impacted by the former Exide Technologies facility in Vernon.	4/21/16	Adopted - SB 93 (De León), Chapter 9, Statutes of 2016 (Budget Act of 2015) and AB 118 (Santiago), Chapter 10, Statutes of 2016, transferred the \$176.6 million as a loan from the General Fund to the Toxic Substances Control Account for DTSC to use for this purpose. The funds are available until June 30, 2018. Funds recovered from responsible parties are to be used to repay the loan.
<b>2</b>	Require the DTSC to prioritize the Exide Technologies residential cleanup based on mapping data on metal levels in blood and soil.	4/21/16	Partially Adopted - On January 12, 2017, DTSC announced its new Time Critical Removal Action Guidance for expedited actions, including cleanups, to prevent exposure to lead in soil at properties around the facility prior to the certification of the Residential Remedial Action Plan and Environmental Impact Report (EIR), which were finalized and released on July 6, 2017. Under the guidance, the time-critical removal actions are determined on a case-by-case basis and give priority to properties with high levels of lead in the soil and the greatest exposures to sensitive populations. DTSC initiated time-critical cleanups under that guidance in March 2017. When the Cleanup Plan was finalized and released, 25 properties had been cleaned up under the guidance.
<b>3</b>	Require collaboration between national, state, and local agencies to better make available and use data, including blood data, to address lead contamination in California communities.	4/21/16	Partially Adopted - AB 1316 (Quirk), Chapter 507, Statutes of 2017, changed the definition of lead poisoning, required that the regulations establishing a standard of care include the determination of risk factors for whether a child is at risk for lead poisoning, and required the Department of Public Health (DPH), when determining those risk factors, to consider the most significant environmental risk factors. The bill further required the DPH to prepare and post on its website information that evaluates its progress in identifying children with high blood levels of lead and reducing the incidence of excessive childhood exposure in the state. The bill required DPH to use an electronic database to support electronic laboratory reporting of blood lead tests, management of lead-exposed children, and assessment of sources of lead exposure.
<b>4</b>	Increase the number of staff members in the Office of Public Participation and Office of Communications to better engage stakeholders throughout all phases of contentious site mitigation projects, especially the early phases.	4/21/17	<b>Not Yet Adopted</b>
<b>5</b>	Place in statute a requirement for DTSC to conduct five-year reviews of all long-term cleanup remedies for as long as the hazardous substances remain at the site above levels that allow for unlimited use and unrestricted exposure.	4/21/17	<b>Not Yet Adopted</b>

6	Direct the California Law Revision Commission to review provisions pertaining to the response authority for releases of hazardous substances in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code and related statutory law and provide necessary revisions to improve their organization, clarify their meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant changes to the effect of the law.	4/21/17	<b>Not Yet Adopted</b>
7	Select and appoint a DTSC Assistant Deputy Director responsible for Exide by June 1, 2017.	4/21/17	Adopted - The Governor appointed Suhasini Patel to the position of Assistant Deputy Director for the Brownfields and Environmental Restoration Program on September 25, 2017. Assistant Deputy Director Patel is primarily responsible for overseeing the Exide closure and cleanup, including the residential cleanup.
<b>Source Reduction</b>			
1	Examine future revenue sources for DTSC. Hazardous waste generation and in-state disposal in California have tended to decrease over the long term, and those trends could be accelerated by successful implementation of the hazardous waste source reduction and Safer Consumer Products Program efforts. This would reduce the amount of funds going into the Hazardous Waste Control Account.	10/6/17	<b>Not Yet Adopted</b>
2	Investigate strengthening the requirement in HSC section 25244.18 for generators to implement their source reduction reviews and plans.	10/6/17	<b>Not Yet Adopted</b>
3	Direct the California Law Revision Commission to work with DTSC to review provisions pertaining to pollution prevention and toxic chemicals in consumer products in Chapter 6.5 of Division 20 of the Health and Safety Code and related statutory law and provide necessary revisions to improve their organization and eliminate unnecessary or obsolete provisions.	10/6/17	<b>Not Yet Adopted</b>
<b>Consumer Products</b>			
1	DTSC's Safer Consumer Products branch administers a young program that will require appropriate resources to grow and function effectively and to its maximal capability. As the program develops, there will be a need for the Legislature to periodically review the progress and provide necessary resources, including determining to what extent a service fee is needed, to fully fund the program.	10/6/17	<b>Not Yet Adopted</b>
2	Respect the Safer Consumer Products Program's comprehensive, science-based review process and minimize legislation that duplicates its core regulatory activities.	10/6/17	<b>Ongoing</b>

## Appendix B: Status of Independent Review Panel Recommendations for DTSC As of December 31, 2017

#	Recommendation	Request Date	Status
<b>Permitting</b>			
1	Publish by 1/1/17 draft SB 673 regulations and adopt by 1/1/18.	1/28/2016	<b>In Progress</b> - DTSC released proposed regulations on the Hazardous Waste Facility Permitting Criteria, R-2016-03, under the Administrative Procedures Act in September 2017, and the 45-day public comment period ended on November 6, 2017.
2	Adopt guidance or publish draft regulations by 1/1/17 on Violation Scoring Procedure (VSP).	1/28/2016	<b>Implemented</b> - Proposed regulations on the VSP, R-2016-03, were included in the Hazardous Waste Facility Permitting Criteria, which DTSC published in September 2017.
3	Using CalEnviroScreen, post clear and concise data on socioeconomic indicators of communities in proximity to permitted hazardous waste facilities on the DTSC website by 1/1/17.	4/21/2016	<b>Implemented</b> - DTSC launched its new and improved EnviroStor public website on September 29, 2017. The new website includes improved search tools, reports, and map features. Public users can view CalEnviroScreen 3.0 data, which was released by the Office of Environmental Health Hazard Assessment in January 2017, along with DTSC's facility and site information.
4	Post clear and concise information on DTSC website that lists all DTSC-permitted sites with contamination, status of cleanup, and amount of financial assurances for cleanup by 1/1/17.	4/21/2016	<b>Not Implemented</b> - According to DTSC, the Department continues to evaluate and prioritize a range of improvements to the website and will implement them based on available resources. Although a webmaster was hired on June 1, 2017, and an assessment of the website is currently in process by an outside vendor, there are no current plans to develop an interactive system. (Note: the intent of this recommendation was for this information to be interactive, up to date, and located in the Managing Hazardous Waste section of the website.)
5	Post all formal responses and permit processing documentation in EnviroStor to improve transparency and community understanding of permit application status by 1/1/17.	4/21/2016	<b>Implemented</b> - DTSC posts information about the status of permit applications on its public EnviroStor website. Although Notices of Deficiency were historically posted there, facility responses were not consistently posted. According to DTSC, its Permitting Program clarified internally in 2016 that the formal facility responses should be posted there as well, and public EnviroStor now includes those responses for all permit applications under review.
6	Create a guidance document on the relationship between the VSP, AB 1075, the California hazardous waste violation classification system, and the federal hazardous waste violation classification system by 1/1/17.	4/21/2016	<b>Under Consideration</b> - According to DTSC, the Department will develop guidance, as needed, following promulgation of regulatory language implementing the Violation Scoring Procedure, R-2016-03.
<b>Enforcement</b>			
1	Adopt by 5/1/16 an AB 1071-compliant Supplemental Environmental Projects Policy.	1/28/2016	<b>Implemented</b> - DTSC released its Supplemental Environmental Projects Policy on May 5, 2016.
2	Adopt by 1/1/17 "Improving Enforcement Performance Initiative" Workplan.	1/28/2016	<b>Implemented</b> - According to DTSC, the Department finalized its Improving Enforcement Performance Initiative Workplan in June 2016. The IRP received the workplan from DTSC in November 2017.
3	Evaluate the number of positions and vacancy levels in OCI and EERD to determine if they are sufficient to meet all inspection and enforcement goals.	7/26/2016	<b>In Progress</b> - According to DTSC, its Enforcement and Emergency Response Division has completed an initial workload study to determine available staff resources and the inspection/enforcement universe. DTSC also has informed the IRP that a more comprehensive study will be completed by the end of 2017. Although the results of the more comprehensive workload analysis may show that additional staff resources are necessary, DTSC would need significant fee reform to adjust its primary funding source, the Hazardous Waste Control Account, to allow for inspection and enforcement activity increases.
4	Evaluate participation in state and local task forces that investigate environmental crimes to determine if DTSC is collaborating with the groups, when necessary, as well as the perceptions and opinions of other environmental enforcement partners about collaboration with the department.	7/26/2016	<b>Partially Implemented</b> - According to DTSC, the Department participates in state and local task forces that investigate environmental crimes to the extent that resources allow. DTSC indicated to the IRP that Office of Criminal Investigation (OCI) staff attended 55 of the 76 local task force meetings that it was aware of from July 1, 2016 to June 30, 2017. DTSC indicated that OCI provided assistance or led investigations stemming from 15 of those meetings. In addition, DTSC indicated that OCI staff attended other similar meetings in several Sierra Foothills counties that it did not categorize as task force meetings. DTSC has not provided the IRP with information on whether it has evaluated the perceptions and opinions of other environmental enforcement partners about collaboration.

5	Evaluate whether to include environmental, occupational, and other violations in the VSP.	7/26/2016	<b>Implemented</b> - The draft Violation Scoring Procedure (VSP) would provide a compliance history score and, during permit decisions, a more comprehensive compliance review. The score itself would only take into account Class I violations, which do not cover compliance with many environmental and occupational laws. However, it would trigger additional review requirements in the case of high scores. Those in the Conditionally Acceptable Tier would trigger a third-party audit and a compliance implementation plan for corrective measures. Scores in the Unacceptable Tier would trigger a more comprehensive analysis of a facility's compliance history, including compliance with environmental and occupational laws. The other part of the VSP process, the comprehensive review during permitting decisions, would take into consideration the VSP score, safety record, financial assurance, Class II and minor violations, complaints, and other environmental laws.
6	Upload all public inspection reports, settlements, and summaries of violation into EnviroStor on a timely basis and evaluate additional technologies to enhance public accessibility.	7/26/2016	<b>Full Status Unknown</b> - According to DTSC, inspection reports are posted to the public version of EnviroStor approximately 30 days after the inspection report is mailed to the facility. The reason for the delay is to allow the facility to make any confidential business information (CBI) claims. According to DTSC, facilities generally do not make CBI claims, and the majority of inspection reports become available according to the 30 day schedule. DTSC did not report on the timeliness of its posting of settlements and summaries of violation. DTSC also did not report on whether it has evaluated additional technologies to enhance public accessibility.
7	Prior to inspection of a permitted hazardous waste facility, the inspection team should communicate with site mitigation staff members to verify that the facility operator has provided any required financial assurances for corrective action.	7/26/2016	<b>Implemented</b> - According to DTSC, Enforcement and Emergency Response Division inspections include a financial assurance review from the Financial Responsibility Unit, which is part of the Hazardous Waste Management Program. That financial assurances review determines whether an adequate financial assurance mechanism has been provided. Also according to DTSC, inspectors contact site mitigation staff to determine whether financial assurances are required for corrective action, and a policy on conducting inspections, DTSC-OP-0005, was updated on June 29, 2017 to improve this communication. The policy states that other programs, such as Brownfields and Environmental Restoration, may be consulted, as necessary, during the pre- and post-inspection process.
<b>Public Outreach</b>			
1	Start to implement, by 1/1/17, the UC Davis public participation work plan.	1/28/2016	<b>In Progress</b> - According to DTSC, the Department is considering the UC Davis Extension Collaboration Center recommendations and dividing them into short and long-term timeframes. The feasibility and practicality of the recommendations are contingent upon available funding and staff resources, statutory authority, and reconciliation with state civil service laws, rules, and regulations. The Office of Public Participation Workplan, currently on track for completion in December 2017, will reflect the recommendations selected for implementation.
2	Continue practice of bi-monthly environmental justice accountability calls or an equivalent mechanism designed to increase the communication between the DTSC and the community.	1/28/2016	<b>Implemented</b> - According to DTSC, the Office of Environmental Justice and Tribal Affairs has established alternative forums to improve communication with communities. For example, the Department hosted a Community Dialogue on the Management of Contaminated Soil, a meeting series in three different communities on October 28, November 14, and December 3, 2017. DTSC reported that it discontinued the bi-monthly calls because stakeholders suggested they were of limited utility.
3	Publish all CEQA notices on one tab on the DTSC website.	1/28/2016	<b>In Progress</b> - According to DTSC, the Department is researching the ability to have all CEQA notices on one page via the public version of EnviroStor, a webmaster was hired and started on June 1, 2017, and an outside vendor is assessing DTSC's website.
4	Publish all Hazardous Waste Facility Permits on one tab on the DTSC website.	1/28/2016	<b>Implemented</b> - This tab function previously existed and can be accessed at <a href="http://www.dtsc.ca.gov/HazardousWaste/Permits.cfm">http://www.dtsc.ca.gov/HazardousWaste/Permits.cfm</a> . It also exists on the public version of EnviroStor at <a href="http://www.envirostor.dtsc.ca.gov/public/report_permitted_public">http://www.envirostor.dtsc.ca.gov/public/report_permitted_public</a> .
5	Publish all public enforcement actions (orders, settlements) in one tab on the DTSC website.	1/28/2016	<b>Implemented</b> - DTSC publishes this information on its Enforcement Cases website page at <a href="http://www.dtsc.ca.gov/EnforcementOrders.cfm">http://www.dtsc.ca.gov/EnforcementOrders.cfm</a> and in the public version of EnviroStor at <a href="http://www.envirostor.dtsc.ca.gov/public/report_enforcement">http://www.envirostor.dtsc.ca.gov/public/report_enforcement</a> .
6	Assign staff, immediately, charged with independent review, to revisit all cases in past five years of "No Further Action" that involve William Bosan or Theo Johnson, and report to the public by 6/1/16 on the findings.	1/28/2016	<b>Implemented</b> - DTSC reported in May 2017 that it conducted reviews of many of the cases, but did not have the resources to review all of them. DTSC reported to the IRP on September 11, 2017 that it referred additional cases to U.S. EPA for independent review. U.S. EPA reported on August 29, 2017 that it conducted a detailed and systematic examination of site-specific project files and documentation provided by DTSC, and the agency did not identify any critical parameters or variables in the risk-based decision-making that were omitted, inaccurate, or otherwise inappropriately applied in arriving at quantitative estimates of human health impact. U.S. EPA further concluded that DTSC's Human and Ecological Risk Office has a well-established and standard operating peer-review and/or peer-consultation procedure that is designed to ensure quality work products.



7	Improve EnviroStor's user-friendliness, accuracy, completeness, and regular updating of material. Provide technical support/assistance to public stakeholders on how to navigate the website.	10/24/2016	<b>In Progress</b> - Based on feedback from the December 2016 EnviroStor Improvements webinar, DTSC has made enhancements to its EnviroStor Public Website that were released along with a "tour" of the website in September 2017. They include incorporating CalEnviroScreen 3.0 data, improving search tools and layout for ease of access, and enhanced navigation for external stakeholders to find reports. In addition to system enhancements, DTSC has updated policies regarding uploading of documents. Additionally, DTSC will be forming a governance team to review the EnviroStor enhancements that impact the public website to ensure consistency moving forward.
8	Finalize the Public Engagement Workplan and the Public Participation Manual update by 12/31/17.	10/24/2016	<b>In Progress</b> - According to DTSC, the drafts continue to be developed and refined to include, for example, enhanced community assessment models for permitting and site mitigation, EnviroStor generated performance metrics, and several other departmental initiatives. The Department plans to complete the Public Engagement Work Plan by December 31, 2017 and finalize the Public Participation Manual update by February 28, 2018.
9	Building on what is learned from the Exide cleanup, establish long-term relationships between public outreach staff members and communities surrounding hazardous waste facilities as well as brownfields and environmental restoration sites. Encourage the hiring of bilingual public outreach staff members who are from those communities or live in or near them.	10/24/2016	<b>In Progress</b> - According to DTSC, the Department has established an ongoing practice of hiring bilingual public outreach staff members who are from, or live near, the impacted communities they serve. Twelve of the 28 Public Participation team members are bilingual. According to DTSC, this practice also extends to the Exide Project Team and the Office of Environmental Justice and Tribal Affairs.
10	Offer DTSC's risk communication workshops to employees of other CalEPA entities to improve collaboration, training, communication, and consistency.	10/24/2016	<b>Implemented</b> - According to DTSC, risk communications workshops were offered to, and attended by, staff members at the State Water Resources Control Board, Air Resources Board, and Office of Environmental Health Hazard Assessment. DTSC reports that it will continue to invite other agencies to the workshops and assist them in the development of their own workshops, when warranted. Training for new DTSC Office of Public Participation and Office of Environmental Justice and Tribal Affairs staff members was conducted January 25, 2017. DTSC also states that the Office of Public Participation will conduct a minimum of two risk communications workshops annually, one in Northern California and one Southern California. Additional workshops would be conducted as needed and/or upon request.
11	Establish a permanent, crisis management team within the Public Participation Program for emergencies involving toxic materials.	10/24/2016	<b>Not Pursuing</b> - According to DTSC, the Department already had an Emergency Response Program in place, and there is an important role for Office of Public Participation staff within it.
<b>Fiscal Management</b>			
1	DTSC should provide timely Health & Safety Code Section 57007 Biennial Report by 1/1/17 and tie report to DTSC "Fixing the Foundation," including documenting compliance with <u>all</u> goals and objectives therein.	1/28/2016	<b>Partially Implemented</b> - DTSC provided the IRP with a summary of the process improvement efforts undertaken by staff and management between 2014 and 2017 on November 9, 2017. However, the report does not tie its summary of extensive process improvements to all of the goals and objectives outlined in the Fixing the Foundation strategic plan.
2	Continue to reduce and report the status of the 211 sites from the historic backlog of sites with unreimbursed response costs that had not yet been the subject of all possible action as of 11/16/16.	1/20/2017	<b>In Progress</b> - DTSC reported that the number of unaddressed sites was reduced to 165 as of November 2017. The Department also stated that it had initiated a path forward for full resolution for all of these sites and continues to pursue available options to recover associated costs.
3	Finish all departmental procedure memorandum updates and drafting of new departmental procedure memorandums called for in DTSC work plans by 1/31/18.	1/20/2017	<b>In Progress</b> - DTSC reported that it is on track to finish updates to its departmental procedure memorandums (DPMs) and will create at least one additional cost recovery DPM called for in DTSC work plans by January 2018.
4	Provide responsible parties with a clear and understandable explanation of indirect costs, and periodically evaluate the percentage of direct to indirect costs against other state agencies to ensure consistent accounting.	1/20/2017	<b>In Progress</b> - DTSC reports that it continues to evaluate its direct and indirect costs in conjunction with the Department of Finance, is evaluating the rates against similar agencies and programs, and plans to submit its latest indirect rate cost proposal to the Department of Finance in January 2018.
5	Make sure fees charged are adequate, and recommend increases to the Governor and Legislature if they are determined to be inadequate.	1/20/2017	<b>In Progress</b> - According to DTSC, the Department continues to work with the Department of Finance and meet with members of the Legislature concerning the structural imbalance in the Hazardous Waste Control Account and Toxic Substances Control Account.



6	Closely monitor the development of the new billing system that will replace DTSC's current archaic and unsupported system.	1/20/2017	<b>In Progress</b> - DTSC reported that it continues to meet major milestones for a replacement Cost Recovery Billing System according to a schedule it submitted to the Department of Technology. In January 2016, the Department of Technology approved DTSC's request to proceed to the second phase of its replacement process: Stage Two Alternatives Analysis, or S2AA. As part of the S2AA process, DTSC conducted market research and an analysis of alternatives that could meet the Department's business needs. Based on this analysis, the Department determined that a modified, off-the-shelf solution was the most cost-effective way to meet project objectives.
<b>Site Mitigation</b>			
1	Publish a strategy by 7/1/17 on how, in appropriate cases, DTSC will work with CalEPA and its boards, departments, and offices, as well as with local air districts, to require fence line/aerial deposition monitoring during site mitigation in situations where there are adjacent sensitive receptors.	4/21/2016	<b>In Progress</b> - According to DTSC, the Department already had guidelines for projects with ambient air monitoring: the Community Air Monitoring Plan Guidance (CAMP Guide). DTSC further explained that the guide is under review by the Department. However, DTSC added that it delayed completion of the review because the South Coast Air Quality Management District (SCAQMD) adopted its Rule 1466 for the Control of Particulate Emissions from Soils with Toxic Air Contaminants on August 6, 2017. Because the rule has new air monitoring, notification, and other requirements, DTSC is working with SCAQMD to obtain an equivalency for Time Critical Removal Projects. DTSC hopes to receive the equivalency by the end of 2017.
2	Publish on DTSC's website an easy-to-read matrix of cleanup standards, cleanup schedules, and sampling levels to enhance transparency of mitigation at particular sites that are subject to public concern and inquiry.	4/21/2016	<b>Under Consideration</b> - According to DTSC, the Department continues to evaluate and prioritize improvements to the website and will implement them based on available resources. DTSC hired a webmaster on June 1, 2017, and an assessment of the website is currently in process by an outside vendor. DTSC also reports that the Brownfields & Environmental Restoration Program is developing a program-specific strategic plan that includes this objective.
3	Provide Level 4 data packages for site mitigation analyses and decisions to the public upon request.	4/21/2016	<b>Implemented</b> - According to DTSC, the Department provides data packages and sampling reports to the public in response to Public Records Act requests. DTSC also reports that it first reviews the data for quality assurance and redacts the information to protect privacy, as permitted by law.
4	Develop written procedures to give stakeholders the opportunity to be informed and participate during the implementation of remedy decision documents.	4/21/2017	<b>Implemented</b> - DTSC reported that it has written procedures in its Public Participation Manual for public participation in the remedy selection process. More information can be found on DTSC's public participation webpage, <a href="http://www.dtsc.ca.gov/GetInvolved/PublicParticipation/PublicParticipation.cfm">http://www.dtsc.ca.gov/GetInvolved/PublicParticipation/PublicParticipation.cfm</a> , which contains a link to a fact sheet under the Citizen Guides header: How You Can Get Involved in DTSC's Removal Action Workplans and Make a Difference (July 2004). DTSC added that it plans to improve and update this information.
5	Approve and certify the Remedial Action Plan and Environmental Impact Report for cleaning up the lead-impacted soil in residential neighborhoods near the closed Exide Technologies facility by 7/1/17.	4/21/2017	<b>Implemented</b> - DTSC released its Final Removal Action Plan (Cleanup Plan) and Final Environmental Impact Report (EIR) for the cleanup of lead-impacted soil in neighborhoods around the former Exide Technologies, Inc. battery recycling facility in Vernon on July 6, 2017.
6	Submit proposed regulation specifying the toxicity criteria for human health risk-based screening levels, action levels, and remediation goals to the Office of Administrative Law by 12/31/17 and adopt the final rule by spring of 2018.	4/21/2017	<b>In Progress</b> - DTSC submitted a proposed regulation entitled Toxicity Criteria for Risk Assessments, Screening Levels, and Remedial Goals (Toxic Criteria Rule) to the Office of Administrative Law on August 4, 2017, and the 45-day public comment ended on September 20, 2017. The Toxic Criteria Rule, R-2016-08, is expected to formalize a toxicity criteria selection procedure that DTSC and U.S. EPA Region 9 have relied upon since 1994.
7	Compile written lessons learned from the DTSC cleanup activities at Riverside Agricultural Park and release them to the public by 12/31/17.	4/21/2017	<b>In Progress</b> - DTSC reported that it began neighborhood soil sampling in mid-summer 2017 after releasing a Draft Sampling Plan for a 30-day public comment period. DTSC has completed this sampling and is in the final stages of sharing the data with individual residents and the overall results with the community, which it expects to finish by December 2017. DTSC also expects to complete the actual cleanup work by December 2017 and issue a final report in early 2018. DTSC added that it has coordinated all of the sampling with U.S. EPA and holds monthly calls with involved agencies such as U.S. EPA and the California Department of Public Health.
8	On a timely basis, submit report to the Legislature with an estimate of the money needed to fund direct site remediation costs at State Orphan sites and meet the state's obligation to pay for site remediation costs at federal Superfund Orphan sites, as required by Health & Safety Code section 25173.7(c).	4/21/2017	<b>Implemented</b> - DTSC released its 2017 Report on Estimated Direct Site Remediation Costs for National Priorities List and State Orphan Sites in May 2017. DTSC reported that its 2018 report is currently under review.
9	Regularly update "frequently asked questions" and other website information on specific site mitigation projects and indicate date of last update on website page.	4/21/2017	<b>Not Implemented</b> - According to DTSC, the Department continues to evaluate and prioritize improvements to the website and will implement them based on available resources.

10	Develop appropriate performance goals and metrics for site mitigation, including goals and metrics on timeliness, community satisfaction, cost, and protection of health and the environment, by 3/31/18.	4/21/2017	<b>In Progress</b> - DTSC reported that the Site Mitigation Program has developed a strategic plan with performance metrics and that it will be incorporated into a Department strategic plan that will be available in early 2018.
<b>Source Reduction</b>			
1	Publish findings, plans, and milestones for implementing the recommendations from the pilot projects in the Community Protection and Hazardous Waste Reduction Initiative.	10/6/2017	<b>In Progress</b> - According to DTSC, the report is being finalized, but this effort was pursued with one-time funding that expired on June 30, 2017, and there is no ongoing funding to continue implementing the recommendations from the pilot projects.
2	Update the DTSC website to reflect the status of the Pollution Prevention and Green Technology programs.	10/6/2017	<b>Implemented</b> - DTSC reported that, in a continuing effort to update DTSC's web site, and in response to the IRP suggestions, the Office of Communications surveyed the Pollution Prevention Program (P2) pages and consolidated them to a list of programs, reports and rules, noting which ones were no longer active, and removing outdated pages and links. The office is working on an archive site to preserve industry best practices and other information, but to clearly indicate that the programs are no longer active.
3	By 1/1/19, ensure that DTSC-provided training and resources are given to all CUPAs to assist them in evaluating large-quantity generator source reduction evaluation reviews and plans.	10/6/2017	<b>Not Implemented</b> - DTSC reported that there is no funding to pursue this recommendation.
<b>Consumer Products</b>			
1	Because of the innovative nature of the SCP Program, there is limited precedent that can be used as a guide. Therefore, it will be crucial to have clear action items, with realistic timelines, to address the strategic plan associated with its Vision and Mission. These reports should be provided periodically so that the program can be assessed and appropriate resources allocated.	10/6/2017	<b>In Progress</b> - DTSC reported that the Safer Consumer Products (SCP) Program reporting will be incorporated into DTSC's annual report and that the branch-level strategic plan will be integrated into the DTSC strategic plan, along with tactics and performance metrics to monitor progress. DTSC also reported that one strategic initiative will be to gather more baseline data on the amount of resources required to implement the SCP regulations, that SCP performance on its strategic plan metrics will be reported within the DTSC strategic plan updates, and that the program will continue to regularly communicate program activities on the DTSC website to ensure transparency and accountability.
2	Assess whether additional standards are needed for the Alternatives Analysis process to encourage appropriate consistency among the submitted reports in the SCP Program.	10/6/2017	<b>No Immediate Plans to Implement</b> - DTSC noted that standards development for the Alternatives Analysis process must be done through rulemaking if a standard of general applicability is desired. The Department reported that it does not anticipate a need for this, given that the anticipated variability in Priority Products may not easily accommodate generalized standards. DTSC also pointed out that the Alternatives Analysis Guide provides a comprehensive resource for identifying resources, approaches, methodologies, and strategies for completing a compliant analysis, and that the guide will be regularly updated and augmented as new examples, tools, and guidance are developed. DTSC also said the SCP Program will prioritize assistance to responsible entities to help them comply with California's unique requirements. However, as DTSC gains experience with the new program, updates or modifications to the regulations may be identified.
3	Evaluate in writing DTSC's compliance with its 2015-17 Priority Product Work Plan in the SCP Program.	10/6/2017	<b>No Plans to Implement</b> - According to DTSC, the 2015-17 Priority Product Work Plan does not trigger any compliance that can be evaluated. DTSC acknowledged that it did not meet a goal in the work plan to name three products in 2015 and increase that number each year thereafter, but the Department reports that it is addressing this problem by implementing recommendations from a Lean Six Sigma project to streamline Priority Product identification.

### Appendix C: Status of IRP Performance Metrics for DTSC As of December 31, 2017

#	Recommendation	Request Date	Status
<b>Permitting</b>			
1	Make an annual average of 16 hazardous waste facility permit decisions over a 10-year permitting cycle.	4/21/16	<b>Substantially Achieved</b> - DTSC made nine permit decisions during 2016-17 and is on track to complete 16 by the end of 2017-18. DTSC committed to achieving eight permit decisions in 2016-17 and an average of 16 annually thereafter.
2	Send out reminder letter at least 18 months in advance of hazardous waste facility permit expiration date 100 percent of the time each fiscal year.	4/21/16	<b>Achieved</b> - Nine reminder letters were due in 2016-17, and all nine were sent 18 months prior to permit expiration.
3	Conduct a pre-application meeting with the hazardous waste facility permit applicant within three months after issuance of the reminder letter 100 percent of the time each fiscal year.	4/21/16	<b>Substantially Achieved</b> - DTSC revised this metric to be clearer, more consistent, and trackable. The new wording is, "Conduct a pre-application meeting with the hazardous waste facility permit applicant at least 15 months prior to permit expiration." Twelve pre-application meetings were due in 2016-17. One facility elected to close; consequently, a meeting was no longer required for it. All 11 of the remaining meetings took place, with 10 of them held 15 months prior to expiration or earlier. The average length of time between a meeting and permit expiration was 16 months.
4	Review hazardous waste facility permit application for administrative completeness within 30 days of receipt of the permit application and notify the applicant, in writing, whether the application is complete 100 percent of the time each fiscal year.	4/21/16	<b>Not Achieved, In Progress</b> - Eight of the 11 administrative reviews in 2016-17 were performed within 30 days of receipt of the permit application. The average length of time for all 11 reviews was 30 days. DTSC plans to change its 100 percent target to 95 percent.
5	Complete technical review for an average of 80 percent of permit applications within 13 months after the application is determined to be administratively complete for the next 10 years.	4/21/16	<b>Not Achieved, In Progress</b> - Of the 11 technical reviews that DTSC completed in 2016-17, only one was completed within 13 months. However, two of the 11 applications were received since the implementation of efficiency procedures that were a product of a Lean Six Sigma project, and the average time to complete their reviews was 16 months. DTSC anticipates that it will achieve its goal of completing technical reviews for an average of 80 percent of permit applications within 13 months, but that it must first work its way through some very complex applications in 2016-17 and 2017-18.
6	Establish average processing time of two years or less for 90 percent of hazardous waste facility permits completed for the next 10 years.	4/21/16	<b>Not Achieved, In Progress</b> - The average processing time for the nine permit decisions in 2016-17 was 5.3 years. However, the two applications that DTSC received since the implementation of the new efficiency procedures were processed in less than two years. In March 2016, DTSC committed to achieving the goal of this performance metric within six years. DTSC states that it is processing some of the most complex applications in 2016-17 and 2017-18, but that it projects to fully achieve the goal of completing 90 percent of permit applications within two years by 2024-25.
7	Review, on average, 24 hazardous waste facility permit closure and post-closure plans and associated engineer's cost estimates each fiscal year.	4/21/16	<b>Substantially Achieved</b> - DTSC performed 20 cost estimate reviews in 2016-17. According to DTSC, programs are in place to ensure that the Department can meet its target of 24 by 2017-18.
8	Experience less than 10-percent staff turnover with permitting staff during FY 2016-17.	4/21/16	<b>Not Achieved</b> - During 2016-17, eight Permitting Division staff members either retired or were transferred/promoted to other DTSC programs. With 46.5 positions in the Permitting Division that fiscal year, the turnover rate was 17 percent. DTSC reports that 50 percent of its current Permitting Division employees are eligible for retirement and that it has little control over staff turnover. However, DTSC is trying to hire more quickly when a vacancy occurs.

Enforcement		
1	Measure the percentage of inspection reports sent to hazardous waste facility operators within the statutory time periods, with a goal of complying 100 percent of the time each fiscal year.	7/26/16 <b>Not Achieved, In Progress</b> - DTSC notes that HSC section 25185 allows for exceptions to the statutory 65-day requirement and that the Department cannot identify those exceptions in EnviroStor because of limitations in the data collected there, making monitoring of this metric problematic. According to DTSC, the average time to complete and submit inspection reports is 45 days based on data collected and analyzed from its 2016-17 Lean Six Sigma project, Enforcement Response. DTSC also reports that, as part of another Lean Six Sigma project, it is streamlining the inspection report process to reduce inspection issuance time further to a stretch target of 95 percent of inspection reports completed within 30 days from the first day of the inspection. DTSC began implementing the improvements with two inspection types, electronic waste and hazardous waste transporters, on September 1, 2017. Once this initial implementation is completed, which is expected by June 30, 2018, DTSC will roll out the improvements to other inspection types.
2	Meet or exceed RCRA Grant commitments for inspection of hazardous waste treatment, storage, and disposal facilities.	7/26/16 <b>Achieved</b> - DTSC currently meets or exceeds its Resource Conservation and Recovery Act Grant C commitment and anticipates continuing to do so.
3	Set a "stretch" target for the percentage of permitted hazardous waste treatment, storage, and disposal facilities inspected each fiscal year.	7/26/16 <b>Not Achieved</b> - DTSC reports that it currently inspects at the following frequencies: operating federal facility with a hazardous waste permit (annually), operating hazardous waste landfill (annually), operating treatment or storage facility (every 2 years), standardized or state-only permitted facility (every 3 years), and post-closure facility (every 5 years). DTSC also reports that it uses various compliance information to identify candidate facilities for priority and/or additional inspections. The Department argues that this is a more effective use of limited inspection resources than setting stretch targets.
4	Measure and evaluate the referral time for OCI cases with a goal of referring 95 percent of the cases within 180 days from the date the violation was determined.	7/26/16 <b>In Progress</b> - According to DTSC, the Office of Criminal Investigations has demonstrated sustained improvement. In 2015, it referred only one of four cases (25 percent) within 180 days. In 2016, it referred 16 of 26 cases (61 percent) within 180 days. From January 1 to June 30 of 2017, it referred 17 of 21 cases (81 percent) within 180 days.
5	Complete 90 percent of EERD administrative enforcement actions within 180 days from the date the violation was determined when the calculated penalties are less than \$75,000.	7/26/16 <b>Not Achieved, In Progress</b> - According to DTSC, a 2016 Lean Six Sigma (L6S) project yielded data indicating that the inspection report and the penalty assessment phases were contributing to significant delays in completing enforcement actions within 180 days, and that other efficiency improvements were needed to achieve the goal. Two subsequent L6S projects pursued those phases as opportunities to streamline the process. The project goals were to: (1) complete and submit 95 percent of inspection reports within 30 days; and (2) assess and approve 95% of initial penalties for administrative enforcement actions within 14 days of sending an inspection report to a facility. The projects identified solutions and tools to meet the goals, and DTSC has been piloting them in two work plans since September 1, 2017.
Public Outreach		
1	Using surveys and other methods, measure community satisfaction of public outreach on an annual basis.	10/24/16 <b>Not Achieved, In Progress</b> - DTSC reports that public satisfaction and outreach effectiveness surveys are under development and will be reflected in the 2017 Public Engagement Workplan. According to DTSC, the Department currently conducts mandated baseline community surveys as soon as possible for projects requiring investigation, cleanup, and/or a hazardous waste permit decision. The surveys are disseminated via U.S. mail to the project mailing list, which typically includes homeowners and residents living in close proximity to the site, nearby businesses, and key contacts (municipal and county officials, involved agencies, interested environmental organizations, and internal project staff). In addition, surveys are disseminated to the Department's Statewide Mandatory Mailing List, which typically includes stakeholders that have expressed interest and involvement in a variety of DTSC sites and decisions, and is not limited to regional proximity. DTSC often provides postage-paid envelopes.

Fiscal Management			
1	Track cost recovery in all program areas with the goal of not recovering less than 90 percent of amounts invoiced.	1/11/17	<b>Achieved</b> - DTSC reports that it collected 96 percent of billed costs for the Hazardous Waste Control Account and 97 percent of reimbursements for the Toxic Substances Control Account between July 1, 2016 and March 30, 2017.
2	Calculate the percent of cleanup costs that are not billed per year.	1/11/17	<b>Achieved</b> - DTSC reports that it billed 99.5 percent of costs incurred for the Hazardous Waste Control Account and 98.9 percent of costs incurred for the Toxic Substances Control Account (reimbursements) between July 1, 2016 and March 30, 2017.
3	Measure how often per year the Department fails to issue invoices on a quarterly basis for cleanup effort oversight costs, as is required by Health and Safety Code section 25269.6.	1/11/17	<b>Achieved</b> - DTSC reports that it issued all invoices on a quarterly billing cycle consistent with HSC requirements in 2016-17.
4	Calculate the percentage of estimates required by Health and Safety Code section 25269.5 that underestimate the total actual hours that DTSC staff actually incurred in the next phase of site mitigation activity per year.	1/11/17	<b>Not Achieved, In Progress</b> - DTSC reports that this metric is difficult to implement because the Department does not have an automated process to make this calculation. However, DTSC plans to implement the metric in 2018 with a process that will require project managers to periodically evaluate their estimates by comparing them against actual hours spent, and to make adjustments accordingly. DTSC adds that project managers would use the Department's timekeeping system for this task and that a new estimate would be sent if there is a deviation of more than 10 percent.
5	Measure the average number of days to resolve formal cost recovery billing disputes per year.	1/11/17	<b>Achieved</b> - DTSC reports that it took an average of 42 days to resolve formal cost recovery billing disputes in 2015-16 and 19 days in 2016-17.
6	Calculate the percentage of cost recovery invoices that are formally disputed by responsible parties per year.	1/11/17	<b>Achieved</b> - DTSC reports that responsible parties formally disputed 1.6 percent of cost recovery invoices in 2015-16 and 2.3 percent in 2016-17.
Consumer Products			
1	Develop milestones and metrics, with realistic timelines, for the SCP Program, including a method to track its effect on hazardous waste generation. Compile a list of short-term and long-term goals and periodically assess how many have been achieved.	10/6/17	<b>Not Achieved, In Progress</b> - DTSC reports that metrics for the Safer Consumer Products Program are being developed as part of DTSC's strategic planning process, work plans to support the strategic objectives will be put in place to ensure progress, and performance on the metrics will be included in a DTSC strategic plan performance management report that is currently under development.
2	The most objective and accurate performance metrics for the SCP Program would be biomonitoring data showing a reduction in the environmental and biological burden of the Priority Products that have been replaced by safer chemicals. This information will not be readily available and may take several years to assimilate. At this time, however, DTSC should be determining measurable biomonitoring parameters.	10/6/17	<b>Under Consideration</b> - DTSC responds that it strongly believes in the value of biomonitoring to track the efficacy of the SCP regulations, but it notes that the structural deficits in the Department's funding sources create a risk to any sustained funding for Biomonitoring California. However, the Department stated that it supports efforts to find other funding opportunities for Biomonitoring California, especially for studies that can demonstrate the efficacy of Department actions.
3	For immediate evaluation of the SCP Program, conduct more subjective assessments, such as surveys that monitor the perception of the various stakeholders as to the success of the program.	10/6/17	<b>Achieved</b> - DTSC responds that it is important to ensure that the Safer Consumer Products Program's active stakeholder community stay engaged and will consider integrating stakeholder surveys when developing strategic planning metrics. The Department adds that the program regularly uses targeted surveys as a means to understand stakeholder needs.

**Appendix D: Health and Safety Code Section 57014**  
**(Effective June 24, 2015; Repealed January 1, 2018)**

Section 57014 is added to the *Health and Safety Code*, to read:

- (a) There is within the Department of Toxic Substances Control an independent review panel, comprising three members, to review and make recommendations regarding improvements to the department's permitting, enforcement, public outreach, and fiscal management.
- (b) The Speaker of the Assembly, the Senate Committee on Rules, and the Governor shall each appoint one person to the panel. One member of the panel shall be a community representative, one member of the panel shall have scientific experience related to toxic materials, and one member of the panel shall be a local government management expert.
  - (1) The Speaker of the Assembly shall appoint the panelist with scientific experience related to toxic materials.
  - (2) The Senate Committee on Rules shall appoint the panelist who is a community representative.
  - (3) The Governor shall appoint the panelist who is a local government management expert.
  - (4) The appointments shall be made within 90 days after the effective date of the act adding this section.
- (c) The panel may advise the department on issues related to the department's reporting obligations.
- (d) The panel shall make recommendations for improving the department's programs.
- (e) The panel shall advise the department on compliance with Section 57007.
- (f) The panel shall report to the Governor and the Legislature, consistent with Section 9795 of the Government Code, 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.
- (g) The department shall provide two support staff to the panel independent of the department. Each member of the panel shall receive per diem and shall be reimbursed for travel and other necessary expenses incurred in the performance of his or her duties under this section. The total amount of money expended for panel expenses pursuant to this paragraph shall not exceed fifty thousand dollars (\$50,000) per year.
- (h) At the time of the submission of the Governor's 2016-17 annual budget to the Legislature, and at the time of each submission of the Governor's annual budget thereafter, the panel shall submit to the Legislature and the Governor recommendations pursuant to this section.
- (i) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.