



Assembly
California Legislature

ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

LUIS A. ALEJO, CHAIR
ASSEMBLYMEMBER, THIRTIETH DISTRICT

August 1, 2013

The Honorable Adam Gray, Chair
Joint Legislative Audit Committee
Legislative Office Building
1020 N Street
Sacramento, CA 95814

Dear Assemblyman Gray:

I respectfully request the Joint Legislative Audit Committee to approve an audit of the effectiveness of cost recovery from hazardous waste cleanup projects by the California Department of Toxic Substance Control (DTSC).

As of April 24, 2013 DTSC has identified \$140 million that it failed to bill responsible parties, \$45 billion it billed but didn't collect and \$37.3 million that is currently in litigation. Altogether, the DTSC has reported 1,700 sites that fell through the cracks.

The Legislature's responsibility to assure the wise use of state funds and the need to provide public health and environmental protection requires that we are confident that the cost recovery and accounting for state expenditures is done in the most effective method possible.

Background:

In the long history of the state Superfund and related cleanup programs there has been a need for clarity, measurable goals, and public transparency for the people of California to understand the process and progress being made to reduce the threat from toxic waste sites.

The DTSC's mission is to protect California's people and environment from the harmful effects of toxic substances, in part, through the restoration of contaminated resources. In fulfilling its mission, DTSC incurs direct cleanup costs and oversight costs (collectively, "response costs") in investigating and remediating contaminated properties. There is clear evidence that DTSC has incurred response costs for which it did not issue invoices to responsible and billable parties.

California has hundreds of toxic waste sites in need of clean-up to protect the public health and quality of communities. The failure to pursue cost recovery hurts all Californians. Any laxness sends the wrong message to communities who need clean-up and to businesses that are being responsible neighbors. We need a stronger, more transparent system for tracking both the cleanup of toxic waste sites as well as the cost recovery for those sites where responsible parties have been unwilling or unable to remediate the sites. The state agency that regulates toxic

polluters regularly spends millions of dollars to clean up sites without collecting money from the responsible parties.

According to DTSC, these programs incurs direct cleanup costs and oversight costs in remediating contaminated property and DTSC is authorized to recover these costs from responsible parties (i.e., those parties responsible for the contamination). DTSC's cost recovery efforts, however, have been impeded by the lack of updated cost recovery procedures that clearly define the roles and responsibilities of DTSC with respect to the cost recovery process.

DTSC is required by Health and Safety Code section 25360 to recover the costs it incurs in site mitigation removal and remediation work. When it is not possible for DTSC to recover all such costs effectively, the decision not to pursue further costs recovery action must be documented.

Scope of the Audit:

Specifically, I believe the audit should cover the past 5 years, beginning in 2007/2008 fiscal year, including, but not be limited to, the following elements of DTSC's cost recovery actions and the effectiveness of the recent steps undertaken by the department:

- 1) Determine the compliance with statutory requirements, regulations and policies related to the collection of outstanding debt owed for oversight and clean-up work provided by DTSC;
- 2) Determine the amount of billed but uncollected debt owed to DTSC for oversight and response cost and the reasons or explanation for these uncollected debts;
- 3) Determine the amount of cost that have been incurred but not billed by DTSC for oversight and response cost and the reasons or explanation for these unbilled debts;
- 4) Determine if interest payments for uncollected debts have been accurately assessed;
- 5) Identify those entities that have substantial unbilled or unpaid debt owed to the State of California;
- 6) Review the actions currently being undertaken by DTSC to increase cost recovery through timely billing and collection; and
- 7) Identify any programmatic or statutory impediments that have hinders the ability of the state to recover cost associate with response activities.

If you have any questions or concerns please contact my Chief Consultant Bob Fredenburg at (916) 319-3965.

Sincerely,


LUIS A. ALEJO, Chair