

California Legislature

The Department of Toxic Substances Control (DTSC) was established to protect California against threats to public health and degradation to the environment and to restore properties degraded by past environmental contamination. Through its statutory mandates, DTSC cleans up existing contamination, regulates management of hazardous wastes, and prevents pollution by working with businesses to reduce their hazardous waste and use of toxic materials.

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility. DTSC's hazardous waste regulatory program is supported by fees on those that generate and manage hazardous waste in California.

There are currently 118 facilities permitted by DTSC to store, treat, or landfill hazardous waste in California. Additionally, there are more than 100,000 businesses that generate hazardous waste, and approximately 900 transporters registered with DTSC to transport hazardous waste. Many hazardous waste generators and facilities are located near communities who look to DTSC to protect them from the threats posed by potential releases of harmful chemicals into their air, land, and water. Effective permitting and enforcement of these hazardous waste facilities is paramount to protecting human health and safety and the environment. Many of these permitted hazardous waste facilities are located in communities with vulnerable populations, and inadequate permits or lax enforcement could severely impact the quality of their life.

Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA): State law provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances, and for hazardous waste disposal sites that pose a threat to public health or the environment. DTSC uses the HSAA for cleanup of contaminated sites and the HWCL for the regulation

of hazardous waste sites. The HSAA is intended to provide compensation for out-of-pocket medical expenses and lost wages or business incomes resulting from injuries caused by exposure to hazardous substances. Additionally, DTSC ensures that the state meets the federal requirements that California pay 10-percent of cleanup costs for federal Superfund sites and 100-percent of the operation and maintenance costs after cleanup is complete. The HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. Federal and state law also authorizes DTSC to recover costs and expenses it incurs in carrying out these activities.

Recent criticism of DTSC: Over the past several years, there have been many criticisms levied at DTSC. Community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and allowing facilities to operate with an expired permit or have numerous violations of state law and regulation. Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years beyond the expiration date of their permit and the costs associated with processing a permit.

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

In 2014, DTSC released its Permitting Enhancement Work Plan as a comprehensive roadmap to guide efforts to improve DTSC’s ability to issue protective, timely and enforceable permits using more transparent standards and consistent procedures.

In the 2014-15 Budget Act, DTSC requested and was granted 8 limited-term positions and \$1.2 million for reduction of backlogged permitting application review.

As part of the 2015-16 Budget Act, DTSC requested an additional \$1.632 million and 16 limited-term positions for two years to address the permitting backlog.

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

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

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

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

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

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

IRP were Chairperson Gideon Kracov, appointed by the Senate President Pro Tempore, an attorney practicing environmental law in Los Angeles; Vice Chairperson Mike Vizzier, appointed by the Governor, former chief of the San Diego County Department of Environmental Health's Hazardous Materials Division, and Dr. Arezoo Campbell, appointed by the Speaker of the Assembly, a toxicologist and Associate Professor at Western University of Health Sciences and Associate Adjunct Professor at the University of California, Irvine.

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

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

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

Over the course of its term, the IRP conducted 24 public meetings and released 11 progress and annual reports. In December, 2016, the IRP released a thorough list of recommendations compiled from the meetings and reports conducted in the IRP's first 11 months. That report contained a compendium of the recommendations that the IRP made in its quarterly reports during 2016. The compendium showed that of a total of 23 IRP recommendations made, 7 have been adopted by DTSC and 16 have not yet been implemented.

In 2017, IRP Chair Kracov, testified before the legislative policy committees on the progress of the IRP. His testimony revealed that less than a third of those recommendations had been implemented and that the IRP shared stakeholder concern and frustration with the lack of implementation of those recommendations. Additionally, Chair Kracov stated that the IRP believed that one of the key

improvements needed at DTSC is a transparent and accountable process by which stakeholders can participate in a public way, in the deliberative processes around permits and cleanup orders.

On January 1, 2018, the IRP completed its term and on January 8, 2018 released its final report and recommendations concluding:

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.