

California Legislature
Senate Committee on
Environmental Quality

BOB WIECKOWSKI
CHAIR



**SENATE ENVIRONMENTAL QUALITY COMMITTEE
OVERSIGHT HEARING**

**California Department of Toxic Substances Control's Cost Recovery:
Progress in Implementing the California State Auditor
Recommendations**

June 17, 2015

9:30 a.m.

California State Capitol, Room 3191

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

DTSC spends millions of dollars each year to clean up sites contaminated by hazardous substances, ranging from large sites like former military bases or landfill operations to small businesses like dry cleaners or gas stations. DTSC is obligated to recover those costs when it can identify one or more responsible parties.

However, between 1987 and 2013, DTSC failed to take the appropriate actions in order to resolve approximately \$184.5 million in costs that the department incurred cleaning up contaminated sites.

In May 2013, DTSC released a Financial Integrity and State Manager's Accountability (FISMA) report summarizing the department's efforts to address the backlog of costs.

Since that time, DTSC has begun to overhaul and standardize its billing and collection process. The department has created two plans to reduce the backlog and to ensure that the same problems are not repeated.

In January 2014, the Joint Legislative Audit Committee directed the California State Auditor to perform an audit of DTSC. The auditor's report, released August 7, 2014 makes the following key findings and recommendations:

STATE AUDITOR FINDINGS

- Because of pervasive issues with its cost recovery process, as of March 2014 the department had 1,661 projects totaling almost \$194 million in unbilled and billed but uncollected cleanup costs (outstanding costs) incurred from July 1987 through December 2013.
- The department is unlikely to collect millions in outstanding costs for projects due to several factors.

The statutes of limitations may have already expired. In fact, the department has preliminarily determined that they have expired for 76 projects totaling nearly \$13.4 million in cleanup costs.

The department cannot verify the billing status on many projects with outstanding costs due to poor documentation—some projects in the billing system indicate that no responsible parties were identified, yet upon closer review it appears that some projects were misclassified.

Some outstanding amounts were never reduced in the billing system after the department entered into a settlement agreement and thus, the outstanding amount may be lower.

Some of the outstanding costs involve 61 projects affected by bankruptcies or subject to ongoing litigation—the department does not know how much, if any, it may recover of \$73 million in these outstanding costs until the legal process concludes.

- Although the department has established updated cost recovery procedures, it still lacks processes for tracking and monitoring when the statute of limitations on contaminated sites will expire and does not have a formal mechanism for tracking

settlement agreements to ensure that the billing system is accurate.

- The department has not consistently used some of its tools to ensure that it maximizes the recovery of costs from responsible parties—it has not always issued collection letters to responsible parties that are delinquent in their payments or placed liens on their properties. Further, the interest rate it can charge for late payments is so low that it does not create an incentive for prompt payment.

STATE AUDITOR RECOMMENDATIONS

- By January 15, 2015, the department should develop a reporting function in its database to track and monitor the statute of limitations expiration dates for its projects and a process to track its settlement agreements to ensure outstanding costs reflect all adjustments made for settlements paid and reduced in the billing system.
- To ensure it maximizes the recovery of its costs from responsible parties, the department should develop and update policies and procedures for its collection letter process and for using liens.
- The Legislature should revise state law to allow the department to use a higher interest rate assessed on late payments to improve its efforts to promptly recover costs.

This hearing aims to provide insight on the following issues and explore legislative solutions:

- 1) An overview of the accounting of uncollected costs as identified in the department's independent audit and the State Auditor's audit.
- 2) How the department failed to collect these costs.
- 3) An outline of the department's actions to address the backlog of uncollected costs.
- 4) The policies, procedures, and other solutions the department is putting in place to avoid similar issues in the future.

- 5) What the department is doing to implement the recommendations made by the State Auditor.
- 6) The challenges identified for future cost recovery, and any statutory changes that may be needed to address these challenges.

DTSC Cost Recovery by the Numbers

(September, 2014)

\$1.8 billion - Spent on cleanup of contaminated properties since 1987.

\$184.5 million - Unrecovered cleanup costs between July 1987 and December 2012 (amount disclosed by DTSC in May 2013).

\$194 million - Unrecovered cleanup costs between July 1987 and December 2013 (amount reviewed by California State Auditor's Office). Includes:

\$142 million - Unbilled cleanup costs.

\$52 million - Billed but uncollected cleanup costs.

\$73 million - Cleanup costs referred to the Office of Attorney General for litigation, bankruptcy or other legal action.

1,661 - Number of project sites with outstanding cleanup costs.

DTSC Cost Recovery by the Numbers

(June, 2015)

\$1.9 billion - Spent on cleanup of contaminated properties since 1987.

\$184.5 million - Unrecovered cleanup costs between July 1987 and December 2012 (amount disclosed by DTSC in May 2013).

\$194 million - Unrecovered cleanup costs between July 1987 and December 2013 (amount reviewed by California State Auditor's Office).

To date DTSC Cost Recovery accounting has resolved or identified the following:

\$59.8 million - Resolved

\$67.2 million - Referred for Litigation/bankruptcy

\$1 million - Sites under \$5,000

\$66 million - Amount identified remaining to be resolved

1,162 - Number of project sites with outstanding cleanup costs.

(Of these cases - 567 unresolved of \$5,000 and under and 259 sites with zero balance that need to be resolved through data cleanup.)