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OVERSIGHT HEARING OF THE
ENVIRONMENTAL QUALITY COMMITTEE
BOB WIECKOWSKI, CHAIR

Wednesday, April 29, 2015

9:00 a.m.

CALIFORNIA STATE CAPITOL
ROOM 3191

THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL:
OVERSIGHT UPDATE ON THE PERMITTING PROGRAM

BACKGROUND INFORMATION

Overview

The DTSC Office of Permitting is authorized to issue hazardous waste facilities permits, and to impose conditions specifying the types of hazardous waste that may be accepted for transfer, storage, treatment, or disposal in California. Currently there are 117 permitted Operating Facilities, including 28 Post Closure Facilities (closed and going through final remediation) in the state, that provide for the treatment, storage, or disposal of substances regulated as hazardous waste under federal and state law. A total of 1.82 billion pounds of California toxic waste were disposed of in these facilities in 2012, with 62%

treated to the point where it no longer met toxic standards, and 38% placed in landfills. From a staffing standpoint, currently there are 29 authorized positions allocated to the Office of Permitting, located in Sacramento, Berkeley, and Chatsworth.

There has been significant dissatisfaction with the performance of the Permitting Office, directed at the cost and length of time in completing the permit process and a perception that the Office does not deny or revoke permits as often as it should to address community concerns. The stakeholder interviews conducted as part of this study identified the following major concerns:

- The need to create clear and objective criteria for making denial/revocation decisions that are based on valid standards of performance and risk;
- A clear standard for violations that would lead to a denial or revocation;
- The need for the Department to document and measure a “scorecard” of attributes that would be perceived as a “good result” for the permitting program;

DTSC entered into a contract with CPS HR Consulting on February 1, 2013, to conduct a Permitting Process Review and Analysis.

CPS HR was asked to review the existing permitting program and develop a recommended standardized process with clear decision criteria and corresponding standards of performance. CPS HR was also asked to document the changes in the permitting process over the past five years based primarily on the record obtained from past internal review, and to obtain perspectives of designated subject matter experts, including representatives from the environmentalist, environmental justice, and industry communities. This report provides findings in each defined area.

The study found that the overall average permitting process time, which was 5.0 years prior to FY2003, improved to a 3.2 year average for the period from FY2003 to FY2007, before again increasing to 4.3 years in the most recent time period (from FY2008 through part of FY2013). So while there was an improvement from the oldest period studied to the most recent, the current trend is again towards longer processing time.

The study notes several key findings regarding the recent increase in permit processing time which is attributed to at least two major factors:

1. There was a reduction in staffing in the office. Permitting staffing has been reduced significantly from 95.8 personnel years utilized in FY2007 to just 24.6 personnel years utilized in FY2009. The initial change was a response to the economic recession in 2009, and its required state budget reductions. However, less than 26.1 personnel years have been utilized in each year since that time.
2. The study found that the second primary reason for permitting delays is poor management practices. Between December 2009 and June 2013, the Permitting Program Office did not maintain consistent uniform management, supervisory structure or clear consistent organizational structure. This is demonstrated by the fact that program managers were either re-assigned to other duties or vacant for a majority of the time period from July 2009 through July 2013, while program supervisor positions for all personnel in the unit were either not authorized or vacant for more than half of this period. In other words, there was a four-year period in which direct supervision of personnel lapsed.

This study concludes that while many aspects of the work process required for a permit renewal are well defined and well known, most of the difficult or complex steps are not clear or well defined. This is one of the most likely reasons for prolonged delays, and for future process improvement.

The study further stated that much of the “process” knowledge within the Office of Permitting is in the individual professional knowledge of the DTSC staff which is interpretive and not documented. More importantly, a re-review of the Permit Renewal Team effort of 2007-2009 has not found any structural changes or permanent process changes that have been implemented that could cause significantly improved permit renewals in the future. According to CPS HR the “lessons learned” from the Renewal team effort appear to have been misconstrued, and the actions taken after the team experience were damaging to management and supervision in the unit.

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 has requested an additional \$1.632 million and 16 limited-term positions for two years to address the permitting backlog.

The DTSC Permitting Backlog:

The CPS audit was conducted over a span of 8 months and during that time period the number of extended permits varied. The total number of extended permits late 2013, at the time the CPS report was published, was approximately 24.

Currently there are 36 expired Permits.

In fiscal year 2014-15, the Office of Permitting has committed to the Legislature the completion of eight permit decisions. The Office of Permitting will publicly notice approximately 12 permit decisions with a goal of making nine permit decisions before the end of the fiscal year. Four permits are issued to date for this fiscal year. There are five additional permit decisions currently being completed or going through the public review process with the goal of completing them by the end of this fiscal year. This does not include the resolution of the Exide permit.

According to DTSC, currently systems are being put in place, including training, resources, and audits, to ensure that permit review timelines are measured and evaluated against goals set out in the Permitting Work Plan. Systems for measuring permit reviews were put in place in the fall of 2014 and are currently being tracked.

It is expected that review timelines will decrease based on the project schedules, however, according to DTSC it is too early to draw conclusions regarding the impact to the permitting timeline.