Assembly
California Legislature

ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY
AND TOXIC MATERIALS
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AND

SENATE ENVIRONMENTAL QUALITY COMMITTEE

JOINT OVERSIGHT HEARING ON THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL – BOARD OF ENVIRONMENTAL SAFETY

To:	Members of the Assembly Committee on Environmental Safety & Toxic Materials and Members of the Senate Committee on Environmental Quality
From:	Chairs, Assemblymember Eduardo Garcia and Senator Ben Allen
Subject:	Joint Oversight Hearing: Progress on Department of Toxic Substances Control's (DTSC) Reform: Update
Date:	August 13, 2024

Introduction: In 2021, after years of legislative hearings and policy changes, the Legislature enacted SB 158 (Committee on Budget and Fiscal Review, Chapter 73, Statutes of 2021) which mandated several policy reforms to the California Department of Toxic Substances Control (DTSC), stabilized funding, and created the Board of Environmental Safety (BES).

The five member BES sets policy and prioritizes transparency and accountability for DTSC. SB 158 also enacted fee reform, by eliminating and modifying some fees. This included repealing the generator fee and instead establishing the new generation and handling fee. All fees were set at a rate that would eliminate DTSC's operating deficit, provide revenue for anticipated needs in the near-term, fund the BES and the development of a hazardous waste management plan, and provide DTSC with a prudent reserve. Lastly, SB 158 included $500 million for the cleanup of contaminated sites, including priority for sites where there are high environmental burdens and sensitive populations.

Through testimony from the BES Chair, and the Director of DTSC, this hearing will provide updates on these reforms and an opportunity to evaluate progress that has been made to improve DTSC.

DTSC's Authority and Major Programs

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 hazardous waste programs. The HWCL covers the entire management of hazardous waste, from the point that hazardous waste is generated to management, transportation, and ultimately disposal of waste into a state or federally-authorized facility. DTSC is responsible for administering the Hazardous Waste Facility Permitting Program, established under the HWCL and the federal Resource Conservation and Recovery Act (RCRA) to regulate facilities that treat, store, or dispose of hazardous waste. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. DTSC's inspection and enforcement responsibilities include its delegated authority under the federal RCRA, California's HWCL, and state laws pertaining to toxic substances in packaging and consumer products, and the disposal of universal wastes such as electronic waste.

Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA):

Under the 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. Additionally, DTSC ensures that the state meets the federal requirements that California pays 10% of cleanup costs for federal Superfund sites and 100% 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; issue and enforce a removal or remedial action order to any responsible party; and, impose administrative or civil penalties for noncompliance with an order. Federal and state laws also authorize DTSC to recover costs and expenses incurred by carrying out these activities.

Board of Environmental Safety:

SB 158 created the BES to improve DTSC's transparency, accountability, and fiscal stability. The BES is comprised of four part-time members and one full-time member. Three of the BES members are appointed by the Governor, including the full-time BES Chair, and subject to confirmation by the Senate. The Senate and Assembly each appoint one additional member.

The BES' duties and authorities include developing a multi-year schedule to develop long-term goals for DTSC's programs; reviewing and approving the Director's priorities and adopting performance metrics; adjusting fee rates based upon changes made in the annual Budget Act; hearing and deciding hazardous waste facility permit appeals; providing opportunities for public hearings on permitted and remediation sites; conducting an analysis of DTSC's fee structure; conducting an analysis of DTSC's programs and their relationship with related programs in other agencies; and, forming

advisory subcommittees on any topic, including fees and environmental justice. SB 158 also established an Office of the Ombudsperson within the BES and requires the DTSC Director and the BES Chair to appear annually before Legislative policy committees. Additionally, SB 158 requires the Director to present and respond to the BES on any issue brought forward by a member of the public, the Ombudsperson, or a BES member, if requested by the BES.

The BES monitors funding to ensure that DTSC remains solvent. SB 158 was enacted in part to create an equitable fee framework and to address historical funding shortfalls in the Toxic Substances Control Account (TSCA) and the Hazardous Waste Control Account (HWCA), which had relied heavily on General Fund backfills. The BES is required to determine fee rates by October 1 of each fiscal year.

Green Chemistry in California:

In 2008, the California Legislature enacted two landmark pieces of legislation to begin implementation of a green chemistry program: AB 1879 (Feuer and Huffman, Chapter 559, Statutes of 2008) and SB 509 (Simitian, Chapter 560, Statutes of 2008). These bills lay the statutory foundation for the state's Green Chemistry Program and are designed to establish a comprehensive approach to chemicals policy. Specifically, AB 1879 mandates that a regulatory process be established for identifying and prioritizing chemicals of concern in consumer products and to create methods for analyzing alternatives to existing hazardous chemicals. SB 509 establishes the Toxics Information Clearinghouse, with the goal of increasing public knowledge about the toxicity and hazards of thousands of chemicals used in California every day.

The Safer Consumer Products regulatory process:

To implement the Green Chemistry statutes, DTSC created what it called a "four-step continuous, science-based, iterative" regulatory process through its "Safer Consumer Products" (SCP) regulations. The SCP regulations were adopted October 2013, and follow the process below:

1) Candidate Chemicals – The regulations establish a list of "candidate chemicals" based on the work already done by other authoritative organizations, and specify a process for DTSC to identify additional chemicals as candidate chemicals;

2) Priority Products – The regulations require DTSC to evaluate and prioritize product/candidate chemical combinations to develop a list of "priority products" for which alternatives analyses must be conducted;

3) Alternatives Analysis – The regulations require responsible entities (manufacturers, importers, assemblers, and retailers) to notify DTSC when their product is listed as a priority product. DTSC will post this information on its website. Manufacturers (or other responsible entities) of a priority product must perform an alternatives analysis for the product and the chemicals of concern in the product to determine how to best limit exposures or reduce the level of

adverse public health and environmental impacts posed by the chemicals of concern; and,

4) Regulatory Responses – The regulations require DTSC to identify and implement regulatory responses designed to protect public health and/or the environment and maximize the use of acceptable and feasible alternatives of least concern. DTSC may require regulatory responses for a priority product, if the manufacturer decides to retain the product, or for an alternative product selected to replace the priority product.

The mission of the SCP Program is to advance the design, development, and use of products that are chemically safer for people and the environment. DTSC provides compliance assistance to responsible entities and conducts compliance evaluation and enforcement activities to ensure that responsible entities comply with the SCP Regulations.

DTSC may initiate formal enforcement actions against recalcitrant responsible entities who fail to comply with regulatory requirements. DTSC's compliance and enforcement activities under the SCP include:

- Hosting workshops and conducting other outreach to inform and engage stakeholders regarding program activities, including new legislation and regulatory requirements, proposed Priority Product listings, and important regulatory deadlines;
- Offering compliance assistance, guidance, and training to help responsible entities successfully navigate the Alternatives Analysis process;
- Conducting market surveillance and product testing to identify product ingredients and assess the presence of Priority Products on the California market; and,
- Undertaking enforcement actions as warranted.

If the manufacturer of a Priority Product fails to comply with SCP regulations, DTSC places that manufacturer on DTSC's publicly available Failure to Comply List. Manufacturers of Priority Products have the principal duty to comply with SCP regulations. When a manufacturer does not comply, the duty to comply falls to the importer (if any), and then after continued non-compliance, this duty falls to the retailer or assembler. The SCP Regulations prohibit retailers and assemblers from purchasing or selling non-compliant Priority Products. Once a manufacturer is placed on the Failure to Comply List, retailers and assemblers of the non-compliant Priority Products must submit a Cease Ordering Notification to DTSC informing the Department that the retailer or assembler has ceased ordering the product.

The pace of regulation of harmful chemicals in consumer products under the SCP Program has been historically slow. In the almost 16 years since the passage of the original Green Chemistry legislation, DTSC has adopted eight Priority Products, with three additional products under development (see below).

Priority products adopted:

2024 -- Laundry Detergents Containing the Surfactants Nonylphenol Ethoxylates (NPEs)
2023 – Motor Vehicle Tires Containing 6PPD
2023 – Nail Products Containing Toluene
2022 – Treatments Containing PFASs for Use on Converted Textiles or Leathers
2021 – Carpets and Rugs with PFASs
2019 – Paint or Varnish Strippers Containing Methylene Chloride
2018 – Spray Polyurethane Foam Systems Containing Unreacted Methylene Diphenyl Diioscyanate
2017 – Children's Foam-Padded Sleeping Products with TDCPP or TCEP

Priority products under development:

No rulemaking proposed – Nail Products Containing Methyl Methacrylate
No rulemaking proposed – Motor Vehicle Tires Containing Zinc
No rulemaking proposed – Paint and Varnish Strippers and Graffiti Removers Containing N-Methylpyrrolidone
No rulemaking proposed – Nail Products Containing Triphenyl Phosphate
No rulemaking proposed -- Personal Care and Cleaning Products Containing 1,4-Dioxane

Legislation to improve the SCP process:

SB 502 (Allen, Chapter 701, Statutes of 2022) provided DTSC with additional tools to help improve and streamline the SCP process. These provisions included authorizing DTSC to issue formal requests for information from product manufacturers and requiring those manufacturers to provide information within a specified timeframe. SB 502 also requires DTSC in its Priority Product Work Plans, commencing with the 2024-2026 Work Plan, to provide specific information, including the timeline for completion of actions for at least five product categories or subcategories in each Work Plan. These actions include information collection, listing a product as a Priority Product, completion of an Alternatives Analysis, and finalization of regulatory responses.

Additional resources for DTSC's SCP:

As part of the 2022-2023 Budget, DTSC requested additional resources to support SCP implementation. Specifically, DTSC states in a Budget Change Proposal:

"As part of the implementation of the 2021 Governance and Fiscal Reform, the Department of Toxic Substances Control (DTSC) requests 37.0 permanent positions and $7.2 million Toxic Substances Control Account (TSCA) in 2022-23 and ongoing to provide the resources needed to fully implement the Safer Consumer Products (SCP) Program. This proposal would increase DTSC’s capacity to identify product-chemical combinations for regulation under the regulatory framework, perform rulemaking tasks, review Alternatives Analyses, and provide technical support to regulated manufacturers for Alternatives Analysis (AA) development.

Based on the current SCP regulations implementation status and the resources requested, the outcomes will be: Accelerate the identification of Priority Products and the rate of regulation adoption to list new Priority Products. Previous resource increases have enabled more efficient research on the product categories in the Work Plan. In calendar year 2022, SCP expects to identify at least five possible Priority Products. With additional resources this number will increase to 12 products per year over the subsequent two years with enhanced exposure considerations. In calendar year 2022, SCP expects to initiate one to three Priority Product listing regulations and with additional resources. **Beginning in calendar year 2023, SCP will increase rulemaking capacity to five Priority Product listings per year**."

Issues for committees to consider: With the additional resources DTSC received in 2022, DTSC expected to ramp up to proposing 5 Priority Products per year beginning in 2023, however that has not happened. When will DTSC ramp up this program? What is the delay in fully implementing the SCP?

Legislation in 2023-2024 dealing with chemicals in products:

While regulation of harmful chemicals in consumer products proceeds slowly under the SCP Program, the Legislature can and increasingly does pass bills banning certain chemicals in products. For example, in 2023-24 alone, members introduced the following bills:

1) AB 2201 (Addis). Prohibits, on and after July 1, 2026, a person, including, but not limited to, a manufacturer, from selling or distributing in commerce in this state an air care product that contains any intentionally added ingredient from a specified list. This bill is on the inactive file on the Assembly Floor.

2) AB 2244 (Ting). Would prohibit, beginning on January 1, 2025 a paper proof of purchase (receipt), provided to a consumer by a business or created by a manufacturer, from containing bisphenol A (BPA) and would prohibit, beginning January 1, 2026, a paper proof of purchase, provided to a consumer by a business or created by a manufacturer, from containing any bisphenols. This bill is pending action in the Senate Appropriations Committee.

3) AB 2300 (Wilson). Prohibits, beginning January 1, 2026, a person or entity from manufacturing, selling, or distributing into commerce in the State of California intravenous solution containers made with intentionally added DEHP; prohibits, beginning January 1, 2031, a person or entity from manufacturing, selling or distributing into commerce in the State of California intravenous tubing made with intentionally added DEHP for use in neonatal intensive care units, nutrition infusions, or oncology treatment infusions; prohibits a person or entity from replacing DEHP for revised or new products with other specified ortho-phthalates; and, exempts, from the prohibition of using DEHP, human blood collection and storage bags and apheresis

and cell therapy blood kits and bags, including integral tubing. This bill is pending action on the Senate Floor.

4) AB 2316 (Gabriel). Prohibits, beginning on July 1, 2025, a public school from offering, selling, or otherwise provide any food containing specified synthetic food dyes or titanium dioxide. This bill is pending action in the Senate Appropriations Committee.

5) AB 2408 (Haney). Prohibits, beginning July 1, 2026, any person from manufacturing, selling, offering for sale, distributing for use in this state, or using in this state, firefighter personal protective equipment (PPE) containing intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS). This bill is pending action in the Senate Appropriations Committee.

6) AB 2491 (Lee). Prohibits, beginning January 1, 2025, a person or entity from selling to a person under 13 years of age an over-the-counter skin care product or cosmetic product advertised to address skin aging that contains specified intentionally added ingredients. This bill was held on the suspense file in the Assembly Appropriations Committee.

7) AB 2515 (Papan). Prohibits a person from manufacturing, distributing, selling, or offering for sale a menstrual product that contains regulated perfluoroalkyl or polyfluoroalkyl substances (PFAS), as defined. This bill is pending action in the Senate Appropriations Committee.

8) AB 2761 (Hart). Prohibits, beginning January 1, 2026, the sale, use, and manufacture of plastic packaging that contains PFAS or polyvinyl chloride (PVC), inclusive of polyvinylidene chloride (PVDC). This bill was held in the Senate Environmental Quality Committee.

9) SB 903 (Skinner). Prohibits, commencing January 1, 2030, a person from distributing, selling, or offering for sale in the state a product that contains intentionally PFAS. Authorizes DTSC to establish regulations to administer the prohibition. This bill was held on the suspense file in the Senate Appropriations Committee.

10) SB 1266 (Limon). Prohibits, beginning January 1, 2026, a person from manufacturing, selling, or distributing in commerce, any juvenile's feeding product, juvenile's sucking product, or juvenile's teething product, as defined, that contains any form of bisphenol, as defined, at a detectable level above 0.1 parts per billion. This bill is pending action in the Assembly Appropriations Committee.

11) AB 347 (Ting). Requires the Department of Toxic Substances Control (DTSC) to enforce and ensure compliance with three existing laws dealing with chemicals in juvenile products, cleaning products, and food packaging and cookware. This bill is pending action in the Senate Appropriations Committee.

12) AB 246 (Papan). Prohibits, beginning January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale a menstrual product that contains intentionally-added PFAS. This bill is pending before the Assembly Environmental Safety and Toxic Materials Committee. This bill was vetoed by the Governor.

13) AB 418 (Gabriel, Chapter 328, Statutes of 2023). Prohibits, beginning January 1, 2025, a person or entity from manufacturing, selling, delivering, distributing, holding, or offering for sale, in commerce a food product that contains any of the four specified substances.

14) AB 727 (Weber). Prohibits, beginning January 1, 2025, a person from manufacturing, selling, delivering, distributing, holding, or offering for sale, a cleaning product that contains intentionally-added PFAS. This bill is pending before the Assembly Environmental Safety and Toxic Materials Committee. This bill was vetoed by the Governor.

15) AB 1423 (Schiavo). Prohibits, starting January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale artificial turf that contains PFAS above specified levels. This bill is pending before the Assembly Environmental Safety and Toxic Materials Committee. This bill was vetoed by the Governor.

Issues for committees to consider: Over the past two years the Legislature has introduced 15 bills to ban or restrict the use of chemicals in products. Over that same time span, DTSC's SCP Program has produced two priority products. Are there additional changes necessary to the SCP Program to improve the pace of evaluating and proposing priority products? Is the SCP Program still viable?

Issues for Further Discussion

Hazardous waste fees:

The Governor's 2024 May Revision included trailer bill language and a Budget Change Proposal to address the structural deficit in the HWCA. The proposed statutory changes included in the enacted budget do the following:

- Clarify fee exemptions to be consistently applied and aligned with intent of SB 158, DTSC's Governance and Fee Reform.
- Define "release" to be consistent with site mitigation language.
- Mandates DTSC to adopt regulations on an exemption review process and reporting requirements.
- Provide DTSC emergency rulemaking authority on fees administration.

- Replace California Department of Tax and Fee Administration (CDTFA) penalties with escalating penalties based on delinquency period.
- Provide technical code cleanup.

The budget proposal includes, $750,000 ($500,000 ongoing) from the HWCA to:

- Increase CDTFA audit activity and implement escalated penalty framework; and develop exemption review and reporting oversight processes
- Technical adjustments resulting in $5 million reduction in HWCA authority, shifted to other funds.
- Build-out of DTSC and CDTFA oversight activities.
- 2023-24 TSCA loan forgiveness.

SB 158 established a sustainable fee framework by consolidating four fees into a single flat per-ton rate. SB 158 also established the BES to annually set rates. At the time of SB 158's enactment, the generation and handling fee was estimated to generate $81 million. Actual generation and handling fee revenues in 2022-23 were $43 million, with revenues in 2023-24 at approximately $48 million. The above proposals seek to address the structural deficit between DTSC's ongoing revenues and expenditures.

Issues for committees to consider: Can DTSC provide an update on the implementation of this May Revise budget proposal (understanding it is approximately one month from enactment)? Can the BES Chair update the committees on the BES' process for evaluating fees and potential fee increases?

BES' fee authority:

Starting in fiscal year 2023-2024, the fees set by the BES annually are the generation and handling fee, the facility fee, and the environmental fee. The BES has emergency rulemaking authority for fee rate setting, and any adopted regulation remains in effect unless it is appealed by the BES. There are several factors that are used by the BES to set fees annually. When adjusting fees, the BES considers cost of living adjustments for all three fees; the administrative costs budgeted by DTSC, including costs to administer and collect fees; appropriations set by the Legislature; and, maintaining prudent reserves. The BES must provide fee rates and fee caps to CDTFA no later than October 1, and the rates are retroactive to July 1. DTSC, together with the Fees Subcommittee, informs the BES of the final budget and fund conditions and makes recommendations to BES. The BES holds a public process and adjusts fees as necessary based on input, and must hold a vote to set rates. The generation and handling fees are deposited into the HWCA, and the facility fee is deposited into the Hazardous Waste Facility Account (HWFA), an HWCA subaccount. The environmental fee is deposited into the TSCA.

On July 17, 2024 a fee rate setting process and timeline update was presented by the BES. For fiscal year 2024-25, the BES must also consider the generation and handling

fee shortfalls and correction of the structural deficit. The fund projections for the end of fiscal year 2023-24 are -2.9 million, -0.9 million and 4.2 million for the HWCA, HWFA and TSCA accounts, respectively. As such, to address the concerning numbers, the BES has looked over three different scenarios that would result in either a 5%, 7.5%, or 10% reserve in each of the accounts. It is anticipated that the BES will adopt fee rates by the end of August and initiate the emergency rulemaking process in September.

Issue for committees to consider: Can the BES Chair describe the process the BES will use to evaluate potential fee increases including any public participation in that process?

Implementation of SB 673 (Lara, Chapter 611, Statutes of 2015):

SB 673 was signed into law in 2015, creating an opportunity for DTSC to improve the permit process for hazardous waste facilities. Implementation of SB 673 is an opportunity to address long standing environmental justice concerns stemming from the location, operation, and expansion of hazardous waste facilities. The provisions of the bill provided for stronger permit criteria to further protect communities and consider "the vulnerability of, and existing health risks, to nearby populations" when issuing new or modified permits and permit renewals. DTSC's efforts to implement SB 673 included dividing the regulations into two tracts. Between both tracts there are a total of seven permit criteria. In 2019, Tract 1 was implemented with five of the seven permit criteria. The five permit criteria in Tract 1 are as follows:

- *Past Violations:* DTSC developed a violation scoring procedure to score past violations in permit decisions;
- *Financial Assurance & Responsibility:* DTSC developed regulations to ensure hazardous waste facilities pay to clean up any contamination at the site;
- *Personnel Training:* DTSC required permitted hazardous waste facilities to ensure personnel were trained in safety, emergency plans, and maintenance of operations; and,
- *Health Risk Assessment:* DTSC required all permitted hazardous waste facilities to assess and report health risks they pose to surrounding workers and communities.

According to their website, DTSC is finalizing the last two permit criteria that fall within Tract 2. The two pending criteria are:

- *Community Vulnerability and Health Risks*; and,
- *Setback Distances*.

Violation Scoring Procedure (VSP): The VSP regulations, part of the Past Violations permit criteria mentioned above, became effective January 1, 2019. These regulations focused on carefully evaluating the 78 hazardous waste operating facilities in the state and considering their compliance history as part of the permit decision-making process. According to DTSC, the VSP regulations apply to all permitted operating hazardous waste facilities, except for those facilities solely authorized by one of two types of

authorizations: (1) post-closure permits or orders; and (2) permits and permit modifications for closure only. The regulations are intended to incentivize facilities to improve compliance performance and reduce the number of violations, which over time will result in better protection of the environment and public health.

A Facility VSP Score is calculated by summing the scores for all Class I violations for compliance inspections over a rolling 10-year period, and then dividing by the number of compliance inspections. DTSC assigns a facility to a compliance tier based on the Facility VSP Score. A facility is assigned to one of the following three compliance tiers: acceptable, conditionally acceptable, and unacceptable. An acceptable or conditionally acceptable tier is not subject to additional administrative dispute resolutions. However, a conditionally acceptable score requires compliance, with additional requirements as described in the regulations. An unacceptable tier requires DTSC to initiate permit denial, suspension, or revocation proceedings for facilities that fall under that tier. A facility can challenge an unacceptable compliance tier assignment, in which case DTSC holds a public meeting to present the grounds for its decision, allow the facility to demonstrate opposition, and provide for a public comment period to weigh in on the pending permit decision. DTSC may still grant a permit or a permit modification to a facility given an unacceptable compliance tier assignment if DTSC determines the operation of the facility will not pose a threat to public health, safety, or the environment. However, DTSC is required by the VSP regulations to impose mandatory permit restrictions, which include limiting the length of the permit, requiring additional audits, and requiring the correction for all potential harm associated with facility operations.

Introduction of SB 575: In 2020, Senator Maria Elena Durazo introduced SB 575 in an effort to make changes to the VSP. The provisions of the bill would have revised the numerical ranges used by DTSC to determine a hazardous waste facility compliance tier and would have prohibited the department from dividing the sum of the provisional and final inspection violation scores by the number of compliance inspections that occurred during that 10-year period. While this bill was held on suspense, DTSC acknowledged that fixes to the VSP regulation were needed and it had calendared with the Office of Administrative Law a proposed update to the regulation beginning in June 2021. The types of changes being considered include the current practice of dividing the raw score by the number of inspections.

SB 673 Revised Framework: In 2018, DTSC released "SB 673 Cumulative Impacts and Community Vulnerability Draft of Regulatory Framework Concepts." This document was compiled by reviewing information that came from hosting symposia on cumulative impacts with academic, business, environmental justice, and government experts. In response to feedback that was received for this document, DTSC released "SB 673 Cumulative Impacts and Community Vulnerability Draft Regulatory Framework" in 2021. The contents of the 2021 document provided a draft methodology for integrating potential facility impacts and community vulnerabilities into DTSC's permitting process for hazardous waste facilities and for identifying facility actions that enhance community protection. The document divides the regulatory framework into the following seven elements:

- *Element 1: Community and Facility Screening*: This element describes two screening steps. First, DTSC proposed to use CalEnviroScreen as an initial screening tool. If a facility has a CalEnviroScreen aggregate score higher than the 60th percentile, then DTSC proceeds to the second screening. The following two key factors would be used to further screen hazardous waste facilities: 1) using CalEnviroScreen (and, in some cases, supplemental information) to identify cumulative impacts in communities near facilities; and 2) characteristics related to potential community impacts including facility size, activities within the facility;
- *Element 2: Facility Tiered Pathway and Designation*: DTSC proposed a methodology to determine whether a facility should be placed on one of three facility tiered pathways in the permitting process to address combined or cumulative impacts and vulnerabilities in the community. The facility tiered pathways are scaled to require the highest level of actions from the largest facilities with the greatest potential to have an adverse effect on health risks for vulnerable communities. DTSC proposed to establish a public engagement opportunity before a facility tiered pathway is finalized for a facility;
- *Element 3: Facility Action*: If a facility is placed in one of the three pathways, DTSC proposed that the facility would be required to take facility actions. This element included a draft menu of facility actions that could be selected by a facility owner or operator to address combined or cumulative impacts and vulnerabilities in the community. The facility actions are listed under three categories: Improvements to Facility Activities and Operations, Monitoring or Other Evaluation of Community Concerns, and Public Engagement and Outreach Strategies;
- *Element 4: Facility Action Workplan (Workplan):* DTSC proposed that facility owners and operators submit a Workplan as part of their permit application (or major permit modification application). Workplans would be required with a permit application to provide details as to how the facility plans to reduce community health risks and enhance community protections;
- *Element 5: Decision to Revoke or Deny a Permit:* DTSC proposed using certain criteria including the presence of environmental and health risks to nearby populations in regulation as a basis for a decision to revoke a permit or deny a permit application or major permit modification or reduce the size or volume of hazardous waste handling or scope of hazardous waste activities authorized in a permit;
- *Element 6: Inspection Scoring Adjustment for Vulnerable Areas*: DTSC proposed a new process for adjusting inspection violation scores for certain violations upward if the facility is located within an environmental justice area and in close proximity to sensitive land uses; and,
- *Element 7: Updates to data and tools* – DTSC would commit to using most updated and quality assured data, tools, and information available in evaluating community and facility characteristics.

DTSC anticipated making modifications to the framework following feedback from stakeholders and draft and submit formal regulatory text in 2022.

Update request by the Legislature: On April 25, 2024, Senators Maria Elena Durazo, Lena Gonzalez, and Wendy Carrillo wrote a letter to DTSC regarding the implementation

of SB 673. The authors note the absence of a cumulative impacts tool to guide DTSC's permitting process. Additionally, the authors requested information on updates to the VSP. DTSC responded to the letter on May 21, 2024 and provided updates and a new timeline. Specifically, DTSC noted that a listening session held September 2021 provided them with comments and input letters that were used to inform planned revisions. Following a complete analysis of all the materials, DTSC developed proposed revised VSP regulations. Lastly, DTSC stated that they had revised the draft regulatory framework based on feedback received. Conversations were ongoing with California Environmental Protection Agency (CalEPA) and the BES. They anticipate sharing a revised framework this summer (summer 2024).

Recent Updates: According to their website, DTSC is finalizing the last two permit criteria: Community Vulnerability and Health Risks, and Setback Distances. On August 5, 2024, DTSC released the first of three planned informational sheets. The informational sheet outlines three goals:

- *Provide earlier opportunities for public input:* In an effort to promote transparency and enhance accountability, DTSC proposes to expand current requirements so that permit applicants will need to complete a community engagement activity before submitting a new permit or permit renewal applications. The objectives will be to inform the public about the proposed hazardous waste management activities and their potential environmental, health, and other impacts on nearby communities. The public will also be informed on how the applicant will manage potential risks to nearby communities. Applicants will be required to incorporate public input from the pre-application public meeting or activity in their permit application. Additionally, DTSC proposes creating a mechanism for the public to see how their input is considered throughout the permitting process. Community engagement can be, but is not limited to, hosting open house, holding public meetings, discussions with community based organizations, fact sheets shared with nearby communities, online or paper community surveys or community focused webpages;
- *Consider community vulnerability in permit decisions and conditions:* To be included in Sheet 2; and,
- *Develop science based setback distances for community protection:* To be included in Sheet 3.

Issues for committees to consider: What is the delay in implementing SB 673? When can the communities expect DTSC to propose and finalize the remaining elements of SB 673? Will DTSC be updating the VSP as promised, in response to SB 575? When can the Legislature expect this update?

<u>Environmental Justice Advisory Council:</u>

SB 158 requires DTSC to establish a forum that represents communities across the state of California that have been impacted by DTSC's programs and activities and provides environmental justice advice, consultation, and recommendations to DTSC's Director and

the Board. To comply with SB 158, DTSC announced it will form an Environmental Justice Advisory Council (EJAC). Once formed the EJAC will work to establish strategies and best practices related to issues of equity, environmental justice, health disparities, hazardous waste management, cleanups in vulnerable communities, and cumulative risks.

EJAC Framework: In a document outlining the EJAC's framework, DTSC describes the EJAC's purpose, function, and process for membership selection. The document states that it is the purpose of EJAC to provide independent environmental justice advice, consultation, and recommendations to promote and protect those who are more negatively impacted by toxic exposure. EJAC members will work collaboratively with communities impacted by DTSC's work to develop solutions that will not only improve the health of those communities, but will also reduce toxic threats throughout the state and promote fair treatment and meaningful involvement of all people, regardless of race, ethnicity, color, national origin, sexual orientation, or income.

According to DTSC, EJAC members should represent communities in the state with significant environmental pollution burden and socioeconomic vulnerability, defined as "vulnerable communities." Members are required to be residents or workers in a vulnerable community and at least one member should be a member of a Tribal nation within California. A selection committee composed of three members of community environmental justice groups, two staff members of DTSC, and two members of the Board appoints EJAC members.

EJAC Framework Workshops: To date, DTSC has hosted several EJAC Framework Workshops that occurred in the summer of 2023. These workshops presented the EJAC framework to the public and provided steps for questions and comments, with the last public comment period ending on August 25, 2023. No upcoming meetings had been posted on DTSC's website at the time this document was prepared.

Issues for committees to consider: When can the Legislature expect DTSC to establish this EJAC? What is the delay?

DTSC Engagement on Sites Impacting Communities

Chiquita Canyon Landfill

The Chiquita Canyon is a 639 acre landfill that provides waste disposal services for the Santa Clarita Valley and surrounding Los Angeles communities. It is located in Castaic, California, approximately 3 miles west of the Interstate 5 on State Route 126. The landfill has been in operation for more than 40 years and is operated by Chiquita Canyon, LLC.

Landfill violations and agency actions: The Chiquita Canyon landfill has been experiencing subsurface oxidation, an event that typically occurs when oxygen intrudes below the landfill cover and results in temperature increases, and that has resulted in significant leachate production and a change in the composition of landfill gas. These types of reactions typically result in increases of carbon monoxide, hydrogen sulfide, and volatile organics in the landfill gas. The reaction area is an estimated 30-35 acres in the northwestern portion of the landfill. The gas collection and control system is not operating effectively, resulting in offensive odors around the area.

According to records available on DTSC's website, the landfill has received over 100 notices of violation for discharging quantities of air contaminants sufficient to cause injury, detriment, nuisance, or annoyance to a considerable number of people. As of July 2024, the landfill had received multiple notices each month and over 100 notices of violations. The agency citing most of these violations was the South Coast Air Quality Management District (SCAQMD). Residents of the area filed nearly 6,800 odor complaints in 2023.

Since November 30, 2023, the United States Environmental Protection Agency (US EPA) has been leading a multi-agency effort. Local, state, and federal agencies have formed a multi-agency action team (MCAT) to address the concerns raised by the landfill crisis. Members of the MCAT include the California Air Resources Board, DTSC, CalEPA, California Department of Resources Recycling and Recovery, Los Angeles Regional Water Quality Control Board, SCAQMD, and the Los Angeles County Departments of Public Works, Public Health, and Planning.

DTSC Investigation: On December 12, 2023, CalEPA and DTSC conducted an investigation of the landfill owned by Chiquita Canyon, LLC. On February 15, 2024, DTSC issued the Chiquita Canyon Landfill a summary of violations due to multiple violations of California's hazardous waste control laws. Among those violations was failure to minimize the potential release of hazardous waste containing benzene in exceedance of regulatory limits into the air, ground, or water.

During the December 2023 inspection, DTSC's personnel observed leachate pooling in a specified location on the property and a well actively leaking. Samples were taken of two wells, with one well showing an exceedance for benzene. It was later confirmed that a leachate geyser that took place at one of the wells, recorded by the US EPA and SCAQMD, was from this same well.

Recent updates: On February 22, 2024, Assemblymembers Pilar Schiavo, Chris Holden, Tina McKinnor, and Mike Gipson wrote a letter to DTSC, the State Water Resources Control Board (State Water Board), and SCAQMD requesting increased involvement with the site and requested a meeting to discuss the oversight and accountability imposed on Chiquita Canyon, LLC. One day prior, the US EPA issued a Unilateral Administrative Order requiring Chiquita Canyon, LLC to comply with the law and ensure proper management, treatment, and disposal of hazardous waste. Steps to mitigate the odors originating from the landfill were also required. US EPA acted under RCRA and

the Comprehensive Environmental Response, Compensation, and Liability Act authority. Under this order, Chiquita Canyon, LLC is required to provide a comprehensive plan to ensure the objectives of the order are being met.

On March 6, 2024, Assemblymembers Pilar Schiavo and Eduardo Garcia wrote a letter to Governor Newsom requesting a state of emergency declaration. The letter cites several health issues that community members have endured as a result of emission of toxic gases and disruption to their daily lives. To date, a state of emergency has not been declared.

CalEPA also issued a Finding of Violation to Chiquita Canyon, LLC under the Clean Air Act. CalEPA found that Chiquita Canyon LLC has, and as of June 4, 2024 continues, to violate the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for municipal solid waste landfills and conditions in their Title V permit. The source of the problem remains under investigation.

Issue for committees to consider: What are the latest steps that Chiquita Canyon, LLC has done to address the issues found during the inspection and in response to the summary of violations that DTSC issued?

Santa Susana Field Laboratory (SSFL):

The SSFL is a roughly 2,850-acre site where rocket testing and nuclear research took place over the span of several decades. Operational activities at SSFL began in 1948 and primarily included research, development, and testing of liquid-propellant rocket engines, water jet pumps, lasers, liquid-metal heat exchanger components, nuclear energy, and related technologies. The principal activity was large rocket engine testing by Boeing (and its predecessors, North American Aviation and Rockwell International), the U.S. Air Force (USAF), and National Aeronautics and Space Administration (NASA). The majority of the project site was acquired in 1954 and 1958, and development of the western portion of the site began soon after.

Operational and maintenance activities in the past contaminated the site's soil and groundwater with various chemicals. Engine testing in the six rocket engine test areas primarily used petroleum-based compounds as fuel and liquid oxygen as the oxidizer. Solvents, primarily trichloroethene (TCE), were used to clean engine components as well as for other equipment degreasing operations at SSFL. Petroleum fuel hydrocarbons and chlorinated solvents were used at SSFL in large volumes. Another solvent, used in lesser quantities, 1,1,1-trichloroethane (TCA), contained 1,4-dioxane as a stabilizer to increase the longevity and usefulness of the solvent. Solid propellants, including perchlorate compounds, were used at SSFL for research and testing operations. Polychlorinated biphenyls (PCBs) were present in some waste oils as well as oils within pre-1980 electrical transformers at various sites within SSFL.

The nuclear research conducted in Area IV also resulted in the accidental release of radioactive elements to the environment. Radionuclides that have been detected at more than one sample location include cesium-137, strontium-90, plutonium-239/240, cobalt-60, europium-152, plutonium-238, americium-241, and curium-243/244.

Three landfills were used at SSFL primarily for disposal of non-hazardous, inert construction debris (concrete, asphalt, rock, soil, etc.). Liquid wastes from engine testing were managed until the 1980s in a series of both flow-through and retention ponds. Ten of these ponds (impoundments) have undergone closure: one was clean-closed and nine were closed as RCRA-regulated units. Radioactive and mixed wastes were managed for offsite disposal at the onsite Radioactive Materials Handling Facility; non-radioactive, alkaline, and liquid-metal wastes were managed and treated at the onsite Hazardous Waste Management Facility. The onsite Thermal Treatment Facility was used for open burn/open detonation of hypergolic, reactive, and explosive wastes. Operational programs are no longer active since all research and development ceased as of 2006.

Clean up of SSFL: DTSC directs and oversees the site investigation and clean-up at the SSFL site under the Corrective Action Program of RCRA. The parties responsible for the clean-up are the Boeing Company, NASA, and the U.S. Department of Energy (DOE), due to their role in causing the contamination at the project site. They are responsible for conducting required investigations and cleanups of contaminants released from past activities at the project site. The cleanup of soil by the federal agencies, DOE, and NASA is also being conducted under the HSAA.

The 2007 Consent Order and the 2010 Administrative Orders on Consent (AOC) for remedial action establish the requirements for the investigation and cleanup of soil and groundwater at the project site. In 2007, the Boeing Company, DOE, and NASA signed the 2007 Consent Order requiring them to conduct a risk-based clean-up of soil and ground water at SSFL. The responsible parties are required to prepare draft documents and conduct cleanup activities. Drafting of these documents is followed by an opportunity for public comment and review, before DTSC can issue a final cleanup decision document for each area requiring cleanup. In 2010, NASA and DOE entered into subsequent, separate AOCs with DTSC. The 2010 AOCs establish the process to investigate and clean up soil within NASA's and DOE's administrative areas. The 2007 Consent Order continues to define the groundwater investigation and cleanup requirements for all of SSFL, and soil investigation and cleanup requirements within Boeing's administrative areas. The AOCs resulted in less stringent soil cleanup requirements for Boeing areas compared to the soil cleanup requirements for DOE and NASA areas.

The SSFL site is divided into the following areas:

- Area I (671 acres owned by Boeing and 42 acres in the northeast portion of the site administered by NASA). Area I contained administrative and laboratory facilities, and was formerly used for rocket engine and component testing. Area I also includes the former Area I Thermal Treatment Facility and three rocket engine test areas, the

Bowl, Canyon, and Advanced Propulsion Test Facility (APTF) areas. All test stands and administrative and laboratory facilities in Area I have been removed.

- Area II (410 acres in the north-central portion of the site, owned by the U.S Government and administered by NASA). Area II contained administrative and laboratory facilities, and four rocket test firing facilities: Alfa, Bravo, Coca, and Delta. NASA has removed the administrative and laboratory facilities and Delta test area. The Bravo and Coca test areas will be removed.
- Area III (114 acres in the northwest portion of the site, owned and operated by Boeing). Area III also includes the systems test area (STL-IV) and associated laboratories. All Boeing facilities in Area III have been removed.
- Area IV (290 acres owned and operated by Boeing and 90 acres leased by the DOE). DOE sponsored nuclear and non-nuclear energy research and development projects at the site. Nuclear energy research and handling of nuclear materials in Area IV ended by 1988. All DOE buildings in Area IV have been removed. Five remaining buildings that were operated by Boeing were identified within this area and were set to be removed.

The northern and southern buffer areas, which consist of 175 and 1,140 acres, respectively never had industrial activities on them.

Program Environmental Impact Report (PEIR) for SSFL: In September 2017, DTSC released the draft EIR for the cleanup of SSFL for 90 day public comment. The draft PEIR explained the environmental impacts that could result from SSFL cleanup activities, and identified alternatives to avoid or reduce those impacts. As required by the California Environmental Quality Act (CEQA), the draft PEIR also evaluated several alternatives to the proposed project.

Comments and recommendations were received on the draft PEIR and in 2023 DTSC released the final PEIR. The final PEIR includes the draft PEIR, comments and recommendations received on the draft PEIR, responses to significant environmental points raised in the review and consultations process, clarifications, revisions, and updates.

SSFL Draft Program Management Plan (PMP): The draft PMP, prepared by DTSC, establishes the framework for investigation and cleanup decisions at SSFL. The draft PMP describes how the cleanup will be undertaken in accordance with all applicable laws, including California state law, the 2007 Consent Order for Corrective Action, and the 2010 AOCs.

The PMP will serve as a roadmap for how DTSC and the three responsible parties (Boeing, NASA, and DOE) will complete the SSFL cleanup. Additionally, the PMP will assist in managing the complex nature of cleanup projects, the responsible parties' schedules, and multiple regulatory agencies' involvement at the site. The PMP will be updated annually to incorporate new information, especially as it relates to schedule and the roles of supporting agencies.

DTSC will determine the final framework for the PMP after reviewing and considering all public comments submitted during the public comment period. Subsequent decision documents, which will include individual public comment periods, will be prepared consistent with the framework for each discrete cleanup project at SSFL.

SSFL Comprehensive Framework: In May 2022, CalEPA announced a comprehensive framework that establishes strict cleanup protocols and timelines for the Boeing Company. DTSC and the Los Angeles Regional Water Quality Control Board are agencies involved in this framework. Boeing will clean up radionuclides in soil to "background" levels. In other words, it will clean up the soil to levels that would exist locally without industrial activity. Boeing will remediate chemical contamination to a health protective standard that could be as stringent as a "Resident with Garden" exposure scenario. This exposure scenario standard means the cleanup would ensure that it would be safe for people to live onsite and consume homegrown produce from a backyard garden. This standard was long advocated for by members of the surrounding community.

The framework was the result of a 15-month legal mediation, initiated to avoid additional litigation under an earlier consent order. The goals of mediation were three-fold; to resolve disputes over Boeing's remediation obligations for the soil and groundwater cleanup; to develop a process to achieve comprehensive cleanup by Boeing in its areas of responsibility at the site; and, to limit further delays and costs that could result from litigation.

SSFL project updates: In 2022, DTSC identified a subarea within SSFL, known as Area 1 Burn Pit, as a unique site requiring a timely response action plan to prevent clear and imminent threats to ecological receptors (plants, animals, habitats, ecosystems etc.). DTSC issued an Imminent and Substantial Endangerment Order to Boeing for removal of contaminated soil in the Area 1 Burn Pit. In November 2023, a public meeting was held to receive public comment on the proposed Removal Action Plan. DTSC integrated additional requirements based on public input and issued a conditional approval.

The cleanup for this area includes removal of soil contaminated with radionuclide concentrations that exceed specified values, to a depth of one foot deeper than each exceedance, to a maximum depth of 10 feet or refusal due to bedrock. Chemicals of concern will be removed to concentrations below ecological risk-based screening levels. Lastly, soil between 6 inches and 2 feet underneath all areas covered by the geotextile fabric will be removed as necessary to stabilize the site until the final cleanup is completed. Excavation depth will be modified as needed and confirmations samples will be collected to confirm soil remediation goals. These removal actions began in March of 2024 and are ongoing.

In February, March and April of 2024, DTSC held several workshops to prepare stakeholders to review and comment on future groundwater decision documents when comment periods for those documents become available. Before these workshops were

held, DTSC gathered input from interested stakeholders, including information, concerns, and chemicals of interest, identified via survey.

Issue for committees to consider: Can the DTSC Director provide an update on any recent cleanup activity at SSFL?

Cleanup in Vulnerable Communities Initiative (CVCI):

In addition to the DTSC reforms described above, SB 158 established the Cleanup in Vulnerable Communities Initiative (CVCI)**,** allocating $500 million to expedite the cleanup and beneficial reuse of contaminated properties, with priority given to properties in historically vulnerable and disadvantaged communities.

The allotted $500 million included the following core CVCI programs:

- Equitable Community Revitalization Grant (ECRG) – more than $250 million in grants to incentivize cleanup and investment in disadvantaged areas of California. The ECRG funding is available to help California public entities, nonprofit organizations, and Tribes conduct community-wide assessments, site-specific investigations, and site-specific cleanups;

- Discovery and Enforcement (D&E) – more than $152 million to fund investigation into a prevalent and ubiquitous potential source of contamination: from up to 7,500 current or former dry cleaners;

- Workforce Development (WFD) – more than $4 million to provide education, training, and certification to community members in regions where work will be conducted. They will gain a pathway toward significant employment in cleanups of their communities;

- Technical Assistance Grants (TAG) – $2.5 million available to provide grants for community organizations to engage in the cleanup process of contaminated properties in their communities. Community groups will be able to hire a technical advisor who can help them become more involved in Cleanup sites. This could include assistance with review of technical documents and/or implementation of community science (including community confirmation sampling);

- Community Benefits Agreements – $800,000 to develop a policy for facilitating Community Benefits Agreements (CBAs) between Responsible Parties of cleanup sites and impacted communities. These CBAs will promote benefits beyond the traditional scope of site mitigation and restoration beginning with vulnerable communities affected by high cumulative environmental burdens; and,

- Orphan Sites – $40 million to accelerate cleanups at 21 existing orphan sites across the state.

Governor's May Revise impact the CVCI:

The Governor's May Revise budget proposed to reduce funding for the CVCI by $136 million in 2023-24 ($268.5 million over four years). The May Revision maintained $65 million ($107.5 million over three years) for this program through a fund shift to the Greenhouse Gas Reduction Fund.

Issue for committees to consider: With the reduction in funding for the CVCI, does DTSC have a plan on how to use existing funding to help continue some of the work that was started under the CVCI?

Metal Shredding Facilities:

California law defines a "metal shredding facility" as an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from non-recyclable materials. The shredding of scrap metal (e.g., end-of-life vehicles) results in a mixture of recyclable materials (e.g., ferrous metals and nonferrous metals) and non-recyclable material (i.e., metal shredder waste). Aggregate is generated after the initial separation of ferrous metals and consists of nonferrous metals that can be further recovered and metal shredder waste. Metal shredder waste consists mainly of glass, fiber, rubber, automobile fluids, dirt, and plastics in automobiles and household appliances that remain after the recyclable metals have been removed. Because scrap metal contains regulated hazardous constituents, it can contaminate and ultimately cause metal shredder waste to exhibit a characteristic of hazardous waste for toxicity. In a 2002 draft report on auto shredder waste, DTSC showed that metal shredder waste often exceeded the soluble threshold limit concentrations for lead, cadmium, and zinc.

Non-hazardous waste classification granted to metal shredding facilities: Based on the hazardous characteristics of metal shredder waste, in many instances, metal shredding facilities are hazardous waste generators and are thus subject to hazardous waste requirements, including permitting, transportation, and disposal. In the late 1980s, in an effort to relieve metal shredding facilities of these requirements, the Department of Health Services (DHS) (the predecessor of DTSC) determined that the metal treatment fixation technologies were capable of lowering the soluble concentrations of metal shredder waste such that the treated metal shredder waste was rendered insignificant as a hazard to human health and safety, livestock, and wildlife. Seven metal shredding facilities applied for and were granted nonhazardous waste classification letters by DHS, and later DTSC, if they used the metal treatment fixation technologies. The authority to issue these classifications is found in subdivision (f) of Section 66260.200 of Title 22 of the California Code of Regulations, and these determinations are now known as "f

letters." These classifications ultimately allowed treated metal shredder waste to be handled, transported, and disposed of as non-hazardous waste in class III landfills (i.e., solid (nonhazardous) waste landfills).

Legislation to address impacts of metal shredding facilities: In 2014, Senator Jerry Hill introduced SB 1249, based in part on concerns about metal shredder safety due to recent fires at metal shredding facilities in his district, but also in response to the historic concerns about metal shredding facilities and their potential impact on the environment. The intent of the bill was that the conditional nonhazardous waste classifications, as documented through the historical "f letters," be revoked and that metal shredding facilities be thoroughly evaluated and regulated to ensure adequate protection of the human health and the environment. SB 1249 (Hill, Chapter 756, Statutes of 2014) was signed by the Governor and authorized DTSC to develop alternative management standards (different from a hazardous waste facility permit) if, after a comprehensive evaluation of metal shredding facilities, DTSC determined that alternative management standards were warranted.

DTSC's implementation of SB 1249: DTSC's implementation of SB 1249 included conducting a comprehensive evaluation of metal shredding facilities and metal shredder waste; determining if alternative management standards specific to metal shredding facilities could be developed to ensure that the management, treatment, and disposal practices related to metal shredder waste are protective of human health and the environment; preparing an analysis of activities to which the alternative standards will apply, made available to the public before any regulations were adopted; and, adopting emergency regulations establishing a fee schedule to reimburse DTSC's costs for the evaluation, analysis, and regulatory development for metal shredding facilities.

As part of this implementation, in January 2015, DTSC developed a three-year work plan to implement SB 1249. The work plan includes development of a treatability study on metal shredder wastes to demonstrate the highest level of treatment that can be achieved with the current technology, and an assessment of the potential for treated or untreated metal shredder waste to migrate off-site and impact residents or business occupants in the areas surrounding metal shredding facilities and landfills that accept metal shredder waste.

As part of the work plan, DTSC approved air monitoring summary reports for metal shredding facilities located in Bakersfield, Redwood City, and Terminal Island. Air sampling was conducted at the facilities during October 2016, to assess the potential for offsite emissions associated with the metal shredding operations.

Issue for committees to consider: Can DTSC provide an update on its efforts to enforce and regulate metal shredding facilities?

Hazardous Waste Management Report.

In July 2023, as part of its programmatic reforms, DTSC released the first Hazardous Waste Management Report (Report), which presents data on the types and amounts of hazardous waste generated, transported, and disposed of in the state. According to DTSC, this Report will be used to inform the Hazardous Waste Management Plan (Plan), the first of which is due by March 1, 2025 and every three years thereafter. These Plans will recommend strategies for waste reduction, capacity assurance, updated waste criteria, and environmental health inequity solutions.

The main objectives of the first Report was to establish a baseline understanding of the management of hazardous waste in California, identify data gaps and items that require additional research, and develop plans to fill data gaps.

As defined in statute, the Report's topics include:

- Hazardous waste generation in the state – waste definitions, data sources, data findings, county-by-county waste generation;
- Hazardous waste destinations by waste type (manifested waste, universal waste, household hazardous waste, onsite treated waste);
- Destination facility analysis;
- Hazardous waste transportation;
- Pollution prevention/waste reduction;
- Fee analysis (e.g., history, types, research opportunities); and,
- Hazardous waste criteria

Below are some of the key findings from the Report:

- The number of generators has increased: from 2010 to 2021, hazardous waste generators with active IDs in California has increased from ~55,000 to 94,500;
- The number of permitted hazardous waste management facilities has decreased from more than 400 in 1983 to fewer than 100 in 2021;
- The majority (81%) of hazardous waste generated since 2010 meets California's criteria for hazardous waste (non-RCRA) but not by federal criteria (RCRA);
- RCRA hazardous waste has decreased, and preliminary investigation shows a decreasing trend since at least 2000;
- Non-RCRA hazardous waste fluctuates, but preliminarily shows a decrease since 2000;
- Contaminated soil, waste, and mixed oil, and other inorganic solid waste are the top three hazardous waste streams consistently year over year and comprise about 65% of the waste generated since 2010;
- Waste reduction programs have been successful (for example, reducing the amount of incinerable waste), but have not resulted in substantial reductions in overall waste generation;
- California's criteria for identification of hazardous waste, which were created in the 1970s, may be outdated given today's landfill regulations; and,

- Data gaps and limitations include impacts from hazardous waste generators, total capacity, onsite treatment and recycling, and full incorporation of hazardous waste data prior to 2010 for analysis.

The final Report was issued in the fall of 2023. DTSC states that it will begin work for the 2025 Plan by starting work on waste criteria, capacity assurance, waste reduction, and environmental justice/community outreach.

Issue for Committees: Is DTSC and the BES on track to adopt a hazardous waste management plan in early 2025?

Perfluoroalkyl and polyfluoroalkyl substances (PFAS)

PFAS are synthetic, highly fluorinated substances that have been widely used in industrial and consumer applications for their heat, water, and lipid resistance properties for more than seven decades. In consumer products, PFAS are used in carpets, furniture fabrics, apparel, paper packaging for food, non-stick cookware, personal care products, and other products designed to be waterproof; grease, heat, water, and stain resistant; or, non-stick. Commercial applications span many sectors of the economy, including aerospace, automotive, building and construction, pharmaceuticals, medical devices, paints, electronics, semiconductors, energy, oil and gas exploration, first responder safety, firefighting foams, and health care. During production, use, and disposal, PFAS can migrate into the soil, water, and air. Some PFAS are volatile, and can be carried long distances through the air, leading to contamination of soils and groundwater far from the emission source. Researchers have found PFAS in indoor and outdoor environments, plants, soil, food, drinking water, wildlife, companion animals, production animals, and humans at locations across the nation and around the globe. PFAS are extremely persistent and degrade very slowly over time, which has resulted in their accumulation in the environment since the onset of their production in the late 1940s. Currently, nearly 15,000 PFAS chemicals are included in the chemicals database CompTox, which is maintained by the US EPA.

Exposure to PFAS: The main route of exposure to PFAS is through ingestion of contaminated food or liquid (accounting for up to half of total exposure), through contact with consumer products, and through inhalation and ingestion of contaminated indoor air and dust.

Exposure to PFAS in drinking water is an escalating concern due to the persistence of PFAS chemicals in the environment and their tendency to accumulate in groundwater. Groundwater PFAS contamination typically has been associated with industrial facilities where these chemicals were manufactured or are used in other products, and in airfields where the chemicals have been used for firefighting. PFAS chemicals can also enter the environment and drinking water through composting, landfilling, recycling, and incineration of products containing PFAS. The State Water Board indicates that the four major sources of PFAS in drinking water in California are fire training/fire response sites, industrial sites, landfills, and wastewater treatment plants/biosolids. The State Water Board notes that because of their presence and persistence in many drinking water supplies, PFAS remain a serious source of exposure decades after their release into the environment.

Hazard traits of PFAS: According to DTSC, all PFAS display at least one of the hazard traits identified in the SCP Program's Hazard Traits Regulations. An intrinsic property of PFAS is the extreme environmental persistence of either the individual compounds or their degradation products or both, resulting in their classification as "forever chemicals." Most PFAS are mobile in environmental media such as air and water, and thus are widespread in living organisms and the environment.

Scientific studies have shown that exposure to some PFAS can lead to adverse health outcomes in humans and animals. DTSC states that if humans are exposed to PFAS through diet, drinking water, or inhalation, some of these chemicals remain in the body for a long time. As people continue to be exposed to PFAS, the PFAS levels in their bodies may increase to the point that they suffer adverse health effects.

Regulating PFAS as a class: Currently, DTSC has designated two product categories that contain PFAS as "Priority Products": carpets and rugs and certain surface treatments. However, DTSC adopted a rationale for regulating PFAS chemicals as a class, concluding, "it is both ineffective and impractical to regulate this complex class of chemicals with a piecemeal approach." This rationale was presented in the February, 2021, *Environmental Health Perspectives* article, "Regulating PFAS as a Chemical Class under the California Safer Consumer Products Program." The authors of the article state,

> "The widespread use, large number, and diverse chemical structures of PFAS pose challenges to any sufficiently protective regulation, emissions reduction, and remediation at contaminated sites. Regulating only a subset of PFAS has led to their replacement with other members of the class with similar hazards, that is, regrettable substitutions. Regulations that focus solely on perfluoroalkyl acids (PFAAs) are ineffective, given that nearly all other PFAS can generate PFAAs in the environment…We at the California DTSC propose regulating certain consumer products if they contain any member of the class of PFAS because: *a*) all PFAS, or their degradation, reaction, or metabolism products, display at least one common hazard trait according to the California Code of Regulations, namely environmental persistence; and *b*) certain key PFAS that are the degradation, reaction or metabolism products, or impurities of nearly all other PFAS display additional hazard traits, including toxicity; are widespread in the environment, humans, and biota; and will continue to cause adverse impacts for as long as any PFAS continue to be used. Regulating PFAS as a class is thus logical, necessary, and forward-thinking."

<u>Recent PFAS legislation:</u>

1. AB 2515 (Papan). Prohibits a person from manufacturing, distributing, selling, or offering for sale a menstrual product that contains regulated perfluoroalkyl or polyfluoroalkyl substances (PFAS), as defined. This bill is pending action in the Senate Appropriations Committee.

2. AB 2761 (Hart). Prohibits, beginning January 1, 2026, the sale, use, and manufacture of plastic packaging that contains PFAS or polyvinyl chloride (PVC), inclusive of polyvinylidene chloride (PVDC). This bill was held in the Senate Environmental Quality Committee.

3. SB 903 (Skinner). Prohibits, commencing January 1, 2030, a person from distributing, selling, or offering for sale in the state a product that contains intentionally PFAS. Authorizes DTSC to establish regulations to administer the

prohibition. This bill was held on the suspense file in the Senate Appropriations Committee.

4. AB 347 (Ting). Requires DTSC to take a number of actions regarding implementation of existing laws dealing with PFAS in food packaging and cookware, including adopting and publishing guidance and testing products. This bill is pending action in the Senate Appropriations Committee.

5. AB 246 (Papan, 2023). Would have prohibited, commencing January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state menstrual products that contain PFAS at or above 10 PPM. This bill was vetoed by Governor Gavin Newsom.

6. AB 727 (Weber, 2023). Would have prohibited, beginning January 1, 2025, a person from manufacturing, selling, delivering, distributing, holding, or offering for sale, a cleaning product that contains intentionally-added PFAS or PFAS at or above 50 PPM, and on January 1, 2027, a cleaning product that contains PFAS at or above 25 PPM. This bill was vetoed by Governor Gavin Newsom.

7. AB 1423 (Schiavo, 2023). Would have prohibited, commencing January 1, 2025, a person or entity from manufacturing, distributing, selling, or offering for sale in the state any covered surface that contains PFAS at or above 20 PPM, and, commencing January 1, 2024, a public entity, a public or private school, or a public or private institution of higher learning, as specified, from purchasing or installing a covered surface that contains PFAS at or above 20 PPM. This bill was vetoed by Governor Gavin Newsom.

8. AB 1817 (Ting, Chapter 762, Statutes of 2022). Prohibits, beginning January 1, 2024, a person from distributing, selling, or offering for sale in the state a textile article, as defined, that contains regulated PFAS, and requires a manufacturer to use the least toxic alternative when removing regulated PFAS in textile articles to comply with the provisions of the bill.

9. AB 2771 (Friedman, Chapter 804, Statutes of 2022). Prohibits, commencing January 1, 2025, a person or entity from manufacturing, selling, delivering, holding, or offering for sale in commerce any cosmetic product that contains intentionally added PFAS.

10. AB 1200 (Ting, Chapter 503, Statutes of 2021). Prohibits, commencing January 1, 2023, the sale of food packaging that contains PFAS; requires, commencing January 1, 2024, cookware manufacturers to label their product if it contains an intentionally added chemical on specified lists; and prohibits, commencing January 1, 2023, for the internet and January 1, 2024, for the cookware package, a cookware manufacturer from making a claim that cookware is free of a chemical, unless no chemical from that chemical class is intentionally added to the cookware.

11. AB 652 (Freidman, Chapter 500, Statutes of 2021). Prohibits, on or after July 1, 2023, a person from selling or distributing in commerce any new juvenile products that contain PFAS.

12. SB 1044 (Allen, Chapter 308, Statutes of 2020). Prohibits the manufacture, sale, distribution, and use of firefighting foam containing PFAS chemicals by January 1, 2022, with some exceptions, and requires notification of the presence of PFAS in the protective equipment of firefighters.

13. SB 1056 (Portantino, 2020). Would have required the State Water Board to establish an analytical laboratory method that can be used as a tool to assess the extent of PFAS contamination in drinking water, surface water, groundwater, and wastewater. This bill was held in the Senate Environmental Quality Committee.

14. AB 1989 (C. Garcia, Chapter 272, Statutes of 2020). Requires a package or box containing menstrual products that was manufactured on or after January 1, 2023, for sale or distribution in this state to have printed on the label a plain and conspicuous list of all intentionally added ingredients, as defined.

15. AB 756 (C. Garcia, Chapter 162, Statutes of 2019). Authorizes the State Water Board to order one or more public water systems to monitor for PFAS and requires municipalities to notify consumers for PFAS detected above notification levels.