



**SENATE ENVIRONMENTAL QUALITY COMMITTEE AND ASSEMBLY  
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS COMMITTEE**

SENATOR ALLEN  
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CHAIRS

WEDNESDAY, AUGUST 23, 2023  
9 A.M. – 1021 O STREET ROOM 1200

**JOINT OVERSIGHT HEARING**

Progress on Department of Toxic Substances Control’s Reform: One-Year Update

**BACKGROUND INFORMATION**

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**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 (Board). On August 3, 2022, these committees heard from the Board and DTSC on a first progress report. Today's hearing is a one-year update on that progress report.

Through testimony from the Board, the Director of DTSC, and stakeholders, this hearing will provide updates on reform efforts, in order to evaluate the progress that has been made to improve DTSC’s operations, with special emphasis on DTSC's engagement with communities affected by hazardous waste and hazardous materials.

**DTSC's authority and major programs.** The *California Hazardous Waste Control Law (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 program. The HWCL covers the entire management of hazardous waste, from hazardous waste generation 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, as well as the management and disposal of universal wastes such as electronic waste.

The *Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA)* 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 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; 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.

*Green Chemistry Law.* 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.

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. However, the pace of regulation of harmful chemicals in consumer products under the SCP Program has been regarded as slow. In the almost 15 years since the passage of the original Green Chemistry legislation, as of August 2023, DTSC has adopted seven Priority Products, products that have potential adverse impacts to humans or the environment for which DTSC can adopt regulatory responses. Four additional Priority Products have been proposed but no rulemaking yet initiated.

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 specific products, such as PFAS or bisphenol A. This approach has many potential problems. The restrictions codified in these prohibitions often do not benefit from detailed review by experts in the same way they might if they were developed by a dedicated program. Many chemical prohibition bills are placed in a location in the California Codes sometimes referred to as the "orphan codes." In these code sections, no state agency is designated to provide oversight of the provisions of the law. As a result, there is no direct enforcement, no establishment of standardized testing methods, no compliance program, no guidance for manufacturers seeking to comply with these laws, and no related information for consumers. There are more than 10 different laws that prohibit specific chemicals or require ingredient disclosure in the orphan codes where no

agency is responsible for them. Because of these deficiencies, it is challenging for some manufacturers to comply and difficult or impossible to know if manufacturers are complying with the requirements of the law. Further, these chemical bans have no robust protections against regrettable substitutes (alternatives to the banned chemical that may be equally or more harmful).

SB 502 (Allen, Chapter 701, Statutes of 2022) provides DTSC with additional tools to help improve and streamline the SCP process. These provisions include 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 additional information, including the timeline for completion of actions for at least five product categories or subcategories in each Work Plan. These actions are to include information collection, listing a product as a Priority Product, completion of an Alternatives Analysis, and finalization of regulatory responses. This timeline shall not exceed seven years. Full implementation of the SCP Program, as per DTSC's Budget Change Proposal for the fiscal year 2022-2023 following SB 158, would involve listing five Priority Products per year. In fiscal year 2021-2022, DTSC reported three rulemakings for Priority Product listings.

**Legislative Oversight.** Over the last seven 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) reviewing staffing needs to improve permit backlogs and business operations; and, (4) improving the Department's enforcement activities.

Numerous clarifying and strengthening statutory changes have been made to help DTSC better achieve its mandates. Limited-term budget augmentations have also been made to give DTSC resources to reduce backlogs and address outstanding programmatic failings. However, up until the adoption of reforms in 2021, many of the underlying concerns about transparency, accountability, and long-term stability of DTSC programs remained, as well as a fiscal deficit.

**DTSC Reform (SB 158).** In 2021, as a result of months of negotiation, the Administration and Legislature agreed to a compromise on DTSC Reform by enacting SB 158. SB 158 includes:

- *Creation of the Board of Environmental Safety.* SB 158 created the Board to improve DTSC's transparency, accountability, and fiscal stability. The Board is comprised of 4 part-time members and one full-time member. Three of the Board members are appointed by the Governor, including the full-time Board Chair, and subject to confirmation by the Senate. The Senate and Assembly each appoint one additional member. Each member of the Board must meet at least one

qualification from a specified list and the Board is required to meet at least 6 times a year.

The Board's 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 Board and requires the DTSC Director and the Board Chair to appear annually before Legislative policy committees. Additionally, SB 158 requires the Director to present and respond to the Board on any issue brought forward by a member of the public, the Ombudsperson, or a Board member, if requested by the Board.

Since the Board was formed, it has held 14 Board meetings and 5 workshops.

- *Fee Reform.* 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 (G&H) Fee. The bill also created a new hazardous waste facility fee and modified and raised the Environmental 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 Board and the development of a hazardous waste management plan, and provide DTSC with a prudent reserve.
- *Programmatic Reforms.* SB 158 included a number of programmatic reforms such as the development of a hazardous waste management plan to be completed by March 1, 2025 and updated every 3 years; strengthened financial assurance requirements for both hazardous waste facilities and contaminated cleanup sites; and, made changes to the permitting requirements for hazardous waste facilities to improve the efficiency and transparency of the processing of the permits.
- *Funding for Contamination Cleanup.* SB 158 included \$500 million for the cleanup of contaminated sites, including priority for sites where there are high environmental burdens and sensitive receptors.

**Recent Release of 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 are 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.

DTSC analyzed data from manifests included in the Hazardous Waste Tracking System for the time period from 2010 to 2021. 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).
- Waste generation trends:
  - 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.
- Waste criteria: California's criteria for identification of hazardous waste, which were created in the 1970s, may be outdated given today's landfill regulations.
- Data gaps and limitations include impacts from hazardous waste generators, total capacity, onsite treatment and recycling, full incorporation of hazardous waste data prior to 2010 for analysis.

The final Report is expected to be published in Fall 2023. DTSC states that it will begin work for the 2025 Plan by starting work in waste criteria, capacity assurance, waste reduction, and environmental justice/community outreach.

**Update on DTSC Fees.** In May of this year, the Legislature learned that the fee changes in SB 158 that were expected to generate approximately \$80 million only resulted in less than half of that amount being collected. DTSC, once again, sought (and received)

additional funding to get it through this fiscal year. DTSC's \$55 million funding request in 2023-24 to fill the funding gap included \$1.2 million for 5 positions and increased contract authority to support in-depth analysis of the current shortfall in G&H Fee revenues, as well as to increase various fee administration activities to better ensure that generators are paying the amounts owed.

SB 158 was enacted, in part, to create a more equitable fee framework and to address historical funding shortfalls. SB 158 restructured DTSC fees by replacing several fees such as the Generator Fee and Disposal Fee with the G&H Fee. The Generator Fee, the most analogous fee to the G&H Fee, was based on a tiered fee structure, wherein the largest generators paid less per ton than the smaller quantity generators. In order to create a sustainable funding model, SB 158 established a flat per ton rate for all G&H fee payers and aligned fees to the fiscal year. SB 158 specified that the rate of \$49.25 per ton be paid for fees owed in 2022-23.

The \$49.25 per ton rate for the G&H Fee was estimated to generate approximately \$81 million in revenues. However, to date DTSC has only collected \$30 million, and current estimates indicate approximately \$40 million will be collected in total for the 2022-23 fiscal year. DTSC has conducted a preliminary analysis of the causation of the revenue shortfall and attribute it to three primary drivers:

- *Reduction in total hazardous waste generated.* Total tonnage in 2021—the year on which 2022-23 G&H Fees are calculated—was 1.4 million. This was 22 percent lower than the 1.8 million generated in 2019.
- *Broad application of the government exemption.* Approximately 20 percent of hazardous waste reported is generated by government entities (or by contractors on their behalf). Preliminary analysis indicates that fees are not paid on most of this waste. Statute does provide a fee exemption on hazardous waste that results from a government entity removing or remediating a release caused by another person.
- *Non-payment or low payment of fees owed.* Initial attempts to reconcile DTSC and the California Department of Tax and Fee Administration (CDTFA)'s data has identified examples of generators for whom it does not appear that any fee was paid, without any exemption clearly applying to the circumstances reported on the manifest. This may be due, in part, to the fact that amounts owed are self-calculated by generators who are supposed to self-report to CDTFA.

DTSC's preliminary analysis has been hampered by limitations in the data collected by both DTSC and CDTFA. The data systems DTSC uses to track the waste generated—the Hazardous Waste Tracking System (HWTS) and Electronic Verification Questionnaire (eVQ)—and the system used by CDTFA for collections and returns do not interface with each other. As DTSC's collection agency, CDTFA oversees the returns filed and is responsible for auditing and enforcing the returns against the waste generation data provided by the HWTS. As the magnitude of the

revenue shortfall has become apparent, DTSC, in coordination with CDTEFA, has taken preliminary steps to address the situation.

DTSC has contracted with CDTEFA (and its predecessor agency) for fee collection activities for many years. The current contract is for \$6.6 million and includes administration of the G&H, Facility, and Environmental Fees. The 2022-23 budget proposals funded by fee reform did not include any additional resources for fee administration activities.

**Cleanup in Vulnerable Communities Initiative (CVCI).** SB 158 set aside \$500 million for the Cleanup in Vulnerable Communities Initiative (CVCI), a multi-year investment in communities that suffer from multiple sources of contamination. CVCI will fund DTSC's discovery, investigation, and cleanup of contaminated properties; a grant program to fund response actions at brownfield sites; and a work development and training program to promote public health, community engagement, and equity, while supporting local economies.

The allotted \$500 million includes the following CVCI programs:

- *Equitable Community Revitalization Grant* – \$250 million in grants to incentivize cleanup and investment in disadvantaged areas of California. Funding is available to help California public entities, nonprofit organizations and Tribes to conduct community-wide assessments, site-specific investigations, and site-specific cleanup.
- *Discovery and Enforcement* – \$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* – \$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* – \$3.5 million to provide grants for communities burdened with environmental challenges regulated by DTSC. The funds are for technical advisors to assist communities in gaining understanding of the technical activities performed during the DTSC process. The grants will also allow funding for community science in eligible areas.
- *Community Benefits Agreements* – \$800,000 to develop a program 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.

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

**Additional Topics of Concern. Hazardous Waste Exports.** In January 2023, CalMatters published an article reporting that nearly half of California’s toxic waste, mainly contaminated soil containing heavy metals such as lead and nickel, petroleum hydrocarbons, and chemicals including DDT, is sent out of state. These are often states with weaker environmental regulations where the toxic waste may be dumped at regular municipal waste landfills. The CalMatters report did not find reports directly linking California waste to public health issues or pollution in surrounding communities but noted that environmental analyses at and around those out-of-state landfills are limited and often rely on self-reported data from the waste companies.

DTSC’s Hazardous Waste Management Report (discussed above) confirmed this finding, stating that since 2010, 4.00 million tons (56.1%) of contaminated soil has been shipped out of state, while 3.13 million tons (43.9%) has been managed in California. It found that the top three destination states California’s generators have shipped hazardous waste to during this time have been Utah (15.2 %), Arizona (13.4%), and Nevada (10.4 %). The report further noted that California has two permitted hazardous waste landfills that have an estimated 20 years of permitted capacity remaining at the current rate of land disposal in state and out of state. If all waste destined for land disposal were to remain in California, these two hazardous waste landfills would reach their permitted capacity in 9.5 years.

*Exide.* A Los Angeles Times investigation published in February 2023 reported that soil on many properties in the area surrounding the former Exide battery recycling plant in southeast Los Angeles County that had been remediated still contained lead concentrations in excess of the California health threshold. The University of Southern California (USC) and Occidental College (Oxy) tested surface soil samples and found that a majority of remediated yards tested had at least one sample containing lead in excess of the California limit of 80 parts per million. The investigation also reported that contractors doing the clean-up failed to meet state standards for contaminated soil removal protocols and violated environmental regulations designed to protect residents.

To date, the USC/Oxy study has not been made public and questions remain about the study and its methodology. According to DTSC, the department has taken the opportunity to dig deeper into community members’ concerns including health and safety, resident communications, and third-party verification of work. DTSC has been working closely with community-based organizations, workers, Exide Technologies Advisory Group members, unions, and several local government officials to address a number of health and safety concerns by crafting a new contract to clean up the remaining homes. Additionally, the department has identified a third-party monitor and will require post-cleanup confirmation sampling on all properties cleaned moving forward.

*Permitting.* Over the past decade or so, DTSC has received complaints from the public about its permitting program and held public meetings to identify and understand these concerns. Prior to reform, community groups living near hazardous waste facilities had expressed concern that DTSC was not properly enforcing state and federal laws, and was allowing facilities to operate with an expired permit or with numerous violations of state laws and regulations. Additionally, the regulated community had expressed concerns about the costs associated with processing a permit and the length of time it was taking DTSC to process a permit, which could take years beyond the expiration date of a permit.

DTSC has been working on improving its permitting process for many years, however some of the more complicated permits continue to languish. Below are a few permits that have been expired for a period of time:

- *Quemetco* – Permit expired in 2015, draft decision pending September 2023. The Ecobat Resources California (formerly Quemetco) facility is on a 15-acre site in the City of Industry, Los Angeles County. This facility is a lead battery recycling facility which has operated at this location since 1959.
- *Kettleman* – Permit expired in 2013, draft decision pending October 2023. One of two hazardous waste landfills in California Chemical Waste Management, Inc. Kettleman Hills Facility (CWM) is a commercial hazardous waste treatment, storage and disposal facility. CWM is located in Kings County, near Kettleman City. CWM accepts virtually all solid, semi-solid, and liquid hazardous and extremely hazardous wastes.
- *Buttonwillow* – Permit expired in 2004, draft decision pending January 2024. One of two hazardous waste landfills in California. The Clean Harbors Buttonwillow Facility (Buttonwillow) is a commercial hazardous waste management and disposal facility located near Buttonwillow and 36 miles west of Bakersfield. Buttonwillow accepts solid, semi-solid, and liquid hazardous and non-hazardous wastes for treatment, storage, or disposal.
- *Phibro Tech* – Permit expired in 1996, draft decision to approve the permit released in August 2022, pending final permit decision. Phibro-Tech, Inc. (PTI) is a hazardous waste treatment, storage, and transfer facility located in Santa Fe Springs, California. If approved, the proposed permit will allow PTI to continue storage, treatment, and transfer of hazardous waste and revise the requirements for cleanup of the remaining contamination at the Facility. PTI is an inorganic chemical manufacturing facility that also conducts treatment/recycling of inorganic hazardous wastes. In January of 1996, PTI submitted a Part B Permit renewal to DTSC which allows PTI to continue to operate under conditions of the current (1991) permit until DTSC makes a permit decision to approve or deny a new permit.

