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August 21, 2023

The Honorable Alex Lee and Ben Allen
Chairs, Assembly Environmental Safety and Toxic Materials &
Senate Environmental Quality
1021 O Street, Room 1200
Sacramento, CA 95814

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

Dear Assemblymember Alex Lee and Senator Ben Allen:

We, the undersigned, appreciate the opportunity to provide our perspective regarding the one-year update on the progress of the Department of Toxic Substances Control reform. Despite decades of efforts to reform the department, Environmental justice organizations and impacted residents remain concerned that the department is not responsive to community concerns and is still failing to meet its fundamental mission. This hearing would not have been possible without the dedication of the residents and organizations leading this environmental justice driven work for a transformative change within DTSC.

These legislative oversight hearings serve a critical accountability mechanism to ensure that the Department is meeting its mission to protect public health and to provide guidance and direction where improvements are necessary. The legislature continues to serve an important role in DTSC reform through budgeting priorities and closing programmatic gaps through legislation.

In light of this ongoing journey of reform, key areas warrant legislative attention and action:

1. Providing resources and mechanisms to explore safer alternative technologies, such as bioremediation, to treat contaminated soils.
2. Providing permanent and adequate funding for the Environmental Justice Advisory Council.
3. Directing DTSC to prioritize outreach to impacted communities and coordinate its activities with other agencies.
4. Understanding DTSC's role and limitations in redevelopment processes, especially regarding housing redevelopment on brownfield sites.
5. Increasing the Board of Environmental Safety and DTSC's overall capacity to address community concerns.

1. Providing resources and mechanisms to explore safer alternative technologies, such as bioremediation, to treat contaminated soils.

DTSC generally relies on one of two traditional methods to manage contaminated soils – “dig and haul” or “capping.” Both methods impose considerable community risks. With capping contaminated soils, dangerous substances remain on-site and pose an ongoing risk to nearby sensitive receptors due to damage and erosion of the cap over time. Dig and haul operations, which remove soils to hazardous waste facilities, pose risks from excavation and transporting waste, and shift burdens associated with the transport and disposal of waste to communities near California's two hazardous waste landfills in Kettleman City and Buttonwillow. Better options exist. We strongly advocate for resources and mechanisms to support the development and adoption of greener, more sustainable technologies to treat soil, such as bioremediation. Bioremediation is the use of microorganisms or other forms of life to consume and break down environmental pollutants in order to clean up a polluted site. Advancing the use of bioremediation not only aligns with the principles of environmental justice but also presents an opportunity for DTSC to transition towards a more holistic and forward-looking waste management paradigm.

The continued reliance on “dig and haul” or “capping” perpetuates a cycle of detrimental environmental impacts, particularly in marginalized communities. Communities near remediation sites; Kettleman City and Buttonwillow; and communities in Utah and Arizona, bear the brunt of the status quo management of contaminated soil. The legislature should provide direction and resources to advance technology and innovation in soil remediation. DTSC should work within its existing statutory authority to develop and encourage the use of bioremediation as a viable and long-term solution. By investing in innovative and sustainable technologies, the legislature and DTSC can lead the charge in transforming waste management practices that are not only effective but also mindful of the communities they serve.

2. Providing permanent and adequate funding for the Environmental Justice Advisory Council.

DTSC is creating an Environmental Justice Advisory Committee that will provide opportunities to inform DTSC and the Board of Environmental Safety on environmental justice priorities and advocate for stronger policies to protect communities facing disproportionate risks of exposure to harmful toxins. Active involvement from the community in the state's hazardous waste programs ensures a tailored approach to addressing local concerns from affected communities, aligns regulations for better protection, and counters state negligence toward environmental justice. Through direct participation, communities can advocate for their well-being, ensure regulators are held accountable, and steer meaningful change in environmental policy and practices. For decades, low-income, BIPOC, and underrepresented communities of concern have faced the negative impacts of negligent waste management and permitting – and the actions required to remedy and prevent these harms will not happen overnight. Despite this, DTSC's current budget for the EJAC only covers the period between July 2023 through June 2025. By the time the EJAC is created and begins its work, it will likely only have sufficient funding to cover a little over a year. The decades-long environmental justice battles surrounding DTSC will not be resolved in a year. The EJAC should play an on-going role in providing feedback and input on improving DTSC's environmental justice activities and practices. The legislature should ensure that the EJAC is a permanent body. In doing so, it will ensure a continuing forum and mechanism to better align DTSC's programs with community needs and further align DTSC with the principles of environmental justice. The legislature should also regularly hear feedback from the EJAC on DTSC's environmental justice performance, perhaps at legislative oversight hearings similar to this one.

Therefore, we ask the legislators to commit ongoing funding to support the EJAC.

3. Prioritizing Outreach to Impacted Communities and the Need for Cross-Coordination with Other Agencies.

While we appreciate increased collaboration with DTSC this past year on grant programs like the Equitable Community Revitalization Grant (ECRG), we continue to have concerns related to the adequacy of DTSC's community outreach efforts. DTSC's outreach efforts for grant programs, like the ECRG, have not effectively reached community groups or organizations that may benefit from the programs. We encourage DTSC to partner with organizations that work directly with communities to develop more effective outreach efforts and strategies. We have also encouraged DTSC to assess cross-agency collaborative strategies, such as engaging with the California Air Resources Board's Environmental Justice Advisory Committee and utilizing CARB's Community Liaison to disseminate information about these invaluable opportunities.

However, we do not see any indications that the ECRG team has connected with these entities before launching its second round of funding this month.

DTSC staff and the Board of Environmental Safety must genuinely prioritize impacted communities, especially on grant programs specifically designed to benefit low-income communities and communities of color. CEJA has appreciated working closely with DTSC on their Cleanup in Vulnerable Communities Initiative (CVCI) programs, but establishing effective channels of communication, cross-collaboration, and meaningful engagement with other environmental justice allies and communities are vital components of ensuring equitable community involvement.

4. Increasing Clarity and Closing Gaps on DTSC's Role in Redevelopment

DTSC's role in housing redevelopment processes is unclear and significant gaps need to be addressed. Contrary to common belief, DTSC does not provide consultation and oversight for all redevelopment initiatives on contaminated sites. As such, there may be a significant difference in a developer's selected method of soil remediation compared to the standards set by DTSC. This misunderstanding obscures the need for improved DTSC oversight on brownfield redevelopment processes. Without better oversight on redevelopment activities, there is a significant risk to the safety of our communities.

DTSC estimates that there are over two hundred and fifty thousand potentially contaminated sites in California awaiting discovery, investigation, and characterization. There is no index or tracking mechanism to determine where these sites are located and the risks they pose to communities. The Cortese list – which is sometimes used in legislation as a proxy to determine whether a site poses an ongoing risk due to contamination – is woefully underinclusive of sites that pose a potential toxic risk. The Cortese List does *not* include all contaminated sites in California, nor was it designed to. This gap leaves most contaminated sites unaccounted for and underscores the need for careful review of all potential redevelopment sites, especially those that will be used for sensitive land uses such as housing. The urgency to address housing demands in California is undeniable. However, this urgency must not come at the cost of skirting rigorous environmental reviews and thorough assessments and clean up of toxic threats. Given the current limitations in identifying toxic sites across the state, establishing a secure and effective site review process is imperative to ensure the development of safe and healthy housing.

5. The Board of Environmental Safety and DTSC's Overall Capacity

The BES and DTSC face issues with capacity that have led to a backlog of unaddressed issues throughout the state. While BES meetings are well attended by both community residents and community-based organizations, the Board is ill-equipped to address many concerns raised

by members of the public. The legislature may need to allocate more resources to the Board in order to address these shortcomings. For example, despite being in its statutory mandate, the Board has yet to hold a hearing on any individual site. There are many dozens of DTSC sites that have given rise to significant community concerns. One fundamental purpose of the Board was to provide transparency and a public forum to raise grievances and concerns about the department's site specific activities. Yet, it is becoming increasingly clear that the Board does not have the expertise or capacity to provide a forum to raise issues or direction to DTSC on steps to resolve community concerns. The legislature can help build capacity to address this gap by funding the creation of a mechanism to formally request a hearing on individual sites, and additional staff to compile relevant information on community concerns and prioritize sites for Board hearings. The EJAC can also assist the Board in prioritizing sites for public hearing. While it is difficult to pinpoint the exact cause for the lack of follow-up from BES and DTSC to community input either provided at meetings or during public tours, should more resources become available, the Department and Board should collaborate with the EJAC, communities, and CBOs to begin addressing these site specific concerns. Finding a solution here would improve the current public engagement process and assist with streamlining the continued work that must be done.

We appreciate the opportunity to provide the committees with our perspective and recommendations for DTSC and the BES. We remain committed to fostering a collaborative partnership with DTSC and the BES to ensure that they uphold the principles of environmental justice while striving for innovative and sustainable solutions. We appreciate your thoughtful consideration of our concerns and hope that you take action on our requests and help lead positive change in DTSC.

Sincerely,

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