

HAZARDOUS SUBSTANCES CONTROL PROGRAMS

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LEGISLATIVE ANALYST

STATE OF CALIFORNIA

925 L STREET, SUITE 650

SACRAMENTO, CALIFORNIA 95814

HAZARDOUS SUBSTANCES CONTROL PROGRAMS

STATEMENT OF THE LEGISLATIVE ANALYST TO
THE COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY

IN ITS INVITATION TO PARTICIPATE IN TODAY'S PANEL DISCUSSION, THE COMMISSION REQUESTED THAT I ADDRESS THE NEED FOR REFORM AND/OR REORGANIZATION OF THE STATE'S HAZARDOUS SUBSTANCES CONTROL PROGRAMS, GIVING PARTICULAR ATTENTION TO THE HAZARDOUS WASTE ACTIVITIES IN THE DEPARTMENT OF HEALTH SERVICES. THIS ISSUE IS PART OF A BROADER ISSUE THAT THE LEGISLATIVE ANALYST'S OFFICE HAS BEEN CONCERNED WITH IN RECENT YEARS: HOW CAN THE LEGISLATURE IMPROVE THE EFFECTIVENESS AND COORDINATION OF THE STATE'S HAZARDOUS SUBSTANCES CONTROL PROGRAMS.

IN OUR RECENT PUBLICATION, THE 1984-85 BUDGET: PERSPECTIVES AND ISSUES (PAGES 174-187), WE ADDRESSED THE ISSUE OF PROGRAM EFFECTIVENESS IN SOME DETAIL. I WILL SUMMARIZE SOME OF THE RECOMMENDATIONS CONTAINED IN THAT ANALYSIS AS PART OF MY RESPONSE TO THE SPECIFIC QUESTIONS POSED BY YOUR STAFF.

A. IS THERE A NEED FOR MAJOR REFORM OR REORGANIZATION OF THE STATE'S PROGRAM FOR THE CONTROL OF HAZARDOUS SUBSTANCES?

MANY OBSERVERS OF THE STATE'S CURRENT HAZARDOUS SUBSTANCES CONTROL PROGRAMS MAINTAIN THAT SIGNIFICANT IMPROVEMENTS IN THE PERFORMANCE AND EFFECTIVENESS OF THESE PROGRAMS ARE NEEDED. WE AGREE. OVER THE YEARS, WE HAVE IDENTIFIED NUMEROUS PROBLEMS RELATING TO THE PERFORMANCE OF SPECIFIC HAZARDOUS SUBSTANCES CONTROL PROGRAMS IN OUR ANNUAL BUDGET ANALYSIS. LAST YEAR, FOR EXAMPLE, WE POINTED OUT IN THE ANALYSIS THAT THE HAZARDOUS SUBSTANCES CONTROL PROGRAM ADMINISTERED BY THE DEPARTMENT OF HEALTH

SERVICES HAS NOT PRODUCED RESULTS COMMENSURATE WITH THE LEVEL OF FUNDING AND STAFF RESOURCES PROVIDED TO IT. THIS YEAR, WE NOTE THAT THE EXISTING MECHANISMS FOR PLANNING AND COORDINATING ACTIVITIES OF THE 12 DEPARTMENTS OPERATING HAZARDOUS SUBSTANCES CONTROL PROGRAMS ARE NOT ADEQUATE. WE CITE PROBLEMS OF OVERLAPPING STATUTORY AUTHORITY, CONFLICTING REGULATORY STANDARDS, INCONSISTENT ENFORCEMENT ACTIONS, AND UNCOORDINATED BUDGET REQUESTS.

THE ADMINISTRATION HAS ALSO RECOGNIZED SOME OF THESE PROBLEMS. IN ORDER TO IMPROVE PROGRAM COORDINATION, THE ADMINISTRATION CREATED A HAZARDOUS SUBSTANCES TASK FORCE IN APRIL 1983. THE EXECUTIVE ORDER CREATING THE TASK FORCE DIRECTS IT TO "IDENTIFY AND ADDRESS ISSUES RELATING TO RADIOACTIVE, TOXIC, AND OTHER HAZARDOUS SUBSTANCES AND HAVE OVERALL RESPONSIBILITY TO FORMULATE AND OVERSEE THE IMPLEMENTATION OF A COMPREHENSIVE PROGRAM" THROUGH EXISTING STATUTORY AUTHORITY. THE GOVERNOR DESIGNATED THE SECRETARY OF ENVIRONMENTAL AFFAIRS AS TASK FORCE CHAIRPERSON. THE MEMBERSHIP OF THE TASK FORCE IS DRAWN FROM 16 STATE DEPARTMENTS AND AGENCIES.

THE TASK FORCE IS CONDUCTING A THREE-PHASE REVIEW THAT IS INTENDED TO (1) IDENTIFY ISSUES, (2) ADOPT GOALS AND PRIORITIES, AND (3) DEVELOP SPECIFIC IMPLEMENTATION PROPOSALS. THE TASK FORCE HOPES TO COMPLETE ITS REVIEW BY THE END OF 1984.

IN OUR PERSPECTIVES AND ISSUES PUBLICATION, WE IDENTIFY WHAT WE CONSIDER TO BE THE MAJOR SHORTCOMINGS OF THE TASK FORCE APPROACH. SPECIFICALLY, THE TASK FORCE:

- HAS NO STATUTORY AUTHORITY AND IS THEREFORE NOT ACCOUNTABLE TO THE LEGISLATURE.
- IS NOT CHARGED WITH REVIEWING EXISTING STATUTES AND ORGANIZATIONAL STRUCTURES.
- DOES NOT REVIEW BUDGET PROPOSALS TO INSURE THAT THEY ARE CONSISTENT WITH ONE ANOTHER.
- HAS NO LINE AUTHORITY TO RESOLVE CONFLICTS OR DIRECT DEPARTMENTS TO TAKE SPECIFIC ACTIONS.
- IS NOT REQUIRED TO REPORT TO THE LEGISLATURE OR THE PUBLIC.

THESE PROBLEMS MAKE IT DIFFICULT FOR THE LEGISLATURE AND THE PUBLIC TO HOLD THE ADMINISTRATION ACCOUNTABLE FOR THE PERFORMANCE OF THE TASK FORCE.

IT IS LIKELY THAT SOME CHANGES IN ORGANIZATIONAL STRUCTURE AND RESPONSIBILITIES WILL BE REQUIRED TO IMPROVE CALIFORNIA'S HAZARDOUS SUBSTANCES CONTROL PROGRAM. NEVERTHELESS, WE HAVE NOT RECOMMENDED THAT A MAJOR REORGANIZATION TAKE PLACE AT THIS TIME. INSTEAD, WE HAVE RECOMMENDED THAT THE LEGISLATURE STRENGTHEN THE HAZARDOUS SUBSTANCES TASK FORCE BY EXPANDING ITS RESPONSIBILITIES. WE MAKE THIS RECOMMENDATION BECAUSE, IN OUR JUDGMENT, THE LEGISLATURE NEEDS MORE INFORMATION IN ORDER TO DETERMINE HOW BEST TO IMPROVE THE PERFORMANCE OF THE STATE'S HAZARDOUS SUBSTANCES PROGRAMS.

SPECIFICALLY, WE RECOMMEND THAT THE LEGISLATURE:

- PERMANENTLY ESTABLISH THE TASK FORCE (OR A COMPARABLE BODY).
- BROADEN THE SCOPE OF THE TASK FORCE TO INCLUDE THE REVIEW OF EXISTING STATUTES AND ORGANIZATIONAL STRUCTURES.

- EXPAND THE ROLE OF THE TASK FORCE CHAIRPERSON TO INCLUDE THE REVIEW OF BUDGET PROPOSALS.
- REQUIRE THE TASK FORCE TO SUBMIT A COMPREHENSIVE STATE PLAN FOR THE CONTROL OF HAZARDOUS SUBSTANCES AND REPORT ANNUALLY ON THE ADMINISTRATION'S PROGRESS IN MEETING THE PLAN'S OBJECTIVES.
- DIRECT THE TASK FORCE TO ESTABLISH TECHNICAL WORKING GROUPS ON DATA SYSTEMS AND RISK ASSESSMENT AND TO REPORT ITS FINDINGS BY MARCH 31, 1985.

WE ALSO PRESENT TWO SUGGESTIONS FOR REORGANIZING THE STATE'S HAZARDOUS WASTE CONTROL PROGRAM: (1) TRANSFER THE PROGRAM FROM THE DEPARTMENT OF HEALTH SERVICES (DHS) TO A NEW DEPARTMENT LOCATED IN THE ENVIRONMENTAL AFFAIRS AGENCY AND (2) CONSOLIDATE RISK ASSESSMENT ACTIVITIES IN THE DHS. BOTH PROPOSALS ENTAIL CERTAIN ADVANTAGES AND DISADVANTAGES.

ON THE POSITIVE SIDE, TRANSFERRING THE HAZARDOUS WASTE PROGRAM FROM THE DHS TO THE ENVIRONMENTAL AFFAIRS AGENCY WOULD (1) IMPROVE COMMUNICATION AND COORDINATION WITH THE STATE WATER RESOURCES CONTROL BOARD (SWRCB) AND THE AIR RESOURCES BOARD (ARB) BECAUSE THE THREE UNITS WOULD THEN REPORT TO ONE AGENCY SECRETARY, (2) REDUCE THE LAYERS OF BUREAUCRACY AND THEREBY SPEED DECISION-MAKING, AND (3) ALLOW ADMINISTRATIVE PROCEDURES TO BE TAILORED TO THE NEEDS OF THE HAZARDOUS SUBSTANCES CONTROL PROGRAM RATHER THAN THE NEEDS OF MEDICAL OR OTHER HEALTH-ORIENTED PROGRAMS. TRANSFERRING THE HAZARDOUS WASTE PROGRAM FROM THE DHS TO THE AGENCY WOULD TAKE ADVANTAGE OF THE FACT THAT THE PROGRAM HAS MORE IN COMMON WITH THE FUNCTIONS OF SWRCB THAN WITH OTHER UNITS IN THE DEPARTMENT OR IN THE HEALTH AND WELFARE AGENCY. FOR EXAMPLE, THE PERSONNEL OF THE HAZARDOUS WASTE DIVISION ARE

PRIMARILY ENGINEERS OR WASTE MANAGEMENT SPECIALISTS, CLASSIFICATIONS THAT ARE COMMON AT THE BOARD BUT RELATIVELY RARE IN THE REST OF THE DEPARTMENT.

CONSOLIDATING RISK ASSESSMENT FUNCTIONS IN THE DHS WOULD REDUCE DUPLICATION AND PROMOTE A MORE CONSISTENT APPROACH TO DETERMINING THE AMOUNT OF RISK FROM SPECIFIC SUBSTANCES. IT ALSO WOULD INSULATE THE SCIENTIFIC ASSESSMENT OF HUMAN HEALTH RISK FROM THE DECISIONS OF THE REGULATORY MANAGERS, WHO MUST TAKE INTO ACCOUNT POLITICAL, ECONOMIC, AND TECHNICAL CONSIDERATIONS, IN ADDITION TO PUBLIC HEALTH CONSIDERATIONS.

ON THE OTHER HAND, TRANSFERRING THE HAZARDOUS WASTE PROGRAM IN THE DHS TO THE ENVIRONMENTAL AFFAIRS AGENCY MIGHT PRODUCE CERTAIN DISADVANTAGES. SPECIFICALLY:

1. THE HAZARDOUS WASTE PROGRAMS MIGHT BECOME LESS SENSITIVE TO PUBLIC HEALTH CONCERNS IF THEY ARE LOCATED OUTSIDE THE STATE'S PRIMARY HEALTH AGENCY (DHS).
2. THE CREATION OF A NEW DEPARTMENT WOULD INCREASE THE NUMBER OF AGENCIES INVOLVED IN HAZARDOUS SUBSTANCES.
3. EXISTING WORKING RELATIONS BETWEEN THE HAZARDOUS WASTE PROGRAM AND THE HEALTH EXPERTS IN EPIDEMIOLOGY, TOXICOLOGY, AND LABORATORY ANALYSIS MIGHT BE IMPAIRED IF THE PROGRAM WERE REMOVED FROM THE DHS.

MOREOVER, CONSOLIDATING RISK ASSESSMENT FUNCTIONS IN THE DHS MIGHT MAKE IT DIFFICULT TO IDENTIFY OR SEPARATE ASSOCIATED PERSONNEL FROM EXISTING STANDARD-SETTING OPERATIONS IN THE VARIOUS STATE DEPARTMENTS. IN ADDITION, EXISTING WORKING RELATIONSHIPS BETWEEN RISK ASSESSMENT AND STANDARD-SETTING PERSONNEL MIGHT BE DIFFICULT TO MAINTAIN IF THE FUNCTIONS WERE SEPARATED.

ANOTHER MAJOR DISADVANTAGE TO A REORGANIZATION OF HAZARDOUS SUBSTANCES CONTROL PROGRAMS IS THE DISRUPTION OF EXISTING PROGRAMS THAT ALWAYS ACCOMPANIES REORGANIZATION. IN THE CASE OF THE HAZARDOUS WASTE PROGRAM, THE DEPARTMENT HAS MADE NUMEROUS INTERNAL ORGANIZATIONAL AND PERSONNEL CHANGES DURING THE LAST NINE MONTHS, WHICH HAVE DISRUPTED THE ACHIEVEMENT OF CURRENT-YEAR GOALS.

EVEN THOUGH REORGANIZATIONS ALONG THE LINES DISCUSSED ABOVE WOULD YIELD IMPORTANT BENEFITS, WE ARE NOT YET CONVINCED THAT THE DISADVANTAGES OF REORGANIZING AND THE SHORT-RUN COSTS RESULTING FROM ADMINISTRATIVE DISRUPTIONS WOULD BE OUTWEIGHED BY THESE BENEFITS.

B. WHAT ARE THE CONSIDERATIONS AND CRITERIA THAT SHOULD GUIDE A REORGANIZATION OF THE STATE'S HAZARDOUS SUBSTANCES CONTROL PROGRAM?

WE HAVE NOT PREPARED A DEFINITIVE LIST OF THE CRITERIA THAT SHOULD BE CONSIDERED IN PUTTING TOGETHER A REORGANIZATION OF HAZARDOUS SUBSTANCES CONTROL PROGRAMS. CLEARLY, HOWEVER, ANY NEW ORGANIZATIONAL STRUCTURE SHOULD REDUCE OR ELIMINATE OVERLAPPING JURISDICTIONS, IN ORDER TO INCREASE ACCOUNTABILITY FOR PROGRAM PERFORMANCE.

IN EVALUATING ANY REORGANIZATION PROPOSAL IN THIS AREA, WE WOULD ASK THE FOLLOWING QUESTIONS:

- HAS A THOROUGH INVENTORY OF EXISTING PROGRAMS BEEN COMPILED?
- HAVE THE CAUSES OF EXISTING PROBLEMS WITH THE HAZARDOUS WASTE CONTROL PROGRAM BEEN IDENTIFIED AND ANALYZED?
- CAN IT BE DEMONSTRATED THAT CURRENT PROBLEMS CAN BEST BE CORRECTED BY AN ORGANIZATIONAL CHANGE, OR WOULD CHANGES IN

PROGRAM OPERATIONS AS CURRENTLY ORGANIZED BE MORE EFFECTIVE IN REMOVING THE CAUSES OF THESE PROBLEMS?

- HAVE PROGRAM MANAGERS BEEN GIVEN ENOUGH TIME TO IMPLEMENT NEW PROGRAMS OR PROGRAM EXPANSION?
- DOES THE REORGANIZATION ATTEMPT TO CONSOLIDATE ACTIVITIES THAT CURRENTLY ARE FUNCTIONING WELL (SUCH AS VEHICLE INSPECTIONS BY THE CALIFORNIA HIGHWAY PATROL AND FEE COLLECTION BY THE STATE BOARD OF EQUALIZATION)?
- HAVE POTENTIAL PROBLEMS WITH THE NEW ORGANIZATION BEEN ANTICIPATED, AND HAVE PLANS BEEN DEVELOPED TO MINIMIZE THEM? FOR EXAMPLE, HOW WOULD EXISTING RELATIONS BETWEEN HAZARDOUS WASTE STAFF AND THE LABORATORY AND RISK ASSESSMENT STAFF BE AFFECTED IF THE HAZARDOUS WASTE PROGRAM WAS LOCATED IN A SEPARATE DEPARTMENT? HOW WOULD RELATIONS WITH COUNTY HEALTH DEPARTMENTS BE AFFECTED?
- HAS THE IMPLEMENTATION OF THE CHANGE BEEN PLANNED IN DETAIL IN ORDER TO MINIMIZE DISRUPTIONS? HOW LONG WOULD IT TAKE TO RESTORE PROGRAM PERFORMANCE TO THE CURRENT LEVEL?
- DO THE LONG-TERM ADVANTAGES OF REORGANIZATION OUTWEIGH THE SHORT-TERM COSTS?

C. WHERE SHOULD THESE PROGRAMS BE LOCATED ON THE STATE'S ORGANIZATIONAL CHARTS?

AS WE DISCUSSED EARLIER, WE NEED MORE INFORMATION BEFORE WE CAN RECOMMEND THAT THE LEGISLATURE INITIATE A MAJOR CHANGE IN THE ORGANIZATION OF THE HAZARDOUS SUBSTANCES CONTROL PROGRAMS. CONSEQUENTLY, WE ARE UNABLE TO ADVISE YOU ON WHERE THESE PROGRAMS SHOULD BE LOCATED ON THE STATE ORGANIZATIONAL CHARTS.