

Department of Toxic Substances Control Reform Implementation

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Summary. In this post, we provide a description and analysis of the Governor’s 2022-23 budget proposals to spend the additional revenues the Department of Toxic Substances Control (DTSC) is expected to receive from last year’s governance and fiscal reform. Overall, we find that the proposals are consistent with the information the Legislature used as the basis for approving DTSC’s governance and fiscal reform. However, we recommend the Legislature continue to conduct oversight of the programmatic expansions being proposed and to revisit staffing levels in future years.

Background

DTSC Is Responsible for Protecting California From Toxic Substances. DTSC is charged with protecting the people of California and the environment from the harmful effects of toxic substances. DTSC administers the following major programs:

- **Hazardous Waste Management Program.** The department regulates the generation, storage, transportation, and disposal of hazardous waste through permitting, compliance monitoring, and enforcement of noncompliance.
- **Site Mitigation and Restoration Program.** DTSC implements the state’s laws regarding the identification, assessment, and cleanup of sites contaminated by toxic substances. The department also monitors long-term operations and maintenance activities at sites where cleanup is complete.
- **Safer Consumer Products Program.** This program identifies and prioritizes chemicals of concern in consumer products, evaluates alternatives, and specifies regulatory responses to reduce chemicals of concern in products.

DTSC Supported by Two Special Funds.

The department’s ongoing operations are primarily supported by the Hazardous Waste Control Account (HWCA) and the Toxic Substances Control Account (TSCA). HWCA largely supports the Hazardous Waste Management Program. The account is sustained by regulatory fees charged to hazardous waste generators, waste disposal entities, and other facilities that handle hazardous waste. TSCA largely supports the Site Mitigation and Restoration Program and the Safer Consumer Products Program. The account is primarily funded by a broad-based tax charged to businesses that contribute to hazardous waste.

Department Recently Underwent Significant Governance and Fiscal Reform. Budget trailer legislation as part of the 2021-22 budget package, Chapter 73 of 2021 (SB 158, Committee on Budget and Fiscal Review), restructured and increased the charges that support HWCA and TSCA. The resulting revenues provided from the changes are intended to (1) solve the longstanding structural deficits in HWCA and TSCA, (2) support a new Board of Environmental Safety (discussed below), (3) support programmatic expansions that address high-priority programs and activities, and (4) build sufficient reserves in both accounts. Beginning in 2022-23, these reforms are estimated to increase revenues in HWCA by \$46.3 million (\$22.5 million to address the account’s structural deficit and \$23.8 million for programmatic expansions) and increase revenues in TSCA by \$53.1 million (\$11.5 million to address the account’s structural deficit and \$41.6 million for programmatic expansions). (Since the state would not begin to receive revenues until 2022-23—due to the timing of how charges for both accounts are collected—the 2021-22 budget provided one-time General Fund resources of \$29 million and \$11.5 million

to HWCA and TSCA, respectively, to keep the accounts solvent and to advance high-priority programmatic expansions a year early.) To inform the 2021-22 budget decisions, DTSC provided the Legislature with an expenditure plan that stated the programs and activities the department intended to augment with the additional revenues from HWCA and TSCA. However, the department still needs statutory authorization to use all of the additional funds in 2022-23.

Senate Bill 158 also established the Board of Environmental Safety within the department. The five-member board is responsible for hearing hazardous waste permit appeals and providing strategic guidance to the department. The board also has the authority to set charge levels for HWCA and TSCA in future years beginning in 2023-24. Specifically, the board will set charges annually to align revenues from both accounts to the amount of expenditures authorized by the Legislature through the annual budget act.

Legislature Provided Considerable New Funding for DTSC to Address Brownfields.

In addition to the above fiscal and governance reforms, the 2021-22 budget package provided DTSC with one-time General Fund of \$300 million to address brownfields—properties underutilized due to the presence or potential presence of hazardous contaminants. Most of the funding was allocated for (1) DTSC to investigate and clean up brownfields with contracted assistance and (2) a new grant program—Equitable Community Revitalization Grant (ECRG) Program—to provide funding to municipalities, nonprofits, tribes, and other governmental agencies for brownfield investigations, cleanups, and community-wide assessments. The 2021-22 budget package also provided an additional \$100 million in 2022-23 and in 2023-24 to continue these activities. A portion of the \$300 million provided in 2021-22 is being used to support the staff needed to begin implementing the above activities, with the expected revenue increases in TSCA anticipated to cover staff costs starting in 2022-23.

Governor’s Proposal

Proposes Total of \$510 Million for DTSC.

The Governor’s 2022-23 budget proposes a total of \$510 million from various funds to support DTSC. The proposed amount reflects a decrease of \$355 million, or 41 percent, compared to projected current-year expenditures. The year-to-year change largely reflects some one-time funds the department received in 2021-22 that are not sustained at the same levels in the 2022-23 proposal, including the \$300 million to address brownfields as well as funding related to the Exide facility.

Provides Funding for DTSC to Significantly Expand Activities. The Governor’s budget includes multiple proposals requesting authorization to use the additional revenues that HWCA and TSCA received from the restructured and increased charges. As shown in **Figure 1**, the funding would be used to support various programmatic expansions to fully implement the reforms initiated in 2021-22. As discussed earlier, some of these activities began in 2021-22 using one-time General Fund, but would switch to HWCA and TSCA beginning in 2022-23. The new proposals request \$16.1 million in additional spending from HWCA and \$33.4 million in additional spending from TSCA, in order to support 260 additional ongoing positions. All of the funding and positions are proposed on an ongoing basis.

Major requests from HWCA include funding to improve inspections of hazardous waste generators and to enhance criminal enforcement investigations. The most significant proposals to be funded from TSCA include funding to administer brownfield cleanups (discussed more below) and expand the Safer Consumer Products Program.

Provides Resources to Support Brownfield Cleanups. Consistent with SB 158, the Governor’s budget includes an additional \$100 million in General Fund to support brownfield cleanups. As shown in Figure 1, the budget proposes \$12.9 million from TSCA in 2022-23 to hire 73.5 ongoing positions to help administer this cleanup workload—together with the workload associated with the \$300 million provided in the current year and the additional \$100 million in 2023-24. The Governor proposes increasing

these staffing resources to \$13.9 million and 79.5 positions in 2023-24 and on an ongoing basis as cleanup projects and grants ramp up. These positions would implement and oversee investigation and cleanup contracts at brownfield sites and administer the ECRG Program.

Assessment

Proposals Consistent With Department’s Intended Expenditure Plan. Overall, we find that the Governor’s budget aligns with the expenditure plan provided to the Legislature last year. Specifically, the proposed activities, associated number of new staff, and corresponding costs are generally consistent with the information the Legislature used as the basis for approving HWCA and TSCA increases.

Need for New Cleanup Staff Will Diminish in Future Years Absent Additional Program Funding. As noted above, the Governor’s budget includes ongoing funding from TSCA for staff to administer the new \$500 million brownfields cleanup program. While the workload for the proposed staffing levels is clear in the near term, the need for these positions will diminish in future years as the department completes investigation and cleanup contracts and ECRG projects. We estimate that the department will encumber most of the \$500 million after five years, at which point the department will start to see a gradual decline in workload. Unless the Legislature provides comparable levels of additional funding for annual brownfield investigation and cleanup contracts and/or grants in future years, the need for the proposed staffing levels likely will begin to gradually phase out after five years.

Recommendations

Approve DTSC Reform Implementation Proposals. We recommend the Legislature adopt the Governor’s DTSC reform implementation proposals, given that they align with the expenditure plan provided to the Legislature last year and are consistent with the assumptions upon which the HWCA and TSCA funding increases were based. Approving these proposals will provide the department with additional resources that will better enable DTSC to enforce hazardous waste laws and clean up contaminated sites.

Monitor Implementation of Program Expansions and Brownfield Cleanups. We recommend the Legislature use future budget hearings to conduct oversight on how the department is implementing these significant programmatic expansions. In addition to solving the structural deficits within HWCA and TSCA, the Legislature enacted the reform measures to ensure

Figure 1

DTSC Reform Implementation Proposals

(Dollars in Millions)

| Proposals | HWCA | TSCA | Positions |
|---|---------------|---------------|--------------|
| Approved in 2021-22^a | | | |
| Implement Violations Scoring Procedure | \$3.1 | — | 11.0 |
| Resource Conservation and Recovery Act | 2.5 | — | 17.0 |
| Board of Environmental Safety | 1.5 | \$1.5 | 15.0 |
| Information technology security unit | 0.6 | 0.6 | 4.0 |
| Subtotals | (\$7.7) | (\$2.1) | (47.0) |
| Governor’s 2022-23 Proposals | | | |
| Enhance hazardous waste generator inspections | \$2.9 | — | 16.0 |
| Criminal enforcement increase | 2.3 | — | 14.0 |
| Modernize information technology infrastructure | 2.3 | \$3.8 | 24.0 |
| Legal support for core programs | 2.1 | 4.7 | 24.0 |
| Administrative support for core programs | 1.9 | 3.7 | 37.6 |
| Hazardous waste classification | 1.5 | — | 8.0 |
| Increase frequency of transporter inspections | 1.3 | — | 8.0 |
| Hazardous Waste Management Plan | 1.2 | — | 7.0 |
| California Environmental Quality Act review | 0.3 | — | 2.0 |
| Office of Environmental Equity | 0.3 | 1.0 | 9.0 |
| Administrative support for brownfield cleanups | — | 12.9 | 73.5 |
| Expand Safer Consumer Products Program | — | 7.2 | 37.0 |
| Subtotals | (\$16.1) | (\$33.4) | (260.1) |
| Totals | \$23.8 | \$35.5 | 307.1 |

^a Activities funded with one-time General Fund in 2021-22.

DTSC = Department of Toxic Substances Control; HWCA = Hazardous Waste Control Account; and TSCA = Toxic Substances Control Account.

that high-priority programs and activities were adequately funded to improve DTSC’s outcomes. Continued monitoring of the department’s efforts will further ensure that DTSC is meeting its mission and achieving the Legislature’s goals. Moreover, such oversight would allow the Legislature to identify when changes—such as to staffing or funding levels, implementation strategies, or statutory requirements—for particular activities might be warranted to improve desired outcomes. Some examples of information the Legislature could request from the department include the average time DTSC takes to make hazardous waste facility permit decisions, the number of additional hazardous waste transporters the department is able to inspect, and the number of additional product-chemical combination investigations completed by the Safer Consumer Products Program.

In addition, we recommend the Legislature track major outcomes from the brownfields cleanup funding. For instance, the Legislature will want to know how many sites the department was able to investigate and clean up, average time lines for completing projects, the number of ECRG projects funded with grants, the human and environmental benefits associated with these activities, and the communities that benefited from funding. Such information can help inform whether the Legislature should consider providing additional funding for cleanup activities—and associated staffing, as discussed next—in the future.

Revisit Staffing Levels in Future Years.

We recommend that the Legislature revisit the department’s staffing levels in future years to evaluate whether the approved level of positions are still needed for the same activities. In particular, we recommend the Legislature request annual updates beginning in 2024-25 regarding how much funding and workload remains from the \$500 million in brownfields funding to assess the degree to which the 79.5 staff and associated \$13.9 million are still needed to administer the program. Based on its assessment of the outcomes of the brownfields program and whether it finds merit in funding additional rounds of contracts and grants, the Legislature could consider one of the following options in future years when the \$500 million is largely expended:

- Provide additional funding for brownfield cleanups and adjust TSCA funding for staffing levels commensurate to the new workload.
- Reallocate some of the TSCA funding from staffing to instead be used for cleanup grants or contracts to sustain a continued but down-sized program.
- Redirect the \$13.9 million in TSCA funding and the 79.5 associated staff from the brownfields cleanup program to a different DTSC priority activity.

LAO PUBLICATIONS

This post was prepared by Frank Jimenez, and reviewed by Rachel Ehlers and Anthony Simbol. The Legislative Analyst’s Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.