

DEPARTMENT OF HEALTH SERVICES
TOXIC SUBSTANCES CONTROL PROGRAMS

DECEMBER 14, 1983

LEGISLATIVE ANALYST
STATE OF CALIFORNIA
925 L STREET, SUITE 650
SACRAMENTO, CALIFORNIA 95814

Statement by Legislative Analyst's Office

Assembly Ways and Means Subcommittee No. 1 on Health and Welfare
Oversight Hearing on the Department of
Health Services Toxic Substances Control Programs

December 14, 1983

The committee asked us to provide an overview of the performance of the Department of Health Services toxic substances control programs since enactment of the budget in July. Specifically, we will comment on (1) the September revisions to the objectives contained in the department's May 1983 work plan and the first-quarter progress report and (2) the department's compliance with requirements adopted in the Supplemental Report of the 1983 Budget Act. We also comment on the need for additional compliance indicators to evaluate the effectiveness of the Toxic Substances Control program to protect public health and the environment.

Background

The state's efforts to control toxic substances began with the passage of the Hazardous Waste Control Act in 1972. The federal government first became involved in 1976 with the passage of the Resource Conservation and Recovery Act (RCRA). In the past five years, the state's programs have grown tremendously. Table 1 displays the growth in program expenditures from \$1 million in 1978-79 to \$67 million in the current year, or 659 percent. This is an average annual increase of over 100 percent.

Table 1

Department of Health Services
Toxic Substances Control Program Expenditures
1978-79 to 1983-84
(in thousands)

<u>Fund</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>1981-82</u>	<u>Estimated 1982-83</u>	<u>Budget 1983-84</u>
Hazardous Waste Control Account	\$782	\$1,136	\$2,063	\$2,785	\$5,238	\$6,404
Federal funds--Resource Conservation and Recovery Account (RCRA)	227	1,361	2,278	3,021	3,623	2,980
Energy and Resources Fund (ERF)	--	--	798	1,359	845	347
General Fund	N/A	N/A	1,708	3,156	2,732	2,552
Hazardous Substances Account	--	--	--	-157	7,310	11,500
Federal funds--Comprehensive Environmental Response, Cleanup, and Liability Act (Superfund)	--	--	--	--	--	12,600
Federal funds--abandoned site project	--	--	--	--	--	541
Responsible parties	--	--	--	--	--	27,900
Reimbursements	--	--	N/A	2,883	3,146	2,674
	<u>\$1,009</u>	<u>\$2,497</u>	<u>\$6,847</u>	<u>\$13,047</u>	<u>\$22,894</u>	<u>\$67,498</u>
Percent increase from prior year		147%	174%	91%	75%	195%
Percent increase from 1978-79						659%

Notes

1. The 1978-79, 1979-80, and 1980-81 data include the Hazardous Materials Management Branch and the Hazardous Materials Laboratory.
2. The 1981-82, 1982-83, and 1983-84 data are for the Toxic Substances Control Division only. The 1982-83 figures are estimates as of May 1983.
3. The 1983-84 figures reflect the receipt of \$541,000 in new federal funds for the abandoned site project.

Management deficiencies and criticisms of the program's effectiveness accompanied the rapid program growth. In the last two years, in the Analysis of the Budget Bill, we have been critical of the department's management of the fundamental program functions of permitting, surveillance, and enforcement. We concluded in the 1983 Analysis that the program "has not produced results commensurate with the funding and staff resources made available by the Legislature." Other agencies, including the Auditor General and the federal Environmental Protection Agency (EPA), have also issued critical evaluation reports.

To increase program accountability, the Legislature required the department to submit a comprehensive work plan containing quantifiable goals, workload standards, identification of available financial and staff resources, and a timetable of quarterly output. The department submitted its work plan in May.

Work Plan Changes and First-Quarter Performance

In September, the department issued a revised work plan to reflect (1) additional funding and positions from legislative and EPA augmentations and (2) revised workload standards and management priorities. On November 25, 1983, the department released the quarterly report covering the period July through September 1983.

In general, the revisions in the work plan goals are minor. The first-quarter report shows that the department met a majority of the output targets established in the revised work plan. The department deserves to be commended for its dramatic improvement in output and reporting. We identified four areas, however, where the department has made significant revisions in its anticipated accomplishments or has not met its objectives:

1. Permitting. The Legislature and the EPA provided an additional 17 positions for permitting above the level originally anticipated in the May work plan. Despite this increase, in its revised work plan the department reduced by 20, from 90 to 70, the number of storage and treatment facility permits it intends to issue. The department also revised its goal for issuing 10 land disposal permits to "completing major work" on 30 facilities.

The revision in program goals follows a period of abysmal performance in meeting earlier goals. Specifically, (a) between July 1982 and June 1983, the program issued 7 out of 50, or 14 percent, of permits promised in April 1982 budget submissions and (b) between October 1982 and September 1983, the program issued 45 out of 150, or 30 percent, of the permits promised to the EPA in April 1983. In the first quarter of 1983-84, the department completed some permits started in earlier periods and, thereby, exceeded by 18 its revised work plan goal of 20.

The department was unable to meet its earlier goals and revised downward its May goals for permitting because (a) authorized staffing levels have not been maintained, (b) the original goals were optimistic--the actual time required to write a permit is 35 days, rather than 14 days as originally estimated, (c) the original goals assumed regular overtime work, which decreased after the April management changes, (d) redirected and new employees needed more time for training than originally anticipated, (e) developing policies and procedures and supervising new employees exceeded the levels originally anticipated, and (f) more staff than originally anticipated are assigned to preparing land disposal permits, which require a greater time commitment than other types of permits.

We believe the permitting activity has a high priority due to its importance in assuring the safety of hazardous waste facilities.

Consequently, we recommend that the Legislature direct the department to take administrative actions aimed at achieving the original permit goals. Such actions should include: redirecting existing staff, immediately filling all vacant positions, and reevaluating its workload standards to determine if productivity will increase during the year as new staff gain experience.

2. Surveillance and Enforcement. The department has taken major steps to improve this activity by appointing a full-time enforcement coordinator, issuing an enforcement manual, and elevating the regional offices to section status. The Legislature and the EPA provided a combined augmentation of 15.75 positions for this activity. The department has, however, reduced the number of facilities and generators it plans to inspect regularly by 77, from 1,140 to 1,063. The department has also reduced its planned inspections of Class I facilities from a daily to a monthly basis. The department indicates that it plans to put a greater emphasis on follow-up and transporter inspections than originally anticipated. It is difficult to tell whether the increases in these types of inspections will offset the decrease in regular planned inspections because comparable figures for follow-up and transporter inspections are not contained in the two work plans.

During the first quarter of the current fiscal year, 71 inspections, including both initial and follow-up inspections, were completed, compared to a goal of 100 initial inspections in the September work plan. The September work plan does not contain goals for follow-up inspections. The

May work plan contained a goal of 135 initial and 41 follow-up inspections, for a combined total of 176 inspections.

The shortfall in inspections was caused primarily by hiring delays and to some degree by the implementation of the new enforcement policy, which required additional staff training and the redirection of field staff from regular inspections to developing current and backlogged enforcement cases. The department has enough positions to meet and probably exceed its September goals if (a) it immediately fills all vacant field positions and (b) the new enforcement policy does not continue to divert staff from regular inspections.

We believe that the current goals for regular inspections may be inadequate to insure compliance with state laws regulating hazardous waste. For example, the department currently plans to perform 500 inspections annually, including some follow-up inspections. Approximately 1,100 permittable facilities exist in the state, many of which handle sufficient quantities of wastes to justify inspections more frequently than once every two years. The department plans only 600 generator inspections annually, while the state has between 10,000 to 60,000 hazardous waste generators. Consequently, we recommend that the Legislature direct the department to include in its 1984-85 work plan a discussion of appropriate inspection frequencies for various categories of facilities and generators, the resources needed to reach those levels, and the potential role of counties in generator inspections.

3. Management Information System. The work plan indicates that manifest, activity tracking, and time accounting systems will be operational throughout 1983-84. While the time accounting system began

operating ahead of schedule, the manifest system is behind schedule in guaranteeing cradle-to-grave control of hazardous waste transportation, treatment, and disposal. Also, the activity tracking system has not been implemented.

It is important that the department complete the development and implementation of these two systems in order to monitor compliance with transportation laws and assure management review of regional office activity.

4. Laboratory Workload. The quarterly report documents that the Hazardous Materials Laboratory exceeded the planned number of determinations on samples by 470 percent for site mitigation and 93 percent for surveillance and enforcement. The large volume of samples submitted by the field staff, however, inundated the laboratories. As a result, only 38 percent of the surveillance and enforcement determinations were completed. The department is investigating the following options for relieving this situation: (a) contracting out to private laboratories for production lab work, (b) examining current sampling procedures to insure that each sample is needed and useful, and (c) revising current priorities for laboratory response.

Compliance with Supplemental Report Language

The Legislature adopted 11 specific items related to the department's Toxic Substances Control program in the Supplemental Report of the 1983 Budget Act. Attachment I displays the language and a status report on each item. We identified problems with the department's performance in four of these areas:

1. Freezes. While the administration approved almost all freeze exemption requests, considerable staff time was used to prepare these requests. Also, the division delayed filling new positions until all salary savings for the year were generated. The permitting and enforcement activities were most adversely affected by this policy due to the large number of new positions.

Contracting and equipment purchases for employee health and safety were delayed. The contract for the continuation of an epidemiology study at the Stringfellow site, conducted by Riverside County, was delayed.

Two positions have been eliminated in the Epidemiological Studies Section: an environmental biochemist and a librarian. The positions were redirected to TSCD management.

2. Community Relations Plans and Meetings. The department has not complied with the requirement for plans for each state-funded superfund site, nor have meetings been held consistently before decisions are made. The department's planned December hiring for the two positions that have been vacant throughout the year should improve the performance level.

3. Birth Defects Registry. The department eliminated one of the nine positions established by the Legislature. The reduction of one field staff has resulted in some delays and has required other program staff to spend one day per week in the field abstracting medical records.

4. Superfund Revenue Notification. The department received \$2.8 million from the EPA for the Stringfellow site in August 1983. The Legislature has not been notified, although the language requires notice within 30 days.

Need for New Evaluation Methodology

We commend the department for its progress in improving program management and for the work plan and first-quarter report. These are important basic tools for the Legislature and the public to provide oversight of these critical programs. They answer the major question that was raised in past years: how are the fiscal and personnel resources of the department being used? They do not, however, answer two other important evaluation questions:

- o What impact are the programs having on the regulated community, the public health, and the environment?
- o Are the program goals, priorities, and resources appropriate and adequate to protect the public health and the environment?

In order to attempt to answer these two questions, we recommend that the Legislature require the department to include with the 1984-85 work plan (1) a multi-year schedule for key performance measures and (2) compliance-based output indicators when appropriate.

For example, these indicators could reflect the percentage of inspected facilities in compliance, the amount of time needed to get facilities in compliance, and the severity of violations. These compliance indicators would be in addition to the system for reporting frequency of inspections, etc.

Summary and Recommendations

In conclusion, the department has demonstrated a significant improvement in managing its resources and meeting its performance commitments. The majority of activities listed in the quarterly report were on schedule. The changes in the work plan generally reflect better

calculations of workload standards and revised priorities. We identified problems with the department's decision to reduce its permitting goal by 20 and its regular inspection goal by 77. We also identified inadequate performance in permitting during 1982-83 and in inspections during the first quarter of 1983-84. There have been major unjustified delays in filling vacant and newly established positions.

Due to the importance of the permitting activity and regular inspections in assuring compliance with hazardous waste laws, we recommend the Legislature direct the department to (1) take administrative actions to achieve the May goal of issuing 90 permits, (2) include in the 1984-85 work plan a discussion of the appropriate inspection frequencies for various categories of facilities and generators, the resources needed to reach those levels, and the potential role of counties in generator inspections, and (3) accelerate the filling of vacant positions.

We also recommend that the Legislature direct the department to include in the 1984-85 work plan (1) a multi-year schedule for key performance measures and (2) compliance-based indicators of program performance.

Were we asked to grade the department on its performance, we would award it a B-/C+ for actual performance and an A-/B+ for effort. Both are major improvements from failing grades in past years.

The department shall pursue administrative and statutory remedies to streamline and development, review, and approval of Superfund program contracts.

By 3/1/84, the TSCD of the DHS, in conjunction with the Office of Emergency Services, shall develop guidelines for a three-year master plan, to be updated annually, for improvement of state and local response to releases of hazardous substances. These guidelines shall include, but not be limited to, (a) a timetable for emergency response equipment purchases, (b) plans for implementation and expenditures to improve emergency response, (c) notification procedures for toxic waste spills, (d) reporting and data collection, and (e) overall coordination efforts between the state and local government on a county-by-county basis. Specific goals and objectives should be indicated for each stage of the plan.

It is the intent of the Legislature that the nine positions established to implement the Birth Defects Monitoring program pursuant to Ch 204/82 be permanently established in the department. It is the intent of the Legislature that the following positions be established: one (1) PHMO III; one (1) research program specialist I; one (1) health records technician III; three (3) health records technician II; one (1) health records technician I; one (1) office technician; and one (1) office assistant II.

Chapter 204 established an ongoing system for collection of information on birth defects, stillbirths, and miscarriages; and therefore the sum of \$365,204 shall be permanently established in the base of this item.

Provided further, any increases in this program shall be through the annual Budget Act.

- The department shall negotiate with the federal Environmental Protection Agency to change the contract period for the Resource Conservation and Recovery Act (RCRA) program to correspond to the state fiscal year (July to June) rather than the the federal fiscal year (October to September).
- The Director of the DHS shall notify the fiscal committees, appropriate policy committees, and the JLBC within 30 days after receipt of funds for services from the federal Superfund program or responsible parties and the site or sites for which funds have been received. The department shall also provide a revised estimate of funds to be

5. The Legislature approved AB 860 (Ch 1044/83), which allows multi-year contracts and, in emergencies, the use of pre-qualified bidders. The department exempted all mitigation contracts from the freeze and instituted a contract tracking system.
6. This activity is proceeding and the TSCD anticipates submitting the report on time.
7. The department has filled eight of the nine positions. It eliminated the health records technician III position. The records technicians are responsible for visiting hospitals and other health care providers. Other nonfield members of the staff now spend up to one day a week in the field. The program has also had delays in getting contracts approved.
8. The EPA has agreed to change the RCRA contracting period to correspond to the state fiscal year. The EPA also accepted the new state work plan.
9. The EPA provided \$2.8 million for the Stringfellow site in August 1983. The Legislature has not yet been officially informed. The department is currently in negotiations for 14 other sites.

received during 1983-84, by site, with submission of its 1984-85 budget.

The department shall prepare a work plan for the activities of the TSCD in 1984-85 and shall submit that plan by 3/31/84 to the chairpersons of the fiscal committees, the appropriate policy committees, and the JLBC. The 1984-85 work plan should include the following: (1) quantitative goals and objectives for all sections, subunits, and regional offices of the TSCD, (2) identification of all program funding sources and positions by function, (3) workload standards for all staff assigned to the program, (4) a schedule for issuing program regulations, (5) a timetable of quarterly milestones, so that progress in meeting the goals set in the plan can be evaluated during the year, (6) specific changes in management or organizational structure that will be needed to achieve the goals of the plan, (7) clear priorities between various work goals and functions, (8) discussion of changes from the 1983-84 work plan, and (9) multi-year plans for activities that are scheduled for completion over an extended time period, such as permitting and financial liability and closure plan review.

In order to ensure that the state attract and retain the most qualified staff possible, the State Personnel Board shall review and report to the Legislature on the adequacy and appropriateness of salary rates for classifications used in the Department of Health Services Toxic Substances Control Division.

10. The department does not anticipate delays in completing the 1984-85 work plan.

11. Salaries are now within the jurisdiction of the Department of Personnel Administration (DPA). The Legislative Analyst's office has requested DPA to perform this study.