

Supporting AB 1 (C. Garcia) Reform of the Department of Toxic Substances Control

Over the past decade, residents and community stakeholders that live near hazardous waste facilities have complained that the Department of Toxic Substances Control (DTSC) is not properly enforcing State and federal law and allowing facilities to operate with an expired permit or have numerous violations of State law and regulation. Additionally, those who store, treat, or dispose of hazardous waste are concerned about the length of time it takes DTSC to process a permit (often extending years beyond the expiration date of their permit) as well as the costs associated with processing a permit.

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) providing staffing to improve permit backlogs and business operations; and, 4) improving enforcement at the department.

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While numerous statutory changes and budget augmentations have been made to clarify and strengthen DTSC's ability to better achieve its mandates, reduce backlogs, and address outstanding programmatic failings, many of the underlying concerns about transparency, accountability, long-term stability, and DTSC's fiscal deficit remain.

Assemblymember Cristina Garcia has introduced AB 1, which seeks to build upon the oversight work done by the State Legislature to bring transparency to DTSC's decision-making process, enact effective and equitable solutions in the fight against facilities that contaminate communities, and implement recommendations from the 2017 Independent Review Panel, including adequate fiscal assurances, creation of a board to improve DTSC, and mechanisms to raise resources needed to bring fiscal stability in the department. Specifically, the bill would:

- 1) create a five-member Board of Environmental Safety (Board) within the California Environmental Protection Agency (Cal/EPA), all of whom shall represent the general public interest, to provide policy direction to and oversight of the DTSC;
- 2) re-establish the Fee Task Force to review the existing charges supporting the Hazardous Waste Control Account (HWCA) and the Toxics Substances Control Account (TSCA) and require the Secretary to provide recommendations to the Legislature by January 2023 as part of the Governor's proposed budget;
- 3) update the statutory requirements for the State to develop a statewide hazardous waste management plan (Plan) to include an identification of areas of the State that are disproportionately impacted by hazardous waste treatment and disposal activities, a description of steps to reduce the generation of hazardous wastes, and a public process with meetings throughout the State and require the Plan to be completed by March 1, 2025 and updated every three years thereafter;
- 4) require owners or operators of hazardous waste facilities to submit to DTSC a written cost estimate

associated with necessary corrective actions after DTSC has identified a release of hazardous waste; applying this same process for responsible parties for cleanup sites; 5) set the base rate of the Facility Fee at \$71,250 and revises the tiered payment structure for the Facility Fee; 6) implement a Generation and Handling Fee to \$35.50 for each ton or fraction of a ton of hazardous waste generated; and 7) phase in a requirement that all permit renewal applications must be submitted at least two years before expiration. Deems the permit extended until DTSC takes final action on the application, if the renewal application is submitted in time. Establishes a process by which the Board may review any final permit decision that DTSC has not made by these deadlines.

As illustrated by Exide's bankruptcy in 2020, a well-functioning DTSC is critical to protecting the public from contamination from hazardous waste facilities and ensuring taxpayers are not left on the hook financially for corporate polluters' actions. AB 1 will reform DTSC into an entity that will prevent the next Exide and oversee the management of hazardous waste in California in a transparent manner that fully protects all communities and public health, irrespective of zip code or socioeconomic status.

I, THEREFORE, MOVE that the Board of Supervisors direct the County's Legislative Advocates in Sacramento to support AB 1, which includes necessary reforms to improve and increase transparency, oversight, and accountability of the Department of Toxic Substances Control.

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