

The California State Auditor released the following report today:

California Department of Toxic Substances Control

Its Lack of Diligence in Cost Recovery Has Contributed to Millions in Unbilled and Uncollected Costs

BACKGROUND

Responsible for overseeing the State's responses to spills or releases of hazardous substances, and for hazardous waste disposal sites that pose a threat to public health or the environment, the California Department of Toxic Substances Control (department)—under federal and state laws—investigates, removes, and remediates contamination at sites. The department can recover costs from responsible parties for cleanup and oversight actions it takes in response to hazardous waste and substance contamination.

KEY FINDINGS

During our review of the department's cost recovery process, we noted the following:

- Because of pervasive issues with its cost recovery process, as of March 2014 the department had 1,661 projects totaling almost \$194 million in unbilled and billed but uncollected cleanup costs (outstanding costs) incurred from July 1987 through December 2013.
- The department is unlikely to collect millions in outstanding costs for projects due to several factors.
 - ✓ The statutes of limitations may have already expired. In fact, the department has preliminarily determined that they have expired for 76 projects totaling nearly \$13.4 million in cleanup costs.
 - ✓ The department cannot verify the billing status on many projects with outstanding costs due to poor documentation—some projects in the billing system indicate that no responsible parties were identified, yet upon closer review it appears that some projects were misclassified.
 - ✓ Some outstanding amounts were never reduced in the billing system after the department entered into a settlement agreement and thus, the outstanding amount may be lower.
 - ✓ Some of the outstanding costs involve 61 projects affected by bankruptcies or subject to ongoing litigation—the department does not know how much, if any, it may recover of \$73 million in these outstanding costs until the legal process concludes.
- Although the department has established updated cost recovery procedures, it still lacks processes for tracking and monitoring when the statute of limitations on contaminated sites will expire and does not have a formal mechanism for tracking settlement agreements to ensure that the billing system is accurate.
- The department has not consistently used some of its tools to ensure that it maximizes the recovery of costs from responsible parties—it has not always issued collection letters to responsible parties that are delinquent in their payments or placed liens on their properties. Further, the interest rate it can charge for late payments is so low that it does not create an incentive for prompt payment.

KEY RECOMMENDATIONS

We made numerous recommendations including the following:

- By January 15, 2015, the department should develop a reporting function in its database to track and monitor the statute of limitations expiration dates for its projects and a process to track its settlement agreements to ensure outstanding costs reflect all adjustments made for settlements paid and reduced in the billing system.
- To ensure it maximizes the recovery of its costs from responsible parties, the department should develop and update policies and procedures for its collection letter process and for using liens.
- The Legislature should revise state law to allow the department to use a higher interest rate assessed on late payments to improve its efforts to promptly recover costs.