

Fiscal Year 2016-17	Business Unit 3960	Department Department of Toxic Substances Control	Priority No.
Budget Request Name 3960-117-BCP-BR-201-GB		Program 3620 - Site Mitigation and Brownfields Reuse 3625 - Hazardous Waste Management Program	Subprogram

Budget Request Description
Attorney General Support for the Independent Review Panel

Budget Request Summary

The Department of Toxic Substances Control requests an augmentation of \$50,000 in Fiscal Year (FY) 2016-17 (\$25,000 from the Toxic Substances Control Account (TSCA) and \$25,000 from the Hazardous Waste Control Account (HWCA) and \$25,000 in FY 2017-18 (\$12,000 from TSCA and \$13,000 from the HWCA to reimburse the Attorney General for expenses associated with its support for the Independent Review Panel, which was established pursuant to Senate Bill 83 (Chapter 24, Statutes of 2015).

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By <i>[Signature]</i>	Date 1/4/16	Reviewed By <i>[Signature]</i>	Date 1/4/16
Department Director <i>[Signature]</i>	Date 1/4/16	Agency Secretary <i>[Signature]</i>	Date 1/6/16

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Original Signed By: Ellen Moratti	Date submitted to the Legislature JAN 07 2016
------	--------------------------------------	--

A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation of \$50,000 in Fiscal Year (FY) 2016-17 (\$25,000 from the Toxic Substances Control Account (TSCA) and \$25,000 from the Hazardous Waste Control Account (HWCA) and \$25,000 in FY 2017-18 (\$12,000 from TSCA and \$13,000 from the HWCA to reimburse the Attorney General for expenses associated with its support for the Independent Review Panel (IRP), which was established pursuant to Senate Bill 83 (Chapter 24, Statutes of 2015).

Background/History

DTSC's mission is to protect California's people and environment from harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically-safer products.

Earlier this year, the Legislature passed and the Governor signed into law SB 83. Among other things, this bill establishes the IRP. The IRP is responsible for reviewing and making recommendations regarding improvements to the Department's permitting, enforcement, public outreach, and fiscal management. The IRP consists of three appointed members.

Statute requires the IRP to report to the Governor and the Legislature 90 days after the IRP is initially appointed and every 90 days thereafter on the Department's progress in the four subject areas. The IRP is also required to submit recommendations to the Legislature and Governor at the time of each submission of the Governor's annual budget.

In order to carry out its responsibilities, statute requires the Department to provide the IRP with two support staff. It also allows each panel member to receive per diem and to be reimbursed for travel and other necessary expenses incurred in the performance of their duties. Statute authorizes an annual budget of \$50,000 to support the IRP's operation.

B. State Level Considerations

DTSC has the responsibility to protect California's people and environment from harmful effects of toxic substances by restoring contaminated resources, enforcing hazardous waste laws, reducing hazardous waste generation, and encouraging the manufacture of chemically safer products. The participation and contribution from the AG's Office supports the commitment from DTSC to provide the appropriate staffing and resources to support the IRP's charge enacted by the Legislature.

C. Justification

As previously noted, the Independent Review Panel is responsible for reviewing and making recommendations and submitting reports in four areas of DTSC: permitting, enforcement, public outreach and financial management. To help prepare these reports, the panel conducts public meetings, which are generally held once per month.

In order to carry out its mandate, the IRP requires legal counsel to attend the panel's monthly meetings, provide legal guidance on issues pertaining to DTSC, and may review the quarterly reports submitted to the Governor and the Legislature for consideration..

Independence is one of the keys to the success of the panel. That independence can be unduly compromised when the department it is reviewing, in this case DTSC, is reviewing the work and advising the panel on the reports it is statutorily mandated to issue. This issue of independence can be further compromised because the Department's legal office provides guidance on projects and legal issues that the IRP is reviewing.

DTSC considered having legal counsel from the California Environmental Protection Agency provide legal advice to the panel. However, this option also serves to compromise the independence of the

panel because CalEPA not only serves in an oversight role to DTSC, but it may also have participated in the decision making-process in the areas subject to the panel's review.

Existing law authorizes the IRP to have an operating budget of \$50,000 annually. This budget covers panel members' travel and per diem expenses. It also covers other expenses, such as printing, room rentals, translation services, and other expenses incidental to the operation of the panel. However, the cost of providing legal counsel from the Attorney General's Office would far exceed the panel's annual operating budget. Without this counsel, the public may view the panel's work as possibly being compromised.

D. Outcomes and Accountability

In implementing SB 83, the IRP is tasked with the following:

1. Advise DTSC on issues related to the department's reporting obligations.
2. Provide recommendations for improving DTSC's programs.
3. Advise DTSC on compliance with Health and Safety Code, Section 57007.
4. Report to the Governor and the Legislature 90 days after the panel is initially appointed and every 90 days thereafter, on DTSC's progress in reducing permitting and enforcement backlogs, improving public outreach, and improving fiscal management.

E. Analysis of All Feasible Alternatives

Alternative 1: Augment the Attorney General budget for the panel

This option ensures the panel has the independent legal counsel necessary to carry out its statutory mandate. It would also serve to strengthen the integrity of the work prepared by panel members.

Alternative 2: Have CalEPA serve as the panel's legal counsel

Although this alternative would result in no new costs, it would appear to compromise the independence of the panel because CalEPA is the umbrella agency over DTSC.

Alternative 3: Maintain status quo

This alternative would result in no new costs. However, much like Alternative 2, this option would contribute to the appearance that the panel's independence would be compromised.

F. Implementation Plan

N/A

G. Supplemental Information

N/A

H. Recommendation

Adopt Alternative 1. This alternative ensures that the panel receives legal guidance that is substantially free of any appearance of influence by either the Department or CalEPA.

BCP Fiscal Detail Sheet

BCP Title: Attorney General Independent Review Panel Costs

DP Name: 3960-117-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Operating Expenses and Equipment						
5340 - Consulting and Professional Services - Interdepartmental	0	50	25	0	0	0
Total Operating Expenses and Equipment	\$0	\$50	\$25	\$0	\$0	\$0
Total Budget Request	\$0	\$50	\$25	\$0	\$0	\$0

Fund Summary

Fund Source - State Operations

0014 - Hazardous Waste Control Account
0557 - Toxic Substances Control Account

0014 - Hazardous Waste Control Account	0	25	13	0	0	0
0557 - Toxic Substances Control Account	0	25	12	0	0	0
Total State Operations Expenditures	\$0	\$50	\$25	\$0	\$0	\$0
Total All Funds	\$0	\$50	\$25	\$0	\$0	\$0

Program Summary

Program Funding

3625 - Hazardous Waste Management
3620011 - Other Site Mitigation Activities

3625 - Hazardous Waste Management	0	25	13	0	0	0
3620011 - Other Site Mitigation Activities	0	25	12	0	0	0
Total All Programs	\$0	\$50	\$25	\$0	\$0	\$0

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 02/15)

Fiscal Year 2016-17	Business Unit 3960	Department Toxic Substances Control	Priority No. 16
Budget Request Name 3960-116-BCP-BR-2016-GB		Program 3630 Safer Consumer Products	Subprogram

Budget Request Description
 Biomonitoring California

Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests to extend for two additional years, \$350,000 from the Toxic Substances Control Account to provide consistency and stability in the Biomonitoring California Program and support 2.0 limited-term positions established in fiscal year 2014-15.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
 Attach comments of affected department, signed and dated by the department director or designee.

Prepared By <i>[Signature]</i>	Date 1/4/16	Reviewed By <i>[Signature]</i>	Date 1/4/16
Department Director <i>[Signature]</i>	Date 1/4/16	Agency Secretary <i>[Signature]</i>	Date 1/6/16

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Original Signed By: Ellen Moratti	Date submitted to the Legislature JAN 07
------	--------------------------------------	---

Analysis of Problem

A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests to extend for two additional years, \$350,000 from the Toxic Substances Control Account to provide consistency and stability in the Biomonitoring California Program and support 2.0 limited-term positions established in fiscal year 2014-15.

B. Background/History

Biomonitoring California was established through legislation (Senate Bill 1379, Perata and Ortiz, Chapter 599, Statutes of 2006, codified in Health & Safety Code D Sections 105440 *et seq*). The Program is a collaborative effort involving the California Department of Public Health (CDPH) as the designated lead, the Office of Environmental Health Hazard Assessment (OEHHA), and the Department of Toxic Substances Control. It receives technical advice and peer review from a Scientific Guidance Panel and input from the public. The content of this Budget Change Proposal (BCP) reflects only programmatic needs of DTSC.

Biomonitoring California's principal mandates are to: (1) measure and report levels of specific environmental chemicals in blood and urine samples from a representative sample of Californians, (2) conduct community-based biomonitoring studies, and (3) help assess the effectiveness of public health and environmental programs in reducing chemical exposures. Biomonitoring provides unique information on the extent to which people are exposed to a variety of environmental chemicals and on how such exposures may be influenced by factors such as age, gender, ethnicity, diet, occupation, residential location, and use of specific consumer products. This information is essential to inform policy decisions in public health and environmental protection (e.g., the reformulation and enhanced safety of consumer products under the Safer Consumer Product Regulations implemented by DTSC).

Biomonitoring California is funded through five special funds including TSCA, the Air Pollution Control Fund (APCF), the Department of Pesticide Registration Fund (DPRF), the Childhood Lead Poisoning Prevention Fund (CLPPF), and the Birth Defects Monitoring Fund (BDMF). DTSC has 2.0 permanent positions for Biomonitoring California; 2.0 positions with two-year limited term funding established in a FY 2015-16 BCP expiring June 30, 2017; and 2.0 two-year, limited-term positions established in a Fiscal Year (FY) 2014-15 BCP which expire on June 30, 2016.

Resource History
(Dollars in thousands)

Program Budget	PY - 3	PY - 2	PY - 1	PY	CY
Authorized Expenditures	\$367	\$367	\$375	\$725	\$987
Actual Expenditures	155	306	357	570	
Revenues					
Authorized Positions	2.0	2.0	2.0	4.0	6.0
Filled Positions	1.0	2.0	2.0	4.0	
Vacancies	1.0	0	0	0	

Programmatic History and Accomplishments: Biomonitoring California has undertaken a number of collaborative projects with University of California faculty (Berkeley, San Francisco, Davis and Irvine), Kaiser Permanente, and other investigators. Listed below are some key achievements Biomonitoring California has made over the last few years by building partnerships and leveraging the State resources:

- Tested urine and blood samples for up to 140 different chemicals from almost 5,000 Californians. This information is the beginning of a massive database that will allow the Program to assess exposures to Californians and to protect their health.
- Recruited pregnant women at San Francisco General Hospital and found many toxic chemicals in both mothers and infants. Many chemicals were at higher levels in the infants compared to their mothers. These discoveries will improve prenatal care advice across the state.

Analysis of Problem

- Demonstrated the drop of polybrominated diphenyl ethers (PBDE) in the blood of two other groups of pregnant women from San Francisco General Hospital as a result of the phase out of these flame retardants.
- Tested Orange County firefighters for over 75 chemicals in their blood or urine. High levels of PBDE flame retardants were found in all of the firefighters, particularly those who worked on front-line activities. Use of personal protective gear and regular cleaning were associated with lower flame retardant levels, reinforcing health and safety guidelines. We also found high levels of benzophenone-3, an endocrine disrupting chemical used as a sunscreen in some lotions and cosmetics and as a UV stabilizer in plastics, up to five times higher than the levels reported for the general population. Such findings will be useful in the implementation of DTSC's Safer Consumer Products regulations.
- In collaboration with Kaiser Permanente, recruited 450 Central Valley residents. Upon completion of chemical analyses of blood or urine, we will compare biomonitoring results with detailed participant health information.
- In collaboration with the Cancer Prevention Institute of California, the lab is in the process of analyzing blood from over 2,500 female teachers across the state. Chemicals in blood will be examined as risk factors for breast cancer. Preliminary data show an association between chemicals in the blood with those in drinking water (PFCs); and with residential proximity to hazardous waste sites (PBDEs).
- Biomonitoring California is the *only* such program that offers testing results to study participants. We found that the vast majority of participants ask to receive their results. Informational packets with test results, fact sheets, and suggestions to reduce exposures are mailed to individuals who requested their individual results.
- The Biomonitoring California website (www.biomonitoring.ca.gov) was recently redesigned and improved with new features and content; the new site presents biomonitoring study results to the public and researchers. Close to 1,500 active subscribers regularly receive Program email updates via the Biomonitoring California listserv.

C. State Level Considerations

Biomonitoring, as a tool for measuring and tracking exposure to toxic chemicals, has broad statewide relevance for public health. Biomonitoring California data can be used as an early warning system for exposure to toxic chemicals and as a means to target surveillance for potential adverse health effects. Furthermore, information collected by the Program can help inform DTSC's Safer Consumer Products regulations and Proposition 65 implementation, as well as CDPH's Safe Cosmetics Program. Results from the Program can also be used to assess the effectiveness of public health efforts and regulatory programs to decrease exposures to specific chemicals. For example, regulatory programs can utilize biomonitoring data (as was done recently with dropping levels of PBDEs) to demonstrate that product restrictions or other actions actually result in lower exposures, with consequent improved health outcomes. In addition, the Program's laboratory resources can be mobilized, as needed, to augment the State's emergency response to chemical releases.

The recently acquired Time-of-Flight (TOF) instrumentation provides the Program and DTSC with first time ever capabilities to measure many previously unknown and undetected chemicals in biological samples. Coupled with CalEPA's CalEnviroScreen (a tool to identify disadvantaged communities with respect to their pollution burden), results from the TOF will help prioritize work for optimal use of resources. These new capabilities will greatly augment the State's ability to investigate environmental exposures and potential links with disease in all Californians, including disadvantaged communities.

Biomonitoring California has high level of external support from advocates, academia, and other environmental health scientists who have supported past proposals for positions and funding. There is a strong external desire to maintain the program in light of recent federal funding reductions. This proposal is consistent with mandated activities under Senate Bill 1379 (2006, Perata) and included in Health & Safety Code Section 105440 et seq.

Analysis of Problem

D. Justification

This proposal requests to extend for two years, two (2.0) limited term positions that will expire June 30, 2016. These two (2.0) positions, with improved automation and sample throughput, will continue to analyze specific toxic chemical contaminants in biological samples from ongoing population-based investigations, allowing timely dissemination of results and science-based decision making. In addition, they will establish methodologies, operate and maintain the TOF, generate and interpret data, and set the direction for the investigation of unknown threats.

Biomonitoring is an emerging field with rapidly changing laboratory technologies. With both state and federal CDC funding, DTSC has purchased several such instruments to test for different toxic chemicals in samples from different populations. The instruments have a useful life of approximately seven years and, therefore, need to be replaced on a regular cycle. To ensure that the laboratory is operating with the appropriate instrumentation, this BCP requests \$70,000 for the purchase of new equipment to replace biomonitoring equipment as it ages. No facility modifications will be needed to house this equipment in the laboratory.

Sophisticated laboratory equipment needs to be serviced and maintained in order to continue functioning within specifications. Each manufacturer provides on-site service, maintenance and repair of this equipment under preventive maintenance contracts. \$10,000 is requested for preventive maintenance services.

E. Outcomes and Accountability

The CDC Cooperative Agreement requires Biomonitoring California to evaluate program functions and efficiency as part of the scope of work. Biomonitoring California is required to produce a Legislative Report biennially, including a progress report and a summary of results for ongoing work. The legislatively-mandated Scientific Guidance Panel will continue to provide scientific peer review of all aspects of program implementation, including rigorous review of scientific data used to inform many public and environmental health programs, public health interventions, and policy decisions.

F. Analysis of All Feasible Alternatives

Alternative 1: Extend 2.0 limited term positions for two more years.

Pros:

- Complete sample analyses of current studies.
- Ensure high data quality.
- Allow for program flexibility to continue to meet mandates.
- Return individual results to existing participants (required by law) and publish aggregated data in a timely manner.
- Retain skilled scientific staff.

Cons:

- Continued authority would increase the size and cost of state government.

Alternative 2: Establish permanent positions and funding.

Pros:

- Lessen the significant administrative impact of having to repeatedly recruit and hire limited term scientific staff to conduct and continue legislatively mandated program activities.
- Ensure high data quality.

Analysis of Problem

- Initiate new population-based investigations and/or long-term community studies to assess chemical threats to California's vulnerable populations.
- Plan for a long-term capacity to assess or prevent exposures to toxic chemicals found in consumer products, the environment and the workplace.
- Return individual results to existing participants (required by law) and publish aggregated data in a timely manner.
- Facilitates retention of skilled scientific staff.

Cons:

- Requires a permanent increase in TSCA expenditures at a time when TSCA is project to have a declining fund fund balance.
- Would permanently increase the size and cost of state government.

Alternative 3: Provide ongoing funding of \$350,000 from TSCA and redirect 2.0 existing positions.

Pros:

- Initiate new population-based investigations and/or long-term community studies to assess chemical threats to California's vulnerable populations.
- Plan for a long-term capacity to assess or prevent exposures to toxic chemicals found in consumer products, the environment and the workplace.
- Return individual results to existing participants (required by law) and publish aggregated data in a timely manner.
- Retain skilled scientific staff.

Cons:

- Depending on where positions are redirected from, this alternative may require a permanent increase in TSCA expenditures at a time when TSCA is projected to have a declining fund balance.
- Would permanently increase the size and cost of state government.

Alternative 4: Do Nothing/Status Quo.

Pros:

- Does not increase the size of government.
- Does not burden TSCA.

Cons:

- Sample throughput will be critically decreased, impeding the conduct of population studies to protect Californians from hazardous chemicals.
- The Program will not be able to plan for a long-term capacity to assess or prevent exposures to toxic chemicals found in consumer products, the environment and the workplace.
- The Department will lose highly skilled and trained scientists.

G. Implementation Plan

If this proposal is approved, the following activities will take place July 1, 2016 or upon approval of the FY 2016-17 State budget:

- Begin the process to retain existing limited-term staff or begin the recruitment and hiring process to fill the two positions.
- Initiate contracts to maintain service agreements for equipment.

H. Supplemental Information
This proposal requests funding for laboratory equipment and contract funds for equipment maintenance agreements.

I. Recommendation

Approve Alternative 1:

Extend two (2.0) limited term positions and funding from TSCA (Fund 0557) for two additional years.

BCP Fiscal Detail Sheet

BCP Title: Biomonitoring California

DP Name: 3960-116-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Salaries and Wages						
Earnings - Permanent	0	174	174	0	0	0
Total Salaries and Wages	\$0	\$174	\$174	\$0	\$0	\$0
Total Staff Benefits	0	83	83	0	0	0
Total Personal Services	\$0	\$257	\$257	\$0	\$0	\$0
Operating Expenses and Equipment						
5301 - General Expense	0	6	6	0	0	0
5320 - Travel: In-State	0	1	1	0	0	0
5322 - Training	0	1	1	0	0	0
5340 - Consulting and Professional Services - External	0	10	10	0	0	0
5368 - Non-Capital Asset Purchases - Equipment	0	70	70	0	0	0
539X - Other	0	5	5	0	0	0
Total Operating Expenses and Equipment	\$0	\$93	\$93	\$0	\$0	\$0
Total Budget Request	\$0	\$350	\$350	\$0	\$0	\$0
Fund Summary						
Fund Source - State Operations						
0557 - Toxic Substances Control Account	0	350	350	0	0	0
Total State Operations Expenditures	\$0	\$350	\$350	\$0	\$0	\$0
Total All Funds	\$0	\$350	\$350	\$0	\$0	\$0
Program Summary						
Program Funding						
3630 - Safer Consumer Products	0	350	350	0	0	0
Total All Programs	\$0	\$350	\$350	\$0	\$0	\$0

Personal Services Details

Salaries and Wages

VR00 - Various

Total Salaries and Wages

	CY	BY	BY+1	BY+2	BY+3	BY+4
	0	174	174	0	0	0
	\$0	\$174	\$174	\$0	\$0	\$0

Staff Benefits

5150900 - Staff Benefits - Other

Total Staff Benefits**Total Personal Services**

	0	83	83	0	0	0
	\$0	\$83	\$83	\$0	\$0	\$0
	\$0	\$257	\$257	\$0	\$0	\$0

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 02/15)

Fiscal Year 2016/17	Business Unit 3960	Department Toxic Substances Control	Priority No. 12
Budget Request Name 3960-112-BCP-BR-2016-GB		Program 3620 Site Mitigation and Brownfields Reuse 3625 Hazardous Waste Management 9900100 Administration 9900200 Distributed Administration	Subprogram

Budget Request Description
 Ability to Pay: Cost Recovery (AB 276 (Ch. 459/2015))

Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests \$200,000 and 2.0 permanent positions from the Toxic Substances Control Account (\$180,000) and the Hazardous Waste Control Account (\$20,000) to implement the expanded information request authority pursuant to Assembly Bill (AB) 276 (Assembly Committee on Environmental Safety and Toxic Materials, Chapter 459, Statutes of 2015). AB 276 allows DTSC to require a potentially responsible party (PRP) to provide information regarding the party's ability to pay for a response action at a site where there has been, or may be, a release of hazardous waste, hazardous substances, or hazardous materials in the environment.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed
---	--

Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
--	----------------	------

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By <i>[Signature]</i>	Date 1/4/16	Reviewed By <i>[Signature]</i>	Date 1/4/16
Department Director <i>[Signature]</i>	Date 1/4/16	Agency Secretary <i>[Signature]</i>	Date 1/6/16

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Original Signed By: Ellen Morath	Date submitted to the Legislature JAN 07
------	-------------------------------------	---

Analysis of Problem

A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests \$200,000 and 2.0 permanent positions from the Toxic Substances Control Account (\$180,000) and the Hazardous Waste Control Account (\$20,000) to implement the expanded information request authority pursuant to Assembly Bill (AB) 276 (Assembly Committee on Environmental Safety and Toxic Materials, Chapter 459, Statutes of 2015). AB 276 allows DTSC to require a potentially responsible party (PRP) to provide information regarding the party's ability to pay for a response action at a site where there has been, or may be, a release of hazardous waste, hazardous substances, or hazardous materials in the environment.

B. Background/History

Prior to AB 276, DTSC could request enforcement-related information from a limited number of parties; and the kind of information that could be requested was also limited. For example, financial information regarding a party's ability to perform or pay for a response action at a hazardous substances release site could only be obtained if the party voluntarily complied. However, PRPs often refuse or are reluctant to provide this information. The inability to access financial information, combined with the other limitations on DTSC's information request and enforcement authority significantly hindered the ability to make informed decisions related to enforcement actions and cost recovery.

DTSC's mission is to protect California's people and environment from the harmful effects of hazardous substances; in part, through the restoration of contaminated properties and other environmental resources. In fulfilling its mission, the Department incurs cleanup and oversight costs (collectively "response costs") in investigating and remediating contaminated properties, and is authorized by law to recover its costs from PRPs.

In 2013, the DTSC identified that its cost recovery efforts had been impeded by various factors, including gaps in the Department's authority and resources to perform necessary cost recovery activities. As of April 24, 2013, DTSC identified unrecovered response costs of approximately \$184.4 million for the period July 1987 through December 2012. As a result, the California Legislature requested the California State Auditor to review the DTSC's cost recovery program and make appropriate recommendations. Recognizing DTSC's need for expanded authority in the Department's information request authority, the California State Auditor recommended that the Legislature give DTSC the authority to require financial information from PRPs. (2014 Auditor Report, at 31.)

Lack of or incomplete information about a PRP's ability to pay for cleanup hinders DTSC's ability to make an informed decision whether to pursue a PRP for response costs, impacting DTSC's ability to ultimately recover its response costs. Although DTSC can request that PRPs voluntarily submit their financial information for review, DTSC lacks the authority to require or compel PRPs to do so. A PRP's financial information could impact DTSC's decision-making about whether to file a cost recovery action. DTSC may not know the PRP's ability to satisfy a judgment for the amount of its claim for cleanup costs, or to pay a substantial portion of its claim, and therefore may not be able to evaluate the practical results of pursuing a PRP for costs. Having access to such information would strengthen DTSC's efforts to address its financial risk in pursuing cost recovery litigation.

AB 276 makes DTSC's information request authority consistent with the United States Environmental Protection Agency's (EPA's) existing authority pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). (42 U.S.C. § 9604(e).)

C. State Level Considerations

Cost recovery constitutes one of the most important administrative activities performed by DTSC. It is significant because it helps fund cleanup efforts. It also serves to hold responsible parties accountable for the damage they have caused to the environment. These collection efforts, along with various taxes and fees, support DTSC's mission.

In January 2014, the California State Auditor's Office began a review of DTSC's cost recovery program, as directed by the Joint Legislative Audit Committee. The Auditor's findings report was released on August 7, 2014. The auditor made 11 recommendations – nine for Department action and two that required Legislative

Analysis of Problem

action. Relevant to this request, the Auditor recommended that the Legislature give DTSC the authority to require financial information from PRPs. (2014 Auditor Report at 31.) AB 276 was specifically introduced to implement this recommendation.

This proposal is consistent with the Department's Strategic Plan 2014 – 2018, Goal 1: Ensure the Department's cleanup efforts protect communities, hold responsible parties accountable, and recover the Department's costs.

D. Justification

Prior to the adoption of AB 276, and unlike the United States Environmental Protection Agency (U.S. EPA), DTSC did not have the authority to require a PRP to provide any financial information when trying to determine the ability of the party to perform or pay for cleanup costs. DTSC could only request such information to be voluntarily provided, or sue the PRP to obtain the information.

With the passage of AB 276, DTSC has the authority to compel parties to provide financial information regarding a PRPs' ability to pay for a response action. This authority will increase the number of cases subject to review of financial documentation for companies and individuals owing money to the State. Without additional staffing, the number of cases left unresolved will increase and potentially cost the State money as the unbilled/overdue accounts receivable amounts will increase and could become uncollectable after a period of time. In addition, a delay in the timely completion of ability to pay assignments has the potential to allow a company or individual to divert/divest their available resources.

As a result of AB 276, DTSC expects the number of ability to pay cases to increase by 25 annually. Based on established workload standards, DTSC is requesting two (2.0) Accounting Administrator I (Specialist) positions to complete ability to pay reviews which includes an analysis of income tax returns, financial statements, bank and/or investment statements, credit cards, loan documents, lease agreements, property records, and trust agreements. This will enable DTSC to maximize the recovery of its past, and present costs, and to continue maximizing collection of costs into the future.

Ability to pay cases often result in settlement negotiations with PRPs to settle liability based on a PRP's inability to pay DTSC's response costs. Settlement negotiations can result in administrative settlements or require the filing of a cost recovery complaint for approval of a judicial settlement. Other ability to pay cases may be appropriate for referral to the Attorney General's Office (AGO) for further cost recovery efforts, and to determine additional cost recovery efforts (i.e., liens and settlement negotiations).

In addition these positions will develop new policies and procedures for responsible parties to provide ability to pay information.

Failure to thoroughly evaluate the financial condition of PRPs who should take or perform response actions may result in an unfair shift of the financial burden to those not responsible for contamination (polluter pays).

E. Outcomes and Accountability

With the additional resources for ability to pay determinations, DTSC will complete the new policy and procedures based on this new authority and will measure improvements based on the number of ability to pay cases that are completed.

To ensure accountability and transparency, DTSC utilizes the Microsoft Office Sharepoint application to track existing ability to pay cases. Continued use of this resource will allow staff and management to track the progress of work being performed and account for workload progress being made. In addition, existing cost recovery policies stipulate that completed ability to pay reviews include a memorandum of findings to Department staff and management. These findings will be delivered on a flow-basis as completed.

F. Analysis of All Feasible Alternatives

Analysis of Problem

Alternative 1: Approve as requested to implement the development of policies and procedures for requesting responsible parties to provide ability to pay information, along with executing the requesting, collecting and processing of this information.

Pro:

- Allows the Department to use this new authority while also sustaining needed resources in other areas.
- Enhances the Department's ability to recover costs from potentially responsible parties.

Con:

- Increased costs to the state, which may be recovered in increased cost recovery.

Alternative 2: Redirection of existing staff and resources.

Pro:

- No additional cost to the state.

Con:

- Staff redirection will impact other priority work conducted by the Department, and critical projects may be delayed.
- Work performed requires financial expertise and a skill-set not typically performed by others within State service.
- This specialized knowledge requires a lengthy period of training.

Alternative 3: No action.

Pro:

- No additional cost to the state.

Con:

- Would cause a backlog in ability to pay determinations delaying potential cost recovery.

G. Implementation Plan

July – August

- Upon approval, the Department would recruit for the necessary positions and begin developing and updating the policies and procedures.

Sept -

- Upon filling the positions, the Department will develop and implement new policies, procedures, and forms necessary to request, collect, and process financial information on PRPs, as well as to safeguard personal and confidential information received on PRPs.
- The Department will work with the AGO to develop procedures for taking appropriate enforcement action when parties fail or refuse to provide information that they are legally required to provide to the Department.

H. Supplemental Information

None.

I. Recommendation

The Department recommends implementing Alternative 1: This alternative ensures DTSC has the resources to implement the development of policies and procedures for requesting responsible parties to provide ability to pay information, along with implementing the requesting, collecting and processing of this information as authorized by AB 276.

BCP Fiscal Detail Sheet

BCP Title: AB 276 Ability to Pay: Cost Recovery

DP Name: 3960-112-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	2.0	2.0	2.0	2.0	2.0
Total Positions	0.0	2.0	2.0	2.0	2.0	2.0
Salaries and Wages						
Earnings - Permanent	0	136	136	136	136	136
Total Salaries and Wages	\$0	\$136	\$136	\$136	\$136	\$136
Total Staff Benefits	0	64	64	64	64	64
Total Personal Services	\$0	\$200	\$200	\$200	\$200	\$200
Total Budget Request	\$0	\$200	\$200	\$200	\$200	\$200

Fund Summary

Fund Source - State Operations						
0014 - Hazardous Waste Control Account	0	20	20	20	20	20
0557 - Toxic Substances Control Account	0	180	180	180	180	180
Total State Operations Expenditures	\$0	\$200	\$200	\$200	\$200	\$200
Total All Funds	\$0	\$200	\$200	\$200	\$200	\$200

Program Summary

Program Funding						
3625 - Hazardous Waste Management	0	20	20	20	20	20
3620011 - Other Site Mitigation Activities	0	180	180	180	180	180
9900100 - Administration	0	200	200	200	200	200
9900200 - Administration - Distributed	0	-200	-200	-200	-200	-200
Total All Programs	\$0	\$200	\$200	\$200	\$200	\$200

Budget Change Proposal - Cover Sheet

DF-46 (REV 02/15)

Fiscal Year 2016-17	Business Unit 3960	Department Department of Toxic Substances Control	Priority No. 3
Budget Request Name SB 162 Treated Wood Waste		Program 3625 Hazardous Waste Management 9900100 Administration 9900200 Distributed Administration	Subprogram

Budget Request Description
Treated Wood Waste (Galgiani, Chapter 351, Statutes of 2015).

Budget Request Summary

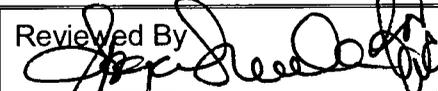
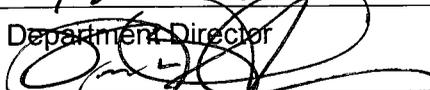
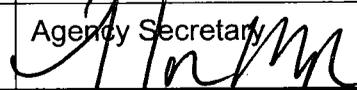
The Department of Toxic Substances Control request an augmentation from the Hazardous Waste Control Account of \$370,000 in fiscal year (FY) 2016-17 and FY 2017-18 to implement Senate Bill (SB) 162 (Galgiani, Chapter 351, Statutes of 2015) related to the management of treated wood waste. This proposal includes Trailer Bill language to extend the implementation period for an additional six months, to provide a full two years to implement SB 162's requirements.

Requires Legislation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed Health and Safety Code Section 25150.7	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By 	Date 1/4/16	Reviewed By 	Date 1/4/16
Department Director 	Date 1/4/16	Agency Secretary 	Date 1/6/16

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA **Original Signed By:**
Ellen Moratti Date submitted to the Legislature: **JAN 07**

Analysis of Problem

A. Budget Request Summary

The Department of Toxic Substances Control request an augmentation from the Hazardous Waste Control Account of \$370,000 in 2016-17 and 2017-18 to implement SB 162 (Galgiani, Chapter 351, Statutes of 2015) related to the management of treated wood waste. This proposal includes Trailer Bill language to extend the implementation period for an additional six months, to provide a full two years to implement SB 162's requirements.

B. Background/History

Statute was enacted in 2004 (Matthews, Chapter 597, Statutes of 2004) that modified the regulation of treated wood waste, identified as a hazardous waste in California due to the copper, chromium and arsenic it contains as preservatives. When the law was enacted, it was intended to resolve a long-standing concern with the management of treated wood waste. Up to that time, most treated wood waste was unregulated, largely due to a variety of prior decisions made by DTSC that had granted variances from hazardous waste management requirements to allow its disposal in solid waste landfills. DTSC's variance decisions created confusion and uncertainty about the regulatory requirements that applied to treated wood waste. While its disposal in solid waste landfills was believed to be protective, its handling and management prior to its disposal continued to pose environmental, worker and public health and safety threats.

The statute, when originally enacted in 2004, included a set of interim management standards that governed the management and disposal of treated wood waste. DTSC was required to adopt regulations to establish an alternative regulatory structure for the management and disposal of treated wood waste that replaced the statutory requirements. DTSC adopted regulations for the management of treated wood waste on July 1, 2007 (Alternative Management Standards for Treated Wood Waste, California Code of Regulations Title 22, Division 4.5, chapter 34). These regulations were structured very similarly to the universal waste regulations, which were also adopted in that same era, except that the treated wood waste standards contained additional tracking and reporting requirements which are not included in the universal waste requirements. Without these alternative management standards, treated wood waste would be required to be managed as a hazardous waste, increasing the burden and complexity of managing the waste, not only on the regulated community, but on the general public as well.

The 2004 statute also required DTSC to prepare a report regarding the successful compliance with, and implementation of, the treated wood waste statute, and to publish its report in June 2011. The report DTSC prepared in 2011 was based on information that was available after the regulations were adopted in 2007, as well as a very limited number of site inspections conducted for purposes of gathering compliance information as mandated by the statute. Because DTSC's original information gathering efforts were limited, the conclusions it drew from the limited amount of data were very generalized. DTSC's methodology, and the limited data set and broad generalizations raised concerns about compliance with the standards and the protections they afford to public health and environmental protection in California.

C. State Level Considerations

This request is necessary to carry out the requirements of SB 162 (Galgiani, Chapter 351, Statutes of 2015).

This request is also necessary to implement the following Fixing the Foundation Fundamentals:

Hazardous Waste Management Plan Work Plan 4(e) – Establish clear priorities for enforcement.

This proposal would also increase DTSC's ability to carry out Goal 2 of DTSC's 2014-2018 Strategic Plan:

Goal 2: Effectively, efficiently, and fairly administer and enforce California's hazardous waste management laws.

Analysis of Problem

D. Justification

SB 162 requires DTSC to conduct a comprehensive evaluation of treated wood waste handlers, their compliance with the requirements, and the effectiveness of the standards. It requires DTSC to inspect at least 25% of treated wood waste generators and treated wood waste disposal facilities in conducting its evaluation. Inspection results from at least 25% of treated wood waste generators and treated wood waste disposal facilities will provide a sufficient basis for drawing supportable conclusions on the compliance and effectiveness of the alternative management standards.

DTSC is proposing an amendment to the statute to extend the due date for the required report. The additional time is needed for DTSC to collect the required data on rates of compliance and injuries related to treated wood waste handling, to conduct the required inspections of treated wood waste handlers, to prepare and administer the required surveys of household hazardous waste collection facilities, solid waste transfer facilities, solid waste disposal facility load check programs, and CUPAs, to assess information and collection and disposal options available to household generators, to evaluate the adequacy of protective measures taken in tracking, handling, and disposing of treated wood waste, and to prepare the report containing the required conclusions and recommendations. To perform all of these activities within the 18 months provided by SB 162 would require DTSC to request more resources than are being requested in this proposal (see below), to be able to accommodate the shorter time frame that the enacted statute provides.

The funding and positions that DTSC is requesting would support the hiring of limited term staff that would be responsible for conducting field inspections of the required number of treated wood waste generators and treated wood waste disposal facilities (approximately 233 inspections total for the time period of the project. DTSC estimates that roughly 20% of all inspections result in enforcement action follow-up. Based on this assumption, DTSC estimates there will be approximately 46 enforcement cases initiated as a result of the treated wood waste inspections. In addition, the funding and positions would also support the gathering of information and data needed for DTSC to present in the mandated report, to draw the required conclusions and to make recommendations as required by SB 162.

DTSC cannot afford to redirect staff to perform these additional responsibilities, nor can it absorb this workload to conduct these activities. DTSC's Enforcement and Emergency Response Division resources are already fully obligated to fulfilling the statutory mandates and funded commitments with which it carries out inspections, investigations, and enforcement actions. These mandates and commitments prevent it from redirecting its enforcement resources to other unscheduled hazardous waste handlers such as transporters.

DTSC's existing enforcement mandates and commitments include:

- Federal Resource Conservation and Recovery Act (RCRA) grant commitments and statutory mandates under DTSC's delegation for the federal RCRA program to inspect and take enforcement actions at federally regulated, authorized treatment, storage, and disposal facilities, as well as generators;
- Cal/EPA funded mandates and commitments to provide support and oversight of the hazardous waste elements of the Unified Program;
- CalRecycle funded statutory mandates and commitments to annually inspect and take enforcement actions at used oil recycling facilities and other used oil handlers;
- Mandates to inspect out-of-state used oil recyclers for compliance with used oil recycling requirements;
- CalRecycle funded mandates and commitments to annually inspect and take enforcement actions at electronic waste recyclers and other electronic waste handlers; and,
- Cal/EPA delegated commitments to implement the Unified Program in Imperial and Trinity Counties as the Certified Unified Program Agency (CUPA).

E. Outcomes and Accountability

With the requested Trailer Bill Language, over the 24 months that will be available to implement this BCP, DTSC will be able to conduct approximately 172 treated wood waste generator inspections, 50 solid waste transfer facility inspections (where treated wood waste that is removed from solid waste destined for landfills), and 12 inspections of landfills where treated wood waste is disposed. Based on

Analysis of Problem

DTSC's experience with inspection of other hazardous waste handlers, these inspections are likely to result in 34 administrative enforcement cases against generators of treated wood waste, 10 administrative enforcement cases against solid waste transfer facilities, and one enforcement case against solid waste landfills receiving treated wood waste for disposal. As data from the inspections is generated, the information will be compiled and analyzed to form the basis for the evaluation and report to be prepared.

Projected Outcomes

Workload Measure	CY	BY	BY+1
TWW Generator Inspections	0	86	86
TWW Generator Enforcement Actions	0	17	17
TWW Transfer Station Inspections	0	25	25
TWW Transfer Station Enforcement Actions	0	5	5
TWW Disposal Facility Inspections	0	6	6
TWW Disposal Facility Enforcement Actions	0	1	1
Report on Findings	0	0	1

F. Analysis of All Feasible Alternatives

Alternative 1: Approve the augmentation to the appropriation in FY 2016-17 and FY 2017-18 for DTSC to implement SB 162 (Galgiani, Chapter 351, Statutes of 2015), and approve the proposed Budget Trailer Bill language to extend the deadline by six months.

Pros:

- Allows DTSC to better manage the workload and facilitate recruitment of staff to carry out the inspection responsibilities.
- Allows DTSC to objectively evaluate the treated wood waste management standards that are less stringent than full hazardous waste management regulations
- Allows DTSC to ensure that its regulations and oversight of hazardous waste management activities continue to be protective of public health and the environment.
- Improves compliance with hazardous waste laws and regulations.

Con:

- Requires the expenditure of additional HWCA funds and allocation of additional positions.

Alternative 2: Approve the augmentation to the appropriation in FY 2016-17 and FY 2017-18 to implement SB 162, but do not approve the proposed Budget Trailer Bill language.

Pros:

- Allows DTSC to objectively evaluate the treated wood waste management standards that are less stringent than full hazardous waste management regulations
- Allows DTSC to ensure that its regulations and oversight of hazardous waste management activities continue to be protective of public health and the environment.
- Improves compliance with hazardous waste laws and regulations.

Con:

- Requires up to 3 additional positions be allocated so that the required number of inspections can be performed within the 18 months specified in the statute.
- Requires the expenditure of additional HWCA funds and the allocation of additional positions.

Alternative 3: Redirect existing staff to conduct the inspections and evaluation required by SB 162.

Analysis of Problem

Pros:

- Requires no additional HWCA funds or allocation of additional positions.
- Ensures HWCA funds remain available for other DTSC priorities.
- Improves compliance with environmental laws.
- Allows DTSC to objectively evaluate the treated wood waste management standards that are less stringent than full hazardous waste management regulations
- Allows DTSC to ensure that its regulations and oversight of hazardous waste management activities continue to be protective of public health and the environment.

Cons:

- Prevents DTSC inspectors and scientists from investigating other serious environmental violations that may also pose risks and hazards to public health and the environment.
- Prevents DTSC from meeting its critical mandates and specifically funded commitments.

Alternative 4: Maintain status quo/do nothing

Pros:

- Requires no additional funds and allocation of additional positions.
- Ensures HWCA funds remain available for other DTSC priorities.

Cons:

- Prevents DTSC from objectively evaluating the treated wood waste management standards that are less stringent than full hazardous waste management regulations
- Prevents DTSC from ensuring that its regulations and oversight of hazardous waste management activities continue to be protective of public health and the environment.
- Ignores a statutory mandate and erodes DTSC's credibility with the Legislature and its stakeholders.

G. Implementation Plan

April 2016

Begin the recruitment process to fill positions in anticipation of Budget Act signature.

July 2016

Begin needed technical training classes and health and safety training (including 40-hour Hazwoper and medical monitoring).

Begin gathering information and producing and inspection strategy/work plan for carrying out the required inspections.

August 2016

Begin on-the-job training with experienced inspectors.

September 2016 - April 2018

Conduct inspections and take enforcement actions as needed.

Compile and analyze inspection data and results from the inspections.

Perform evaluation of inspection findings

April 2018 - June 2018

Analysis of Problem

Prepare report of findings for July 1, 2018 deadline.

H. Supplemental Information

None

I. Recommendation

Approve Alternative #1 and approve the request of \$370,000 and four (4.0) positions in FY 2016-17 and FY 2017-18 to implement SB 162 (Galgiani, Chapter 351, Statutes of 2015) related to the management of treated wood waste, and approve the Budget Trailer Bill language to extend the implementation period for an additional six months, to provide a full two years to implement SB 162's requirements. This alternative allows DTSC to objectively evaluate the treated wood waste management standards that are less stringent than full hazardous waste management regulations, ensure that its regulations and oversight of hazardous waste management activities continue to be protective of public health and the environment, and improves compliance with hazardous waste laws and regulations.

BCP Fiscal Detail Sheet

BCP Title: SB 162 Treated Wood Waste

DP Name: 3960-111-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Salaries and Wages						
Earnings - Temporary Help	0	241	241	0	0	0
Total Salaries and Wages	\$0	\$241	\$241	\$0	\$0	\$0
Total Staff Benefits	0	114	114	0	0	0
Total Personal Services	\$0	\$355	\$355	\$0	\$0	\$0
Operating Expenses and Equipment						
5320 - Travel: In-State	0	10	10	0	0	0
5322 - Training	0	5	5	0	0	0
Total Operating Expenses and Equipment	\$0	\$15	\$15	\$0	\$0	\$0
Total Budget Request	\$0	\$370	\$370	\$0	\$0	\$0

Fund Summary

Fund Source - State Operations						
0014 - Hazardous Waste Control Account	0	370	370	0	0	0
Total State Operations Expenditures	\$0	\$370	\$370	\$0	\$0	\$0
Total All Funds	\$0	\$370	\$370	\$0	\$0	\$0

Program Summary

Program Funding						
3625 - Hazardous Waste Management	0	370	370	0	0	0
Total All Programs	\$0	\$370	\$370	\$0	\$0	\$0

Personal Services Details

Salaries and Wages

VR00 - Various

Total Salaries and Wages

	CY	BY	BY+1	BY+2	BY+3	BY+4
	0	241	241	0	0	0
	\$0	\$241	\$241	\$0	\$0	\$0

Staff Benefits

5150900 - Staff Benefits - Other

Total Staff Benefits**Total Personal Services**

	0	114	114	0	0	0
	\$0	\$114	\$114	\$0	\$0	\$0
	\$0	\$355	\$355	\$0	\$0	\$0

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 02/15)

Fiscal Year 2016-17	Business Unit 3960	Department Toxic Substances Control	Priority No. 1
Budget Request Name 3960-107-BCP-BR-2016-GB		Program 3625 Hazardous Waste Management	Subprogram

Budget Request Description
 Continued Permit Backlog Support and Enhanced Permitting Capacity and Support

Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation of \$1,167,000 from the Hazardous Waste Control Account and the conversion of 8.0 limited-term positions to permanent status, to continue work completing the backlog of continued permits, support timely permitting actions, and continue supporting the effort to improve the clarity, consistency, protectiveness, and enforceability of the permits issued.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
---	--	--

Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
--	----------------	------

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By <i>Ormann Collado</i>	Date 3.2.16	Reviewed By <i>Handwritten Signature</i>	Date 3.2.16
Department Director <i>Handwritten Signature</i>	Date 3.2.16	Agency Secretary <i>Handwritten Signature</i>	Date 3-2-16

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Original Signed By: Ellen Morath	Date submitted to the Legislature 3-3-16
------	--	---

Analysis of Problem

A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation of \$1,167,000 from the Hazardous Waste Control Account and the conversion of 8.0 limited-term positions to permanent status to continue work completing the backlog of continued permits, support timely permitting actions, and support the effort to improve the clarity, consistency, protectiveness, and enforceability of the permits issued.

B. Background/History

DTSC is responsible for regulating hazardous waste pursuant to California's Hazardous Waste Control Law (HWCL). DTSC is the federally delegated agency for the Resource Conservation and Recovery Act (RCRA), Subtitle C, and implements the HWCL permitting and enforcement program in lieu of the United States Environmental Protection Agency (U.S. EPA).

DTSC issues hazardous waste facility permits to establish operation controls at facilities that manage waste that is toxic, corrosive, reactive, and ignitable. A hazardous waste permit is a set of detailed site-specific requirements that is the result of evaluation of all aspects of a facility such as the physical plant, personnel, types of waste, chemical processes employed, health and safety measures, the facility's compliance history, and its financial assurance.

When it issues a permit, DTSC establishes conditions that a facility must meet in addition to the applicable laws and regulations for the management of hazardous waste. If the facility fails to meet the requirements or the conditions, DTSC can take criminal, civil, and administrative enforcement actions that can include assessing fines and penalties, suspension of operations, or permit revocation.

There are 119 facilities permitted to manage hazardous waste in California, with a total of 132 permits. Of the 119 facilities, 91 are operating facilities that primarily handle newly generated hazardous waste. The other 28 are considered post-closure facilities. These facilities primarily have monitoring and activities that ensure previously disposed wastes are not migrating from the hazardous waste unit.

Hazardous waste permits are issued for a defined term of 10 years. The facility is required to apply for a renewal of its permit six months before the permit expires. If the application is submitted on time, the law allows the facility to continue operation under its expired permit; these permits are referred to as "continued" permits. Facilities operating under continued permits are held to the standards in the original permit and current regulations and statutes, but they do not have the advantage of the most recent technologies, practices, and safeguards to prevent releases of hazardous waste into the environment that have been developed since the permit was previously reviewed. DTSC has undertaken a sustained effort to better manage the number of "continued" hazardous waste facility permits by performing a more timely review of permit applications and making a permitting decision (renewal or denial).

In 2014 DTSC received 8.0 two-year limited-term positions to complete 17 of 24 backlogged permits. The Department made decisions on 5 of the backlogged permits in FY 2014-15, will complete 12 decisions in FY2015-16, and plans to complete 7 decisions for FY 2016-17 with these resources.

DTSC currently has 37 permitted facilities operating under "continued permits" with pending permit renewal applications. The Department expects to receive 57 applications for renewals for expiring permits in the four-year period beginning with the current fiscal year. This includes 10 applications in FY 2015-16, 15 in FY 2016-17, 16 in FY 2017-18, and 16 in FY 2018-19. The Department's efforts to reduce the backlog of continued permits, as well as improve and enhance permitting process, have been supported by the Legislature in recent years with 8 positions referenced in this request; approval of 5 positions and \$699,000 HWCA in 2014-15 to improve and enhance permitting processes; and 16 positions and \$1.6 million HWCA in 2015-16 in various support programs (e.g., enforcement, legal, CEQA) for permitting coordination and backlog support that contribute to processing permits, but that are not permit writers.

As a first step to address the permitting backlog and improve the permitting process, DTSC developed and is implementing the Permitting Enhancement Work Plan to create and update processes, guidance, and tools to support consistent processing of permit applications and more timely and protective permit decisions. Development of guidance and tools is only the start, however; in order to maintain needed improvements, staff must be trained to use the guidance and tools, and those guidance and tools must be

Analysis of Problem

continually updated to match developments in law, regulation, technologies, and waste streams. Additional steps are needed to support future permit decisions that are consistent, high-quality, and timely.

C. State Level Considerations

This proposal is consistent with the following elements of DTSC's 2014-18 Strategic Plan:

Goal 2: Effectively, efficiently and fairly administer and enforce the California hazardous waste management laws.

Objective 2.1: Identify and implement policies and procedures to ensure hazardous waste permits are protective, timely, legally defensible, and enforceable, and to improve transparency and public confidence in permit decisions.

Objective 2.2: Identify and implement a process to ensure that all permitted hazardous waste facilities have accurate estimates for the costs of facility closure and post-closure work, and develop and apply criteria for prioritizing closure cost reviews.

Objective 2.3: Improve effectiveness, efficiency, and consistency in enforcing California's hazardous waste laws; and make DTSC's enforcement program's information and processes more accessible to the public.

Objective 2.4: Improve public confidence in DTSC's enforcement decisions by establishing clear guidelines for decision points that ensure enforcement actions result in timely resolution with appropriate penalties and corrective actions.

Objective 2.5: Develop and apply criteria and processes to prioritize work within the hazardous waste enforcement and permitting programs, including the use of tools such as new environmental screening methods and Geographic Information System (GIS) technology

This proposal also directly relates to several of the goals established in DTSC's Fixing the Foundation Fundamentals Work Plan, including the following elements:

(4.a) Improve the efficiency and consistency in enforcing state hazardous waste laws and make the enforcement program's information and processes more accessible to the public.

(4.b) Improve efforts to ensure hazardous waste permits are protective, timely, legally defensible and enforceable.

(4.d) Improve public confidence in permit decisions.

(4.h) Ensure groundwater monitoring at local disposal facilities is protective of human health and the environment.

(4.i) Maintain a strong Financial Assurance program at all permitted facilities that reflect the actual cost of closure and post-closure work, and update the estimates every five years.

(4.j) Fully integrate the new Hazardous Waste Management Program.

The Legislature has shown specific interest in DTSC's permitting actions, as demonstrated by Legislative Oversight hearings and during confirmation hearing for DTSC Director Barbara Lee.

D. Justification

Permits issued by DTSC expire 10 years from the date they are issued. The permit term is finite specifically to cause a re-evaluation of the facilities and processes to incorporate the most current and protective

Analysis of Problem

technologies and practices. Over the 10-year life of a permit, technological advances may have occurred that could improve treatment and storage procedures, and safer equipment may have become available. Chemical treatment processes and release prevention technologies are constantly changing and improving. Environmental monitoring techniques also improve as new laboratory and sample collection methods are developed and implemented. More sensitive environmental measurements can allow DTSC to improve assessment of potential offsite migration of hazardous waste constituents and to reduce the risks they might pose. In addition, the periodic comprehensive analysis ensures that any deterioration in the existing facility is evaluated and addressed. When expiring permits are delayed, these improvements in performance standards are also delayed.

The permit renewal process also includes a thorough investigation of the facility for evidence of releases of hazardous waste or hazardous waste constituents. A delay in the renewal process could allow releases to migrate further, causing increased environmental damage. It also delays the periodic review of the financial assurance provided by the facility to cover the costs of future activities to address any contamination the facility has caused, which increases the risk that cleanup costs will be borne by the State.

In addition to changes that impact the facility and its operations, changes may have also occurred in the area around the facility. New residences may have been built near the facility or other changes made to nearby land uses. Demographics of the surrounding community may also have changed. The permit renewal process considers the effect of these changes and allows the surrounding community to interact and voice its concerns about the facility. Public feedback improves the quality and responsiveness of a permit. A continued permit will not have had the benefit of more recent community input and feedback.

In order to reduce the number of continued permits and the length of time permits continue post-expiration, the Permit Enhancement Work Plan established a goal of reducing the permit application review time to an average of two years for 90% of permit renewal applications received.

In addition to processing new and renewal permit applications to result in permit decisions, the permitting staff performs additional activities that include:

- Class 1 and 2 Permit Modifications – Technical reviews, drafting of modifications, public participation, response to public comments, finalization of modifications, dealing with permit modification appeals, modification tracking and other procedural items.
- Emergency Permits – Review of Emergency Permit applications, public notice, and CEQA document coordination with other offices.
- Closure oversight projects – Review of closure plan and report submittals and related data; site visits to observe closure activities; related meetings; and review/ approval of closure certification report.
- Assist in preparation of regulatory development packages – Development of State rules by coordinating internal legal review, obtaining approval by Department of Finance for the fiscal estimate, and following the Administrative Procedure Act process.
- Assist in development of RCRA Authorization packages – Completions of federal rule checklists, negotiations with U.S. EPA, and provide technical support to assigned attorneys from the Attorney General's Office and DTSC's Office of Legal Affairs staff to develop AG's Statement.
- Development of guidance documents – Review and update existing guidance, and develop new guidance documents as needed (for example, guidance on landfill geomembrane design, Notice of Deficiency guidance, applicant guidance materials, and model applications).
- Other support activities such as:
 - Permit Oversight and Maintenance Activities: Addressing questions posed by agency management, responding to citizen/media calls, compliance inquiries, facility management planning, data management, responding to internal inquiries, file review requests, permit billing (cost recovery) activities, review of routine facility reports (e.g., non-corrective action progress/ monitoring reports), meetings, phone calls and site visits.

Analysis of Problem

- Regulatory Analysis of Federal HW Rules: Analysis of proposed federal rules, development of State comments on proposals and consideration of proposals for State rules.
- U.S. EPA Grant/Annual Work Plan Activities: Includes Grant/Work Plan development, negotiations with U.S. EPA, quarterly meetings with U.S. EPA, quarterly, semi-annual and annual report development, and program reviews.
- State Outreach/Guidance/Policy Development/Implementation Activities: Includes public notices, public meetings/hearings, presentations to State environmental boards, development of guidance, development of policies, development of outreach and training materials, compliance assistance activities, training sessions, and ongoing rule interpretation.
- State Legislative Activities: Analysis of legislative bills, development of legislative concepts, analysis of impacts to State hazardous waste program, and identification of needed State rule changes
- Training: Includes health and safety training and recertification, personal protection and medical monitoring, and other training.

Together with existing resources, the positions requested in this BCP will support approximately 7-8 permits annually.

DTSC requests converting 8.0 limited-term positions to permanent status as follows:

- 5.0 Hazardous Substances Engineer (HSE) positions.
- 1.0 supervisory HSE position to oversee the new HSE positions
- 1.0 Senior Environmental Planner in the Office of Planning and Environmental Analysis
- 1.0 Attorney III in the Office of Legal Counsel to provide support

E. Outcomes and Accountability

Outcomes – Together with existing resources, the proposed staffing in this BCP anticipates completing 7-8 permits annually.

Accountability – The following will ensure accountability of the resources resulting from this request:

- Operation Plans - a document revised annually that clearly identifies the Office of Permitting's permit issuance record for the prior year and the projected goals for the upcoming year.
- Government Performance and Result Act (GPRA) - The U.S. EPA closely monitors permits issued by DTSC. DTSC continues to meet with U.S. EPA on a quarterly basis to discuss progress. Results are posted on U.S.EPA's database.
- Work Plan – DTSC reports regularly to the Legislature its progress in meeting its commitments to improve aspects of its permitting processes.

F. Analysis of All Feasible Alternatives

Alternative 1: Convert 8.0 limited-term positions permanent status to process continued permit applications.

Pros:

- Provides additional support for reducing the current number of facilities operating with expired permits.
- Ensures that hazardous waste permitting decisions are completed in a more timely manner, meet all standards, reflect best management practices and address compliance concerns for each facility.
- Demonstrates DTSC's commitment to protecting vulnerable communities and other communities around hazardous waste facilities.

Analysis of Problem

- Reduces the risk to public health and safety and the environment, particularly in areas impacted by multiple environmental exposures.
- Provides for the collection of workload data to allow DTSC to implement further improvements to the permitting and enforcement processes.

Cons:

- Creates additional cost.

Alternative 2: Redirect staff.

Pros:

- Requires no additional funding.
- Ensures that hazardous waste facility permit determinations are completed in a more timely manner, meet all standards, reflect best management practices, and address compliance concerns for each facility.
- Demonstrates DTSC's commitment to protecting vulnerable communities and other communities around hazardous waste facilities.
- Reduces the risk to public health and safety and the environment, particularly in areas impacted by multiple environmental exposures.
- Provides for the collection of workload data to allow DTSC to implement further improvements to the permitting process.

Cons:

- Would limit the ability of impacted division and program staff to meet DTSC's other mission-critical mandates and commitments such as cleaning up contaminated properties and recovering its response costs.
- Would create a backlog in other mission critical areas of work within DTSC.

Alternative 3: Maintain status quo/do nothing

Pros:

- Requires no additional position authority or funding.

Cons:

- Fails to mitigate the anticipated growth in expired permits.
- Permit decisions will be delayed significantly.
- Impairs ability to meet the critical environmental review and public noticing requirements of CEQA and may increase DTSC's vulnerability to legal challenges on its permit determinations.

G. Implementation Plan

July 2016

Continue work completing decisions on continued permits. Provide technical training classes, including hazardous waste laws and regulations, inspection and enforcement processes, permitting process, and required health and safety training, including 40-hour HAZWOPER and medical monitoring to new staff. Continue on-the-job training with experienced staff. Assign further independent permit work and related support activities.

H. Supplemental Information

None

I. Recommendation

Adopt Alternative I – This option would accomplish the following:

- Provide additional support for reducing the current number of facilities operating with expired permits.
- Ensure that hazardous waste facility permit determinations are completed in a more timely manner, meet all standards, reflect best management practices and address compliance concerns for each facility.
- Demonstrate DTSC's commitment to protecting vulnerable communities and other communities around hazardous waste facilities.
- Reduce the risk to public health and safety and the environment, particularly in areas impacted by multiple environmental exposures.
- Provide for the collection of workload data to allow DTSC to implement further improvements to the permitting and enforcement processes.