STATE OF CALIFORNIA
**Spring Finance Letter - Cover Sheet**
DF-46 (REV 08/15)

| Fiscal Year | Business Unit | Department | Priority No. |
|---|---|---|---|
| 2016-17 | 3960 | Toxic Substances Control | 6 |

| Budget Request Name | Program | Subprogram |
|---|---|---|
| 3960-009-SFL-BR-2016-GB | 3960 CLEANUP<br>9900100 ADMINISTRATION<br>9900200 DISTRIBUTED ADMINISTRATION | |

Budget Request Description
Argonaut Mine Tailings Site Dam Repair/Retrofit

Budget Request Summary
The Department of Toxic Substances Control requests a one-time augmentation of $14.325 million from the General Fund to design and construct a remedial action to retrofit the Eastwood Multiple Arch Dam at the Argonaut Mine Tailings Site in Jackson, California. This action is intended to prevent the release of hazardous mine tailings from the site into the City of Jackson and Jackson Creek.

| Requires Legislation | Code Section(s) to be Added/Amended/Repealed |
|---|---|
| ☐ Yes ☒ No | |

| Does this BCP contain information technology (IT) components? ☐ Yes ☒ No<br>*If yes, departmental Chief Information Officer must sign.* | 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 | Reviewed By | Date |
|---|---|---|---|
| | 2.5.16 2-5-16 | | 2.5.16 |
| **Department Director** | **Date** | **Agency Secretary** | **Date** |
| | 2-5-16 | | 2-8-16 |

**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 | Date submitted to the Legislature |
|---|---|
| Original Signed By: Ellen Moratti | APR 04 |

## A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests a one-time augmentation of $14.325 million in Fiscal Year (FY) 2016-17 from the General Fund to complete the design and construct a response action to address the repair and retrofit of the Eastwood Multiple Arch Dam (Dam) at the Argonaut Mine Site in Jackson, California. The Dam currently sits at the base of a ravine above downtown Jackson and retains approximately 165,000 cubic yards of mine tailings. The United States Environmental Protection Agency (U.S. EPA) and United States Army Corps of Engineers (USACE) have conducted studies which conclude the Dam is unstable, and if it fails during periods of sustained rainfall, it could release a flow of mine tailings into downtown Jackson at depths of up to 15 feet. The preliminary cost estimate to repair/retrofit the Dam is $14.0 million. An additional $325,000 is required to complete the 100 percent design and ensure the Interim Storm Water Diversion System is operated until construction is completed.

## B. Background/History

Federal laws enacted in the 1890s required mine operators to construct debris or tailings dams to protect the rivers, lakes, and farmland downstream from destruction by mining wastes. The Dam is the last of a three-dam series at the Argonaut Mine Tailings Site, located in a ravine situated just above downtown Jackson, California. It is a concrete dam constructed in 1916 for the purpose of retaining waste mine tailings from the Argonaut gold mine and releasing the waste water into Jackson Creek. The Dam was operated until about 1942 and is located on private property currently owned by a widow on a fixed income.

The Argonaut Mine Tailings Site three-dam system contains an estimated one million cubic yards of mining wastes including hazardous levels of metals, primarily arsenic. The Eastwood Dam retains an estimated 165,000 cubic yards of those tailings. The ravine behind the Dam is nearly full of waste mine tailings, consisting of a fine-grained sand and slime mixture containing hazardous concentrations of arsenic that does not consolidate. When the ravine fills with water, the tailings become saturated, and water eventually flows over the top of the dam.

Until recently, the Dam had not had regular inspections or maintenance in decades. In the early 1930s, the definition of a "regulated" dam was changed in statute, effectively removing all state and federal jurisdiction over this dam. It is considered a "non-jurisdictional" dam. Since the dam is unregulated by the State, regulatory authority resides with the County of Amador, which does not have the expertise or resources to regulate the dam. DTSC, under the Health and Safety Code, has authority to prevent the release of hazardous substances from the site, and therefore, is asserting this authority to take interim and long-term measures to prevent the release of arsenic-contaminated mine tailings into the City of Jackson and the Jackson Creek watershed, including public water supplies and Lake Amador.

In June 2015, under U.S. EPA contract, USACE finalized an Eastwood Multiple Arch Dam, Failure Study that assessed the stability of the dam and the impact of a failure. The study concluded the dam is structurally unstable, has a significant chance of failure with sustained rainfall, and that failure could cover portions of downtown Jackson and State Route 49 with up to 15 feet of arsenic-contaminated mine tailings. The failure

would impair the Jackson Creek watershed and Lake Amador. The study also found that failure could cause damages and cleanup costs to exceed $120 million and result in loss of life.

On July 14, 2015, the Region 9 US EPA Administrator, presented the Dam Failure Study findings and requested the State's support to fund the design and retrofit of the Dam. At that time, the US EPA had exhausted its budget conducting a site assessment and emergency response to remove contaminated mine tailings from the yards of neighboring residences and a junior high school.

CalEPA sought the assistance of the Boards, Departments, and Office (BDOs) with potential jurisdiction including the State Water Resources Control Board (SWRCB) and DTSC, as well as the Office of Emergency Services (OES), the Department of Water Resources (DWR), and the California Natural Resources Agency (Resources Agency). Because the change in the law defining a regulated mine, the Resources Agency and DWR do not have jurisdiction over the Dam. The Dam is considered "non-Jurisdictional" under the law. Except for DTSC, no other agency has the authority and capacity to manage these response actions.

Based on the conclusion of the Dam Failure Study and at the request of the US EPA, DTSC has taken the lead in designing and constructing the retrofit/repair of the Dam. In September 2015, DTSC requested $1.5 million for two tasks related to the dam: 1) $1 million to construct interim measures to reduce the risk of dam failure by diverting water around the dam; 2) $500,000 to pay the USACE to initiate the design of a dam retrofit project to stabilize the dam. DTSC and the US EPA have concluded the property owner does not have the resources to conduct the repairs.

In November 2015, using the $1 million construction funding, DTSC successfully completed the construction of the storm water interim measures and continues to work with local, state, and federal partners to monitor conditions at the dam.

To design the retrofit of the Dam, DTSC requested cost estimates from the USACE and AECOM, an international engineering firm that performs contracting work on dams and water projects throughout the state for DWR. AECOM's estimate was approximately 50 percent of the USACE cost estimate. In January 2016, DTSC utilized the $500,000 available funding to contract with AECOM to perform as much work as possible with these funds. This work has already begun.

In January 2016, USACE completed a preliminary alternatives assessment and cost estimate for two options with a cost estimate just under the original $14.0 million estimate. An updated cost estimate will be prepared when a preferred option is selected, at 50 percent design, and the final cost estimate will be prepared as part of the 95 percent design.

**C. State Level Considerations**

Health and Safety Code (H&SC) section 25355.5(b)(3) provides DTSC the authority spend money from the state account, upon appropriation from the Legislature for removal or remedial actions, if the Director determines that removal or remedial action at a site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or to the environment. The waste mine tailings behind the Dam contain hazardous levels of toxic metals, primarily arsenic. DTSC issued an Imminent and Substantial Endangerment Determination for the Dam structure, providing

DTSC with the authority under the Health and Safety Code, to prevent the release of hazardous substances from the site. DTSC is asserting this authority to take interim and long-term removal and remedial measures to prevent the release of arsenic contaminated mine tailings into the City of Jackson and the Jackson Creek watershed including public water supplies and Lake Amador.

**D. Justification**

DTSC is requesting the following funding:

$ 250,000 to complete the Design of the Retrofit

$ 75,000 to extend the Operation of the Interim Stormwater Diversion System an additional year

$14,000,000 to fund Construction and Construction Support of the Final Design.

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$14,325,000 Total Funding Request

The cost to design the retrofit of the dam is estimated at $750,000. DTSC was funded $500,000 in 2015 to initiate the design. An additional $250,000 is required to complete the design of the retrofit.

The current contract to construct and operate the temporary Interim Stormwater Diversion System provides for 2 years of operation and maintenance. Increases in construction costs reduced the operations budget. DTSC is requesting $75,000 to extend the operations and maintenance of the interim system an additional year.

The USACE, under contract with the US EPA has prepared a Phase II Technical Report evaluating two retrofit alternatives. The preliminary cost estimate was similar for both alternatives and was estimated at $13 million. DTSC's original preliminary cost estimate was $14 million. This cost estimate will be updated by AECOM again at the 50% design and at 95% design.

**E. Outcomes and Accountability**

DTSC would undertake the following actions to ensure proper outcomes and accountability:

Outcomes

- Provide relief to the City of Jackson from the potential for catastrophic failure of the dam and potential inundation of the City's downtown business district, State Highway 49, and Jackson Creek with arsenic containing mining wastes.
- Prevent potential for property damage, economic loss, and cleanup costs exceeding $120.0 million resulting from a catastrophic failure.
- Prevent the potential for loss of life resulting from a catastrophic failure.
- Contain mine tailings on the owner's property.
- Ensure a permanent remedy for containing the mine tailings consistent with the likely long-term remedy for the entire site.

Accountability

DTSC will utilize the State's Cleanup Process in Chapter 6.8 of the Health and Safety Code to ensure compliance with the US EPA's National Contingency Plan. All decisions will be public and subject to public review and comment.

DTSC will comply with the California Environmental Quality Act (CEQA) during the selection of the remedy for the failing dam.

DTSC coordinates all activities with a multi-agency workgroup established to implement the Interim Stormwater Diversion System removal action, develop an Emergency Action Plan, monitor the site conditions, and design and construct the repair/retrofit of the Dam. Besides DTSC, the workgroup includes US EPA and their contractors, USACE, OES, NOAA, DWR, City of Jackson, and Jackson Valley Irrigation District.

Progress toward completion will be tracked in DTSC's EnviroStor database and will provide instant public access to uploaded documents.

## E. Analysis of All Feasible Alternatives

DTSC considered the following alternatives:

**Alternative 1: Approve this request for a one-time Dam design and retrofit augmentation**

Pro:

- Results in pro-active solution to a potentially catastrophic man-made disaster with potential losses in excess of $120.0 million, and potential for loss of life.
- Protects the City of Jackson, State Highways, and the Jackson Creek watershed in the shortest possible timeframe.
- Keeps the Dam Retrofit remedy on schedule for completion by 2018.
- DTSC currently has the jurisdictional authority and the contracting mechanisms to conduct the remedy in an effective and efficient manner.

Con:

- Requires State expenditure of state funds with no likelihood of Cost Recovery from the property owner.

**Alternative 2: Maintain the Status Quo/Do Nothing/Operate Interim Remedy until the Retrofit is constructed by US EPA.**

Pro:

- Returns the responsibility of the removal or remedial action to the US EPA.
- Does not require expenditures of state funds.
- Limits or relieves DTSC of responsibility to take a remedial action.

Con:

- Delays implementation of a permanent solution until the US EPA can list the site on the National Priority List, prioritize the project for federal funding, and finally fund and construct the project.
- Risk of catastrophic failure continues to threaten the City of Jackson, Highway 49, and the Jackson Creek Watershed until a permanent solution is constructed.
- DTSC would be required to continue funding the operations and maintenance of the Interim Stormwater Diversion System until the US EPA could fund and construct the Retrofit, which could take several years.
- DTSC would be required to redirect $325,000 from other priority Orphan cleanup projects to complete the Design since DTSC has agreed to complete the Design and has only contracted up to the 50 percent design stage.
- Opens the Department to criticism after receiving widespread praise for our pro-active stance in getting the Interim Stormwater Diversion System in place.
- Project would be required to compete for Site Remediation Account funding along with fund-lead NPL sites and other state orphan sites. Since the estimated cost exceeds the total appropriation, it would not be funded by DTSC at all.

## F. Implementation Plan

January 2016 – August 2016

- Contract in place with AECOM to review the USACE technical reports, develop Basis of Design Report and 50% design documents.
- Contract with DWR for engineering technical support/oversight.
- Operate Interim Stormwater Diversion System.
    - Regular system inspections
    - Storm forecast monitoring for system operation
    - Structural inspections of Dam

August 2016 – December 2016

- Prepare Remedy Selection document for public review.
- Conduct CEQA Initial Study.
- Contractor to prepare 95 percent Design.
- Operate Interim Stormwater Diversion System.
    - Regular system inspections
    - Storm forecast monitoring for system operation
    - Structural inspections of Dam

January 2017 – May 2017

- Complete 100 percent Design.
- Develop bid package for construction.
- Screen and select construction contractor.
- Award construction contract.
- Operate Interim Stormwater Diversion System.
    - Regular system inspections
    - Storm forecast monitoring for system operation
    - Structural inspections of Dam

June 2017 – June 2018

- Construct Dam retrofit.
- Operate Interim Stormwater Diversion System.
    - Regular system inspections
    - Storm forecast monitoring for system operation
    - Structural Inspections of Dam

July 2018

- Operations and Maintenance of Dam.
- Remove Interim Stormwater Diversion System.

**G. Supplemental Information**

Attached is the US EPA's June 9, 2015 Executive Summary for the Dam Failure Study, a letter from the US EPA requesting DTSC take interim actions and pursue design and construction of a retrofit of the Dam, and a letter of support from the Jackson City Manager.

**H. Recommendation**

DTSC recommends Alternative 1: Approve a one-time augmentation of $14,325 million from the General Fund to design and construct a remedial action to retrofit the Eastwood Multiple Arch Dam (DAM) at the Argonaut Mine Tailings Site in Jackson, California.

Attachment 1

Amend Item 3960-001-0001 to add the following provision:

7. Of the amount appropriated in this item, $14,325,000 is available to retrofit the Argonaut Mine Dam located in Jackson, California. The Director of Finance may increase or decrease this item of appropriation based on the final cost estimate and upon determination of the final award of contract. Within 30 days of making any adjustment, the Department of Finance shall report the adjustment in writing to the Joint Legislative Budget Committee.

**ATTACHMENTS:**

**US EPA Dam Failure Study Executive Summary**

**October 2, 2015 Letter from US EPA**

**October 5, 2015 Letter from the City of Jackson**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION IX**
75 Hawthorne St.
San Francisco, CA 94105

# EXECUTIVE SUMMARY

# EASTWOOD MULTIPLE ARCH DAM

# DAM FAILURE STUDY

June 9, 2015

The Eastwood Multiple Arch Dam (EMAD) is part of the Argonaut Mine Site ("Site") in Jackson, California. As part of the preliminary assessment of the Site, the U.S Environmental Protection Agency (EPA) has obtained assistance from the U.S. Army Corps of Engineers (USACE) and EPA's Office of Research & Development (ORD) to assess the stability of the dam and the impact of a possible failure. USACE structural engineers have determined the dam is structurally weak and unstable. Modeling efforts by ORD indicated that, in the event of complete dam failure, a release of the saturated tailings in the slimes impoundment behind the dam could cover portions of downtown Jackson, State Route (SR) 49 and Jackson Creek in up to 15 feet of mud that contains high levels of arsenic. EPA has consulted with multiple State, local and federal agencies regarding this threat and while California State and local agencies may have authorities to take action, all have issues surrounding available resources. Because of the threat of a release of hazardous substances, EPA could choose to take removal or remedial action; however, EPA Region 9 does not currently have adequate funds authorized for this purpose. While continuing to work with EPA Headquarters to identify funding, Region 9 recognizes the need to work collaboratively with State and local partners as well as elected officials in exploring a cost-sharing approach to fund the dam retrofit design and construction. Based on previous retrofit projects for similar slender buttress dams, the cost estimate for the EMAD retrofit would range from $6 million to $8 million.

## Background

The EMAD was built in 1916. It is 46 feet in height, 420 feet in length and has 13 inverted arches. The impoundment has been filled with arsenic-contaminated mine tailings as a result of sediment runoff from mine tailings piles located on 59.5 acres of private land within the limits of the City of Jackson. The dam is located near the corner of Sutter Street and Argonaut Drive. Jackson Junior High School is in close proximity to the dam and SR 49 in downtown Jackson is approximately 400 yards downstream from the dam. The total volume of tailings in the impoundment behind the dam is approximately 165,000 cubic yards or 247,500 tons. The estimated volume of freestanding water impounded behind the dam when it overtops is 2.8 acre-feet or nearly 1.0 million gallons. The estimated volume of water in the pore space of the impounded tailings under saturated conditions is 54.72 acre-feet or 17.8 million gallons. The tailing slimes behind the dam are currently saturated to 40 feet below ground surface. The City of Jackson has been designated by Amador County as the agency having primary jurisdiction for dam safety.

In February 2013, EPA and the California Department of Toxics Substances Control conducted a joint inspection of the dam. The dam was in a deteriorated condition. Leakage was observed in numerous cracks on the walls of the arches. Concrete reinforcement steel cable was exposed and corroded, and broken concrete pieces from the cross support beam had fallen to the ground. The State of California Division of Safety of Dams determined that it does not have jurisdiction over EMAD, because the area behind the dam is filled with sediment and had less than 15 acre-feet of water storage capacity.

The City of Jackson was not aware of the hazard posed by the EMAD and the dam was not listed in its local Hazard Mitigation Plan (HMP). Since the City of Jackson and County of Amador are small jurisdictions that lack sufficient financial resources to perform the hazard assessment, EPA commissioned the USACE in May 2013 to perform the hazard assessment and a dam stability evaluation. This dam stability evaluation has been completed. USACE has determined that the dam is unstable. USACE identified conditions that could cause the dam to collapse, including earthquakes, pressure from the water and tailings behind the dam, or a combination of both. Preliminary calculations indicate that such a dam failure could impact downstream human and environmental resources and, most importantly, result in the loss of life. Therefore, further hazard impact studies were recommended by USACE.

EPA engaged its Superfund Technical Assessment and Response Team (START) contractor to assist in further assessments. In August 2014, EPA, START and USACE conducted a geotechnical investigation to collect data and evaluate the potential for material flow downstream in case of dam failure. This involved evaluating the current condition of materials (tailings and water) behind the concrete arch dam. The data collection event acquired data that clarified the potential for liquefaction of soils, soil stability, slide potential, and downstream mud and water flow, if the concrete arch dam fails. The results of the geotechnical investigation indicated the tailings behind the dam were liquefiable and could travel a great distance if the dam failed. Additionally, the USACE was concerned about the middle earthen tailings dam and the impoundment which contains an estimated 345,000 cubic yards of tailings that are also liquefiable. The concern is that if the lower concrete tailings dam were to fail and a large mass of tailings were released up to the base of the middle tailings dam, it could cause that earthen dam to become unstable and fail. This could more than triple the total volume of tailings released downstream during a wet season scenario.

In order to define the extent of the mudflow as a result of a potential failure of the EMAD as well as the financial impacts to the local community if such a failure occurred, EPA Region 9 requested that ORD perform the modeling and technical analysis needed to quantify the damage probabilities and likely costs in the event of dam failure and any subsequent downstream flooding and mudflows in Jackson. The ORD's contractors, RTI and CDM Smith, performed the preliminary mudflow modeling in March 2015. The preliminary modeling results indicated that if the dam failed there could be significant damage to the City's infrastructure, economy and the California highway system in the City of Jackson, specifically SR 49. The depth of mud could be as great as 15 feet on SR 49 at the True Value Hardware Store near the intersection of Sutter Street and SR 49. Modeling demonstrated that emergency services, such as the Jackson Fire Department, could be inundated, further interfering with response efforts. Further, the mud behind the dam is contaminated with high levels of arsenic and could meet the criteria for

classification as a hazardous waste. Specifically, analysis of a tailings sample failed California's Soluble Threshold Limit Concentration (STLC) for arsenic.

**Summary**

The final Dam Failure Study is comprised of three (3) reports including the USACE Phase I Dam Stability Evaluation, USACE Geotechnical Investigation, and the EPA ORD Flow Modeling & Damage Estimates Analysis. The Dam Failure Study used the FLO-2D model to simulate dam failure and create downstream mudflow inundation maps for three scenarios, followed by the use of the Federal Emergency Management Agency HAZUS model to estimate potential losses within each inundation map. The three scenarios represent dry, average and wet season conditions of dam failure.

The results of the USACE Phase I Dam Stability Evaluation indicated the EMAD is structurally unstable. The results of the USACE Geotechnical Investigation indicated the sediment in the impoundment is liquefiable and could flow a great distance if the dam failed. The results of the EPA ORD Flow Modeling & Damage Estimates Analysis indicated there could be extensive damage to property, infrastructure, highway system, local economy and emergency services in the event of dam failure in all three modeling scenarios. In a wet season scenario, it was estimated the damages and losses could be as high as $100 million.

**Recommendations**

EPA believes there is a significant, potential risk to the citizens of Jackson. As a result, EPA and the USACE believe there is a need to proceed promptly with the design and implementation of a dam retrofit that would prevent an unimpeded flow of contaminated mud. The estimated costs for a dam retrofit range from $6 million to $8 million, including the cost of design work. EPA has funded the USACE to begin a dam retrofit alternative design study, which will provide several retrofit design options and cost estimates. The final dam retrofit alternative design study report is due in November 2015. According to USACE, if the retrofit project was elevated by the stakeholders to a high priority and the necessary funding was in place by August 2015, the final design could be completed in February 2016, and the construction could begin in August 2016 and complete in June 2017.

In the interim, EPA has funded the USACE to develop and implement a dam safety monitoring and inspection plan. Survey markers will be set up on the dam to monitor movement within 1/100 foot. USACE structural engineers will conduct periodic inspections of the dam and will inspect the dam during significant rainfall events as tasked by EPA. However, this monitoring and inspection effort is not an early warning system of imminent failure of the dam and, as a result, is unlikely to avert loss of life or property damage in the event of dam failure. EPA is aware that it will be difficult for local responders to warn, evacuate and shelter people if the dam suddenly fails, due to its close proximity to downtown Jackson. The mudflow could hamper emergency and medical services.

EPA Region 9 recommends collaboration between State, local and federal agencies and elected officials in exploring a cost-sharing approach to fund the dam retrofit design and construction.

Attachments:

(1) Argonaut Dam Stability & Retrofit Alternative Investigation, Jackson, CA – Phase I Technical Report, U.S. Army Corps of Engineers, January 6, 2015

(2) Argonaut Mine Tailings Storage Site, Earth Tailings Dam and Concrete Multi-Arch Dam (Argonaut Dam), Jackson, CA, Geotechnical Report, U.S. Army Corps of Engineers, February 2015

(3) Flow Modeling & Damage Estimates for Argonaut Mine Dam Failure Study, prepared by RTI and CDM Smith for EPA's Office or Research & Development, June 2015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne St.
San Francisco, CA 94105

October 2, 2015

Barbara A. Lee, Director
California Department of Toxic Substance Control
1001 "I" Street
Sacramento, CA 95814-2828

Re: Argonaut Mine Site – Eastwood Multiple Arch Dam – Confirming US EPA's Support For Urgent Interim Actions by California Department of Toxic Substance Control

Dear Ms. Lee:

As we have discussed, the U.S. Environmental Protection Agency (USEPA), along with the State of California and local agencies, share a common concern regarding environmental conditions at the Argonaut Mine Site (Site) in the City of Jackson, Amador County, California, including the threat posed by the instability of the Eastwood Multiple Arch Dam (EMAD). The purpose of this letter is to confirm that USEPA has requested that the Department of Toxic Substance Control (DTSC) take interim actions, on an urgent basis, to reduce the risks to the downstream community and to simultaneously pursue design and construction of a retrofit to restore the structural stability of the dam.

As is documented in USEPA's Executive Summary dated June 9, 2015 (attached), the EMAD is part of the Argonaut Mine Site. The EMAD was built in 1916 and is 46 feet in height, 420 feet in length and has 13 inverted arches. The impoundment behind the dam has been filled with arsenic-contaminated mine tailings as a result of sediment runoff from mine tailings piles located on 59.5 acres of private land within the limits of the City of Jackson. In addition to its preliminary assessment of the Site, USEPA has performed removal actions at the Site to contain immediate contaminant exposures to residents. In connection with our preliminary assessment of the Site, USEPA has assessed the stability of the EMAD.

Specifically, USEPA has obtained assistance from the U.S. Army Corps of Engineers (USACE) and USEPA's Office of Research & Development (ORD) to assess the stability of the dam and the impact of a possible EMAD failure. USACE structural engineers have determined the dam is structurally weak and unstable. Modeling efforts by ORD indicated that, in the event of complete dam failure, a release of the saturated tailings behind the dam could cover portions of downtown Jackson, State Route (SR) 49 and Jackson Creek in up to 15 feet of mud, containing high levels of arsenic.

At USEPA's request, DTSC has agreed to immediately seek appropriate funding, obtain necessary access, and begin work on interim actions to reduce the risk of dam failure, prior to completion of an appropriate retrofit that will restore the dam's structural integrity. As you know, a key element of the interim actions is to promptly improve storm water management, to avoid any additional pressure on the dam that could result from the precipitation expected this fall. USEPA intends to work in partnership with DTSC and other California agencies on the urgent interim and long-term response actions needed to address the threat posed by the Site and the EMAD.

Attached please find copies of the studies that support the urgent need for your assistance.

If you have any questions or require further assistance, please contact Dan Shane, On-Scene Coordinator, at (415) 972-3037.

Sincerely,

Enrique Manzanilla, Director
Superfund Division

Attachments:

1. Executive Summary, Eastwood Multiple Arch Dam Failure Study, June 9, 2015.
2. Argonaut Dam Stability & Retrofit Alternative Investigation, Jackson, CA – Phase I Technical Report, U.S. Army Corps of Engineers, January 6, 2015, http://www.epaosc.org/sites/8780/files/FINAL_AD_STAB_EVAL_AND_RETRO_060315_QC_USACE.pdf
3. Argonaut Mine Tailings Storage Site, Earth Tailings Dam and Concrete Multi-Arch Dam (Argonaut Dam), Jackson, CA, Geotechnical Report, U.S. Army Corps of Engineers,

February 2015
http://www.epaosc.org/sites/8780/files/FINAL%20GEOTECHNICAL%20REPORT_FEB2015_USACE.pdf

4. Flow Modeling & Damage Estimates for Argonaut Mine Dam Failure Study, prepared by RTI and CDM Smith for EPA's Office or Research & Development, June 2015
http://www.epaosc.org/sites/8780/files/Flow%20Modeling%20and%20Damage%20Estimates%20for%20the%20Argonaut%20Mine%20Dam%20Failure%20Study.pdf

CITY OF
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*"Preserving Our Past, Enriching Our Present, Building Our Future"*

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October 5, 2015

Barbara A. Lee, Director
California Department of Toxic Substances Control
1001 "I" Street
Sacramento, CA 95814-2828

Re: Argonaut Mine Site – Eastwood Multiple Arch Dam – Confirming City of Jackson's Support for Urgent Interim Actions by California Dept. of Toxic Substances Control

Dear Ms. Lee,

The purpose of this letter is to include the City of Jackson as a supporter of DTSC's interim measures proposed at the former Argonaut Mine property within the City of Jackson. The Eastwood Multiple Arch Dam is a 99 year old structure that is in danger of collapse, which would cause significant health and safety issues within the City of Jackson. It is important that these issues be addressed as soon as possible, particularly with an El Niño weather pattern that could create additional stress on this structure.

The City understands it is critical for DTSC to have immediate access to the property to implement the interim measures necessary to help protect the dam from failing and the significant damage that could occur below the dam should it fail (see the Army Corps of Engineers Report, dated January 6, 2015, http://www.epaosc.org/sites/8780/files/FINAL_AD_STAB_EVAL_AND_RETRO_060315_QC_USACE.pdf). The U.S. Environmental Protection Agency has invested significant money over the past two years improving the safety in our community by accessing this property, and the continued government agency access is key to the protection measures proposed.

Please let me know if you need any additional information.

Sincerely,

Michael Daly
City Manager

Mayor: Patrick Crew • Vice Mayor: Keith Sweet • Councilmembers: Connie Gonsalves • Wayne Garibaldi • Marilyn Lewis
City Manager: Michael Daly • City Attorney: Joshua Nelson

# BCP Fiscal Detail Sheet

**BCP Title: Argonaut Mine Tailings Site Dam Repair/Retrofit** **DP Name: 3960-009-BCP-DP-2016-A1**

## Budget Request Summary

| | FY16 | | | | | |
|---|---|---|---|---|---|---|
| | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
| Operating Expenses and Equipment | | | | | | |
| 5340 - Consulting and Professional Services - External | 0 | 14,325 | 0 | 0 | 0 | 0 |
| **Total Operating Expenses and Equipment** | **$0** | **$14,325** | **$0** | **$0** | **$0** | **$0** |
| **Total Budget Request** | **$0** | **$14,325** | **$0** | **$0** | **$0** | **$0** |

## Fund Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Fund Source - State Operations | | | | | | |
| 0001 - General Fund | 0 | 14,325 | 0 | 0 | 0 | 0 |
| **Total State Operations Expenditures** | **$0** | **$14,325** | **$0** | **$0** | **$0** | **$0** |
| **Total All Funds** | **$0** | **$14,325** | **$0** | **$0** | **$0** | **$0** |

## Program Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Program Funding | | | | | | |
| 3620011 - Other Site Mitigation Activities | 0 | 14,325 | 0 | 0 | 0 | 0 |
| **Total All Programs** | **$0** | **$14,325** | **$0** | **$0** | **$0** | **$0** |

STATE OF CALIFORNIA
**Spring Finance Letter - Cover Sheet**
DF-46 (REV 02/15)

| Fiscal Year | Business Unit | Department | Priority No. |
|---|---|---|---|
| 2016-17 | 3960 | Toxic Substances Control | |

| Budget Request Name | Program | Subprogram |
|---|---|---|
| 3960-107-BCP-BR-2016-XX | 3265 - Hazardous Waste Management<br>9900100 Administration<br>9900200 Distributed Administration | |

Budget Request Description
Enhanced Permitting Capacity and Support

Budget Request Summary
The Department of Toxic Substances Control (DTSC) requests an augmentation of $2,403,000 to the Hazardous Waste Control Account and 15.0 permanent positions for the Permitting Division to fully implement the process improvements developed under the Permit Enhancement Work Plan, which will sustain timely permitting actions; mitigate the incidence of facilities operating for extended periods of time on expired permits; and improve the clarity, consistency, protectiveness and enforceability of the permits issued.

DTSC also proposes to eliminate the option to pay a flat fee for permit applications in lieu of a fee for service so that permit applicants pay the full costs associated with permitting efforts.

| Requires Legislation | Code Section(s) to be Added/Amended/Repealed |
|---|---|
| ☒ Yes ☐ No | Health & Safety Code Section(s) 25189.3, 25205.7, 25205.18, 25205.19, and 25247, and Rev & Tax Code Sections 43053 and 43152.10 |

| Does this BCP contain information technology (IT) components? ☐ Yes ☒ No<br>*If yes, departmental Chief Information Officer must sign.* | 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 | Reviewed By | Date |
|---|---|---|---|
| Colleen Rawford | 4/7/2016 | [signature] | 4.7.16 |
| **Department Director** | **Date** | **Agency Secretary** | **Date** |
| [signature] | 4.7.16 | [signature] | 4/8/16 |

**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 | Date submitted to the Legislature |
|---|---|
| Original Signed By: Ellen Moratti | 4-8-16 |

## A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation of $ $2,403,000 (Hazardous Waste Control Account and 15.0 permanent positions for the Permitting Division to fully implement the process improvements developed under the Permit Enhancement Work Plan, which will sustain timely permitting actions; mitigate the incidence of facilities operating for extended periods of time on expired permits; and improve the clarity, consistency, protectiveness and enforceability of the permits issued.

DTSC also proposes to eliminate the option to pay a flat fee for permit applications in lieu of a fee for service to ensure permit applicants pay the full costs associated with permitting efforts.

## 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 hazardous waste management systems and related operations, physical plant, personnel, types of waste, chemical processes employed, the facility's compliance history, and its financial assurance.

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

DTSC issues hazardous waste permits with a 10 year term. Six months prior to expiration, a facility is required to apply for renewal. If the application is submitted on time, existing law allows the facility to continue operation under the conditions of the expired permit; these permits are referred to as "continued" permits. Although the facility is required to comply with the conditions of the expired permit, and all applicable laws and regulations, the continued permit would not include the improved safeguards, technologies, and practices that have been developed since the original permit was issued and that could better protect human health and the environment from hazardous waste releases. In addition, changes may have also occurred in the area around the facility. For example, 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 with a significant decision delay will not have had the benefit of more recent community input and feedback.

Currently, California has 118 facilities permitted that manage hazardous waste in California, with a total of 127 permits. Of the 118 facilities, 89 are operating facilities that handle hazardous waste. The other 29 are considered post-closure facilities. These facilities primarily have monitoring activities that ensure previously disposed waste are not migrating from the hazardous waste unit. DTSC currently has more than 30 permitted facilities operating under "continued permits" with pending permit renewal applications. The Legislature has supported DTSC's efforts to reduce the existing backlog of continued permits, as well as improve and enhance permitting process, in recent years.

DTSC developed a substantial backlog of permits that were continued for more than 5 years. Permitting actions did not keep pace with applications and the Department was unable to maintain a consistent quality of review. The Department has been unable to update its program consistent with changes in U.S. EPA regulations and associated RCRA authorizations requested for California. In addition, Permitting did not maintain adequate training, update and maintain the EnviroStor database of permitted facilities, or develop/update policies and guidance.

Despite these limitations, 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 FY14-15, 8.0 limited term positions were approved, providing additional permit writers and support staff; these positions – including 5 permit writers, 1 supervisor, and 2 support service positions -- are now in the Governor's budget to become permanent in FY16-17 pending Legislative approval. In FY15-16, 16 positions were authorized in various support programs (e.g., enforcement, legal, CEQA) that contribute to the permit review process, but do not directly evaluate permits. There were no permit writers.

The process for reviewing, approving or denying a permit is a highly technical and complex process, requiring the knowledge and skills of a variety of disciplines. At DTSC, permit writers are typically engineers or engineering geologists, with the technical background to understand hazardous waste management treatment and operational processes. The permit writers perform an exhaustive review of the permit application for conformance with regulatory requirements, and for proper application of technology and procedures required to manage hazardous waste in a protective manner. The permit writer analyzes the permit application content, including engineering drawings, process and instrumentation diagrams, and operation plans. The permit writer manages the permitting process, working with other programs areas within DTSC to ensure the permit decisions address conditions necessary for safe and protective facility operation, waste characterization, inspections, closure, and training. Even at optimum efficiency, the process takes years.

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

1. 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.
2. Class 3 Permit Modifications – Technical reviews, drafting of modifications, public participation, public hearing, response to public comments, finalization of modifications, responding to appeals, tracking and other procedural items. Class 3 modifications are the most complex and involved permit modifications, with a level of effort similar to that required for processing full permit applications, to add of new hazardous waste units, substantial increases of storage capacity or changes to groundwater monitoring program.
3. Emergency Permits – Review of Emergency Permit applications, public notice, and CEQA document coordination with other offices.
4. 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.
5. 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.
    - Regulatory Analysis of Federal HW Rules: Analysis of proposed federal rules and implementation of new standards.
    - 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 technical training.

**Permitting**
**Resource History**
(Dollars in thousands)

| Program Budget | FY11-12 | FY12-13 | FY13-14 | FY14-15 | FY15-16* |
|---|---|---|---|---|---|
| Authorized Expenditures | 3,823 | 2,526 | 3,586 | 5,180 | 5,343 |
| Actual Expenditures | 3,096 | 3,387 | 3,586 | 5,413 | 2,609 |
| Revenues (Permit Application Fee) | 402 | 356 | 293 | 628 | 523 |
| Revenues (Federal Grant) | 858 | 1,182 | 1,863 | 1,413 | $703 |
| Authorized Positions | 32.9 | 30.9 | 27.5 | 39.4 | 49.5 |
| Filled Positions | 28.0 | 27.9 | 27.5 | 34.5 | 47.5 |
| Exide Corrective Action Positions | - | - | - | - | 4.0** |
| Permitting Vacancies | 4.9 | 3.0 | 0.0 | 4.9 | 2.0 |

*Actual Expenditures projected by DTSC budget office. Actual expenditures and revenues through 1-28-2016. Positions as of 12-31-2015.
**The Exide Corrective Action positions were filled starting in November 2015 to oversee the Residential Cleanup around Exide.

**Permitting Workload History ***

| Workload Measure | FY11-12 | FY12-13 | FY13-14 | FY14-15 | FY15-16** |
|---|---|---|---|---|---|
| Permit Issuance (or denial) | 8 | 3 | 4 | 8 | 12 |
| Permit modifications (Class 2) | 4 | 5 | 5 | 5 | 4 |
| Permit modifications (Class 1) | 10 | 10 | 10 | 17 | 14 |
| Emergency Permits/Variances | 4 | 7 | 7 | 48 | 50 |
| Closure Verifications | 4 | 4 | 5 | 1 | 4 |

*Numbers of permits do not always reflect the complexity of permits processed
**Projected by Permitting Division

The Department currently has 49.5[1] authorized positions in the Permitting Division, of which 25.5 are permit writers. The 49.5 positions include 6.0 positions[2] from other program areas; these positions will return to their original program assignments on July 1, 2016. Also included are the 6 two-year limited-term positions authorized in FY14-15 to complete 17 of 24 backlogged permits. These positions contributed to the Department's progress toward reducing the number of continued permits that have been in process for several years. The Department made decisions on 8[3] permits in FY14-15, and plans to complete 12 decisions in FY15-16. In addition to the 12 temporary positions described above, the Permitting Division has: 8 supervisors and managers, 7 administrative support positions, and 4 positions dedicated to the Exide closure and corrective measures study. There are 2 additional positions dedicated to closure cost estimate reviews. This means that Permitting Division will have only 16.5 authorized permit writers as of July 2016 available to work on permits. With the anticipated authorization of the Governor's Budget which proposes to convert 5.0 limited term permit writer positions – authorized in FY14-15 – to permanent in FY16-17, the total number of permit writers will be 21.5.

[1] As of December 2015.
[2] The 6 positions were temporarily redirected from the Brownfields and Environmental Restoration Program and the Policy and Program Support Division to the Permitting Division in 2014
[3] *In addition, in February 2015 DTSC informed Exide that their permit application would be denied, and the facility entered closure.

To prevent a backlog of permits from developing, DTSC must process 127 permit renewals every 10 years, or an average of 12.7 permit renewal decisions each year. The Department also receives an average of 2.5 applications for new permits each year, as well as 0.7 applications for Class 3 permit modifications. Class 3 modifications can be as difficult to process as a full permit. When the new permits and Class 3 modifications are factored in, DTSC must make an average of 15.9 permit decisions each year. Permit writers have other responsibilities as well, as described above.

As a result of historical efforts to address the backlog, permit renewals are not evenly distributed over the 10-year cycle. 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 FY15-16, 15 in FY16-17, 16 in FY17-18, and 16 in FY18-19. This represents additional workload beyond the capacity of the existing staff, which will result in increased number of continued permits.

The following chart illustrates the permitting actions and resulting volume of continued permits at the current permanent staffing levels without any additional permanent positions.

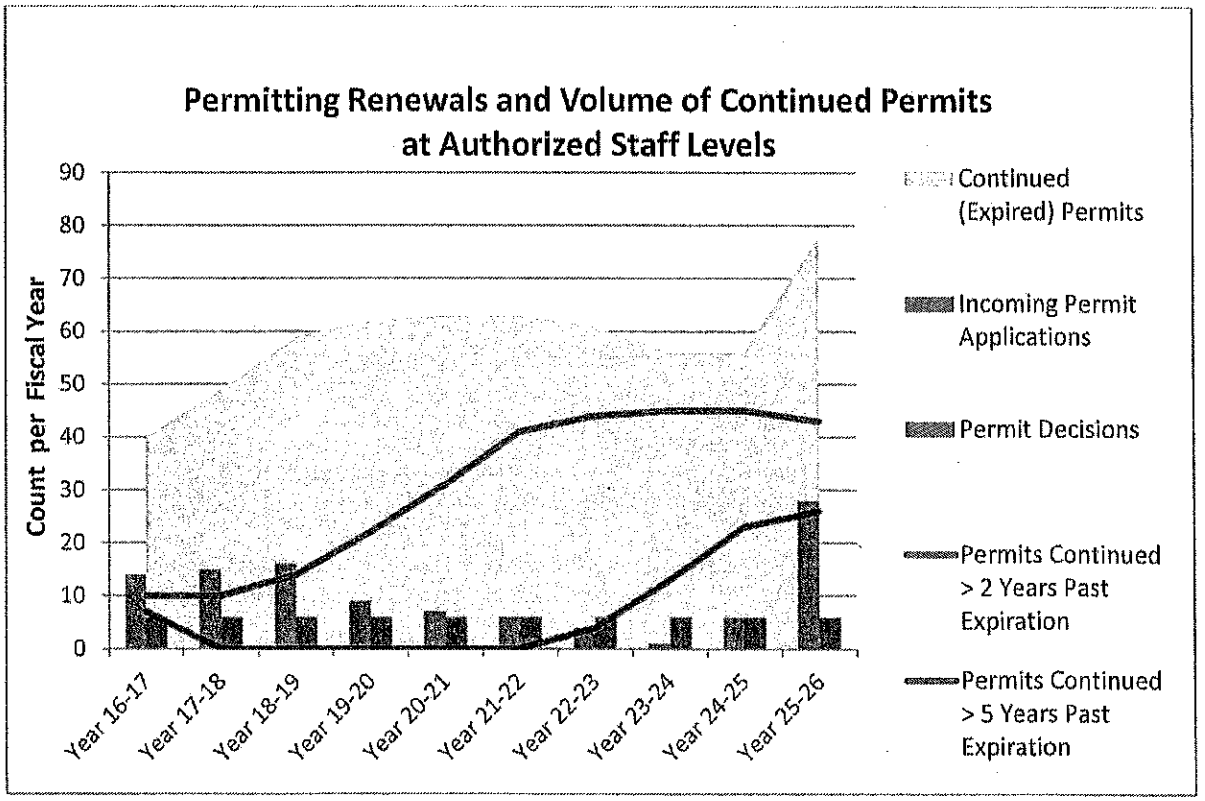
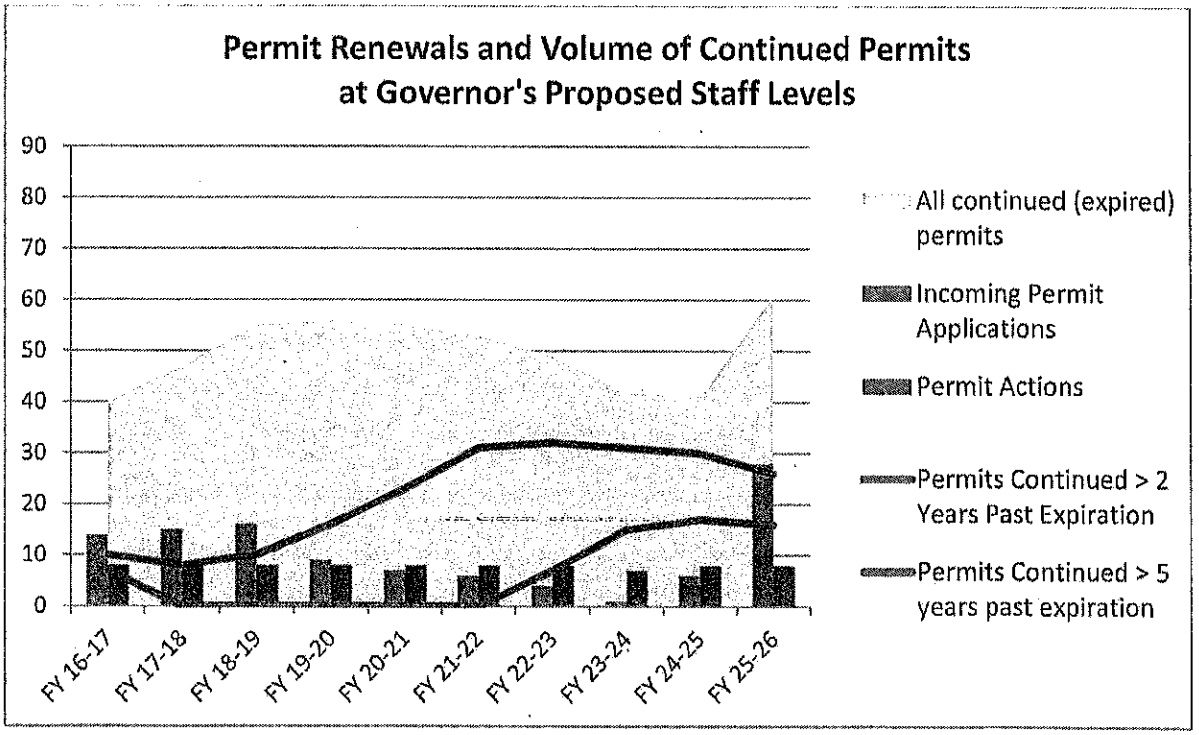



*Table illustrates status quo (without Fall BCP)

The Governor's proposed budget for FY16-17 includes 8.0 positions for DTSC, of which 5.0 are permit writers. The following chart illustrates the permitting actions and resulting volume of continued permits at the current permanent staffing levels and additional permanent positions proposed in the Governor's FY16-17 budget.




In 1997, SB 660 (Sher, Ch. 870, Statutes of 1997) established the requirement that any person who applies for, or requests, a new hazardous waste facilities permit, hazardous waste facilities permit for post-closure, permit modification, or a permit renewal must either enter into a fee-for-service agreement to reimburse the department for its full costs in processing the application or responding to the request, or pay a flat fee prescribed in statute. The flat fee rates were thought to be sufficient to pay for DTSC's review costs. Experience has since shown that DTSC's costs exceed the revenues collected through the permit application fees. In addition, without the cost signal that the fee for service provides, the applicant has no incentive to work efficiently with the Department. Incomplete and inadequate application submittals are frequently encountered, requiring labor-intensive rounds of review by DTSC permit writers of the resulting repeated submittals, further extending the deficit between the fee revenue and actual costs.

## 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 ongoing specific interest in DTSC's permitting actions, as demonstrated by Legislative Oversight hearings, confirmation hearing for DTSC Director Barbara Lee, and the creation of the Independent Review Panel (SB 83).

**D. Justification**

In order to reduce the number of continued permits and the length of time permits continue post-expiration, DTSC implemented a Permitting Enhancement Work Plan and three Lean Six Sigma projects. These efforts resulted in a goal for permit application review time of an average of two years for 90 percent of the permit renewal applications[4].

The resources requested in this BCP will support completing approximately 16 permits annually, with additional effort to perform the activities listed above. The requirement for 16 annual permit actions is based on workload in the following table, which shows applications for permits, permit renewals, and complex Class 3 modifications.

[4] The Permitting Enhancement Work Plan had a preliminary goal of all permit reviews in an average of 2 years. Further analysis in data-driven Lean Six Sigma projects adjusted that goal to an average of 2 years for 90% of permits. The analysis accounted for the small number of very controversial permits that require substantially more resources to process.

| Existing and Projected Hazardous Waste Permit Applications | Quantity |
|---|---|
| Existing hazardous waste permits<br>*Each expires after 10 years, requiring renewal application processing* | 127 |
| Class 3 permit mod applications<br>*Requires effort similar to permit application processing.* | 7* |
| New permits processed in past 10 years based<br>*New permit applications that require processing.* | 25* |
| Total permit applications in 10 year period<br>*Projected new, renewal, and Class 3 permit modification applications* | 159 |
| Average number of permit applications per year | 16 |

*Based on quantity received in past 10 years.

The table above does not include Class 1 or 2 modifications. The Department received 20 Class 2 permit modifications in the past 10 years, however DTSC expects to process more Class 2 modifications in future years. The review of closure plans, cost estimates, and related financial assurance mechanisms is resulting in the need for permit modifications. Increased enforcement will require changes for the facility to come into compliance. A recent EPA report addressing changes in business needs indicates that 56% of permitted facilities will require a Class 2 permit modification during the life of the permit[5]. These modifications are anticipated to respond to changes in types and quantities of waste, technological changes, and regulatory changes. As a result, DTSC projects the need to process an average of 8 Class 2 permit modifications per year.

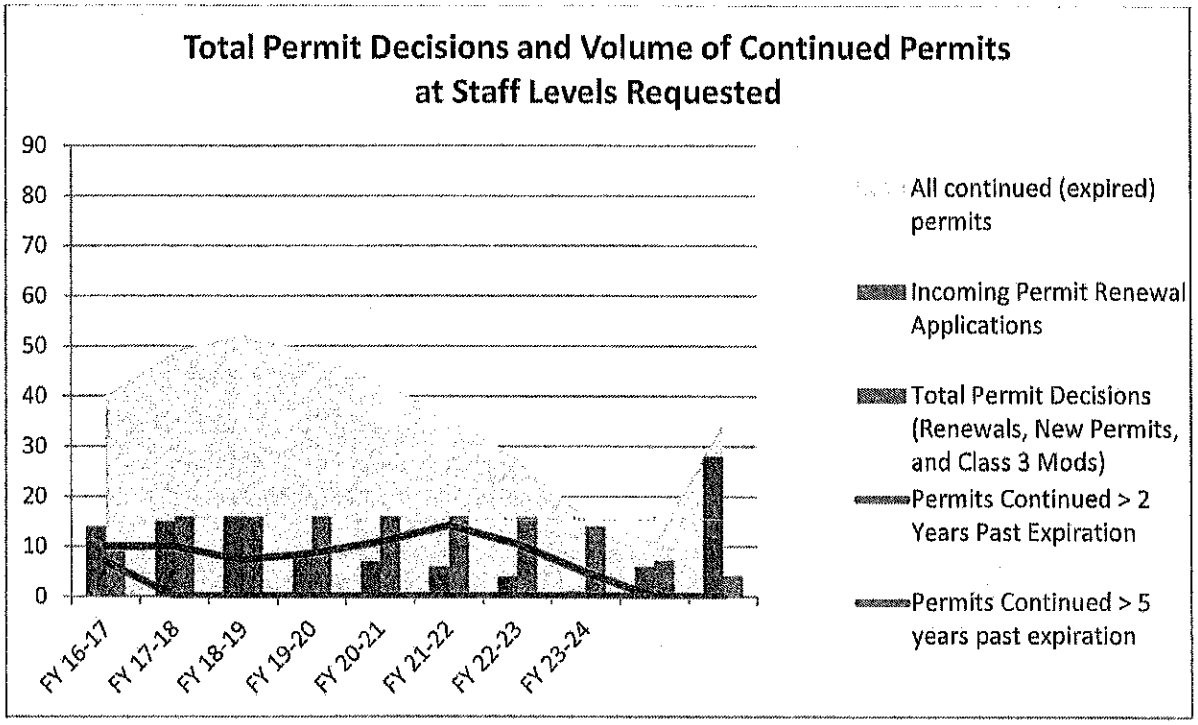
To produce 16 permit decisions each year, DTSC requires 35.5 permit writers. Each permit writer produces approximately 0.5 permits per year for 90% of the applications. The remaining 10% of applications are more complex and can require 4 to 6 person-years to complete, at a rate of ~0.2 permits per permit writer per year. To reduce the total time needed to complete these very difficult permits, the Department will increase the number of permit writers assigned to the permit. The needed resources requested in this BCP are 14 permit writers and 1 supervisor.

Presently DTSC has 16.5 permanent positions and anticipates an additional 5.0 permanent permit-writer positions as reflected in the Governor's Proposed FY16-17 budget, and supporting BCP for Enhanced Permitting Capacity and Continued Permit Backlog Support. DTSC is therefore requesting 14 permanent positions for permit writing and 1 supervisory position as follows:

- 10.0 HSE permanent positions
- 4.0 Senior HSE permanent positions.
- 1.0 Supervising HSE I position

At the requested staffing level, DTSC will address the volume of continued permits and be staffed to achieve goals for permit processing as shown in the following chart.

[5] *Permit Modification Report: Safeguarding the Environment in the Face of Changing Business Needs.* EPA. January 2016. EPA 530-R-15-001.




This chart illustrates the volume of permit renewals processed. As the volume of permit renewal applications declines, DTSC will apply these resources toward processing of new applications and Class 3 permit modification applications, which will in sum, require an average of 16 permit decisions per year, as described earlier.

The requested resources will enable DTSC to eliminate the backlog and to avoid developing another backlog in the future, and will enable DTSC to process an average of 16 permit decisions a year and achieve the goal of processing 90% of permit applications within 2 years.

The existing hazardous waste fee structure allows a permit applicant to choose one of two options: 1) to pay a flat fee established in statute to pay for DTSC's review and evaluation of its application; or 2) to enter a reimbursement agreement with DTSC to pay for DTSC's actual costs in reviewing and evaluating its application.

DTSC proposes to eliminate the option to pay a flat fee for permit applications in lieu of a fee for service so that permit applicants pay the full costs associated with permitting efforts and have an incentive to submit timely and complete applications and follow-up information.

By eliminating the flat fee option, and requiring all permit applicants to enter a reimbursement agreement with DTSC to pay DTSC's actual costs, DTSC will be able to recover costs through reimbursements from by the applicant.

Historically DTSC has not processed permits in a timely manner. Substantial improvements to the permitting process have been made to make the process more efficient. In doing this, DTSC has reduced the overall cost of permit review. Notwithstanding, many permit applications are submitted with missing, incomplete or inaccurate information, resulting in challenges to processing a permit in a timely fashion. This creates additional workload for DTSC permitting staff to track down missing information from the permit application, increasing the cost and the time to process a permit. If a permit applicant is responsible for the costs of processing a permit, the applicant is more likely to improve the permit application, providing a more complete and accurate information submittal, and a more efficient review and permitting process within the Department.

## E. Outcomes and Accountability

| Workload Measure | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|
| Permit Decisions | 12 | 9 | 16 | 16 | 16 | 16 |
| Permit Mods - Class 2 | 4 | 8 | 8 | 8 | 8 | 8 |
| Permit Mods - Class 1 | 14 | 25 | 25 | 25 | 25 | 25 |
| Emergency Permits | 50 | 50 | 50 | 50 | 50 | 50 |
| Closure Verifications | 4 | 10 | 10 | 10 | 10 | 10 |
| RCRA Authorization Package | 1 | 1 | 1 | 1 | 1 | 1 |

With the above proposed staff increases, DTSC anticipates completing the following annually as needed:

- 16 permit/ renewal decisions
- 8 Class 2 Permit Modifications
- 25 Class 1/1* Permit Modifications
- 50 Emergency Permits
- 10 closure oversight projects
- 1 RCRA Authorization package

With these staff increases, permits that have been continued more than 5 years (i.e., those considered backlogged) will be eliminated on an ongoing basis.

Performance metrics for the permitting program include: the average permit processing time for permits issued, number of permits continued more than 2 years, and number of permits continued more than 5 years. Below is a comprehensive table that shows historical and projected staffing and outcomes with the approval of the proposed resources.

| HISTORICAL AND PROJECTED STAFFING LEVELS AND OUTCOMES | | | | | | |
|---|---|---|---|---|---|---|
| | FY14-15 | FY15-16 | FY16-17 | FY17-18 | FY18-19 | FY19-20 |
| Number of Permit Writers | 25.5* | 25.5* | 35.5 | 35.5 | 35.5 | 35.5 |
| Number of Total Program staff | 39.5 | 49.5 | 53.5 | 53.5 | 53.5 | 53.5 |
| Number of Permit Decisions | 8 ** | 12 | 9 | 16 | 16 | 16 |
| Years from receipt of application to permit decision, for decisions made in this year (average) | 6.6 | 4.7 | 6.6 | 3.8 | 2.6 | 2.7 |
| Number of Permits Expired More than 2 Years *** | 27 | 18 | 10 | 7 | 9 | 11 |
| Number of Permits Expired More than 5 Years*** | 24 | 12 | 7 | 0 | 0 | 0 |

Reporting and communication will be in the form of the following:

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 United States Environmental Protection Agency (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 aspect of its permitting processes.

DTSC will prepare a work plan, and staff will provide regular status reports and updates to the Permitting Branch Chiefs and the Hazardous Waste Management Program Deputy Director so that the pending permit applications each have a cost reimbursement agreement in place.

In addition, DTSC's Fiscal and Accounting Offices will monitor payments of invoices required under the cost reimbursement agreements, and, along with the Permitting Branch Chiefs and the Hazardous Waste Management Program Deputy Director, will monitor hours spent on the work for each permit application to so that cost estimates and actual work hours are consistent, and payment is collected.

## F. Analysis of All Feasible Alternatives

Alternative 1: Add 15.0 permanent positions to reduce the volume of continued permits, make timely permitting decisions, continue the permitting process improvement initiatives, and modify the permit fee structure from a flat fee to a fee for service

Pros:

- Mitigates the incidence of long delays in issuing hazardous waste permitting decisions, and, for each permit decision completed, provides for meeting all standards, implementing best management practices, and addressing compliance concerns.
- 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 support needed to maintain pace with the anticipated volume of permit renewals, and reduce the current number of facilities operating with expired permits.
- Allows DTSC to be reimbursed for its full costs of permit application reviews.
- Creates increased accountability and efficiency in performing permit reviews through fee-for-service cost signals.
- Provides for the collection of workload data to allow DTSC to implement further improvements to the permitting process.

Cons:

- Increases position authority.
- Creates additional cost.
- Requires training of new staff for this work.
- Increases hazardous waste permit fees.

Alternative 2: Redirect staff, and make no changes to the permit fee structure.

Pros:

- Requires no additional funding.
- Mitigates the risk of long delays in issuing hazardous waste facility permits, provides for permits meeting all standards, supports implementation of best management practices, and addresses 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.

Cons:

- Would impair DTSC's ability to meet other mission-critical mandates and commitments such as conducting inspections, cleaning up contaminated properties, and recovering response costs. It is unclear where these staff could be redirected from, and still accomplish the core mission of DTSC.
- Businesses will continue to pay the flat fee and hazardous waste industry fees will continue to subsidize permit activities.

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.
- Businesses will continue to pay the flat fee and hazardous waste industry fees will continue to subsidize permit activities.

## G. Implementation Plan

a) Once approval is received, DTSC will begin the recruitment process to fill positions.
b) Hire new staff.
c) Begin necessary 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 for new hires.
d) Begin on-the-job training of new hires with experienced staff.
e) Begin independent permit work and related support activities.

**Fall 2016**

Implement new permit writer bootcamp training program.

## H. Supplemental Information

Trailer bill language to eliminate the flat fee option will be provided when available.

## I. Recommendation

Adopt Alternative I: Add 15.0 permanent positions to reduce the volume of continued permits, make timely permitting decisions, and continue the permitting process improvement initiatives, and modify the permit fee structure from a flat fee to a fee for service – This option would accomplish the following:

- Mitigates the incidence of long delays in issuing hazardous waste permitting decisions, provides for meeting all standards, implementing best management practices, and addressing compliance concerns.
- Ensure that hazardous waste facility permit determinations are completed in a 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.
- Allows DTSC to be reimbursed for its full costs of permit application reviews.

# BCP Fiscal Detail Sheet

**BCP Title: Enhanced Permitting Capacity & Support** **DP Name: 3960-007-BCP-DP-2016-A1**

## Budget Request Summary

| | FY16 | | | | | |
|---|---|---|---|---|---|---|
| | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
| Positions - Permanent | 0.0 | 15.0 | 15.0 | 15.0 | 15.0 | 15.0 |
| **Total Positions** | **0.0** | **15.0** | **15.0** | **15.0** | **15.0** | **15.0** |
| Salaries and Wages | | | | | | |
| Earnings - Permanent | 0 | 1,354 | 1,354 | 1,354 | 1,354 | 1,354 |
| **Total Salaries and Wages** | **$0** | **$1,354** | **$1,354** | **$1,354** | **$1,354** | **$1,354** |
| Total Staff Benefits | 0 | 644 | 644 | 644 | 644 | 644 |
| **Total Personal Services** | **$0** | **$1,998** | **$1,998** | **$1,998** | **$1,998** | **$1,998** |
| Operating Expenses and Equipment | | | | | | |
| 5301 - General Expense | 0 | 105 | 105 | 105 | 105 | 105 |
| 5302 - Printing | 0 | 15 | 15 | 15 | 15 | 15 |
| 5304 - Communications | 0 | 30 | 30 | 30 | 30 | 30 |
| 5306 - Postage | 0 | 15 | 15 | 15 | 15 | 15 |
| 5320 - Travel: In-State | 0 | 30 | 30 | 30 | 30 | 30 |
| 5322 - Training | 0 | 30 | 30 | 30 | 30 | 30 |
| 5324 - Facilities Operation | 0 | 120 | 120 | 120 | 120 | 120 |
| 5326 - Utilities | 0 | 15 | 15 | 15 | 15 | 15 |
| 5346 - Information Technology | 0 | 45 | 0 | 0 | 0 | 0 |
| **Total Operating Expenses and Equipment** | **$0** | **$405** | **$360** | **$360** | **$360** | **$360** |
| **Total Budget Request** | **$0** | **$2,403** | **$2,358** | **$2,358** | **$2,358** | **$2,358** |

## Fund Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Fund Source - State Operations | | | | | | |
| 0014 - Hazardous Waste Control Account | 0 | 2,403 | 2,358 | 2,358 | 2,358 | 2,358 |
| **Total State Operations Expenditures** | **$0** | **$2,403** | **$2,358** | **$2,358** | **$2,358** | **$2,358** |
| **Total All Funds** | **$0** | **$2,403** | **$2,358** | **$2,358** | **$2,358** | **$2,358** |

## Program Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Program Funding | | | | | | |
| 3625 - Hazardous Waste Management | 0 | 2,403 | 2,358 | 2,358 | 2,358 | 2,358 |
| 9900100 - Administration | 0 | 165 | 165 | 165 | 165 | 165 |
| 9900200 - Administration - Distributed | 0 | -165 | -165 | -165 | -165 | -165 |
| **Total All Programs** | **$0** | **$2,403** | **$2,358** | **$2,358** | **$2,358** | **$2,358** |

## Personal Services Details

| Positions | Salary Information Min | Mid | Max | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|---|---|---|
| 3724 - Supvng Hazardous Substances Engr I (Eff. 07-01-2016) | | | | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 3725 - Sr Hazardous Substances Engr (Eff. 07-01-2016) | | | | 0.0 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 |
| 3726 - Hazardous Substances Engr (Eff. 07-01-2016) | | | | 0.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| **Total Positions** | | | | **0.0** | **15.0** | **15.0** | **15.0** | **15.0** | **15.0** |

| Salaries and Wages | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|
| 3724 - Supvng Hazardous Substances Engr I (Eff. 07-01-2016) | 0 | 111 | 111 | 111 | 111 | 111 |
| 3725 - Sr Hazardous Substances Engr (Eff. 07-01-2016) | 0 | 422 | 422 | 422 | 422 | 422 |
| 3726 - Hazardous Substances Engr (Eff. 07-01-2016) | 0 | 821 | 821 | 821 | 821 | 821 |
| **Total Salaries and Wages** | **$0** | **$1,354** | **$1,354** | **$1,354** | **$1,354** | **$1,354** |
| Staff Benefits | | | | | | |
| 5150900 - Staff Benefits - Other | 0 | 644 | 644 | 644 | 644 | 644 |
| **Total Staff Benefits** | **$0** | **$644** | **$644** | **$644** | **$644** | **$644** |
| **Total Personal Services** | **$0** | **$1,998** | **$1,998** | **$1,998** | **$1,998** | **$1,998** |

STATE OF CALIFORNIA
**Spring Finance Letter - Cover Sheet**
DF-46 (REV 08/15)

| Fiscal Year | Business Unit | Department | Priority No. |
|---|---|---|---|
| 2016-17 | 3960 | Toxic Substances Control | 3 |

| Budget Request Name | Program | Subprogram |
|---|---|---|
| 3960-002-SFL-BR-2016-GB | 3620 Site Mitigation And Brownfields Reuse<br>3625 Hazardous Waste Management | |

Budget Request Description
Office of Environmental Justice and Tribal Affairs

Budget Request Summary:
The Department of Toxic Substances Control (DTSC) requests an augmentation of $881,000 ($441,000 from Toxics Substances Control Account and $440,000 from Hazardous Waste Control Account) and 6.0 permanent positions to create an Office of Environmental Justice (EJ) and Tribal Affairs. This proposal will help strengthen coordination of EJ and Tribal Affairs activities and enhance engagement with impacted communities. It will also allow the Department to identify and address gaps within its programs that may contribute to unequal environmental protections or outcomes in these communities, and broaden the transparency of and access to DTSC's programs.

| Requires Legislation | Code Section(s) to be Added/Amended/Repealed |
|---|---|
| ☐ Yes ☒ No | |

| Does this BCP contain information technology (IT) components? ☐ Yes ☒ No<br>*If yes, DTSC Chief Information Officer must sign.* | DTSC CIO | Date |
|---|---|---|
| | | |

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

☐ FSR ☐ SPR Project No. Date:

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

| Prepared By | Date | Reviewed By | Date |
|---|---|---|---|
| [signature] | 4/8/16 | [signature] | 4.8.16 |
| **DTSC Director** | **Date** | **Agency Secretary** | **Date** |
| [signature] | 4-8-16 | [signature] For | 4/8/16 |

**DTSC 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 | Date submitted to the Legislature |
|---|---|
| Original Signed By: Ellen Moran | 4-8-16 |

## Analysis of Problem

### A. Budget Request Summary

DTSC requests an augmentation of $881,000 ($441,000 from Toxics Substances Control Account; $440,000 from Hazardous Waste Control Account) and 6.0 permanent positions to create an Office of Environmental Justice (EJ) and Tribal Affairs (Office). This proposal would help to strengthen coordination of EJ and Tribal Affairs activities and enhance engagement with impacted communities. It would also allow the Department to identify and address gaps within its programs that may contribute to unequal environmental protections or outcomes in these communities, and broaden the transparency of and access to DTSC's programs.

### B. Background/History

DTSC has experienced increasing public scrutiny and legislative oversight since 2008. Programmatic improvements are currently being implemented; however, concern continues to be raised about DTSC's ability to protect the State's people and environment from the harmful effects of toxic substances. A key focus is on those communities most impacted by multiple sources of pollution and most vulnerable to their effects. High profile cases -- such as the Exide Technologies facility in the City of Vernon, where DTSC is overseeing facility closure and large-scale cleanup efforts in surrounding neighborhoods -- keep DTSC's policies, decision-making processes, and community engagement practices in the spotlight at a state and national level.

In early 2015, DTSC took a critical step towards restoring public confidence by developing a new executive leadership position focused on advancing environmental justice. According to California statute, environmental justice is defined as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies" (Government Code Section 65040.12). DTSC worked with the Legislature to create an Assistant Director position in statute in June 2015. This new position has been filled by a highly qualified individual.

In 2007, an environmental justice initiative was created within the enforcement program to fulfill certain state mandates and address concerns of environmental justice communities. Since that time, environmental justice coordination has been the primary responsibility of one staff member within the enforcement program, and has lacked reach into DTSC's other key programs such as permitting, site cleanup, and safer consumer products and workplaces.

The Department is currently overseeing the cleanup of approximately 1,300 contaminated sites in California and is the only state agency responsible for hazardous waste oversight at more than 120,000 businesses that generate, handle, treat and dispose of hazardous waste in California. Within its jurisdiction and statutory authority, DTSC is committed to equitable protection for all communities, including Tribal communities, and seeing that all communities have the opportunity for meaningful participation in regulatory decisions and planning processes.

Native American Tribes are sovereign nations requiring government-to-government interaction. Executive Order B-10-11 requires state agencies to encourage and permit representatives of Tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect Tribal communities. Assembly Bill (AB) 52 (Public Resources Code Section 21080.3.1 – 21080:3.) requires lead agencies to consult with California Native American Tribes before conducting an environmental review of agency activities so that Tribal communities who may be impacted are informed and actively involved in mitigating any potential impacts. Tribal consultation activities, which rely on building and maintaining trusted relationships, have previously been limited and lacked effective coordination within DTSC.

**Work Plan**
**Workload History***

| WORKLOAD MEASURE | FY11-12 | FY12-13 | FY13-14 | FY14-15 | FY15-16 |
|---|---|---|---|---|---|
| Participation in CalEPA Advisory Committee Meetings (involving community members/stakeholders) | 2* | 2* | 3* | 4* | 10 |
| Attendance at Public Hearings involving Environmental Justice Communities | -- | -- | -- | -- | 10 |
| Coordination/participation in Community/Stakeholder meetings | -- | -- | -- | -- | 100 |
| Participation in & assistance provided to local community IVAN meetings | -- | -- | -- | -- | 25 |
| Performance of AB 52 Tribal consultations | -- | -- | -- | -- | 20 |

*Attended by staff as available & time permitted from other DTSC programs

## C. State Level Considerations

DTSC is required to develop a strategy to identify and address any gaps in existing programs, policies and activities that may impede the achievement of environmental justice (Government Code sections 65040.12(e) and 12812.2; Public Resources Code sections 71110-71113; California Health and Safety (CA H&S) Code section 25180.2, and CalEPA Intra-Agency Environmental Justice Strategy). AB 1329 (CA H&S Code Section 25180.2) requires DTSC to prioritize enforcement actions within the most impacted environmental justice communities, as identified by CalEPA. Additionally, SB 673 (CA H&S Code Section 25200.21) directs the Department to update criteria used for issuance of a new or modified hazardous waste facility permit to consider vulnerability, cumulative impacts, and existing health risks as well as other criteria that are important to environmental justice communities.

California H&S Code section 57015 requires the Assistant Director to:

(a) Serve as ombudsperson and outreach coordinator for disadvantaged communities, as described in Section 39711, where hazardous materials and hazardous waste disposal facilities are located.

(b) Provide information and assistance to communities on permitting, enforcement, and other DTSC activities in the major language(s) spoken in those communities to ensure the maximum feasible community participation in regulatory decisions made by DTSC.

(c) Make community health or epidemiological information collected by DTSC or other parties available to communities, consistent with other requirements of law, as soon as possible with plain explanations as to their impacts.

This work will align with objectives identified in DTSC's 2014-2018 Strategic Plan, including:

- Objective 2.5: Develop processes and apply criteria to prioritize work within the hazardous waste Enforcement and Permitting programs using tools such as new environmental screening methods and GIS technology.
- Objective 5.1. Provide the public with clear, accessible, and timely information to build trust in DTSC's decision-making and foster an understanding of how DTSC's work benefits the public and the environment.
- Objective 5.2. Ensure DTSC's website and social media efforts are useful and accessible, and address the needs of communities, the public, and other DTSC stakeholders.
- Objective 5.3. Develop and implement a process to hold regular public meetings for input on DTSC's projects and proposals, and to inform stakeholders about DTSC programs and activities.
- Objective 5.4. Develop and implement a strategy for impacted communities that engages members and aligns with program initiatives and community needs.
- Objective 5.5. Develop/update DTSC's communication guidance documents (i.e., public participation guidance, community advisory group guidance, environmental justice action plan,

Tribal affairs guidance, media guide, and writing guide) using a publicly transparent process; and ensure guidance documents align with CalEPA and US EPA guidelines, as appropriate.

- Objective 5.6. Integrate DTSC's public participation strategies and activities into site cleanup and hazardous waste management programs, including the use of cross-program workgroups.

CalEPA's Tribal Policy on Consultation with California Native American Tribes (August 20, 2015) requires that Tribal communities who may be impacted by environmental legislation, regulations, rules and policies are addressed through their informed and active involvement. Governor's Executive Order (EO) B-10-11 requires strengthening of communications and consultation with California Tribal governments. AB 52 (Public Resources Code Section 21080.3.1 – 21080.3.2) requires lead agencies to consult with California Native American Tribes.

## D. Justification

***Programmatic and Legal Justifications***

Six broad programmatic and legal justifications underpin this request for resources and staff. They are as follows:

*Building on California's Precedent-Setting Commitment to Environmental Justice*

California was one of the first states to codify environmental justice in state statute. With the first executive level position focused on environmental justice at any CalEPA Board, Department or Office, DTSC is uniquely positioned to embed equitable protections in policy decisions and practices for impacted communities across the state. Much of the work involved in advancing environmental justice for impacted communities involves procedural justice, which focuses on the process through which environmental decisions are made. This includes supporting vulnerable groups with access to legal and technical resources, equal access to decision-makers and decision-making processes, equitable data collection, and providing for materials in the languages necessary to allow for meaningful public involvement. All of these duties require an investment in community education and empowerment strategies in order to build trusted community partnerships. By placing skilled and well-qualified staff to serve as ombudspersons to impacted communities, DTSC will broaden access to and transparency of each program, as well as enhance relationships with EJ and Tribal communities.

*Institutionalizing DTSC's Commitment to EJ and Tribal Affairs*

Creation of a DTSC Office of Environmental Justice and Tribal Affairs will enable the Assistant Director to carry out the statutorily required duties and coordinate DTSC's EJ and Tribal Affairs work and provide the executive leadership, resources, and public accessibility. This in turn will significantly raise the profile of DTSC's commitment to engage EJ and Tribal communities in the regulatory processes. Resources will provide improved coordination, analysis, and promotion of community-state government partnerships to reduce pollution in impacted communities throughout the State. DTSC will be able to identify more and earlier opportunities for communities to meaningfully engage in our work and expand consultation and collaboration efforts with community organizations, Tribes, academia, and other agencies and stakeholders.

*Filling Gaps that Inhibit DTSC's Ability to Broadly Promote Environmental Justice*

State law requires DTSC to conduct its programs, policies, and activities in a manner that provides for the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations (PRC section 71110). However, DTSC does not currently have an EJ or Tribal Policy, Strategy or Action Plan.. Resources from this BCP will be used to identify and address gaps in existing programs, policies and activities that may impede the achievement and advancement of environmental justice under California law (*e.g.* compliance with California Government Code sections 65040.12(e) and 12812.2; Public Resources Code sections 71110-71113; CA H&S Code section 25180.2, and CalEPA Intra-Agency Environmental Justice Strategy requirement).

## Analysis of Problem

*Better Compliance with Significant New State Law Protecting Tribal Cultural Resources*

DTSC must comply with the California Environmental Quality Act (CEQA) when conducting or overseeing investigations and remediation of contaminated properties; making decisions on hazardous waste facility permit applications, facility closures, and corrective actions; and promulgating regulations. During these processes, the potential effects a project may have on Tribal cultural resources must be assessed. Effective January 1, 2015, Assembly Bill (AB) 52 imposed additional requirements on DTSC to notify and consult with Tribal contacts before issuing a CEQA document, attend meetings requested by the Tribal contacts, conduct site visits, review information provided by Tribal contacts about Tribal cultural resources, and negotiate changes to the project to accommodate mitigation measures needed to protect those cultural resources. Some of the proposed mitigation measures could be quite complex and sensitive and require lengthy consultation and negotiation among DTSC, the affected Tribal group(s) and the project proponent. Additional staff resources will be needed to address the related technical and legal issues and to comply with AB 52.

In some cases, considerable time will be spent by DTSC staff to reassess the project and discuss with a project proponent how the mitigation measures proposed by the Tribe(s) could change the scope, nature, cost, and schedule of the project, and whether or not the project could be carried out with the proposed mitigation measures. The consultation activities required by AB 52 must be undertaken before the lead agency decides on the type of CEQA document to be prepared for a project. The final conclusion as to what type of CEQA document and the final mitigation measures will depend on the agreement reached by the parties; otherwise, DTSC must document that the required consultation has taken place and agreement was not reached after good faith and reasonable efforts. In those instances, DTSC still needs to consider feasible mitigation measures as provided in AB 52.

*Enhancing Enforcement of Environmental Justice*

DTSC is mandated by AB 1329 (CA H&S Code section 25180.2) to prioritize enforcement actions within communities identified by CalEPA as the most impacted environmental justice communities. Additional resources are needed to support staff training on CalEnviroScreen, and to develop program protocols for its application in prioritizing our work within impacted communities. With limited existing resources, DTSC has undertaken a significant new workload presented by DTSC's Permitting Enhancement Work Plan, Strategic Plan 2014-18, Fixing the Foundation Workplans, and supporting CalEPA EJ Task Forces and statewide initiatives. Opportunities exist to better integrate community concerns into CalEPA Task Force initiatives. Additional staff would help to support such work, while increasing DTSC's support for community-lead environmental reporting networks or IVANs (Identifying Violations Affecting Neighborhoods] and environmental justice task forces that seek to identify and reduce pollution. DTSC has stated commitments and established partnerships with disadvantaged communities to address public health and environmental impacts, to participate in collaborative partnerships, and to support regular communication with statewide EJ organizations.

*Environmental Justice and Tribal Affairs Positions*

The positions requested include: (1) the formal creation of the position of Assistant Director for Environmental Justice and Tribal Affairs; (2) an Environmental Justice Program Manager (EPM1); (3) two Environmental Scientists (ESs); and (4) two Associate Governmental Program Analysts (AGPAs). These resources supplement the 4 positions redirected from within the department.

The Assistant Director for Environmental Justice and Tribal Affairs, in consultation with executive leadership and program staff, will establish goals and objectives for developing and implementing an EJ and Tribal Affairs Strategic Plan. The Plan will build on existing frameworks developed across DTSC's programs, and will focus on identifying and addressing any gaps in existing programs, and policies and activities that may impede the achievement of environmental justice. The goals and objectives will be reviewed on a regular basis and evaluated for effective program development and implementation. This position was created in statute in the FY 2015-2016 Budget Act.

The Environmental Justice Program Manager will supervise program specialists, including three existing specialists (one Senior ES, one AGPA and one SSA) and the two requested AGPAs. The work of this unit (and the specific work of the two requested AGPAs) will include deep engagement with environmental

justice communities and native tribes to characterize and understand the environmental impacts they experience and how the modes of service used by DTSC's core programs affect them. The unit will be organized regionally (northern, central and southern). These staff will partner with regional and local community-based organizations to build community networks, establish regular meetings, conduct surveys, assess cultural sensitivities and identify culturally specific communication needs (languages, preferred media, etc.). They will work with community members to prioritize issues of concern and serve as liaisons with technical program staff to identify the potential range of responsive actions. They will also report progress to the communities. In addition, these specialists will support the development and implementation of the Department's EJ and Tribal Affairs action plans.

The requested Environmental Scientists, along with an existing Senior ES, will report to the Assistant Director. This group will develop, coordinate, and implement elements of DTSC's EJ and Tribal Affairs action plans, and CalEPA's EJ and Tribal policies. They will act as technical and program consultants within the Department on Environmental Justice and Tribal issues, community health and environmental impact assessments, and specific analyses associated with environmental justice reviews for permitting, enforcement and cleanup activities. They will evaluate the design or delivery of DTSC's core programs to identify gaps that may contribute to less effective environmental protection of these communities. These staff will participate in making recommendations for policy, regulation, and other program improvements. They will also participate in the design and implementation of Supplemental Environmental Projects, support community-based enforcement efforts (such as IVAN) and environmental grants to, and projects in impacted communities.

## E. Outcomes and Accountability

The requested resources will provide for the establishment of an Office of Environmental Justice and Tribal Affairs under the recently appointed Assistant Director for EJ and Tribal Affairs. The new Office will broaden the transparency of DTSC's programs and improve access to legal and technical resources, equitable data collection, and decision-makers and decision-making processes; help build trusted partnerships with EJ and Tribal communities; and allow for meaningful public involvement. EJ and Tribal communities will be better able to inform DTSC about environmental health concerns and needs enhancing the ability of impacted communities and DTSC to make decisions better suited to protect public health and address EJ and Tribal community needs.

DTSC will formally create and fund the position of Assistant Director within the Department. While the position was established in statute and the incumbent was appointed last year, the position is currently being loaned from the California Air Resources Board. Five additional positions are being requested to support the Office and develop comprehensive Environmental Justice and Tribal Affairs programs. Action Plans, policies, protocols and other needed documents and newsletters will be developed to promote transparency and community trust for all stakeholders including EJ and Tribal communities. DTSC will have the staff needed to do much needed outreach and adequately coordinate and participate in community and other meetings with stakeholders – 100 such meetings are anticipated. DTSC will be able to involved fully in CalEPA EJ and Tribal Advisory Committee meetings as well as CalEPA EJ and Tribal Liaison meetings. There will be much needed support for 25 public hearings on high profile projects involving impacted communities and follow up meetings with core program staff. Staff will be available to provide regular support to ongoing, established community-based environmental reporting networks (IVANs), to help recently organized networks keep going and assist in the organization of new networks. This will involve both participation in regular network meetings, assisting organizers of new networks and providing problem-solving expertise. As required under AB 52, staff will be involved in outreach to tribal communities and providing Tribal consultation for cleanup and permitting projects – particularly those involving ground-disturbing activities – to support protection of Tribal cultural resources. It is anticipated that there will be at least 50 projects in the next year that will be requiring coordination and consultation with potentially impacted Tribal communities.

Projected Outcomes

| Workload Measure | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|
| Participation in CalEPA Advisory Committee Meetings (involving community members & stakeholders) | 10 | 15 | 15 | 15 | 15 | 15 |
| Attendance at Public Hearings involving Environmental Justice Communities | 10 | 25 | 25 | 25 | 25 | 25 |
| Coordination/participation in Community/Stakeholder meetings | 100 | 150 | 150 | 150 | 150 | 150 |
| Participation in & assistance provided to local community IVAN meetings | 25 | 36 | 36 | 36 | 36 | 36 |
| Performance of AB 52 Tribal consultations | 20 | 50 | 50 | 50 | 50 | 50 |

## F. Analysis of All Feasible Alternatives

**Alternative 1:** Approve a request for $881,000 and 6.0 permanent positions to create an Office of Environmental Justice and Tribal Affairs.

**Pros:**

- Provides DTSC resources to develop and implement EJ and Tribal Affairs strategies, plans, and policies as required by federal and state mandates and CalEPA policies.
- Required statutory duties of the Assistant Director will be met as well as actions required under the Governor's Executive Order for Tribal Consultation, Assembly Bill 52, and CalEPA Tribal Policies.
- Enables DTSC to support the increasing number of EJ task forces and environmental reporting networks.

**Con:**

G. Requires an increase in budget and position authority.

**Alternative 2:** Redirect existing staff.

**Pros:**

- Requires no additional funding.

**Cons:**

- Limits resources to support statutorily required duties of the Assistant Director for EJ and Tribal Affairs, compliance with the Governor's Executive Order for Tribal Consultation and AB 52, and implementation of CalEPA's Tribal Policy.
- Restricts support for the increasing number of environmental reporting networks and meeting the significant new workload imposed by DTSC's Permitting Enhancement Work Plan, Strategic Plan 2014-18, and CalEPA EJ Task Forces.
- Impairs the development and implementation of DTSC's EJ and Tribal Affairs strategies, plans, and policies as required by federal and state mandates and CalEPA policies to identify and direct program resources to serve disadvantaged communities and California Native American Tribes.

**Alternative 3:** Status Quo.

**Pros:**

- Requires no additional funding.

**Cons:**

- Limits resources to support statutorily required duties of the Assistant Director for EJ and Tribal Affairs and essential coordination of DTSC's EJ and Tribal Affairs functions.
- Restricts support for the increasing number of environmental reporting networks and meeting the significant new workload imposed by DTSC's Permitting Enhancement Work Plan, Strategic Plan 2014-18, and CalEPA EJ Task Forces.
- Impairs the development and implementation of DTSC's EJ and Tribal Affairs strategies, plans, and policies as required by federal and state mandates and CalEPA policies to identify and direct program resources to serve disadvantaged communities and California Native American Tribes.
- Fails to provide EJ and Tribal affairs expertise and inter-departmental coordination for high profile sites potentially resulting in increased time and costs in completion of projects when required EJ and Tribal protocols are not incorporated in the beginning stages of the project.
- Impairs support for the increasing number of environmental justice organizations and reporting networks and commitments made to support impacted communities and Tribal groups.

## G. Implementation Plan

**July 2016 – September 2016:** Complete hiring process for new positions. Begin necessary technical training classes including CalEnviroScreen and Fundamentals of EJ and Tribal Affairs, and required health and safety training including 40-hour HAZWOPER and medical monitoring for new hires. Attend regional project and community meetings to start solidifying relationships with stakeholders and enhance technical understanding of projects.

**October 2016 – December 2016:** Begin on-the-job training. Conduct regional public workshops on EJ and Tribal strategies and policies. Develop recommendations for revision of these guidance documents and draft plans for implementation.

**January 2017:** Begin Environmental Justice and Tribal Affairs work and related support activities. Coordinate with project managers and staff on projects of concern to EJ and Tribal communities. Develop action plans for addressing specific issues and provide recommendations for programmatic changes.

## H. Supplemental Information

None.

## I. Recommendation

Adopt Alternative 1 – Approve a request for $881,000 and 6.0 permanent positions to create an Office of Environmental Justice and Tribal Affairs. This option would accomplish the following:

- Establish an Office of Environmental Justice and Tribal Affairs.
- Support the statutorily required duties of the Assistant Director for Environmental Justice and Tribal Affairs.
- Ensure coordination of the Department's EJ and Tribal Affairs strategies, functions, policies, and programs including required consultation and outreach with California Native American Tribes.

# BCP Fiscal Detail Sheet

**BCP Title: Office of Environmental Justice and Tribal Affairs** **DP Name: 3960-002-BCP-DP-2016-A1**

## Budget Request Summary

| | FY16 | | | | | |
|---|---|---|---|---|---|---|
| | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
| Positions - Permanent | 0.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 |
| **Total Positions** | **0.0** | **6.0** | **6.0** | **6.0** | **6.0** | **6.0** |
| Salaries and Wages | | | | | | |
| Earnings - Permanent | 0 | 447 | 447 | 447 | 447 | 447 |
| **Total Salaries and Wages** | **$0** | **$447** | **$447** | **$447** | **$447** | **$447** |
| Total Staff Benefits | 0 | 204 | 204 | 204 | 204 | 204 |
| **Total Personal Services** | **$0** | **$651** | **$651** | **$651** | **$651** | **$651** |
| Operating Expenses and Equipment | | | | | | |
| 5301 - General Expense | 0 | 42 | 42 | 42 | 42 | 42 |
| 5302 - Printing | 0 | 6 | 6 | 6 | 6 | 6 |
| 5304 - Communications | 0 | 18 | 18 | 18 | 18 | 18 |
| 5306 - Postage | 0 | 6 | 6 | 6 | 6 | 6 |
| 5320 - Travel: In-State | 0 | 68 | 68 | 68 | 68 | 68 |
| 5322 - Training | 0 | 12 | 12 | 12 | 12 | 12 |
| 5324 - Facilities Operation | 0 | 48 | 48 | 48 | 48 | 48 |
| 5368 - Non-Capital Asset Purchases - Equipment | 0 | 18 | 18 | 18 | 18 | 18 |
| 539X - Other | 0 | 6 | 6 | 6 | 6 | 6 |
| 54XX - Special Items of Expense | 0 | 6 | 6 | 6 | 6 | 6 |
| **Total Operating Expenses and Equipment** | **$0** | **$230** | **$230** | **$230** | **$230** | **$230** |
| **Total Budget Request** | **$0** | **$881** | **$881** | **$881** | **$881** | **$881** |

## Fund Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Fund Source - State Operations | | | | | | |
| 0014 - Hazardous Waste Control Account | 0 | 440 | 440 | 440 | 440 | 440 |
| 0557 - Toxic Substances Control Account | 0 | 441 | 441 | 441 | 441 | 441 |
| **Total State Operations Expenditures** | **$0** | **$881** | **$881** | **$881** | **$881** | **$881** |
| **Total All Funds** | **$0** | **$881** | **$881** | **$881** | **$881** | **$881** |

## Program Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Program Funding | | | | | | |
| 3625 - Hazardous Waste Management | 0 | 404 | 404 | 404 | 404 | 404 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 362001 - Other Site Mitigation Activities | 0 | 405 | 405 | 405 | 405 | 405 |
| 9900100 - Administration | 0 | 144 | 144 | 144 | 144 | 144 |
| 9900200 - Administration - Distributed | 0 | -72 | -72 | -72 | -72 | -72 |
| **Total All Programs** | **$0** | **$881** | **$881** | **$881** | **$881** | **$881** |

## Personal Services Details

| Positions | Salary Information Min | Mid | Max | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|---|---|---|
| 0756 - Environmental Program Mgr I (Supvry) (Eff. 07-01-2016) | | | | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 0762 - Environmental Scientist (Eff. 07-01-2016) | | | | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| 5393 - Assoc Govtl Program Analyst (Eff. 07-01-2016) | | | | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| VR00 - Various (Eff. 07-01-2016) | | | | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| **Total Positions** | | | | **0.0** | **6.0** | **6.0** | **6.0** | **6.0** | **6.0** |

| Salaries and Wages | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|
| 0756 - Environmental Program Mgr I (Supvry) (Eff. 07-01-2016) | 0 | 124 | 124 | 124 | 124 | 124 |
| 0762 - Environmental Scientist (Eff. 07-01-2016) | 0 | 111 | 111 | 111 | 111 | 111 |
| 5393 - Assoc Govtl Program Analyst (Eff. 07-01-2016) | 0 | 124 | 124 | 124 | 124 | 124 |
| VR00 - Various (Eff. 07-01-2016) | 0 | 88 | 88 | 88 | 88 | 88 |
| **Total Salaries and Wages** | **$0** | **$447** | **$447** | **$447** | **$447** | **$447** |
| Staff Benefits | | | | | | |
| 5150900 - Staff Benefits - Other | 0 | 204 | 204 | 204 | 204 | 204 |
| **Total Staff Benefits** | **$0** | **$204** | **$204** | **$204** | **$204** | **$204** |
| **Total Personal Services** | **$0** | **$651** | **$651** | **$651** | **$651** | **$651** |

STATE OF CALIFORNIA
**Spring Finance Letter - Cover Sheet**
DF-46 (REV 08/15)

| Fiscal Year | Business Unit | Department | Priority No. |
|---|---|---|---|
| 2016-17 | 3960 | Toxic Substances Control | 9 |

| Budget Request Name | Program | Subprogram |
|---|---|---|
| 3960-008-~~BCP~~-BR-2016-GB | 3625 HAZARDOUS WASTE MANAGEMENT<br>9900100 ADMINISTRATION<br>9900200 DISTRIBUTED ADMINISTRATION | |

Budget Request Description
Replacement of Laboratory and Investigatory Equipment

Budget Request Summary
The Department of Toxic Substances Control requests a one-time augmentation of $2.0 million (Hazardous Waste Control Account) resulting from an enforcement action and settlement to procure laboratory and investigatory equipment used for conducting investigations and testing of wastes and substances for hazardous characteristics in support of criminal, civil and administrative enforcement of hazardous waste laws, cleanups, and safer products.

| Requires Legislation | Code Section(s) to be Added/Amended/Repealed |
|---|---|
| ☐ Yes ☒ No | |

| Does this BCP contain information technology (IT) components? ☐ Yes ☒ No<br>*If yes, departmental Chief Information Officer must sign.* | 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 | Reviewed By | Date |
|---|---|---|---|
| | 2.5.16 | | 2·5·16 |
| Department Director | Date | Agency Secretary | Date |
| | 2-5-16 | | 2-8-16 |

**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 | APR 04 |
|---|---|---|---|

ECL serves as the analytical and environmental chemistry expertise for DTSC, identifying and measuring the amount of chemicals in a wide variety of environmental, product, and biomonitoring samples. Laboratory data are essential to regulatory activities such as permitting, complaint and criminal investigations, enforcement actions, site characterization and remediation, and safer products and workplaces. ECL provides impartial and legally defensible scientific data for critical decision-making by DTSC. The Department needs analytical data to identify an increasing number of toxic chemicals. This requires reliable, state-of-the-art instruments and equipment.

ECL also serves as a reference laboratory for the State Water Resources Control Board's Environmental Laboratory Accreditation Program (ELAP), the State's laboratory certification program under Title 22 California Code of Regulations (CCR) section 64811(g). ELAP is necessary to validate laboratory facilities, scientist qualifications and competency, quality operation systems and data accuracy and precision of commercial laboratories that operate as business entities in California for hazardous waste testing. ECL is the reference laboratory for ELAP's hazardous waste fields of testing.

As a reference laboratory ECL is called upon to validate or refute data from commercial laboratories used by defendants and other potential responsible parties. These commercial laboratories generally use updated and advanced instruments for their work. For ECL to support an investigation and potential prosecution it must be able to match, or exceed, the capability of private labs. The scientific credibility of ECL and DTSC is firmly linked to its analytical and data management capabilities and these capabilities require modern, properly functioning instruments and equipment.

In addition, as a reference laboratory, ECL has a role in developing new methodologies for identifying and measuring non-traditional chemicals in waste streams, in products, and at contaminated sites. ECL needs to procure the specialized instrument and supporting equipment to carry out these functions.

Resource History
*(Dollars in thousands)*

| Program Budget | PY - 4 | PY - 3 | PY - 2 | PY - 1 | PY |
|---|---|---|---|---|---|
| Authorized Expenditures | 109 | 259 | 259 | 259 | 1,759 |
| Actual Expenditures | 516 | 555 | 550 | 253 | 1,759 |

## C. State Level Considerations

DTSC is charged with enforcing laws and regulations governing the management and disposal of hazardous waste and the cleanup of sites contaminated with hazardous substances under Chapter 6.5 of the Health and Safety Code section 25100 et seq. and Title 22 CCR section 66260 et seq.

For OCI, this proposal is consistent with the following goal and objectives of DTSC's 2014-2018 Strategic Plan:

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

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.

Object 2.9: Using a cross-functional workgroup, assess, report on, and implement initiatives to increase collaborative enforcement efforts between DTSC's Enforcement Division and Office of Criminal Investigations, CUPAs, US EPA, local prosecutors, and other enforcement agencies.

For ECL, this proposal is aligned with the following goal and objective of DTSC's 2014-2018 Strategic Plan:

Goal 4: Maintain and increase DTSC's organizational and operational capacity, effectiveness, and performance.

Objective 4.6: Strengthen and augment the capability and capacity of the Environmental Chemistry Laboratory (ECL) to provide scientific leadership and serve DTSC's programs by prioritizing work, updating equipment, and implementing an internationally recognized quality management system.

**D. Justification**

DTSC is requesting an augmentation to procure investigatory and laboratory equipment using the $2.0 million received for this purpose in *The People of the State of California v Comcast Cable Communications LLC*.

ECL proposes to use the $1.6 million to procure equipment to improve and expand the capacity and measurement technologies used in criminal, civil, and administrative enforcement of hazardous waste laws and other DTSC activities. With the proposed instruments and equipment, DTSC will be able to: update the sample preparation equipment for extraction and digestion of samples; expand the analysis of organic compounds in soil, water, sludge, solid waste and consumer products at lower detection levels; develop methods for detection of trace metals and hexavalent chemicals in drinking water at the new health-based levels; develop methods for the speciation of arsenic and other toxic metals; develop new methods for soil vapor analysis of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOC) from vapor intrusion; test and validate methods developed by commercial labs. The proposed instruments and associated data systems provide updated tools for the identification and quantitation of toxic chemicals.

In addition, procuring instruments with the latest technology would allow ECL to achieve greater efficiency in chemical analysis capacity to support enforcement cases. The improved technology allows for faster analysis of samples resulting in shorter turn-around-time for generating analytical results that can be used by the Department in support of investigations to reach timely resolutions. Delays in analysis translate into delays in case referrals and prosecutions.

The new instruments offer greater sensitivity in detecting chemicals and with greater computational power to generate data that are reliable and defensible and meet U.S. EPA and other standard method quality control requirements. If laboratory data are not presented in a timely manner or do not meet legal standards of defensibility, they can be successfully challenged. This can result in the failure of enforcement actions.

DTSC relies heavily on impartial and legally defensible scientific data for critical decision-making to enforce hazardous waste laws and ensure the safety of communities and the environment. ECL's role is to provide this defensible scientific data by using

advanced instruments to identify and measure chemicals in wastes and other samples. The instruments must be accurate, precise, and reliable, so that ECL's results will withstand challenges in legal proceedings.

OCI proposes to use $400,000 for investigatory equipment that will facilitate and improve evidence collection activities in criminal investigations. OCI search warrants and other field investigation activities often require identifying, screening, collecting, and preserving key evidence in a very short period of time utilizing sophisticated investigatory equipment. The acquisition of investigatory equipment such as computer forensics equipment and real-time hazardous materials screening devices will facilitate, enhance, and improve OCI's evidence collection capabilities. Field screening equipment such as the X-Ray Fluorescence instruments that can detect hazardous constituents in various media instantaneously will enable OCI scientists to quickly identify and collect samples of hazardous waste that have been illegally disposed of into the environment. Computer forensics laboratory equipment will enable OCI's computer forensics examiner and investigators to identify, transfer, and preserve digital data from computers, servers, phones, memory cards, and other devices during search and seizure activities conducted as part of a search warrant.

## E. Outcomes and Accountability

This proposal would enhance ECL's capabilities to identify and measure chemicals of concern to the Legislature and the public. It would also aid OCI in providing more rapid and accurate decision-making during field investigations.

Outcomes

- DTSC management decisions would be based on high-quality scientific data on chemicals of emerging concern to California.
- Standardized and validated methods used by commercial laboratories that measure toxic chemicals in wastes and water streams.
- Use of high-quality scientific reports and publications as basis by regulatory management for policy decision making.
- Data quality, precision, and accuracy would improve.
- Shorter turn-around-time for sample analysis.
- Stronger, legally defensible criminal and civil cases.
- Evidence collection capabilities would improve.

Accountability

ECL would use tracking indicators to measure the effectiveness of the instrument purchase.

Outcomes will be tracked using ECL's performance indicators on scientific publications, professional meetings attended, and specific PCA codes for time spent supporting DTSC management and other programs on hazardous chemical issues.

Outcomes will also be tracked using ECL's Laboratory Information Management System's output of the number of samples analyzed and methods used, and by OCI's Envirostor system for case tracking and management.

## F. Analysis of All Feasible Alternatives

**Alternative 1: Approve this request for a one-time laboratory equipment augmentation**

Pro:

- Provides authority to expend monies as intended in the judgment.
- Allows DTSC to improve data quality, precision, and accuracy.
- Expands analysis to other toxic chemicals in soil, water and consumer products
- Provides DTSC the ability to develop new methods for soil vapor analysis of VOCs and SVOCs from vapor intrusion.
- Helps DTSC to develop methods for detection of trace level metals and hexavalent chromium in drinking water at new health-based levels.
- Provides DTSC the ability to develop methods for the speciation of arsenic and other toxic metals.
- Updates software for increased data storage and security.
- Allows shorter turn-around time for sample analysis.
- Improves on-site identification, collection, and decision-making ability of field investigators and scientists.

Con:

- Requires a one-time augmentation to DTSC's budget to allow it to expend the funds as designated in the judgement.

**Alternative 2: Approve the request only for $400,000 for investigatory Equipment**

Pro:

- Improves investigatory abilities for on-site identification, collection, and decision-making ability by field investigators and scientists.

Con:

- Does not allow DTSC to comply with all the requirements of the supplemental environmental program to spend the funds for designated purposes as specified in the court judgment.
- Does not provide funding for laboratory activities that would support investigations, enforcement, hazardous waste management, and hazardous substances response activities.

**Alternative 3: Approve the request only for $1.6 million for laboratory instruments and equipment**

Pro:

- Allows DTSC to improve data quality, precision, and accuracy.
- Expands analysis to other toxic chemicals in soil, water and consumer products

- Provides DTSC the ability to develop new methods for soil vapor analysis of VOCs and SVOCs from vapor intrusion.
- Helps DTSC to develop methods for detection of trace level metals and hexavalent chromium in drinking water at new health-based levels.
- Provides DTSC the ability to develop methods for the speciation of arsenic and other toxic metals.
- Updates software for increased data storage and security.
- Allows shorter turn-around time for sample analysis.

Con:

- Does not allow DTSC to comply with all the requirements of the supplemental environmental program to spend the funds for designated purposes as specified in the court judgment.
- Does not provide funding for on-site identification, collection, and decision-making ability of field investigators and scientists.

**Alternative 4: Maintain status quo/do nothing**

Pro:

- Does not require an augmentation in DTSC's budget.

Cons:

- Does not allow DTSC to comply with the supplemental environmental program specified in the court judgement to spend the funds for designated purposes.
- Does not meet the intent of the judgment and the $2.0 million SEP will remain in the HWCA.
- Does not provide the opportunity to expand analysis to other toxic chemicals in soil, water and consumer products.
- Does not improve data quality, precision, and accuracy.
- Does not provide the opportunity to develop new methods for soil vapor analysis of VOCs and SVOCs from vapor intrusion.
- Does not provide the opportunity to develop methods for detection of trace level metals and hexavalent chromium in drinking water at new health-based levels.
- Does not provide the opportunity to develop methods for the speciation of arsenic and other toxic metals.
- Does not allow for increased data storage and security.
- Does not allow the lab to provide timely sample and chemical analysis for enforcement cases.
- Does not allow for improved field collection, screening and decision-making.

## G. Implementation Plan

July 2016 – October 2016

- Contact vendors to provide information and demonstration on instruments to understand the technology and capabilities of the equipment.
- Compare capabilities and costs with different vendors.
- Identify the appropriate procurement method and proceed with procuring equipment.

November 2016 – December 2016

- Coordinate with vendor on schedule for installation and training for laboratory and investigatory equipment.
- Prepare facility to ensure it can accommodate laboratory equipment (i.e. location, electrical and ventilation requirements, safety measures).
- Receive field screening and other investigatory equipment.

January 2017 – February 2017

- Install equipment, which includes setup, optimization of equipment parameters and familiarization of hardware and software of equipment.
- Train ECL Staff on equipment operation.
- Train OCI staff on use of field screening and other investigatory equipment.

February 2017 to April 2017

- Method development and validation on new equipment.
- Write standard operating procedures (SOPs) for methods using new equipment.
- Establish competency on analyzing samples with new methods for ECL.

Begin using investigatory equipment by OCI staff

## H. Supplemental Information

Attachment 1 provides a list of equipment that will expand DTSC's sample analysis and method development capabilities in support of criminal, civil, and administrative enforcement of hazardous waste laws.

## I. Recommendation

DTSC recommends Alternative 1: Approve a one-time augmentation of $2.0 million to procure investigatory and laboratory equipment. This option provides DTSC the authority to expend funds resulting from a judgment as required. It also would serve to improve the quality, precision, and accuracy of data. It also serves to improve on-site identification, collection, and decision making of field investigators and scientists.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL
**BCP Title: Replacement of Laboratory and Investigatory Equipment**
BCP Priority: 9

**Attachment A**

| PROPOSED EQUIPMENT | ANALYSIS CAPABILITY | LAB LOCATION | ESTIMATED COST |
|---|---|---|---|
| Liquid Chromatography Q-Trap Mass Spectrometer | Expands analysis of emerging chemicals of concern in soil, water and consumer products at environmentally relevant detection limits. Advanced data processing capability to tentatively identify new compounds, better tools for data analysis and data mining and capability to address data storage and security. | Berkeley | $400,000 |
| Inductively Coupled Plasma Mass Spectrometer | Develop methods for detection of trace level metals and hexavalent chromium (Cr(VI)) in drinking water at the new health-based levels. Advanced data processing capability with better tools for data analysis and data mining with capability to address data storage and security. | Berkeley | $220,000 |
| High Pressure Liquid Chromatography | Develop methods for the speciation of chromium and arsenic and other toxic metals. | Berkeley | $100,000 |
| Spectra Max (Immunochemistry) | Expands and develops new method for the detection of PCBs and pesticides. | Berkeley | $100,000 |
| Liquid Chromatograph – Inductively Coupled Plasma Triple Quad Mass Spectrometer | Expands lab capability by developing methods for detection of trace level metals and hexavalent chromium (Cr(VI)) in drinking water at the new health-based levels and speciation of arsenic and other toxic metals. Advanced data processing capability to address data analysis, data ,mining, and data storage and security. | Pasadena | $450,000 |
| | | | |

| | | | |
|---|---|---|---|
| Inductively Coupled Plasma Atomic Optical Emission | Updated instrument with latest software and capability to analyze for metals from different extracts in shorter turn-around-time (TAT). Updated data processing capability to address data storage and security | Pasadena | $130,000 |
| Thermal Desorption Equipment and Accessories | Expands capability by developing method to analyze VOCs and SVOCs in soil gas from vapor intrusion. Updated data processing with better tools for data analysis and data mining with capability to address data storage and security. | Pasadena | $200,000 |
| X-Ray Fluorescence (XRF) Analyzers and Specialized Standards | Screening tools to detect the presence of metals in materials. Provides initial qualitative screening of samples before submitting to lab for quantitative analysis. XRF standards of different matrices are required to provide sufficient quality control. | Various Regional Offices | $300,000 |
| Forensics laboratory equipment and surveillance equipment | Computer forensics laboratory equipment to image and download computer data, and to identify, transfer, and preserve digital data from servers, phones, memory cards, and other devices during search and seizure activities conducted as part of a search warrant | Various Regional Offices | $50,000 |
| Investigatory equipment and other field supplies | Tools and supplies used in the field to collect evidence of environmental violations | Various Regional Offices | $50,000 |

# BCP Fiscal Detail Sheet

**BCP Title: Replacement of Laboratory and Investigatory Equipment** **DP Name: 3960-008-BCP-DP-2016-A1**

## Budget Request Summary

| | FY16 | | | | | |
|---|---|---|---|---|---|---|
| | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
| Operating Expenses and Equipment | | | | | | |
| 5368 - Non-Capital Asset Purchases - Equipment | 0 | 2,000 | 0 | 0 | 0 | 0 |
| **Total Operating Expenses and Equipment** | **$0** | **$2,000** | **$0** | **$0** | **$0** | **$0** |
| **Total Budget Request** | **$0** | **$2,000** | **$0** | **$0** | **$0** | **$0** |

## Fund Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Fund Source - State Operations | | | | | | |
| 0014 - Hazardous Waste Control Account | 0 | 2,000 | 0 | 0 | 0 | 0 |
| **Total State Operations Expenditures** | **$0** | **$2,000** | **$0** | **$0** | **$0** | **$0** |
| **Total All Funds** | **$0** | **$2,000** | **$0** | **$0** | **$0** | **$0** |

## Program Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Program Funding | | | | | | |
| 3625 - Hazardous Waste Management | 0 | 2,000 | 0 | 0 | 0 | 0 |
| **Total All Programs** | **$0** | **$2,000** | **$0** | **$0** | **$0** | **$0** |

STATE OF CALIFORNIA
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| Fiscal Year | Business Unit | Department | Priority No. |
|---|---|---|---|
| 2016-17 | 3960 | Toxic Substances Control | 5 |

| Budget Request Name | Program | Subprogram |
|---|---|---|
| 3960-006-SFL-BR-2016-GB | 3960 - CLEANUP<br>3265 - Hazardous Waste Management<br>9900100 Administration<br>9900200 Distributed Administration | |

Budget Request Description
Strategic Program Development

Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation of $747,000 ($374,000 from the Hazardous Waste Control Account and $373,000 from the Toxic Substances Control Account), and to convert 5.0 positions from limited-term to permanent, for ongoing Strategic Program Development. The Office will be responsible for developing and implementing performance management strategies, including metrics, to improve efficiency and accountability. This initiative will provide crucial oversight and promote a systemic culture of change, accountability, and transparency.

| Requires Legislation | Code Section(s) to be Added/Amended/Repealed | |
|---|---|---|
| ☐ Yes ☒ No | | |
| Does this BCP contain information technology (IT) components? ☐ Yes ☒ No<br>*If yes, departmental Chief Information Officer must sign.* | 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 | Reviewed By | Date |
|---|---|---|---|
| [signature] | 4/8/16 | [signature] | 4.8.16 |
| Department Director [signature] | Date 4.8.16 | Agency Secretary [signature] | Date 4/8/16 |

**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 | Date submitted to the Legislature |
|---|---|
| Original Signed By: Ellen Moratti | 4-8-16 |

more effectively address the health and safety issues that directly impact the people and businesses of California. A flowchart of the permitting process was baselined and updated to reflect work plan improvements. A measurable goal of reducing the average time to process a permit application -- from the current average of 4.3 years down to 2.0 years for 90% of permits -- is now being tracked, and new processes are being applied to achieve that goal.

Through DTSC's engagement in the Lean Six Sigma pilot[1] process improvement project -- sponsored by the Governor's Office of Business and Economic Development (Go Biz) and the California Department of Human Resources -- 3 Lean Six Sigma projects have been completed to improve the hazardous waste permitting process. Additional future Lean Six Sigma projects have been identified, for example to improve review under CEQA, decrease the time needed to refer environmental crimes for prosecution, and speed the processing of field samples by the Environmental Chemistry Laboratories. The Department plans to continue with new projects in future years. Lean Six Sigma projects are aimed at identifying root causes of performance issues, and recommending actions to effect positive change. Over the course of these projects, DTSC gained valuable experience and insight into the process of continual improvement.

Note that the resource and workload history of permitting is provided for context, although the proposed resources will address multiple programs and support services within DTSC.

**Workload Measures***

| WORKLOAD MEASURE | FY11-12 | FY12-13 | FY13-14 | FY14-15 | FY15-16 |
|---|---|---|---|---|---|
| Accountability, Supervisory & Organizational Structure Actions Completed | -- | -- | 1 | 7 | 0 |
| Lean Six Sigma individual action items ** | -- | -- | 2 | 6 | 4 |
| Permit Writer Guidance, Tools, and Processes Completed | -- | -- | -- | 17 | 10 |
| Departmental Procedures Memorandums for Intra-Departmental Coordination | -- | -- | -- | 1 | 7 |
| Technology Improvement Action Completed | -- | -- | -- | 0 | 1 |
| Violations as Basis for Permit Denial Actions Completed | -- | -- | -- | 1 | 1 |
| Environmental Justice and Public Participation Actions Completed | -- | -- | -- | 2 | 7 |
| EnviroStor Actions Completed | -- | -- | -- | 2 | 5 |
| Training Actions Completed | -- | -- | 6 | 8 | 6 |

*FY 15-16 Includes completed and projections
Dashes (--) indicate no activity. The Work Plan team was not in place until FY14-15. Select actions were completed prior to FY15-16 by the Permitting Division as shown in the workload history chart above.
**Within the Department's three Lean Six Sigma projects there were several deliverables outlined in the work plan. These numbers reflect those discrete tasks.

**Work Plan**
**Resource History**
*(Dollars in thousands)*

| Program Budget | FY2011-12 | FY2012-13 | FY2013-14 | FY2014-15 | FY2015-16 |
|---|---|---|---|---|---|
| Authorized Expenditures | -- | -- | -- | 699 | 699 |
| Actual Expenditures | -- | -- | -- | 699 | 699 |

[1] Lean Six Sigma combines two powerful business methodologies. "Lean" was developed by the Toyota Motor Corporation and focuses on streamlining. "Six Sigma" was developed by Motorola and stresses improving quality through data analysis. Lean Six Sigma has been successfully adapted by government agencies across the country to improve the delivery of services.

**Work Plan**
**Resource History**
*(Dollars in thousands)*

| Program Budget | FY2011-12 | FY2012-13 | FY2013-14 | FY2014-15 | FY2015-16 |
|---|---|---|---|---|---|
| Revenues | -- | -- | -- | 0 | 0 |
| Authorized Positions | -- | -- | -- | 5 | 5 |
| Filled Positions | -- | -- | -- | 5 | 5 |
| Vacancies | -- | -- | -- | 0 | 0 |

The Permitting program is one of many high-visibility functions of DTSC. The Department has also undertaken a similarly successful initiative to strengthen its Cost Recovery system and is actively engaged in reforming its Enforcement program. Critical reviews from stakeholders, as well as the ongoing interest in the Legislature, demonstrate the need to expand reform efforts to all program and support areas in the Department.

In the last year, the Legislature conducted four in-depth oversight hearings on DTSC and some of its key programs. In addition, the Confirmation Hearing of the Director highlighted a number of areas where improvements can and should be made.

In 2015 the Governor signed several key pieces of legislation that call for additional improvements in DTSC's core programs, including development of more protective standards and processes for permitting and enforcement under SB 673 (Lara) and AB 1075 (Alejo). Additional legislation is pending in the current year that would call for further program improvements if passed and signed.

Although DTSC recognizes the imperative to address gaps in its program and achieve organizational excellence in the service of protecting California's people and environment, the Department lacks the resources to accomplish and sustain these improvements across all programs.

## B. State Level Considerations

This proposal will improve DTSC's ability to carry out its program responsibilities and improve processes and accountability throughout DTSC. These goals are incorporated into the following areas of DTSC's Strategic Plan:

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

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.

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.

Goal 4: Maintain and increase DTSC's organizational and operational capacity, effectiveness and performance.

4.4: Implement a sustainable training needs assessment and prioritization process and upgrade the electronic learning management system to support implementation of DTSC's training plan for providing staff and managers with the skills they need to succeed in their jobs and careers.

Goal 5: Increase the effectiveness of organizational engagement with external partners.

5.3: Develop and implement a process for regular public meetings to obtain broad-based public input on various DTSC projects and proposals and to better inform stakeholders concerning DTSC's programs and activities.

5.4: Develop and implement an engagement strategy for impacted communities that aligns with program initiatives and community needs.

5.6: Integrate DTSC's public participation strategies and activities into the site cleanup and hazardous waste management programs, including the use of cross-program workgroups.

This proposal also directly relates to the following DTSC "Fixing the Foundation" Objectives:

Objective 1.a: Implement sustainable solutions where all staff hold themselves and others accountable and encourage frank and open internal discussions at DTSC.

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

Objective 4.d: Improve public confidence in permit decisions.

Objective 4.k: Implement a new information technology system that improves the availability and usability of hazardous waste management data.

Objective 5.e: Create a training plan that provides staff members with the skills they need to succeed in their jobs and careers.

## C. Justification

DTSC successfully demonstrated its ability to reform a key program in a manner that is responsive to stakeholder needs and consistent with the principles of good government by developing and implementing its Permit Enhancement Work Plan. However, these efforts have been successful only because DTSC received temporary spending authority and 5.0 limited term positions to implement the programs that would enhance the Department's performance and accountability. DTSC lacks the resources and structure that would allow it to conduct ongoing strategic planning and performance management, identify deficiencies across all program areas, and develop corrective action plans to address them.

The measurable success of the Permitting Program improvement effort demonstrates the importance of dedicated resources to develop, support, assess, and monitor reform efforts. Notwithstanding that success of that effort, however, DTSC continues to receive close scrutiny by the Legislature and the public through oversight hearings and the creation, in the current year budget, of an Independent Review Panel for the Department. That Panel is charged with reviewing, reporting on, and recommending improvements to DTSC's programs.

In order to institutionalize continuous improvement, and to address the issues raised through Legislative hearings, DTSC proposes to establish a permanent team to carry out organized and integrated strategic planning and program review. This team will work collaboratively with the Department's core programs and

support services to conduct baseline assessments, prioritize issues and development needs, create strategic development plans, establish standards and metrics, provide implementation support, design and assist in training on new processes and tools, conduct periodic reviews, and develop progress reports. The effort will build from the DTSC's mission and vision, and the mission and vision of each program or support area, using them as guiding principles.

DTSC requests 5.0 permanent positions reporting to the Special Assistant for Program Review, who reports to the Chief Deputy Director, to comprise the Strategic Program Development Team. These positions, one Senior Hazardous Substances Engineer (1.0 Senior HSE) to serve as a team leader, one Hazardous Substances Engineer (1.0 HSE), one Attorney III (1.0 Attorney III) and two Associate Government Program Analysts (2.0 AGPAs), will support continuous improvement in the Department through organized and integrated strategic planning.

The Team will work systematically through the Department's core programs and support services to evaluate the strengths, weaknesses, opportunities and threats in the programs and service functions. The work will be done in collaboration with program staff and management, and in partnership with the Department's Office of Environmental Justice and Tribal Affairs.

Working with the staff and management, the Team will prioritize areas or issues for development. Prioritization will consider the degree of threat posed to achieving the core mission; opportunities to improve transparency and accountability; mandates and other obligations; impact on staff morale; and workplace culture, cost, and feasibility.

The Team will create a Strategic Program Development Plan for each identified program and service area that will provide a prioritized roadmap for enhancement efforts with clear actions and timelines. These plans will support and integrate with the Department's overall Strategic Plan. The Team will use a variety of tools and approaches, including the Baldridge Excellence Framework and Criteria, Lean Six Sigma assessments, brainstorming, team-building, and change management. Plans will be developed with input from the staff and management of the program or service area, and engagement with executive management.

As the Team addresses actions and tasks under the Strategic Program Development Plans, it will work with program or support service staff to establish performance standards and metrics. Where issues span across multiple program areas or support services, the Team will facilitate group problem solving. Performance standards may, in some cases, require new or amended regulations. In these instances, the Team will either lead or support rulemaking activities, depending on the nature of the regulation.

The Team will also provide targeted support for implementation of the enhancements in a variety of modes as needed and appropriate, including, for example, pilot projects, mentoring and story-booking progress. Where new standards or process changes create significant changes in workflow, or involve new tools, the Team may develop and training for staff, guidance documents, fact sheets or other support.

Periodically, the Team will review and evaluate progress and outcomes considering performance metrics, employee, management and stakeholder acceptance of and satisfaction with changes, and other measures of success. These reviews will be structured and documented, and will serve as the basis for future planning and improvement cycles. In addition, the Team will produce periodic formal reports, such as the Biennial Report required under H&SC Section 57007 (next due in December 2016), and track the Department's compliance with other reporting obligations.

The Team will also lead the development of the Department's Strategic Plan and any needed updates to that Plan, building on the progress achieved through the individual Strategic Program Development Plans, and chart the course for the next three years. Strategic planning and continuous improvement are critical components of organizational excellence, and it is imperative that DTSC dedicate the resources needed to formally embed them in the structure and management of the Department.

In the first year, the Team will focus on four main deliverables: (1) Preparing the initial Scoping Plan for program evaluation and improvement; (2) Completing a Statutory Program Review for the Voluntary

Cleanup Program (completing the review for all DTSC programs by year two); (3) Conducting a Baseline Program Evaluation and development of a Strategic Program Development Plan for the Voluntary Cleanup Program; and (4) Preparing the Biennial Report pursuant to H&SC Section 57007.

The Scoping Plan will generally identify program areas and support services that will be evaluated for performance improvement. With input from executive leadership, the Plan will prioritize the program areas and support services for review. It will specifically identify the work areas for the coming year, with an outline of projected program reviews in future years. In the first year, the Voluntary Cleanup Program will be the program area evaluated. The Plan will be updated annually.

The Statutory Program Review for the Voluntary Cleanup Program, and, subsequently for each program area, will identify the statutory authorities and mandates that underpin the program's activities, minimum performance standards and other obligations, and the specific program activities that implement those statutes. It will also identify statutes that are not fully implemented, and statutes that are no longer needed or appropriate in light of current conditions. The resources needed to fulfill these obligations will be identified based on current program practices. This information will provide the foundation for the Baseline Program Evaluation.

The Baseline Program Evaluation will build on the Statutory Program Review with detailed analyses of work processes, existing performance metrics and other quality measures. It will assess the program performance issues and gaps identified through internal review, legislative oversight, recommendations of the Independent Review Panel, or other stakeholder input. Functional analyses of the program or service area will be developed (such as a matrix analysis of Strengths, Weaknesses, Opportunities and Threats, or SWOT analysis). These analyses will identify the program or service elements where improvements can be most productively made.

The Strategic Program Development Plan will provide the overall performance improvement map, including expected outcomes, tools and methods, and specific deliverables and milestones. Some of the tools and methods identified may include Lean Six Sigma projects and other structured performance improvement strategies. The Plan will incorporate internal and external feedback as appropriate.

In the first year, the Department expects to complete the Statutory Program Review, Base Program Evaluation and Strategic Program Development Plan for the Voluntary Cleanup Program. This program area is a priority for review because of questions raised by impacted communities and the Independent Review Panel, as well as internal reviews of some of the Department's voluntary cleanup projects. The Plan will be implemented in the second year, including one or more Lean Six Sigma projects and the development of concrete performance goals and metrics.

In the first year, the Team will also produce the Biennial Report on DTSC's implementation of continual quality improvement required pursuant to H&SC Section 57007.

### D. Outcomes and Accountability

The Strategic Program Development Team will carry out the following activities:

1. Prepare Annual Scoping Plan:
    - Outline of functional program areas and discrete support service areas
    - Prioritized order for evaluation of outlined areas with approximate timing of review
    - Schedule of reviews and other substantive activities for year ahead
2. Complete Statutory Program Review:
    - Review of federal and state statutes specific to the program or support service area

- Review of applicability of general statutes
- Review of federal guidance, grant obligations, and other performance mandates
- Evaluation of program or service activities against mandates to identify mandates that are fully implemented, partially implemented, or not implemented; activities that are not mandated; mandates that are no longer needed or appropriate; and limits on authorities
- Evaluation of resources needed to appropriately implement mandates and opportunities to prioritize resources.

3. Conduct Baseline Program Evaluations:
   - Initial meetings with executive leadership, program management and staff
   - Engaging the Office of Environmental Justice and Tribal Affairs
   - Identification of the program partnership team for the program area under review
   - Review of mandates and available program metrics
   - Solicitation of internal and external input to identify potential issue areas
   - Functional analyses (e.g. SWOT analysis) of program area
   - Drafting of Baseline Program Evaluation
4. Create Strategic Program Development Plans:
   - Development of overall performance improvement map for program area or support service function
   - Identification of outcomes, including opportunities to reduce resource needs through efficiencies improvements in processes and operations, and selection of key focus areas for improvement
   - Selection of improvement tools, methods, etc. best suited to address each focus area
   - Setting of actions, deliverables, and milestones
   - Drafting of Strategic Program Development Plan
   - Incorporating internal and external input, as appropriate, into draft Plan prior to finalizing it
5. Develop Standards & Performance Metrics:
   - Review of authorities, and identification of potential conflicts and/or limitations, resolution and/or redirection
   - Consultation with internal and external stakeholders to identify appropriate performance targets
   - Consultation with internal and external stakeholders to identify meaningful performance metrics
   - Identification/implementation of appropriate mechanism to establish standards/metrics (procedural memorandum, policy, regulation, etc.) and associated processes
6. Provide Implementation Support & Training:
   - Development of and/or participation in pilot projects as needed
   - Mentoring of staff in new program elements, and other support such as story-booking progress and on-call support
   - Development of training for staff, guidance documents, and fact sheets as appropriate
7. Conduct Periodic Reviews:

- Monitoring of performance metrics (and the periodic posting of metrics on DTSC's website) for identified DTSC programs or support services
- Continuous reviews of various improvements implemented in previous years.
- Review and reinforcing of standardized use of new guidelines, procedures and other reform measures instituted.
- Documenting progress and shortfalls

8. Reports
   - Status reports to executive leadership on activities and outcomes
   - Development of periodic reports on strategic improvement efforts
   - Development of the Biennial Report on Performance Improvement required under H&SC Section 57007

Accountability will be assured through:

- Periodic reports posted on the DTSC website
- Biennial Report on Performance Improvement required under H&SC Section 57007
- Regular reporting to the Independent Review Panel (IRP) on performance metrics; the IRP is required by law to report quarterly on DTSC's progress improving its Permitting, Enforcement, Public Engagement, and Fiscal Management.

**Projected Outcomes**

| Workload Measure | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|
| Annual Scoping Plan | - | 1 | 1 | 1 | 1 | 1 |
| Baseline Program Evaluations | - | 1 | 1 | 1 | 1 | 1 |
| Strategic Program Development Plans | - | 1 | 1 | 1 | 1 | 1 |
| Biennial Reports | - | 1 | - | 1 | - | 1 |

## E. Analysis of All Feasible Alternatives

Alternative 1: Adopt this proposal to make permanent 5.0 positions to provide Strategic Program Development, and maintain and oversee the continued implementation of improvements to DTSC's programs and support services.

Pros:

- Ensures DTSC undertakes critical strategic planning and continuous improvement efforts necessary for the Department to achieve performance excellence.
- Establishes a mechanism for institutionalizing required or recommended enhancements and reforms.
- Ensures that any efficiencies and/or enhancements to programs and support services, and new or improved standards are fully authorized and legally defensible.
- Creates accountability and transparency across DTSC's programs and support services.
- Aligns with, supports and leverages efforts by the Office of Environmental Justice and Tribal Affairs.

- Incorporates input into program and service enhancements, standards, and metrics through multi-level staff engagement and iterative internal and external consultation.
- Provides mentoring, training, support and documentation necessary to sustain program enhancements.

Cons:

- Requires expenditure of additional State funds
- Increases position authority and expands State government.
- New staff will need to be trained.

Alternative 2: Redirect existing staff to provide Strategic Program Development, and maintain and oversee the continued implementation of improvements to DTSC's programs and support services.

Pros:

- Does not require the expenditure of additional State funds.
- Does not increase position authority or expand State government.
- Does not require training of new staff.
- Supports critical strategic planning and continuous improvement efforts necessary for the Department to achieve performance excellence.
- Establishes a mechanism for institutionalizing required or recommended enhancements and reforms from the Legislature.
- Provides legal review of efficiencies and/or enhancements to programs and support services, and new or improved standards.
- Creates accountability and transparency across DTSC's programs and support services.
- Aligns with, supports and leverages efforts by the Office of Environmental Justice and Tribal Affairs.
- Incorporates input into program and service enhancements, standards, and metrics through staff engagement and internal and external consultation.
- Provides some mentoring, training, support and documentation to sustain program enhancements.

Cons:

- Would adversely impact other programs, including cleaning up contaminated sites, taking action against violators of hazardous waste laws, and ensuring permits are processed in a timely manner.
- Would delay other legal reviews and actions through competition for overcommitted legal resources.
- It will take longer to put consistent processes and standards in place.
- Long term maintenance of reforms may be compromised.
- Potentially prevents other high-priority work within DTSC from being addressed.

Alternative 3: Do Nothing

Pros:

- Does not require the expenditure of additional State funds.
- Would not increase position authority or expand State government.

- Does not require the training of new staff.
- Would not result in a redirection or disruption of current program and support service activities

Cons:

- DTSC will not undertake critical strategic planning and continuous improvement efforts necessary for the Department to achieve organizational excellence.
- DTSC will lack sufficient resources to implement potential program efficiencies, enhancements, and reforms .
- DTSC will not create accountability and transparency across its programs and support services.
- Provides mentoring, training, support and documentation necessary to sustain program enhancements

## F. Implementation Plan

**July 2016**

Hire new staff

Begin on-the-job training of new hires with experienced staff

**September 2016**

First Annual Scoping Plan

**December 2016**

Biennial Report on performance improvement (H&SC Section 57007)

**Ongoing**

Baseline program evaluations

Strategic Program Development Plans

New/improved performance standards and metrics

Implementation support

Monitoring and reporting on progress and performance

## G. Supplemental Information

None.

## H. Recommendation

Approve Alternative 1 to make permanent 5.0 positions to provide Strategic Program Development, and maintain and oversee the continued implementation of improvements to DTSC's programs and support services.

# BCP Fiscal Detail Sheet

**BCP Title: Strategic Program Development**

**DP Name: 3960-006-BCP-DP-2016-A1**

## Budget Request Summary

| | FY16 | | | | | |
|---|---|---|---|---|---|---|
| | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
| Positions - Permanent | 0.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| **Total Positions** | **0.0** | **5.0** | **5.0** | **5.0** | **5.0** | **5.0** |
| Salaries and Wages | | | | | | |
| Earnings - Permanent | 0 | 426 | 426 | 426 | 426 | 426 |
| **Total Salaries and Wages** | **$0** | **$426** | **$426** | **$426** | **$426** | **$426** |
| Total Staff Benefits | 0 | 201 | 201 | 201 | 201 | 201 |
| **Total Personal Services** | **$0** | **$627** | **$627** | **$627** | **$627** | **$627** |
| Operating Expenses and Equipment | | | | | | |
| 5301 - General Expense | 0 | 36 | 36 | 36 | 36 | 36 |
| 5302 - Printing | 0 | 6 | 6 | 6 | 6 | 6 |
| 5304 - Communications | 0 | 10 | 10 | 10 | 10 | 10 |
| 5306 - Postage | 0 | 5 | 5 | 5 | 5 | 5 |
| 5320 - Travel: In-State | 0 | 10 | 10 | 10 | 10 | 10 |
| 5322 - Training | 0 | 10 | 10 | 10 | 10 | 10 |
| 5324 - Facilities Operation | 0 | 40 | 40 | 40 | 40 | 40 |
| 5326 - Utilities | 0 | 6 | 6 | 6 | 6 | 6 |
| 5342 - Departmental Services | 0 | 1 | 1 | 1 | 1 | 1 |
| **Total Operating Expenses and Equipment** | **$0** | **$124** | **$124** | **$124** | **$124** | **$124** |
| **Total Budget Request** | **$0** | **$751** | **$751** | **$751** | **$751** | **$751** |

## Fund Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Fund Source - State Operations | | | | | | |
| 0014 - Hazardous Waste Control Account | 0 | 376 | 376 | 376 | 376 | 376 |
| 0557 - Toxic Substances Control Account | 0 | 375 | 375 | 375 | 375 | 375 |
| **Total State Operations Expenditures** | **$0** | **$751** | **$751** | **$751** | **$751** | **$751** |
| **Total All Funds** | **$0** | **$751** | **$751** | **$751** | **$751** | **$751** |

## Program Summary

| | | | | | | |
|---|---|---|---|---|---|---|
| Program Funding | | | | | | |
| 3625 - Hazardous Waste Management | 0 | 751 | 751 | 751 | 751 | 751 |
| 9900100 - Administration | 0 | 55 | 55 | 55 | 55 | 55 |
| 9900200 - Administration - Distributed | 0 | -55 | -55 | -55 | -55 | -55 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Total All Programs | $0 | $751 | $751 | $751 | $751 | $751 |

## Personal Services Details

| Positions | Salary Information Min | Mid | Max | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|---|---|---|
| 3724 - Supvng Hazardous Substances Engr I (Eff. 07-01-2016) | | | | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 3726 - Hazardous Substances Engr (Eff. 07-01-2016) | | | | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 5393 - Assoc Govtl Program Analyst (Eff. 07-01-2016) | | | | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| 5795 - Atty III (Eff. 07-01-2016) | | | | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| **Total Positions** | | | | **0.0** | **5.0** | **5.0** | **5.0** | **5.0** | **5.0** |

| Salaries and Wages | CY | BY | BY+1 | BY+2 | BY+3 | BY+4 |
|---|---|---|---|---|---|---|
| 3724 - Supvng Hazardous Substances Engr I (Eff. 07-01-2016) | 0 | 111 | 111 | 111 | 111 | 111 |
| 3726 - Hazardous Substances Engr (Eff. 07-01-2016) | 0 | 82 | 82 | 82 | 82 | 82 |
| 5393 - Assoc Govtl Program Analyst (Eff. 07-01-2016) | 0 | 124 | 124 | 124 | 124 | 124 |
| 5795 - Atty III (Eff. 07-01-2016) | 0 | 109 | 109 | 109 | 109 | 109 |
| **Total Salaries and Wages** | **$0** | **$426** | **$426** | **$426** | **$426** | **$426** |
| Staff Benefits | | | | | | |
| 5150900 - Staff Benefits - Other | 0 | 201 | 201 | 201 | 201 | 201 |
| **Total Staff Benefits** | **$0** | **$201** | **$201** | **$201** | **$201** | **$201** |
| **Total Personal Services** | **$0** | **$627** | **$627** | **$627** | **$627** | **$627** |