



## DEPARTMENTAL PROCEDURES MEMORANDUM

**Subject:**

Cost Recovery: Administrative Site  
Management

**Number:**

DPM-CR-01

**Date Issued:**

November 21, 2013

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines administrative tasks that will be conducted by Cleanup and Hazardous Waste Management Program Project Managers and Branch Liaisons and Cleanup Program Regional Brownfields Coordinators to comply with chapter 6.66 of the Health and Safety Code, as well as other cost recovery provisions contained in the Health and Safety Code.<sup>1</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program and Hazardous Waste Management Program (collectively referred to as "Program") Project Managers and Branch Liaisons overseeing the investigation and/or remediation of hazardous substance release sites or taking a hazardous waste corrective action or response action. This DPM also applies to Cleanup Program Regional

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

Brownfields Coordinators developing voluntary agreements under the Department's Voluntary Cleanup Program.<sup>2</sup>

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25187.2, 25205.7(b), 25269 et seq., and 25360
- OPP-90-7, "Site Mitigation Enforcement Case Management" (Nov. 1990)
- EO-93-009-PP, "Imminent and/or Substantial Endangerment Policy, Procedures, and Guidelines" (July 1993)
- EO-96-005-PP, "Prospective Purchaser Policy" (July 1996)
- EO-95-006-PP, "Managing Voluntary Site Mitigation Projects" (Sept. 1995)<sup>3</sup>

**PROCEDURES:**

**Program Project Managers and Branch Liaisons and Cleanup Program Regional Brownfields Coordinators**

1. **Pre-Voluntary Agreement and Pre-Enforcement Order Tasks**
  - a. The Project Manager, Branch Liaison, and Regional Brownfields Coordinator will comply with DPM-CR-04, "Cost Recovery: Memorandum of Agreement (MOA) Process," and DPM-CR-05, "Cost Recovery: Voluntary Cleanup Program Agreements," in preparing and entering into voluntary agreements (also known as cost recovery agreements) under the Department's Voluntary Cleanup Program.

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<sup>2</sup> The roles and responsibilities of other Department staff, including, but not limited to, the Collections and Resolution Unit, Cost Recovery Billing Unit, Accounting Office, and Office of Legal Counsel, are addressed in the various DPMs referenced herein.

<sup>3</sup> This DPM complements OPP-90-7, EO-93-009-PP, EO-96-005-PP, and EO-95-006-PP, which are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and OPP-90-7, EO-93-009-PP, EO-96-005-PP, and EO-95-006-PP, Department staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating the policies and staff will be notified when the updated policies are issued.

- b. The Project Manager and Branch Liaison will comply with DPM-CR-06, “Cost Recovery: Orders,” in preparing and issuing orders.
- c. The Project Manager and Branch Liaison will comply with DPM-CR-02, “Cost Recovery: Site Screenings,” if the work is related to screening sites to determine the need for further action by the Cleanup Program.
  - i. If the work is associated with a U.S. EPA grant (e.g., PA/SI, State Response Program (SRP)), then the Project Manager and Branch Liaison will work with their Unit Supervisor to ensure that the workload is properly identified and the applicable Program Cost Account (PCA) Code has been defined.
- d. The Branch Liaison will obtain a Site Code pursuant to DPM-CR-03, “Cost Recovery: Site Code and Project Code Origination.”
  - i. See DPM-CR-04, “Cost Recovery: Memorandum of Agreement (MOA) Process,” and DPM-CR-05, “Cost Recovery: Voluntary Cleanup Program Agreements,” for more information about requesting Site Codes for voluntary agreements.
  - ii. See DPM-CR-06, “Cost Recovery: Orders,” for more information about appropriate PCA Codes, Site Codes, Project Codes, and/or Work Phases for orders.
- e. As required by DPM-CR-16, “Cost Recovery: Invoicing,” the Project Manager and Branch Liaison will ensure that billing information for billable parties (e.g., project proponents and responsible parties) is accurate and communicate with the Cost Recovery Billing Unit (CRBU)<sup>4</sup> regarding billing information.
  - i. If responsible parties for a site or facility have not been identified, then the Project Manager will conduct a potentially responsible party (PRP) search in accordance with DPM-CR-07, “Potentially Responsible Party (PRP) Searches.”

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<sup>4</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

- f. Pursuant to DPM-CR-16, “Cost Recovery: Invoicing,” the Project Manager and Branch Liaison will monitor Daily Log entries to ensure that staff are charging the appropriate PCA Codes, Site Codes, and/or Work Phases.

## 2. **New Orders or Voluntary Agreements**

- a. The Project Manager, Branch Liaison, or Regional Brownfields Coordinator will prepare voluntary agreements and orders in accordance with the following policies and procedures (available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>):
  - i. OPP-90-7, “Site Mitigation Enforcement Case Management” (Nov. 1990).
  - ii. EO-93-009-PP, “Imminent and/or Substantial Endangerment Policy, Procedures, and Guidelines” (July 1993).
  - iii. EO-96-005-PP, “Prospective Purchaser Policy” (July 1996).
  - iv. EO-95-006-PP, “Managing Voluntary Site Mitigation Projects” (Sept. 1995).
  - v. DPM-CR-05, “Cost Recovery: Voluntary Cleanup Program Agreements.”
  - vi. DPM-CR-06, “Cost Recovery: Orders.”
- b. Once a voluntary agreement is executed by the Department and project proponent(s) or the Department issues an order, the Project Manager, Branch Liaison, or Regional Brownfields Coordinator will upload a copy of the final voluntary agreement or order, including all attachments, to the EnviroStor profile for the site as a public document.
  - i. CRBU will receive an automated EnviroStor notification in the [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov) mailbox notifying them that a voluntary agreement or order has been uploaded to EnviroStor.

- ii. Once CRBU receives an automated EnviroStor notification for an order, then CRBU may start billing responsible parties for the Department's response costs incurred pursuant to the order. The Project Manager or Branch Liaison will immediately send CRBU a list of billable parties upon issuance of an order in accordance with DPM-CR-16, "Cost Recovery: Invoicing."
- iii. CRBU will start billing project proponents for the Department's costs incurred pursuant to a voluntary agreement as soon as billable party information is provided to CRBU by the Project Manager or Branch Liaison pursuant to DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," and DPM-CR-16, "Cost Recovery: Invoicing."

### **3. EnviroStor Profiles**

- a. The Branch Liaison will create a profile in EnviroStor for "sites." An EnviroStor profile is not required, but may be created by the Branch Liaison, for "projects." (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for more information about creating EnviroStor profiles.)
- b. The Project Manager or Branch Liaison will incorporate the schedule of remediation activities that is included as an attachment to the voluntary agreement or in the cover letter for the order into the EnviroStor "Activities Report" page.
- c. The Project Manager or Branch Liaison will add site contact information, including contact information for billable parties, billing information, and names of departmental and external contacts into the EnviroStor "Contact" page.
- d. The Project Manager or Branch Liaison will maintain the accuracy of the EnviroStor profile as necessary, including by uploading required documents within five business days and reviewing the accuracy of billing information for billable parties.

4. **Cost Recovery Monitoring**

- a. **Billable Party Information.** The Project Manager or Branch Liaison will ensure that billable party information is accurate.
- i. Billable party information, if available, will be provided by the Project Manager or Branch Liaison on the California State Accounting and Reporting System (CALSTARS) Project/Site Code Request Form (DTSC Form 1431). (See DPM-CR-03, “Cost Recovery: Site Code and Project Code Origination,” for more information about DTSC Form 1431.)
  - ii. Every six months, the Project Manager or Branch Liaison will review and maintain the accuracy of contact information for billable parties and other parties that should receive copies of invoices.
    - 1. The Billable Parties Report can be accessed through the CRBS Reports SharePoint page. A link to the CRBS Reports SharePoint page is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
    - 2. The Project Manager or Branch Liaison will update the EnviroStor “Contact” page with any changes to billable party information.
  - iii. The Project Manager or Branch Liaison will immediately communicate any change(s) in billable party information to the CRBU analyst handling the site. (See DPM-CR-16, “Cost Recovery: Invoicing,” for more information about procedures for maintaining billable party information.) Changes in billable party information may be sent directly to the CRBU analyst assigned to the site or submitted to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov). Include the following information in the “Subject” line of the email: Site Code, Site Name, and purpose of the email.

- b. **Cost Estimates.** The Project Manager or Branch Liaison will develop a cost estimate for the site that, to the extent feasible, accurately reflects the anticipated time and costs associated with the site. The Project Manager, Branch Liaison, or Regional Brownfields Coordinator will use the Contract Estimation Rates published annually and posted on Financial Planning/Fiscal System's SharePoint page to determine the estimated costs. A link to the Contract Estimation Rates is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
- i. Information regarding initial cost estimates for voluntary agreements and orders is provided in DPM-CR-05, "Cost Recovery: Voluntary Cleanup Program Agreements," and DPM-CR-06, "Cost Recovery: Orders."
  - ii. As a site moves into a new phase of work, but no less frequently than annually, the Project Manager will update the Resource Estimation Worksheet in EnviroStor and provide updated cost estimates to the billable party(ies).
    1. The Project Manager or Branch Liaison will schedule cost estimate letters in EnviroStor.
    2. If the billable party(ies) does not agree with the cost estimate, then Department staff will meet and confer with the billable party(ies) to resolve any issues regarding the cost estimate. In all cases, the billable party(ies) should be informed that the Department expects that all actual expenses will be paid.
  - iii. The Project Manager or Branch Liaison will monitor cost estimates on a monthly basis by comparing cost estimates against actual expenditures. If actual expenditures exceed the cost estimates, then the Project Manager will immediately notify the billable party(ies), explain why the actual expenditures exceed the cost estimate, and update the cost estimate and schedule accordingly.

- c. **Changes in Scope of Work.** If the scope of work associated with a site changes after execution of a voluntary agreement or issuance of an order, then the Project Manager, Branch Liaison, or Regional Brownfields Coordinator will review the terms of the applicable voluntary agreement or order to ensure that they are still appropriate.
  - i. If the revised scope of work impacts the schedule of remediation activities and/or cost estimate for the site, then the Project Manager, Branch Liaison, or Regional Brownfields Coordinator will send the billable party(ies) a revised schedule of remediation activities and/or cost estimate.
- d. **Advance Payments.** The Project Manager or Branch Liaison will confirm that advance payments, if required pursuant to a voluntary agreement, Standard (Reimbursement) Agreement, or other contract, are received from the billable party on time.
  - i. Every effort should be made to limit work on the site until the advance payment has been received by the Department. (See DPM-CR-05, "Cost Recovery: Voluntary Cleanup Program Agreements," and DPM-CR-18, "Cost Recovery: Payments," for more information about advance payments.)
    - 1. Advance payments received can be verified using the link to the Receipts Listing Report via the Cost Recovery Billing System at <http://dtscnet.dtsc.ca.gov/database/crbs/> or by contacting the CRBU analyst assigned to the site.
    - ii. If an advance payment is not received within the timeframe specified in a voluntary agreement, then the Project Manager or Regional Brownfields Coordinator will follow the procedures in DPM-CR-09, "Cost Recovery: Suspension and Termination of Voluntary Cleanup Program Agreements," to determine whether to suspend or terminate the voluntary agreement.
- e. **Daily Logs.** The Project Manager and Branch Liaison will perform the following tasks with respect to Daily Logs:

- i. The Project Manager and Branch Liaison will complete Daily Logs on a daily basis, and notify other Department staff billing to the site of their responsibility to also complete Daily Logs on a daily basis.
  - ii. By the end of the first full week of each month, the Project Manager or Branch Liaison will review Daily Logs for the previous month to verify that only authorized Department staff are charging to the Site Code and that the time charged by Department staff is consistent with the cost estimates prepared for the site. (See DPM-CR-16, “Cost Recovery: Invoicing,” for more information about reviewing Daily Logs for accuracy.)
  - iii. If, while reviewing the Daily Logs, questions arise regarding time charged to the Site Code, then the Project Manager or Branch Liaison will work with all Department staff necessary to resolve the questions, including, if necessary, requiring the preparation of timesheet amendments.
- f. **Invoices.** CRBU invoices billable parties quarterly. The Project Manager or Branch Liaison will provide CRBU with accurate billing information and periodically verify that billable parties have paid their invoices. (See DPM-CR-16, “Cost Recovery: Invoicing,” for more information about Project Manager and Branch Liaison invoicing responsibilities.)
- g. **Payments.** The Project Manager or Branch Liaison will periodically monitor payments from billable parties to ensure that the payments are credited to the correct account. (See DPM-CR-18, “Cost Recovery: Payments,” for more information about the payment process.)
- h. **Invoice Disputes.** If a billable party disputes an invoice issued by the Department for the Department’s response costs, then the Project Manager and Branch Liaison will follow the invoice dispute procedures outlined in DPM-CR-17, “Cost Recovery: Invoice Disputes.”

- i. **Cost Recovery.** The Project Manager or Branch Liaison will periodically review the Collection Letter Log to determine which sites have invoices that are past due. A link to the Collection Letter Log is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
- i. After receiving notification of the third collection letter, the Project Manager or Branch Liaison will submit a “Site and Collection Activities Summary” (DTSC Form 1479) to the Collections and Resolution Unit (Collections) within 20 business days of the third collection letter date in accordance with the procedures outlined in DPM-CR-20, “Cost Recovery: ‘Site Collection and Activities Summary’ (DTSC Form 1479).” (See DPM-CR-19, “Cost Recovery: Collection Letters,” for more information about the collection letter process.)
- ii. Within 30 business days of receipt of the DTSC Form 1479, Collections will review the DTSC Form 1479 and related information and begin working with the Branch Liaison and/or Project Manager, and possibly OLC, to develop a comprehensive plan for future cost recovery efforts.
- iii. Future cost recovery measures may include, but are not limited to:
  - 1. **Suspension or Termination of Site Work.** For more information regarding appropriate circumstances in which to terminate or suspend Department oversight activities pursuant to a voluntary agreement under the Department’s Voluntary Cleanup Program, see DPM-CR-09: “Cost Recovery: Suspension and Termination of Voluntary Cleanup Program Agreements.”
  - 2. **Liens.** For more information about the lien placement process, see DPM-CR-24, “Cost Recovery: Lien Placement.”
  - 3. **Office of Legal Counsel (OLC) Referrals.** For more information about cost recovery referrals to OLC, see

DPM-CR-26: “Cost Recovery: Cost Recovery Referrals to the Office of Legal Counsel (OLC).”

4. **Attorney General’s Office Referrals.** For more information about cost recovery referrals to the Attorney General’s Office, see DPM-CR-27, “Cost Recovery: Cost Recovery Referrals to the Attorney General’s (AG’s) Office.”
  5. **No Further Cost Recovery Action (NFCRA) Determinations.** For more information about the NFCRA process, see DPM-CR-25, “Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations.”
- iv. Various issues may arise during the cost recovery process, including, but not limited to:
1. **PRP Searches.** If a billable party fails or is unable to pay the Department’s response costs, then the Project Manager or Branch Liaison may need to conduct a PRP search in accordance with DPM-CR-07, “Cost Recovery: Potentially Responsible Party (PRP) Searches,” to identify other PRPs that may be liable for the Department’s response costs.
  2. **Orphan Sites.** If it appears that no viable PRPs exist to pay the Department’s response costs, then the Project Manager or Branch Liaison may need to classify the site as an “orphan” site in the Cost Recovery Billing System (CRBS) in accordance with DPM-CR-08, “Cost Recovery: Classifying ‘Orphan’ Sites in the Cost Recovery Billing System (CRBS).”
  3. **Bankruptcy.** If the Project Manager or Branch Liaison becomes aware that a billable party will file or has filed for bankruptcy, then the Project Manager and Branch Liaison will comply with the procedures outlined in DPM-CR-23, “Cost Recovery: Bankruptcy Notices.”

4. **Ability to Pay.** If the billable party claims an inability to pay the Department's response costs, then the Project Manager and Branch Liaison will comply with the procedures outlined in DPM-CR-22, "Cost Recovery: Ability to Pay (ATP) Determinations."
  5. **Payment Agreements.** The Department may enter into payment agreements allowing the billable party to pay the Department's response costs in installments. (See DPM-CR-21, "Cost Recovery: Payment Agreements," for more information about payment agreements.)
5. **Site Completion and Closure**
- a. If work on a site is complete, then the Project Manager and Branch Liaison will comply with DPM-CR-11, "Cost Recovery: Site Completion," in concluding Department oversight of a site.
  - b. The Project Manager and Branch Liaison are responsible for complying with the administrative site closure requirements outlined in DPM-CR-13: "Cost Recovery: Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure."

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost

Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Site Screenings

**Number:**

DPM-CR-02

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**Date Issued:**

November 21, 2013

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM describes the Department's procedures for tracking and charging the time staff spends screening potential hazardous substance release sites for possible future remediation by responsible parties or the Department.<sup>1</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program staff responsible for screening potential hazardous substance release sites for possible future remediation by responsible parties or the Department. This DPM also applies to Cleanup Program Grants and Program Support Branch staff administering the U.S. EPA Preliminary Assessment/Site Inspection Cooperative Agreement Grant (PA/SI Grant).<sup>2</sup>

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> This DPM applies to sites that are covered by the PA/SI Grant or come to the Cleanup Program's attention through referrals from other agencies, third-party complaints, or that are identified by other

## **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- U.S. EPA Preliminary Assessment/Site Inspection Cooperative Agreement Grant
- EO-97-001-MM, "Management Memo, Site Screening Guidance" (Jan. 1997)<sup>3</sup>

## **PROCEDURES:**

### **Cleanup Program and Cleanup Program Grants and Program Support Branch staff**

1. **U.S. EPA Preliminary Assessment/Site Inspection Cooperative Agreement Grant (PA/SI Grant) sites.** The PA/SI Grant provides funding to the Department to screen specific sites to determine whether site conditions require further action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. § 9601 et seq.).
  - a. Each year, the Department and U.S. EPA negotiate the number of sites to be screened and the number of hours authorized per screening under the PA/SI Grant.
  - b. For sites covered by the PA/SI Grant, Cleanup Program staff will evaluate the site and complete a U.S. EPA form indicating the appropriate agency, if any, to conduct further evaluation of the site.
  - c. The Cleanup Program Grants and Program Support Branch will obtain the appropriate Site Codes and the 14000 series Program Cost Account (PCA) Code for Cleanup Program staff to charge time

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programs within the Department. This DPM does not apply to sites that are brought to the Department's attention through the California Environmental Protection Agency's Memorandum of Agreement (MOA) process (Voluntary Cleanup Program sites), referrals from Cal-Mortgage, or the Department's Schools Program.

<sup>3</sup> This DPM complements the Department's EO-97-001-MM, "Management Memo, Site Screening Guidance" (Jan. 1997), which is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and in EO-97-001-MM, Department staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating EO-97-001-MM and staff will be notified when the updated policy is issued.

related to screening a site covered by a PA/SI Grant. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for more information about requesting Site Codes.)

- d. Cleanup Program staff will charge time spent conducting the site screening to the appropriate 14000 series PCA Code and Site Code to facilitate tracking and recovering Department costs related to the screening. Cleanup Program staff will identify the site being screened and the work that was completed in the comments field in the Daily Log entry for time charged to conduct the site screening.
- e. The Branch Liaison will create a page in EnviroStor for the site in accordance with DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination."
- f. The Project Manager will use the current U.S. EPA forms and procedures to conduct the site screening within the number of hours authorized for the screening under the PA/SI Grant for that fiscal year. The Site Code and PCA Code will only be charged during the fiscal year covered by the PA/SI Grant covering the site screening.
- g. If the site screening recommends follow-up by an agency other than U.S. EPA (e.g., the Department, State Water Resources Control Board, or a local agency), then the Project Manager will charge to site screening PCA Code 11005 for time spent drafting the referral letter or determining the priority of the site for further action by the Department.
  - i. The Project Manager will obtain Unit Supervisor approval if the referral letter or priority determination is projected to exceed 15 hours to complete.
  - ii. The Project Manager and/or the Unit Supervisor must notify the Branch Chief if the referral letter or priority determination is projected to exceed 40 hours to complete.
  - iii. The Project Manager will identify the site being screened and the work that was completed in the comments field in the Daily Log entry for time spent drafting the referral letter or

determining the priority of the site for further action by the Department.

- h. The Project Manager will upload the appropriate U.S. EPA forms to the EnviroStor profile for the site as public documents and change the EnviroStor classification of the site in accordance with the recommended follow-up action for the site. (See section 2.k., below, for a list of EnviroStor classifications.)
- i. If the Project Manager is referring the site to another agency for oversight, then the Project Manager will upload the referral letter to the EnviroStor profile for the site as a public document after mailing the referral letter.

2. **Agency-, third-party-, and Department-referral sites.** Cleanup Program staff will comply with the following procedures for sites that come to the attention of Cleanup Program staff through referrals by other agencies or third-party complaints or that are identified by other programs within the Department and are assigned to Cleanup Program staff for further evaluation.

- a. The Project Manager will follow the general procedures outlined in EO-97-001-MM, "Management Memo, Site Screening Guidance" (Jan. 1997) to conduct a site screening. A link to EO-97-001-MM, "Management Memo, Site Screening Guidance" (Jan. 1997), is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
- b. The Project Manager is allocated up to 15 hours to gather and review information related to the site, determine whether known or potential hazardous substance contamination exists, conduct a site drive-by, assess the need for further action by the Department, and complete the Site Screening Form.
- c. The Project Manager will charge his or her time as follows:
  - i. Time spent screening tiered permitting sites will be charged to PCA Code 36507 (CUPA Phase I).
  - ii. Time spent screening non-tiered permitting sites will be charged to PCA Code 11005 (Site Screening).

- d. The Project Manager will obtain Unit Supervisor approval if the screening is projected to exceed 15 hours to complete.
- e. The Project Manager and/or the Unit Supervisor will notify the Branch Chief if the screening is projected to exceed 40 hours to complete.
- f. The Project Manager will identify the site being screened and the work that was completed in the comments field in the Daily Log entry for time spent conducting the site screening.
- g. Based on the information reviewed, the Project Manager will recommend appropriate follow-up action for the site.
- h. The Project Manager will complete a Site Screening Form documenting the steps taken to evaluate the site and the Project Manager's recommendations for appropriate follow-up action. The Site Screening Form is available as an attachment to EO-97-001-MM, "Management Memo, Site Screening Guidance" (Jan. 1997).
- i. The Project Manager will obtain Unit Chief approval of the Site Screening Form and submit the Site Screening Form to the Branch Chief for review and approval. As discussed in EO-97-001-MM, "Management Memo, Site Screening Guidance" (Jan. 1997), the Branch Chief will review the Site Screening Form and upon approval, sign and date the form.
- j. Once the Branch Chief has approved the Site Screening Form, the Project Manager will upload the Site Screening Form to the EnviroStor profile for the site as a public document and change the EnviroStor classification for the site to reflect the recommended follow-up action.
- k. The EnviroStor classifications include:
  - i. For sites requiring no further action by the Department: "No further action."
  - ii. For sites referred to another Agency:
    - 1. "Refer: 1248 Local Agency"

2. “Refer: EPA”
  3. “Refer: IWMB”
  4. “Refer: Local Agency”
  5. “Refer: Other Agency”
  6. “Refer: RWQCB”
- iii. For sites requiring further action by the Department:
1. “Refer: RCRA” for sites referred to the Facility Permitting Branch (for permitted facilities).
  2. “Active Site” (for sites with imminent or substantial endangerment conditions). The Project Manager will identify the Department’s next steps for handling the site.
  3. “Inactive Site – Action Required.”
  4. “Inactive Site – Needs Evaluation.”

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

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/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Site Code and Project Code Origination	<b>Number:</b> DPM-CR-03 <sup>1</sup>
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department’s mission is to protect California’s people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.” The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM clarifies the Department’s procedures for obtaining and issuing Site Codes and Project Codes to assist the Department in monitoring and tracking its response costs and other costs (e.g., grant costs).<sup>2</sup>

**APPLICABILITY:** This DPM applies to Cleanup and Hazardous Waste Management Program (collectively referred to as “Program”) Project Managers, Branch Liaisons, and Grant Administrators that request Site Codes and Project Codes for sites and projects where the Department monitors and tracks its response costs and other costs (e.g., grant costs). This DPM also applies to

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<sup>1</sup> This DPM supersedes DPM-CR-02, “Cost Recovery: Site Code and Project Code Origination” (May 2013).

<sup>2</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department’s general procedures with respect to the subject area addressed herein. There may be site- or project-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site or project.

Fiscal Systems Unit (FSU) and Cost Recovery Billing Unit (CRBU)<sup>3</sup> staff that process Site Code and Project Code requests from Program staff.

**PROCEDURES:**

**California State Accounting & Reporting System (CALSTARS) Project/Site Code Request Form (DTSC Form 1431)<sup>4</sup>**

1. Branch Liaisons and Grant Administrators may obtain Site Codes and Project Codes by submitting a California State Accounting & Reporting System (CALSTARS) Project/Site Code Request Form (DTSC Form 1431) to FSU via email to [ProjectCode@dtsc.ca.gov](mailto:ProjectCode@dtsc.ca.gov).
  - a. A link to DTSC Form 1431 is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
2. To assist in clarifying whether a Site Code or Project Code is appropriate, this DPM utilizes the following definitions of “site” and “project”:
  - a. “Site” means any area, location, or facility where a “hazardous material,” as defined by section 25260(d) of the Health and Safety Code, has been released or threatens to be released into the environment. Site Codes are typically associated with a physical address.
  - b. “Project” is defined by the Department as any work performed that is not related to a specific “site” and is intended to evaluate potential threats to human health or the environment or to gain or provide information that will improve or update cleanup policies or knowledge base.
    - i. The following are examples of “projects”: work performed by the Department pursuant to the U.S. EPA 128 Grant and the Department’s responses to requests from other agencies or entities that the Department study a potential threat to human health and the environment.

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<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>4</sup> This overview of DTSC Form 1431 applies to all Department staff that request or issue Site Codes and Project Codes to assist the Department in monitoring and tracking its response costs and other costs.

## **Program Project Managers, Branch Liaisons, and Grant Administrators**

### **1. Obtaining a Site Code or Project Code.**

- a. A Branch Liaison will obtain a Site Code or Project Code when:
  - i. Pursuant to the Memorandum of Agreement (MOA) process, the Department is designated to oversee a site. (See DPM-CR-04, “Cost Recovery: Memorandum of Agreement (MOA) Process,” for more information about the MOA process.)
  - ii. An MOA Application Supplemental Attachment for the Prospective Purchaser Program or the California Land Reuse and Revitalization Act (CLRRRA) Program is received for a site already under Department oversight.
  - iii. A Phase I Environmental Site Assessment is submitted to the Department’s Schools Program.
  - iv. A site screening determined that further investigation and/or remediation of a site by the Department is required. (See DPM-CR-02, “Cost Recovery: Site Screenings,” for more information about the site screening process.)
  - v. Costs associated with different operable units within a site need to be tracked separately either because there are different billable parties (e.g., project proponents or responsible parties) or because a billable party needs or requests that the Department track these costs separately (e.g., Department costs are covered by different insurance policies or funding sources).
  - vi. There is a change in billable parties and the Department needs to track its past and future response costs separately (e.g., different billable parties are responsible for past versus future oversight costs).
  - vii. If there are multiple billable parties and one party declares bankruptcy, a separate Site Code may be obtained after consultation with the Office of Legal Counsel (OLC) and the Accounting Office (Accounting) to track the administrative costs associated with the bankruptcy. (See DPM-CR-23, “Cost Recovery: Bankruptcy Notices,” for more information

about the Department's procedures for tracking bankruptcy notices.)

- b. A Grant Administrator will obtain a Site Code or Project Code when:
  - i. Site screenings or other site work will be conducted by the Department under a grant. However, these Site Codes or Project Codes, and corresponding Work Phases need to be restricted to the specific grant and the applicable fiscal year (e.g., Targeted Site Investigation (TSI), U.S. EPA Preliminary Assessment/Site Inspection Cooperative Agreement Grant (PA/SI Grant), Department of Defense and State Memorandum of Agreement (DSMOA)). (See DPM-CR-02, "Cost Recovery: Site Screenings," for more information about the PA/SI Grant, and DPM-CR-15, "Cost Recovery: Department of Defense and State Memorandum of Agreement (DSMOA)," for more information about DSMOA.)

**2. Submitting DTSC Form 1431.**

- a. The Branch Liaison or Grant Administrator will complete DTSC Form 1431 and submit the form to FSU via email to [ProjectCode@dtsc.ca.gov](mailto:ProjectCode@dtsc.ca.gov).
- b. The Project Manager will work with the Branch Liaison or Grant Administrator to complete DTSC Form 1431. The Project Manager will email the Branch Liaison or Grant Administrator the following information:
  - i. A short explanation of the requested action (e.g., a new Site Code or Project Code or modified Site Code or Project Code).
  - ii. A short status of all associated Site Codes or Project Codes, if any.
  - iii. A list of billable parties, including billing information, if known.
- c. The Branch Liaison or Grant Administrator will complete DTSC Form 1431 and ensure it contains the following required information:
  - i. Name of Project Manager Supervisor and date submitted.
  - ii. Name and telephone number of the Project Manager.

- iii. Correct Site Code or Project Code designation.
- iv. Site name.
- v. Physical address of the site or project (when applicable).
- vi. Name of billable party(ies), if known.
- vii. Billing address, if known.
- viii. Verification that a Site Code or Project Code does not already exist. If a Site Code or Project Code already exists, then the Branch Liaison or Grant Administrator will confirm whether a new Site Code or Project Code is necessary and, if so, verify that the new and existing site or project names are consistent.

**3. EnviroStor Profiles.**

- a. The Branch Liaison will create a profile in EnviroStor for “sites” that are issued Site Codes by FSU.
- b. An EnviroStor profile is not required, but may be created by the Branch Liaison, for “projects” that are issued Project Codes by FSU.

**4. Closing and Reactivating Site Codes or Project Codes.**

- a. There may be certain circumstances in which a Site Code or Project Code may need to be temporarily closed or deactivated in the Daily Log in order to minimize the potential for inadvertent charges to the site. (See DPM-CR-09, “Cost Recovery: Suspension and Termination of Voluntary Cleanup Program Agreements,” and DPM-CR-13, “Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure,” for more information on closing Site Codes in the Daily Log and CRBS.) If a Project Manager needs to reactivate a previously closed or deactivated Site Code, then the Project Manager will email FSU requesting that FSU reopen the Site Code, Project Code, and/or Work Phase in the Daily Log. (See Fiscal Systems Unit item 3 below.)

### **Fiscal Systems Unit (FSU)**

1. FSU will review DTSC Form 1431 to ensure that all necessary information has been provided by the Branch Liaison or Grant Administrator. If the FSU analyst has any questions concerning DTSC Form 1431, then he or she will contact the Branch Liaison or Grant Administrator that submitted the form.
2. Once the FSU analyst determines that DTSC Form 1431 is complete, the FSU analyst will assign a unique Site Code or Project Code number to the site or project and email the new Site Code or Project Code, as well as a completed copy of DTSC Form 1431, to the Branch Liaison or Grant Administrator that submitted the form, the Project Manager, CRBU (at [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov)), and anyone listed on DTSC Form 1431 to be copied on the notification.
  - a. If there are no issues with DTSC Form 1431, then FSU typically assigns a new Site Code or Project Code number within 24 hours of receipt.
  - b. FSU will retain a copy of the completed DTSC Form 1431 in its files in accordance with the Department's record retention policy.
3. If the FSU analyst receives a request to reactivate a previously deactivated Site Code or Project Code, the analyst will reactivate the Site Code, Project Code, and/or Work Phase in the Daily Log and notify the Project Manager, Branch Liaison, or Grant Administrator, and CRBU that the Site Code, Project Code, and/or Work Phase has been reactivated and when it will be available for use (typically within 24 hours of request). Branch Liaisons, Project Managers, and Grant Administrators may request that a Site Code or Project Code be reactivated via email.
4. FSU will update the Site Code and Project Code lists on the SharePoint page at <http://share/Support/Administration/FP/FCM/default.aspx> on a monthly basis.

### **Cost Recovery Billing Unit (CRBU)**

1. When CRBU receives a copy of DTSC Form 1431, the CRBU analyst assigned to the site or project will input the information necessary for cost recovery into CRBS in preparation for invoicing billable parties for the Department's response costs. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about the invoicing process.)

2. Upon notification from FSU that a Site Code has been reactivated, CRBU will contact the Project Manager and/or Branch Liaison regarding the appropriate CRBS billing status and/or classification for the site. CRBU will also contact the Project Manager and/or Branch Liaison to ensure the accuracy of billable party information for the site.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Memorandum of Agreement (MOA) Process	<b>Number:</b> DPM-CR-04 <sup>1</sup>
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department’s mission is to protect California’s people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.” The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the Memorandum of Agreement (MOA) process for selecting the state agency that will oversee the remediation of contaminated property under one of the state’s voluntary cleanup programs, including the Department’s Voluntary Cleanup Program.<sup>2</sup> This DPM also outlines procedures for ensuring that the Department, if selected as the oversight agency, recovers the costs of preparing and negotiating voluntary agreements for these sites.<sup>3</sup>

<sup>1</sup> This DPM supersedes DPM-CR-01, “Cost Recovery: Pre-Agreement Cost Recovery for Voluntary Cleanup Program Sites” (May 2013).

<sup>2</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department’s general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>3</sup> As used in this DPM, the term “voluntary agreements” means Voluntary Cleanup Agreements (VCAs), Environmental Oversight Agreements (EOAs), Prospective Purchaser Agreements (PPAs), and California Land Revitalization and Reuse Act (CLRRRA) Agreements. Voluntary agreements are also sometimes referred to as “cost recovery agreements.”

**APPLICABILITY:** This DPM applies to Cleanup Program Regional Brownfields Coordinators processing requests from project proponents to enter into a voluntary agreement under the Department's Voluntary Cleanup Program and Cleanup Program Project Managers tasked with developing the voluntary agreement.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code section 25360
- Memorandum of Agreement between the Department of Toxic Substances Control and the State Water Resources Control Board and the Regional Water Quality Control Boards and the California Environmental Protection Agency for the Oversight of Investigation and Cleanup Procedures (Mar. 2005)

**PROCEDURES:**

**The Memorandum of Agreement (MOA) Process**

1. Any applicant desiring state oversight of its cleanup project under one of the state's voluntary cleanup programs, including the Department's Voluntary Cleanup Program, must submit an MOA Application (also known as a Request for Agency Oversight) to the Department's or State Water Resources Control Board's (Water Board) Regional Brownfields Coordinator.<sup>4</sup>
  - a. A link to information about the MOA process, the Memorandum of Agreement between the Department of Toxic Substances Control

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<sup>4</sup> The MOA process does not apply to existing sites for which the Department or a Regional Board is currently serving as the oversight agency.

The MOA process also does not apply to sites in the following programs where a statute designates an oversight agency, where the statute authorizes actions by the Department or a regional board, but not both, where an oversight agency has been designated through a process defined or provided by statute, or where an oversight agency has been designated or specified as a result of statutory direction or separate agreement between the Department, the State Water Resources Control Board and the Regional Water Quality Control Boards: (1) existing or proposed schools; (2) Department of Defense or Department of Energy Sites; (3) sites that have gone through the Site Designation Process (Health and Safety Code, Chapter 6.65); (4) burn dumps; (5) petroleum underground and above ground storage tank sites; (6) Expedited Remedial Action Program (ERAP, SB 923) sites; (7) Hazardous Waste Facility Regulation and Permitting Consolidation Program (SB 1082) sites; and (8) federal National Priorities List (NPL) sites.

and the State Water Resources Control Board and the Regional Water Quality Control Boards and the California Environmental Protection Agency for the Oversight of Investigation and Cleanup Procedures (Mar. 2005), and the MOA Application is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.

- b. Applicants seeking entry into the Prospective Purchaser Program or the CLRRRA Program must also complete the appropriate Supplemental Attachment to the MOA Application.
  - c. The MOA Application requests the applicant's billing information and requires the applicant to certify that it will pay for costs incurred by the oversight agency in "preparing and negotiating the appropriate cost recovery agreement, regardless of whether the agreement is subsequently executed by the Applicant and the oversight agency," as well as the oversight activities identified in the application and incorporated into the selected voluntary agreement.<sup>5</sup>
2. MOA Applications will proceed through the Department's MOA process. The Department and Water Board Regional Brownfields Coordinators work together to evaluate each MOA Application to verify that it meets the criteria for state oversight under the MOA process and, if appropriate, to determine which regulatory agency should serve as the oversight agency for the site.

#### **Cleanup Program Regional Brownfields Coordinators and Project Managers**

1. When an MOA Application is received, the Department Regional Brownfields Coordinator (or designee) will review the application to determine if the site is eligible for the MOA process.
  - a. Time spent reviewing the MOA Application, determining eligibility, entering the site into the lead agency database, and working with the Water Board Regional Brownfields Coordinator to select the

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<sup>5</sup> The Cleanup Program will be monitoring new Voluntary Cleanup Program sites to determine whether further actions are required to bolster the Department's cost recovery rates during the pre-agreement phase of work. Further actions may include requiring applicants to sign a separate cost reimbursement letter or execute a Standard (Reimbursement) Agreement allowing the Department to recover the costs it incurs negotiating and preparing voluntary agreements. Any additional actions the Department is required to take will be outlined in a subsequent DPM or official policy.

appropriate oversight agency will be charged to Program Cost Account (PCA) Code 11310, Multi-purpose Code (MPC) 302, Site Mitigation and Brownfields Reuse Program (SMBRP).

2. If the site is not eligible for the MOA process because it is an existing Department site,<sup>6</sup> then the Department Regional Brownfields Coordinator will refer the site to the assigned Project Manager. The Project Manager must determine whether a Standard (Reimbursement) Agreement is required to recover the Department's costs for developing the Agreement. Then, the Project Manager will follow the procedures in one of the following DPMS to develop the appropriate voluntary agreement or operation and maintenance (O&M) agreement:
  - a. DPM-CR-05, "Cost Recovery: Voluntary Cleanup Program Agreements."
  - b. DPM-CR-10, "Cost Recovery: Operation and Maintenance (O&M) Agreements and Financial Assurance Requirements."
3. If the Department and Water Board Regional Brownfields Coordinators determine that a site is not eligible for the MOA process pursuant to one of the other criteria outlined in the MOA, then the Department or Water Board Regional Brownfields Coordinator who initially received the MOA Application will notify the applicant.
4. If the site is eligible for the MOA process, then the Department Regional Brownfields Coordinator will enter the site into the lead agency database and notify the appropriate Water Board Regional Brownfields Coordinator regarding the pending MOA Application. The Department and Water Board Regional Coordinators will then determine which agency should serve as the oversight agency for the site.
5. If the Department and Water Board Regional Brownfields Coordinators determine that the Department is the appropriate oversight agency for the site, then the Department Regional Brownfields Coordinator will update the

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<sup>6</sup> However, a project proponent related to a site that is already under Department oversight may request to enter into a PPA or CLRRRA Agreement with the Department by completing the MOA Application Supplemental Attachment for the Prospective Purchaser or CLRRRA Program.

lead agency database with this information and notify the applicant that the Department has been selected as the oversight agency.

6. Depending on the status of the site, the Department Regional Brownfields Coordinator, assigned Project Manager, or Branch Liaison will then follow the procedures outlined in DPM-CR-05, "Cost Recovery: Voluntary Cleanup Program Agreements" or DPM-CR-10, "Cost Recovery: Operation and Maintenance (O&M) Agreements and Financial Assurance Requirements," to draft the appropriate voluntary agreement or O&M agreement.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Voluntary Cleanup  
Program Agreements

**Number:**

DPM-CR-05

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**Date Issued:**

November 21, 2013

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM clarifies the Department's procedures for entering into voluntary agreements pursuant to the Department's Voluntary Cleanup Program.<sup>1</sup>

**APPLICABILITY:** This DPM applies to all Cleanup Program Project Managers, Branch Liaisons, and Regional Brownfields Coordinators and Office of Legal Counsel (OLC) staff handling sites within the Department's Voluntary Cleanup Program pursuant to one of the following voluntary agreements: Voluntary Cleanup Agreement (VCA), Schools Program Environmental Oversight Agreement (EOA), Schools Program Cleanup Agreement, California Land Revitalization and Reuse Act (CLRRA) Agreement, or Prospective Purchaser Agreement (PPA) (collectively referred to as "voluntary agreements"). This DPM

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

also applies to Cost Recovery Billing Unit (CRBU)<sup>2</sup> staff responsible for invoicing and processing payments from billable parties pursuant to voluntary agreements.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25269.5, 25355.2, 25355.5(a)(1)(C), 25360, and 25395.92
- Education Code section 17213.1
- EO-96-005-PP, “Prospective Purchaser Policy” (July 1996)
- EO-95-006-PP, “Managing Voluntary Site Mitigation Projects” (Sept. 1995)
- OPP-90-7, “Site Mitigation Enforcement Case Management” (Nov. 1990)<sup>3</sup>

**PROCEDURES:**

**Cleanup Program Project Managers, Branch Liaisons, Regional Brownfields Coordinators, and Unit Supervisors**

1. **Secure agreement development costs, request a Site Code, and create an EnviroStor profile.** The Project Manager, Branch Liaison, and Regional Brownfields Coordinator will comply with DPM-CR-04, “Cost Recovery: Memorandum of Agreement (MOA) Process” to recover the Department’s voluntary agreement development costs, request a Site Code, and create an EnviroStor profile for the site for which the project proponent requests entry into the Department’s Voluntary Cleanup Program.
2. **Develop the voluntary agreement.** The Project Manager, Branch Liaison, or Regional Brownfields Coordinator will use the most current model to prepare the appropriate voluntary agreement<sup>4</sup> and will:

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<sup>2</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>3</sup> This DPM complements EO-96-005-PP, “Prospective Purchaser Policy” (July 1996), and EO-95-006-PP, “Managing Voluntary Site Mitigation Projects” (Sept. 1995), which are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and in EO-96-005-PP or EO-95-006-PP, Department staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating EO-96-005-PP and EO-95-006-PP and staff will be notified when the updated policies are issued.

- a. Insert specific site and project proponent information into the draft voluntary agreement and remove guidance, instructions, and suggested language from the model agreement prior to initiating negotiations with the project proponent(s). Guidance and instructions appear in **boldface** and brackets ([ ]).
- b. Develop a cost estimate for the site that accurately reflects the anticipated time and costs associated with the site to the extent feasible. The cost estimate also forms the basis for the advanced payment. In developing the cost estimate, the Project Manager, Branch Liaison, or Regional Brownfields Coordinator will:
  - i. Use Microsoft Excel or the EnviroStor Resource Estimation Worksheet to develop the initial cost estimate.
  - ii. Estimate the oversight costs for each phase of work defined in the agreement's scope of work. The estimate should include a list of estimated personnel labor rates, as well as, to the extent feasible, an estimate of the total hours Department staff expect to charge for the entire scope of the project, including, if applicable, Project Manager, technical support staff, public participation staff, and OLC attorney hours.
  - iii. Use the Contract Estimation Rates published annually and posted on Financial Planning's SharePoint page to determine the estimated costs. A link to the Contract Estimation Rates is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
- c. Obtain supervisor and, if necessary, OLC approval of the draft voluntary agreement, including the scope of work, schedule, and cost estimate, and send all draft documents to the project proponent for review and approval.

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<sup>4</sup> Links to the most current model voluntary agreements can be found on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.

- i. The Project Manager or Regional Brownfields Coordinator is not required to obtain OLC approval of VCAs signed pursuant to section 25355.5(a)(1)(C) of the Health and Safety Code.
  - ii. All CLRRRA Agreements and PPAs must be reviewed and approved by OLC prior to being sent to the project proponent for review.
- d. Review the project proponent's edits, if any, to the draft voluntary agreement, scope of work, schedule, and cost estimate:
  - i. It is the Project Manager's or Regional Brownfields Coordinator's responsibility to respond to and address any proposed changes to the technical requirements and site description.
  - ii. For VCAs being entered into under section 25355.5(a)(1)(C), of the Health and Safety Code, the Unit Supervisor or Regional Brownfields Coordinator will determine if the project proponent's proposed changes to the agreement significantly differ from the model agreement such that review and approval by OLC is required.
  - iii. For CLRRRA and PPAs, OLC must review and approve all agreements.
- e. If OLC review of the voluntary agreement is required, submit an EnviroStor Work Request to OLC and work with OLC to negotiate and finalize the voluntary agreement.
  - i. It is the Project Manager's or Regional Brownfields Coordinator's responsibility to coordinate a conference call, if necessary, with Department staff (e.g., Unit Chief, OLC), the project proponent(s), and/or the project proponent's(s') legal counsel to finalize the voluntary agreement.
- f. Once the voluntary agreement is fully executed, scan and upload the agreement to the EnviroStor profile for the site as a public document and place the original document in the site file. If requested by CRBU, the Project Manager, Branch Liaison, or

Regional Brownfields Coordinator will email a copy of the voluntary agreement to the CRBU analyst assigned to the site.

3. **Monitor Cost Recovery.** The Project Manager and Branch Liaison will comply with DPM-CR-01, "Cost Recovery: Administrative Site Management," to monitor the Department's response costs incurred pursuant to the voluntary agreement.
  - a. **Advance Payments.** The Project Manager or Branch Liaison will confirm that advance payments, if required pursuant to a voluntary agreement, Standard (Reimbursement) Agreement, or other contract, are received from the billable party on time.
    - i. Every effort should be made to limit work on the site until the advance payment has been received by the Department. (See DPM-CR-05, "Cost Recovery: Voluntary Cleanup Program Agreements," and DPM-CR-18, "Cost Recovery: Payments," for more information about advance payments.)
      1. Advance payments received can be verified using the link to the Receipts Listing Report via the Cost Recovery Billing System at <http://dtscnet.dtsc.ca.gov/database/crbs/> or by contacting the CRBU analyst assigned to the site.
    - ii. If an advance payment is not received within the timeframe specified in a voluntary agreement, then the Project Manager or Regional Brownfields Coordinator will follow the procedures in DPM-CR-09, "Cost Recovery: Suspension and Termination of Voluntary Cleanup Program Agreements," to determine whether to suspend or terminate the voluntary agreement.

#### **Office of Legal Counsel (OLC)**

1. Upon receipt of an EnviroStor Work Request for review of a draft voluntary agreement, OLC will review the agreement to ensure compliance with the most current model agreement.
2. As necessary, OLC will work with Cleanup Program staff to negotiate and finalize voluntary agreements.

### **Cost Recovery Billing Unit (CRBU)**

1. Upon notification of the issuance of a new Site Code, CRBU will follow the procedures outlined in DPM-CR-03, "Cost Recovery: Site Code Origination," to initiate the invoicing process.
2. Upon receipt of a voluntary agreement or an EnviroStor notification of an uploaded voluntary agreement, CRBU will upload the voluntary agreement to the Cost Recovery Billing System (CRBS).
3. CRBU will follow the procedures outlined in DPM-CR-18, "Cost Recovery: Payments," to process payments received from the project proponent.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Orders

**Number:**

DPM-CR-06

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**Date Issued:**

November 21, 2013

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM describes the Department's procedures for developing and issuing orders.<sup>1</sup>

**APPLICABILITY:** This DPM applies to Cleanup and Hazardous Waste Management Program (collectively referred to as "Program") Project Managers and Branch Liaisons, Office of Legal Counsel (OLC), and Cost Recovery Billing Unit (CRBU)<sup>2</sup> staff handling sites for which the Department will issue or has issued one of the following "orders":<sup>3</sup>

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>3</sup> Although Corrective Action Consent Agreements (CACAs) and Agreements for Facility-Initiated Corrective Action (FICAs) are called "agreements," they are included in this DPM because they are also

- Imminent and Substantial Endangerment Determination and Order and Remedial Action Order (I/SE Order)
- Imminent and Substantial Endangerment Determination and Consent Order (I/SE Consent Order)
- Remedial Action Order (RAO)
- Corrective Action Consent Agreement (CACA)
- Agreement for Facility Initiated Corrective Action (FICA)
- Enforcement Order for Corrective Action (CAO)

#### **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25187, 25269.5, 25355.5, 25356.1.3, 25358.3, and 25360
- EO-93-009-PP, “Imminent and/or Substantial Endangerment Policy, Procedure and Guidelines” (July 1993)
- OPP 90-7, “Site Mitigation Enforcement Case Management” (Nov. 1990)<sup>4</sup>

#### **PROCEDURES:**

##### **Program Project Managers, Branch Liaisons, and Unit Supervisors**

1. **Identification of the appropriate order.** Once the Department determines that it needs to require investigation and/or remediation of a site or facility, the Project Manager, Unit Supervisor, and, if necessary, OLC will identify the appropriate order for the site.
2. **Request a Site Code.** The Project Manager will work with the Branch Liaison to request a Site Code in accordance with DPM-CR-03, “Cost

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documents issued pursuant to the Department’s enforcement authority. Voluntary Cleanup Program agreements (see DPM-CR-05, “Cost Recovery: Voluntary Cleanup Program Agreements”) are not included in this DPM because Voluntary Cleanup Program agreements have termination for convenience clauses. For ease of reference, and when appropriate, CACAs and FICAs are also referenced to herein as “orders.”

<sup>4</sup> This DPM complements EO-93-009-PP and OPP-90-7, which are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and EO-93-009-PP or OPP-90-7, Department staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating EO-93-009-PP and OPP-90-7 and staff will be notified when the updated policies are issued.

Recovery: Site Code and Project Code Origination,” or confirm that an existing Site Code may be utilized for staff to bill their time. (See also DPM-CR-01, “Cost Recovery: Administrative Site Management,” for more information about requesting Site Codes for orders.)

- a. For sites that will be issued an I/SE Order, RAO, or an I/SE Consent Order, the Project Manager will determine if a new Site Code and/or Work Phase is required. (See DPM-CR-03, “Cost Recovery: Site Code and Project Code Origination,” for more information about the Department’s procedures for requesting and issuing Site Codes.)
    - i. Staff will charge time spent developing I/SE Orders and RAOs to Program Cost Account (PCA) Code 11018.
    - ii. Staff will charge time spent developing I/SE Consent Orders to PCA Code 12018.
  - b. For sites to be issued a CACA, a FICA, or a CAO, the need for a new Site Code and/or Work Phase is evaluated after the order is issued.
    - i. Staff will charge time spent developing CACAs, FICAs, or CAOs to of the following PCA Codes: 25122 (for RCRA Facilities) or 22122 (for Standardized Permit and Tiered Permit Facilities).
3. **Create an EnviroStor profile.** The Project Manager and Branch Liaison will comply with DPM-CR-01, “Cost Recovery: Administrative Site Management,” to create an EnviroStor profile for the site.
  4. **Conduct a PRP search.** In accordance with DPM-CR-07, “Cost Recovery: Potentially Responsible Party (PRP) Searches,” the Project Manager will identify PRPs to name as respondents in the order.

5. **Developing the order.** The Project Manager will use the most current model to prepare the appropriate order and will:<sup>5</sup>
- a. Insert specific site and billable party information into the draft order and remove guidance, instructions, and suggested language from the model order. Guidance and instructions appear in **boldface** and brackets ([ ]).
  - b. Develop a cost estimate for the site that accurately reflects the anticipated time and costs associated with the site, to the extent feasible. In developing the cost estimate, the Project Manager or Branch Liaison will:
    - i. Use Microsoft Excel or the EnviroStor Resource Estimation Worksheet to develop the initial cost estimate.
    - ii. Address the oversight costs for each phase of work defined in the order's scope of work. This estimate should include a list of estimated personnel labor rates, as well as, to the extent feasible, an estimate of the total hours Department staff expect to charge for the entire scope of the project, including, if applicable, Project Manager, technical support staff, public participation staff, and OLC attorney hours.
    - iii. Use the Contract Estimation Rates published annually and posted on Financial Planning's SharePoint page to determine the estimated costs. A link to the Contract Estimation Rates is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  - c. **For I/SE Orders, I/SE Consent Orders, and RAOs.**
    - i. Ensure that the I/SE Order, I/SE Consent Order, or RAO will be issued to the largest manageable number of PRPs after

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<sup>5</sup> Links to the most current model orders can be found on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.

considering the factors provided in Health and Safety Code section 25356.1.3(a).

- ii. Draft, review, and submit the I/SE Order, I/SE Consent Order, or RAO to the Unit Supervisor for approval in accordance with EO-93-009-PP, “Imminent and/or Substantial Endangerment Policy, Procedure and Guidelines” (July 1993).
- d. **For CACAs, FICAs, and CAOs.** Draft and submit the CACA, FICA, or CAO to the Unit Supervisor for approval in accordance with the procedures and requirements provided in Health and Safety Code section 25187.
- e. After the Unit Supervisor approves the order, upload the draft order to the EnviroStor profile for the site as a draft document, submit an EnviroStor Work Request for OLC to review the order, and work with the assigned OLC attorney to finalize and issue the order.
- f. Obtain necessary signatures on the order.
  - i. For CACAs and FICAs, the Project Manager will facilitate the review, approval, and signature of the document by the billable party(ies). Any changes to the model CACA and FICA language proposed by the billable party will also be reviewed and approved by OLC.
  - ii. The cover sheet of the letter accompanying the order issued to the billable parties will include the estimate of the cost of investigation and/or remediation for the initial phase of work required pursuant to the order.
  - iii. The Project Manager will refer to the appropriate delegation table to determine proper signatories to the order.
- g. Once the order is fully executed and issued:
  - i. Scan and upload the order to the EnviroStor profile for the site as a final document.
  - ii. Place the original order in the public site file.

- iii. Send billable party information and, if requested, a copy of the order, to the CRBU analyst assigned to the site or [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov). Include the following information in the “Subject” line of the email: Site Code, Site Name, and purpose of the email.
6. **Cost recovery monitoring.** The Project Manager and Branch Liaison will comply with DPM-CR-01, “Cost Recovery: Administrative Site Management,” to monitor the Department’s response costs incurred pursuant to the order.

#### **Office of Legal Counsel (OLC)**

1. Upon receipt of an EnviroStor Work Request for review of a draft order, OLC will review the order to ensure that it complies with the current model order and work with Program staff to finalize and issue the order. OLC will refer to the PRP Identification Memorandum prepared by Program staff to ensure that the largest manageable number of PRPs is identified in the order after considering the factors provided in Health and Safety Code section 25356.1.3(a).
2. OLC will respond to legal issues raised by billable parties named in orders issued by the Department.
3. OLC will work with Program staff to develop and implement an enforcement strategy in accordance with OPP 90-7, “Site Mitigation Enforcement Case Management” (Nov. 1990), upon receipt of an EnviroStor Work Request from Program staff to pursue billable parties that are not complying with an order issued by the Department.

#### **Cost Recovery Billing Unit (CRBU)**

1. CRBU will follow the procedures outlined in DPM-CR-16, “Cost Recovery: Invoicing,” to initiate the invoicing process as soon as CRBU is notified that an order has been issued and a list of billable parties is submitted to CRBU by the Project Manager or Branch Liaison.
2. Upon receipt of an order or an EnviroStor notification of an uploaded order, CRBU will upload the order to the Cost Recovery Billing System (CRBS).

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Potentially Responsible Party (PRP) Searches	<b>Number:</b> DPM-CR-07
	<b>Date Issued:</b> October 3, 2014 <sup>1</sup>

**PURPOSE:** The Department’s mission is to protect California’s people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.” The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of Department staff with respect to cost recovery. This DPM describes the Department’s procedures for conducting potentially responsible party (PRP) searches to identify parties that are responsible for conducting the necessary characterization and remediation of a site.<sup>2</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program Technical and Administrative Project Managers (collectively referred to as “Project Managers”), Program Contract Managers, Unit Supervisors, and Branch Chiefs responsible for conducting PRP searches prior to issuing orders requiring investigation and/or remediation of contaminated properties or when considering whether state funds may be used to investigate and/or remediate contaminated properties. This DPM

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<sup>1</sup> This DPM supersedes DPM-CR-07, “Cost Recovery: Potentially Responsible Party (PRP) Searches” (November 2013).

<sup>2</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department’s general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.



also applies to Office of Legal Counsel (OLC), Contracts and Business Services Branch (Contracts), Collections and Resolution Unit (Collections), Data Systems Unit, and Generator Information Services Section (GISS) staff assisting Project Managers and Unit Supervisors with PRP searches and other related administrative tasks.

#### **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25187, 25187.5, 25323.5, 25355.5, 25356.1.3, 25358.3, and 25360
- [U.S. EPA's "PRP Search Manual," EPA 330-K-09-001A \(Sept. 2009\) and Nov. 2011 Addendum](#)

#### **PROCEDURES:**

##### **The PRP Search Process**

1. Pursuant to Health and Safety Code section 25356.1.3, the Department will issue orders requiring investigation and/or remediation of contaminated properties to the largest manageable number of PRPs after considering certain factors provided by law. (See [DPM-CR-06, "Cost Recovery: Orders"](#) for more information about orders.) The Department must also identify PRPs when considering whether state funds may be used to investigate and/or remediate contaminated properties.
2. A PRP search is the process of collecting evidence of liability that is legally sufficient (Prima Facie Case) to establish that certain parties may be responsible for investigating and/or remediating contaminated properties or are liable for response costs incurred by the Department in investigating and/or remediating contaminated properties. The PRP search process may include, but is not limited to, gathering site documents, performing title searches, sending and receiving Requests for Information and Documents, reviewing documents, conducting interviews, and performing research.
3. **Initial Coordination Meeting**
  - a. Upon determining that an order must be issued for a site or when considering whether state funds may be used to investigate and/or remediate a site, the Project Manager will schedule a PRP Identification Memorandum activity in EnviroStor and send an



EnviroStor Work Request to OLC to have an attorney assigned to the site in order to schedule an initial coordination meeting, which will be scheduled within thirty days of attorney assignment.

- b. During the initial coordination meeting, the Project Manager, Unit Supervisor, and OLC will discuss what is known about PRPs for the site, identify any additional information needed to complete a PRP search for the site, and determine what resources are available for conducting the PRP search.
- c. The Project Manager, Unit Supervisor, and OLC will also discuss whether outside contractor assistance is required to complete the PRP search. If outside contractor assistance is needed, the Project Manager will contact the Program Contract Manager for assistance.

#### 4. **Perform PRP Search**

- a. The Project Manager will follow the procedures for conducting a PRP search that are described in the [U.S. EPA's "PRP Search Manual," EPA 330-K-09-001A \(Sept. 2009\) and Nov. 2011 Addendum](#).
- b. For National Priorities List (NPL) sites, the Project Manager and OLC will coordinate with U.S. EPA staff for the purpose of obtaining U.S. EPA PRP search documentation. (See [DPM-CR-14, "Cost Recovery: National Priorities List \(NPL\) Sites,"](#) for more information about obtaining PRP search information from U.S. EPA.)
- c. The basic steps of the PRP search are as follows:
  - i. **Review available information in federal files, state files, local government files, and other records.** The Project Manager will review information in federal, state, and/or local government files, as well as other records, to identify people and businesses that used the property from the present back to the time period when contamination is suspected to have occurred or the property's first use that could have caused contamination, whichever is earlier. This information is used to begin identifying PRPs for the site.



- ii. **Determine ownership and leasehold interests.** The Project Manager will determine ownership and leasehold interests in the property from the present back to the time period when contamination is suspected to have occurred or the property's first use that could have caused contamination, whichever is earlier. Determining ownership interests in the property may require the Department to conduct a title search. If outside contractor assistance is needed to conduct the title search, the Project Manager will contact the Program Contract Manager for assistance.
- iii. **Identify other associated businesses or entities.** The Project Manager will identify other associated businesses or entities that may be PRPs. This may require the Department to evaluate corporate and business relationships, including, but not limited to, parent or successor companies and other entities that may be liable.
- iv. **Identify businesses that sent hazardous waste or hazardous substances to the site.** For circumstances involving offsite hazardous waste or hazardous substances being brought onsite, the Project Manager will identify businesses that sent hazardous waste or hazardous substances to the site.
  1. The Project Manager will search the Hazardous Waste Tracking System (HWTS) for any information about hazardous waste that was sent to the site.
    - a. HWTS is accessible through the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
    - b. HWTS contains a copy of each hazardous waste manifest from 1997 to the present. The Data Systems Unit can provide information on hazardous waste manifests dated before 1997.





- vii. As a member of the Western States Project, the Department can request LexisNexis searches for individuals and Dunn & Bradstreet searches for companies by e-mailing Western States Project staff Lynn Cassidy at Cassidy.Lynn@azdeq.gov or Eunice Sepulveda-Martinez at Sepulveda-Martinez.Eunice@azdeq.gov.

## 5. Follow-up Coordination/Progress Meeting(s)

- a. The Project Manager, Unit Supervisor, OLC, and, if necessary, Collections will participate in a follow-up coordination meeting to jointly evaluate the information obtained during the initial PRP search to determine whether there is sufficient information to complete the PRP search.
- b. If no response or an inadequate response is received in response to a Request for Information and Documents, then the Project Manager, Unit Supervisor, and OLC will develop an appropriate enforcement strategy.
- c. The Project Manager, Unit Supervisor, OLC, and, if necessary, Collections will discuss additional information necessary to assess PRP financial viability, determine the resources available for collecting PRP financial information, and identify the appropriate Department staff responsible for obtaining PRP financial information.<sup>3</sup> (See [DPM-CR-22, “Cost Recovery: Ability to Pay \(ATP\) Determinations”](#) for more information about conducting ATP evaluations for PRPs upon request.)
  - i. Considerations impacting PRP viability may include, but are not limited to, individuals who are deceased, estates in probate, form of business entity (e.g., sole proprietorship, partnership, corporation), corporate status (suspended, forfeited, or dissolved), bankruptcy, and the current property owner’s financial ability to remediate the site.

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<sup>3</sup> The financial viability of a PRP does not preclude the Department from issuing an order naming the PRP as a respondent.



- ii. Information regarding PRPs' financial viability may also be requested by using a Request for Information and Documents, although the PRPs are not required to produce such information. U.S. EPA's [sample information request letters](#) include questions intended to determine the financial condition of a PRP, and these questions can be included in Attachment C to the Department's Request for Information and Documents.

## 6. Prepare PRP Identification Memorandum

- a. The Project Manager will prepare a draft PRP Identification Memorandum utilizing the [PRP Identification Memorandum template](#) to document the PRPs identified for the site following the instructions provided in this DPM.
- b. The PRP Identification Memorandum must be marked "Privileged & Confidential," "Deliberative Process," "Attorney-Client Communication," and "Attorney Work Product" and include:
  - i. The site name, Site Code, site address, and assessor's parcel numbers.
  - ii. A chronological summary of the site history, including the specific hazardous substances at issue, the date of the first release of the specific hazardous substances at issue or if the date of first release is unknown, the date the specific hazardous substances at issue were first used at the site, and any other relevant information.
  - iii. A summary of Department response actions, including the current site status and anticipated future response actions.
  - iv. Information on each PRP since the date of the first release or use of the specific hazardous substances at issue, including all factual information establishing the liability of each PRP, and a conclusion, if any, regarding the viability of each PRP.
  - v. A summary of previous Department cost recovery actions, including PRP searches, cost recovery litigation,



settlements, and Requests for Information and Documents and responses, if applicable.

- c. If appropriate, the PRP Identification Memorandum will also include the following attachments:
  - i. A table containing property ownership information for all parcels from the present back to the time period when contamination is suspected to have occurred or the property's first use that could have caused contamination, whichever is earlier, to the present.
  - ii. A table containing operator information for all parcels from the present back to the time period when contamination is suspected to have occurred or the property's first use that could have caused contamination, whichever is earlier, to the present.

## **7. Submitting and Approving a PRP Identification Memorandum**

- a. Once the Project Manager completes the draft PRP Identification Memorandum, the Project Manager will upload it to the EnviroStor PRP Identification Memorandum activity and submit an EnviroStor Work Request to OLC for review and approval of the draft PRP Identification Memorandum.
- b. Once OLC reviews and approves the draft PRP Identification Memorandum, OLC will sign the final PRP Identification Memorandum and e-mail the signed copy to the Project Manager who submitted the EnviroStor Work Request.
- c. Upon receipt of a PRP Identification Memorandum signed by OLC, the Project Manager will obtain the Unit Supervisor's and Branch Chief's signatures on the PRP Identification Memorandum.

## **8. Post-PRP Identification Memorandum Approval Procedures**

- a. If the PRP search indicates there are no viable PRPs, then the Project Manager will evaluate the site for potential use of state funds to investigate and/or remediate the contaminated property and follow the procedures outlined in DPM-CR-08, "Cost Recovery:



Classifying 'Orphan' Sites in the Cost Recovery Billing System (CRBS)." ([See DPM-CR-08, "Cost Recovery: Classifying 'Orphan' Sites in the Cost Recovery Billing System \(CRBS\)."](#))

- b. If the PRP search indicates there may be viable PRPs, the Project Manager will work with OLC to discuss issuing an order naming the PRPs as respondents ([See DPM-CR-06, "Cost Recovery: Orders"](#)).

### **Project Managers**

1. The Project Manager will schedule a PRP Search activity in EnviroStor and send an EnviroStor Work Request to OLC to have an attorney assigned to the site prior to scheduling an initial coordination meeting.
2. The Project Manager will initiate and participate in the initial coordination meeting with the Unit Supervisor and OLC.
3. The Project Manager will work with the Unit Supervisor and OLC to determine whether an outside contractor is needed to perform or assist with the PRP search. If outside contractor assistance is needed, the Project Manager will contact the Program Contract Manager for assistance.
4. The Project Manager will perform the PRP search or supervise the outside contractor that is performing the PRP search and consult with OLC as necessary during this process.
5. If necessary, the Project Manager will prepare Requests for Information and Documents to PRPs utilizing the model Request for Information and Documents. The Project Manager may consult with OLC regarding appropriate questions to include in a Request for Information and Documents. The Project Manager will also track Request for Information and Documents compliance.
6. If necessary, the Project Manager will work with Collections, OLC, and the Unit Supervisor to determine the financial viability of PRPs in accordance with the procedures outlined in [DPM-CR-22, "Cost Recovery: Ability to Pay \(ATP\) Determinations"](#).



7. The Project Manager will initiate and participate in follow-up coordination/progress meetings with the Unit Supervisor, OLC, and, if necessary, Collections.
8. The Project Manager will prepare a draft PRP Identification Memorandum utilizing the [PRP Identification Memorandum template](#) to document the PRPs identified for the site following the instructions provided in this DPM.
9. The Project Manager will upload the draft PRP Identification Memorandum to the EnviroStor PRP Identification Memorandum activity and submit an EnviroStor Work Request to OLC for review and approval of the draft PRP Identification Memorandum.
10. Upon receipt of a final PRP Identification Memorandum signed by OLC, the Project Manager will obtain the Unit Supervisor's and Branch Chief's signatures on the PRP Identification Memorandum.
11. After the PRP Identification Memorandum is signed by OLC, the Unit Supervisor, and the Branch Chief, the Project Manager will upload it to the site's EnviroStor PRP Identification Memorandum activity and place the original in the site's confidential file.
12. If viable PRPs were identified during the PRP search, the Project Manager will issue an order naming them as respondents. If no viable PRPs were identified during the PRP search, the Project Manager will evaluate the site for potential use of state funds to investigate and/or remediate the contaminated property and follow the procedures outlined in [DPM-CR-08, "Cost Recovery: Classifying 'Orphan' Sites in the Cost Recovery Billing System \(CRBS\)."](#) (See [DPM-CR-06, "Cost Recovery: Orders"](#) and [DPM-CR-08, "Cost Recovery: Classifying 'Orphan' Sites in the Cost Recovery Billing System \(CRBS\)"](#) for more information about orders and classifying sites as "orphan" in CRBS.)
13. For National Priorities List (NPL) sites, the Project Manager and OLC will coordinate with U.S. EPA staff for the purpose of obtaining U.S. EPA PRP search documentation. (See [DPM-CR-14, "Cost Recovery: National Priorities List \(NPL\) Sites,"](#) for more information about obtaining PRP search information from U.S. EPA.)



### **Program Unit Supervisors**

1. The Unit Supervisor will participate in the initial coordination meeting and any follow-up coordination/progress meetings with the Project Manager, OLC, and, if necessary, Collections.
2. The Unit Supervisor will assist the Project Manager, the Program Contracts Manager, and Contracts to obtain outside contractor assistance, if needed, with PRP searches.
3. The Unit Supervisor will review, approve, and sign the final PRP Identification Memorandum after OLC signs.

### **Program Branch Chief**

The Branch Chief will review, approve, and sign the final PRP Identification Memorandum after OLC signs.

### **Program Contract Manager**

If outside contractor assistance is required to complete the PRP search, then the Program Contract Manager will work with the Project Manager and Contracts to identify funding and access existing contracts or establish a new contract for PRP search assistance.

### **Office of Legal Counsel (OLC)**

1. Upon receipt of an EnviroStor Work Request seeking assistance with a PRP search, OLC will assign an attorney to work with Program staff during the PRP search process.
2. OLC will participate in the initial coordination meeting and any follow-up coordination/progress meetings with the Project Manager and Unit Supervisor.
3. Upon request, OLC will assist the Project Manager and other Department staff with the PRP search, including, but not limited to:
  - a. Conducting Westlaw public records and Secretary of State business records searches.



- b. Assisting in developing contracts for contractor assistance with the PRP search, drafting Requests for Information and Documents to PRPs, evaluating PRP responses to Requests for Information and Documents, and initiating enforcement actions as a result of a PRP's failure to respond to Requests for Information and Documents or having provided an inadequate response.
  - c. Assisting Project Managers, Unit Supervisors, and Collections, as necessary, to determine the viability of PRPs identified during the PRP search process.
  - d. Assisting Project Managers and Unit Supervisors to finalize the draft PRP Identification Memorandum.
  - e. Reviewing, approving, and signing the final PRP Identification Memorandum and e-mailing the signed copy to the Project Manager who submitted the EnviroStor Work Request.
4. For National Priorities List (NPL) sites, OLC and the Project Manager will coordinate with U.S. EPA staff for the purpose of obtaining U.S. EPA PRP search documentation. (See [DPM-CR-14, "Cost Recovery: National Priorities List \(NPL\) Sites,"](#) for more information about obtaining PRP search information from U.S. EPA.)

#### **Contracts and Business Services Branch (Contracts)**

If outside contractor assistance is needed to complete the PRP search, then Contracts will work with the Project Manager and Program Contract Manager to access existing contracts or establish a new contract for PRP search assistance.

#### **Collections and Resolution Unit (Collections)**

Upon request, Collections will assist Department staff in evaluating the financial ability of PRPs to fund the investigation and/or remediation of contaminated properties and, as necessary, participate in any follow-up coordination/progress meetings with the Project Manager, Unit Supervisor, and OLC.

#### **Data Systems Unit**

1. The Data Systems Unit will ensure the PRP Identification Memorandum is identified as a confidential document so that uploaded electronic documents are not displayed on the public website.



2. Upon request, the Data Systems Unit will provide reports that contain hazardous waste manifest information.

### **Generator Information Services Section (GISS)**

Upon request and depending on the scope of the request, GISS will provide copies of hazardous waste manifests.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

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**Miriam Barcellona Ingenito**

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Miriam Barcellona Ingenito, Acting Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Classifying Sites with Future Costs as “Orphan” Sites in the Cost Recovery Billing System (CRBS)

**Number:**

DPM-CR-08<sup>1</sup>

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**Date Issued:**

February 20, 2015

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**PURPOSE:** The Department’s mission is to protect California’s people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.” The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of Department staff with respect to cost recovery. This DPM explains the Department’s procedures for classifying a site or project<sup>2</sup> for which the Department will incur future costs as an “orphan” site in the Department’s Cost Recovery Billing System (CRBS).<sup>3</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program Technical and Administrative Project Managers (collectively referred to as “Project Managers”), Unit Supervisors, and Branch Chiefs responsible for identifying and designating “orphan” sites, and Cost Recovery Billing Unit (CRBU),<sup>4</sup> Accounting Office

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<sup>1</sup> This DPM supersedes DPM-CR-08, “Cost Recovery: Classifying “Orphan” Sites in the Cost Recovery Billing System (CRBS)” (Nov. 21, 2013).

<sup>2</sup> “Site” and “project” are collectively referred to herein as “site.” Refer to [DPM-CR-03, “Cost Recovery: Site Code and Project Code Origination,”](#) for definitions of “site” and “project.”

<sup>3</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department’s general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>4</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

(Accounting), and Fiscal Systems Unit (FSU) staff managing “orphan” sites. This DPM also applies to Office of Legal Counsel (OLC) and Collections and Resolution Unit (Collections) staff assisting Cleanup Program staff with the “orphan” site designation process.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\) section 104\(c\) and \(d\) \(42 U.S.C. § 9604\(c\) & \(d\)\)](#)
- [40 Code of Federal Regulations \(CFR\)](#) parts 300.415, 300.500, 300.510, 300.515, and 300.525(b)
- [Health and Safety Code](#) sections 25187.5(b)(1), 25337, 25350, 25353, 25355, 25355.5, 25335.6, and 25356
- [Department of Finance, State Administrative Manual \(SAM\)](#) chapter 8700, section 8776.6
- Brownfields and Environmental Restoration (Cleanup Program): SharePoint Site, Administrative Document Collaboration (a.k.a. Collaboration Site) – Document Flow Charts ([Document Flow Charts](#))

**PROCEDURES:**

**Scope of DPM**

1. This DPM applies only to “orphan” sites (defined below) for which the Department will incur future costs, including, but not limited to, costs associated with site remediation, operation and maintenance, administering land use covenants, and Five-Year Reviews.
2. This DPM provides the process for approval of an Orphan Site Designation Memorandum, which authorizes a change in the billing status and Work Phases, the cessation of invoicing, the adjustment of all existing and future costs related to the orphan site in CRBS, and the adjustment of billed costs in California’s official accounting system related to the newly designated orphan site.
  - a. A separate No Further Cost Recovery Action (NFCRA) Memorandum is no longer required to make adjustments to costs in

CRBS and California's official accounting system to reflect the "orphan" status of a site.

- b. Adjustment of costs in CRBS and in California's official accounting system will apply regardless of whether a lien has been recorded on the "orphan" site.
3. If no future costs will be incurred by the Department for an "orphan" site, then Department staff will follow the applicable Document Flow Chart and, as appropriate, [DPM-CR-11, "Cost Recovery: Site Completion,"](#) [DPM-CR-13, "Cost: Recovery: Daily Log and Cost Recovery Billing System \(CRBS\) Closure,"](#) and [DPM-CR-25, "Cost Recovery: No Further Cost Recovery Action \(NFCRA\) Determinations,"](#) to close the site and address any unrecovered costs.

### **"Orphan" Definition**

1. For purposes of this DPM, "orphan" refers to a site for which the Department will incur future costs to remediate and/or to operate and maintain a remedy and all known potentially responsible parties (PRPs) fall into one or more of the categories listed below.<sup>5</sup> In most cases, a PRP Identification Memorandum will be required prior to designating a site as "orphan" in CRBS.<sup>6</sup> ([See DPM-CR-07, "Cost Recovery: Potentially Responsible Party \(PRP\) Searches,"](#) for more information regarding PRP Identification Memoranda.)
  - a. The PRPs cannot be identified. Examples include, but are not limited to:

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<sup>5</sup> The examples provided in this DPM are not exhaustive, and there may be other circumstances in which an "orphan" site designation may be appropriate.

<sup>6</sup> Program staff should consult with OLC (via a Triage Meeting discussed below) regarding whether a PRP Identification Memorandum is necessary to support the designation of a site as "orphan" in CRBS. There may be instances where information necessary to support the Department's designation of a site as "orphan" may be included in the Orphan Site Designation Memorandum, such as where the Department is relying on a PRP search conducted by the U.S. EPA that determined that no viable PRPs exist for a site or where the "orphan" designation is based on settlement agreements with all known PRPs releasing the PRPs from liability related to the site or the Department's response costs.

- i. Where the Department conducted a site investigation to locate sources of groundwater contamination using state Site Remediation Account (SRA) funds. If the Department was unable to identify a source area, then there are no PRPs to identify and the site may be considered an “orphan” site for purposes of conducting future response actions to remediate the groundwater contamination.
  - ii. Where the U.S. EPA defined a National Priority List (NPL) site or operable unit in a manner that precludes naming any PRPs for response actions at the site.
- b. The PRPs have been identified, but are insolvent. Examples include, but are not limited to:
  - i. The Department cannot recover costs from a PRP because it declared bankruptcy. (See [DPM-CR-23, “Cost Recovery: Bankruptcy Notices,”](#) for more information about the Department’s procedures for tracking bankruptcy notices.)
  - ii. An ability to pay (ATP) analysis conducted by the Department determined that the PRPs are unable to pay for the remediation of the contaminated property or reimburse the Department’s response costs. (See [DPM-CR-22, “Cost Recovery: Ability to Pay \(ATP\) Determinations,”](#) for more information about the Department’s procedures for ATP determinations.)
  - iii. The property owner’s only asset is the site, which is valued at significantly less than the cost of the necessary response actions. In this case, the Department will evaluate whether to record a lien on the property to secure the Department’s response costs. (See [DPM-CR-24, “Cost Recovery: Lien Placement,”](#) for more information about the lien placement process.)
- c. The PRPs are deceased and there are no assets remaining in their estates. Social Security records can be used to document when a person is deceased.

- d. The PRP business entities are dissolved or suspended or have otherwise gone out of business without a viable successor. Secretary of State business records can be used to determine the status of a business entity.
- e. OLC or the Attorney General's (AG's) Office recommends that the Department is unable to or should not pursue cost recovery from the PRPs.
- f. The Department entered into a settlement agreement (settlement) with all known PRPs resolving the PRPs' liability for past and future response costs incurred by the Department. An Orphan Site Designation Memorandum should be prepared if these settlement funds will be exhausted within one year and additional work is required.
- g. The U.S. EPA classified an NPL site or operable unit as a Fund-lead site and the Department separately determined that there are no viable PRPs.

### **Orphan Site Designation Process**

#### **1. Triage Meeting**

- a. Upon determining that questions regarding the existence and/or viability of a PRP or PRPs exist, Project Managers will follow the steps outlined in the [Document Flow Charts](#) to initiate a Triage Meeting that will include Project Managers, Unit Supervisor, Branch Chief, and OLC to discuss whether any additional information is necessary to designate the site as "orphan" in CRBS, determine the availability of resources for collecting necessary information, and designate the staff responsible for obtaining this information.
  - i. Project Managers will schedule an EnviroStor Activity for "Triage Meeting" and send an EnviroStor Work Request to OLC to have an attorney assigned to the site for consultation purposes.
- b. Prior to the Triage Meeting, Project Managers will ensure that documents supporting the potential orphan site designation are

identified as activities and uploaded to EnviroStor, including but not limited to, settlements (including judicial consent decrees and orders), bankruptcy orders, and PRP Identification Memoranda.

- c. During the Triage Meeting, staff will discuss issues such as, but not limited to, whether the Department should:<sup>7</sup>
  - i. Conduct a PRP search, if required and not previously conducted by the Department, to identify additional PRPs related to the site. (See [DPM-CR-07, “Cost Recovery: Potentially Responsible Party \(PRP\) Searches](#),” for more information about the Department’s procedures for conducting PRP searches.)
  - ii. Conduct an ATP analysis to determine the financial viability of PRPs related to the site. (See [DPM-CR-22, “Cost Recovery: Ability to Pay \(ATP\) Determinations](#),” for more information about ATP analyses.)
  - iii. Place a lien on the property to secure the Department’s response costs. (See [DPM-CR-24, “Cost Recovery: Lien Placement](#),” for more information about the lien placement process.)<sup>8</sup>

## **2. Assess Financial Viability of PRP(s)**

- a. If appropriate, Department staff will follow [DPM-CR-22, “Cost Recovery: Ability to Pay \(ATP\) Determinations](#),” to request and analyze financial information from PRPs claiming an inability to pay for the remediation of contaminated property or the Department’s response costs.
  - i. An ATP analysis may not be required if the Department cannot recover its costs from a PRP because the PRP declared bankruptcy, the PRP is deceased, or the PRP is a

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<sup>7</sup> This list is not exhaustive and there may be other relevant issues that Department staff should discuss during the Triage Meeting.

<sup>8</sup> A site may be designated as an “orphan” site even if there is a lien on the site.

business entity that is dissolved, suspended, or has otherwise gone out of business. Project Managers will consult with Collections and OLC to determine whether an ATP analysis is necessary under these circumstances.

- b. The Department may also request information regarding a PRP's financial viability through the use of a [Request for Information and Documents](#). (See [DPM-CR-07, "Cost Recovery: Potentially Responsible Party \(PRP\) Searches](#)," for more information about Requests for Information and Documents.)
- c. If, after assessing the financial viability of the PRP in accordance with [DPM-CR-22, "Cost Recovery: "Ability to Pay \(ATP\) Determinations](#)," Project Managers, Unit Supervisor, Branch Chief, Collections, and OLC determine that the PRP demonstrated an inability to pay for the remediation of the contaminated property or the Department's response costs, then the Project Manager will prepare an Orphan Site Designation Memorandum to document the Department's conclusions and request approval to change the billing status of the site to "orphan" in CRBS.

### **3. Orphan Site Designation Memorandum Preparation, Collaboration, Submission, and Approval Process**

- a. The Orphan Site Designation Memorandum is an administrative cost recovery document created by using a template in the [Admin Document Collaboration Site – Admin Doc Library](#) and following the processes outlined in the Document Flow Chart for orphan designation.
- b. Project Managers will verify that documents supporting the orphan site designation are identified as activities and uploaded to EnviroStor, including but not limited to, settlements (including judicial consent decrees and orders), bankruptcy orders, and PRP Identification Memoranda.
- c. Project Managers will schedule an EnviroStor Activity for "Orphan Site Designation" and send an EnviroStor Work Request to OLC to

have an attorney assigned to the site to help develop the Orphan Site Designation Memorandum.

- d. Program and OLC staff will charge time spent determining whether an orphan designation is appropriate for a site and time spent developing, finalizing, and processing an Orphan Site Designation Memorandum to the Site Code for the site being evaluated.
- e. The Orphan Site Designation Memorandum will include the following non-confidential information<sup>9</sup>:
  - i. **Site Name:** Identify the name of the site, as commonly identified in both EnviroStor and CRBS.
  - ii. **Site Code:** Identify the Site Code(s) assigned to the site.
  - iii. **Site Address:** Identify the physical address of the site.
  - iv. **CRBS Billing Status:** Identify whether the CRBS billing status of the site should be changed to “Orphan/NPL” or “Orphan/State.”
  - v. **Site History:** Include a chronological summary of the site history, including the specific hazardous substances at issue, other relevant information, and the date of the first release of the specific hazardous substances at issue or if the date of first release is unknown, the date the specific hazardous substances at issue were first used at the site.
  - vi. **Summary of Department Response Actions:** Provide summary of Department response actions, including the current site status and anticipated future response actions.
  - vii. **Potentially Responsible Party (PRP) Information:** Include information on each PRP since the date of the first release

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<sup>9</sup> The Orphan Site Designation Memorandum is a public document. Confidential information and documents, such as the confidential PRP Identification Memorandum and confidential financial information, must not be included in or attached to the Orphan Site Designation Memorandum, placed in the public file for the site, or uploaded to EnviroStor as public documents.

or use of the specific hazardous substances at issue, including all factual information establishing the liability of each PRP.

- viii. **Previous Department Cost Recovery Actions:** Provide a summary of previous Department cost recovery activities, including PRP searches, cost recovery litigation, settlements, and Requests for Information and Documents and responses, if applicable.
- ix. **Conclusion:** Include the following statement: “After conducting a reasonable and thorough potentially responsible party (PRP) search, the Department determined that no viable PRPs likely exist for this site.”
- f. Before it is considered final, the Orphan Site Designation Memorandum must be reviewed and signed by the Unit Supervisor, Branch Chief, and Office of Legal Counsel. The Branch Chief is the final approval authority.

#### **4. Post-Orphan Site Designation Memorandum Approval Procedures**

- a. Project Managers will follow the Document Flow Chart for orphan designation and ensure the final copy of the memorandum is routed and filed as follows:
  - i. Upload a PDF copy of the approved Orphan Site Designation Memorandum to the Admin Document Collaboration Site - Admin Doc Library;
  - ii. Upload a copy of the approved Orphan Site Designation Memorandum to the EnviroStor public profile for the site; and
  - iii. Place a hardcopy of the approved Orphan Site Designation Memorandum in the public file for the site.
- b. Project Managers will complete and follow the processes outlined in the associated Document Flow Chart to submit the following forms:

- i. Accounting CALSTARS Project/Site Request (DTSC Form 1431) to open State/NPL Orphan Work Phase 17 for the site pursuant to the procedures outlined in [DPM-CR-03, “Cost Recovery: Site Code, Project Code, and Work Phase Origination”](#); and
  - ii. Daily Log and Cost Recovery Billing System (CRBS) Closure Request (DTSC Form 1554) to close any Work Phases in the Daily Log that are no longer applicable to the site pursuant to the procedures outlined in [DPM-CR-13, “Cost Recovery: Daily Log and Cost Recovery Billing System \(CRBS\) Closure.”](#)
- c. Upon receipt of an approved Orphan Site Designation Memorandum notification via the Admin Document Collaboration Site - Admin Doc Library, CRBU and Accounting will perform the following tasks:
- i. CRBU will change the billing status of the site in CRBS to “ORPHAN/STATE” or “ORPHAN/NPL” as indicated on the Orphan Site Designation Memorandum.
    - 1. CRBU will classify existing and future unbilled costs in the CRBS cost tab as “CO” to identify “orphan” costs (will not be reported on the Incurred vs Invoiced report). CRBU will revisit “orphan” sites at least every 6 months to classify unbilled costs as “CO.”
  - ii. For billed costs, CRBU will adjust the outstanding invoice balances in CRBS.
    - 1. CRBU will draft and send an adjustment memorandum to Accounting regarding the invoiced or billed costs to be adjusted in California’s official accounting system.
    - 2. Accounting will then adjust billed costs in California’s official accounting system in accordance with the instructions outlined in the adjustment memorandum.

- iii. Once adjustments are complete, CRBU will note that the Orphan Site Designation Memorandum was processed in the CRBS notes for the site and in the Admin Document Collaboration Site – Admin Doc Library. CRBU will upload a copy of the Orphan Site Designation Memorandum to both systems.
  
- d. Upon notification of receipt of Accounting CalStars Project/Site Code Request (DTSC Form 1431) and Daily Log and Cost Recovery Billing System (CRBS) Closure Request (DTSC Form 1554) from Project Managers, via the Admin Document Collaboration Site – Admin Doc Library for an “orphan” site, FSU will:
  - i. Process DTSC Form 1431 to open State/NPL Orphan Work Phase 17 for the site pursuant to the procedures outlined in [DPM-CR-03, “Cost Recovery: Site Code, Project Code, and Work Phase Origination”](#); and
  - ii. Process DTSC Form 1554 to close any Work Phases in the Daily Log that are no longer applicable to the site pursuant to the procedures outlined in [DPM-CR-13, “Cost Recovery: Daily Log and Cost Recovery Billing System \(CRBS\) Closure.”](#)
  - iii. Work Phase 62, however, should not be closed for Orphan/NPL Fund-Lead sites that utilize the Multi- Site Cooperative Agreement (MSCA) Grant for federal assistance.

## **ROLES AND RESPONSIBILITIES**

### **Project Managers**

As discussed in the orphan site designation procedures outlined above, the Project Managers will:

1. Initiate and participate in a Triage Meeting (if necessary) with the Unit Supervisor, Branch Chief, and OLC to determine whether an orphan site designation is appropriate for a site.
  - a. Schedule a Triage Meeting activity in EnviroStor and submit an EnviroStor Work Request to OLC to request an attorney to participate in the Triage Meeting.
  - b. Prior to the Triage Meeting, verify that documents relevant to and supporting the orphan site designation are uploaded to EnviroStor, including but not limited to, settlements (including judicial consent decrees and orders), bankruptcy orders, and PRP Identification Memoranda.
2. Coordinate with the Unit Supervisor, Branch Chief, and OLC to determine the availability of resources for collecting necessary information, and designate the staff responsible for obtaining information required to document the orphan designation.
3. Once a decision is made to pursue an orphan site designation, schedule an “Orphan Site Designation” activity in EnviroStor and submit an EnviroStor Work Request to OLC to have an attorney assigned to the site to assist with the orphan designation process.
4. If required, but not previously completed, conduct PRP searches and complete a PRP Identification Memorandum in accordance with the procedures outlined in [DPM-CR-07, “Cost Recovery: Potentially Responsible Party \(PRP\) Searches.”](#)
5. If appropriate, work with Collections and OLC to conduct ATP analyses in accordance with the procedures outlined in [DPM-CR-22, “Cost Recovery: Ability to Pay \(ATP\) Determinations.”](#)
6. Develop and finalize the Orphan Designation Memorandum following the Document Flow Chart for orphan designation.
7. Obtain OLC, Unit Supervisor, and Branch Chief approval of and signatures on the final Orphan Site Designation Memorandum.

8. Once approved , follow the Document Flow Chart for orphan designation and ensure the final copy is routed properly and filed as follows:
  - a. Upload a PDF copy of the approved Orphan Site Designation Memorandum to the Admin Document Collaboration Site - Admin Doc Library;
  - b. Upload a copy of the approved Orphan Site Designation Memorandum to the EnviroStor public profile for the site; and
  - c. Place a hardcopy of the approved Orphan Site Designation Memorandum in the public file for the site.
9. Follow the process outlined in the applicable Document Flow Charts to submit Accounting CALSTARS Project/Site Request Form (DTSC Form 1431) and Daily Log and Cost Recovery Billing System (CRBS) Closure Request (DTSC Form 1554). Open State/NPL Orphan Work Phase 17 for the site and close any Work Phases that are no longer applicable to the site in the Daily Log pursuant to the procedures outlined in [DPM-CR-03, “Cost Recovery: Site Code, Project Code, and Work Phase Origination,”](#) and [DPM-CR-13, “Cost Recovery: Daily Log and Cost Recovery Billing System \(CRBS\) Closure.”](#)<sup>10</sup>
10. Charge time spent determining whether an orphan designation is appropriate for a site and time spent developing, finalizing, and processing the Orphan Site Designation Memorandum to the Site Code for the site being evaluated.
11. Consult with the Unit Supervisor, Branch Chief, OLC, and if appropriate, Collections, upon receipt of any new information that may indicate that a site may no longer be an “orphan” (e.g., new information indicates the existence of viable PRPs that were previously unidentified or documentation submitted to Collections for purposes of an ATP determination was false or misleading) to evaluate possible enforcement or cost recovery actions.

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<sup>10</sup> Work Phase 62, however, should not be closed for Orphan/NPL Fund-Lead sites that utilize the Multi-Site Cooperative Agreement (MSCA) Grant for federal assistance.

### **Unit Supervisor and Branch Chief**

As discussed in the orphan site designation procedures outlined above, the Unit Supervisor and Branch Chief will:

1. Participate in a Triage Meeting (if necessary) with Project Managers and OLC to determine whether an orphan site designation is appropriate for a site.
2. Coordinate with Project Managers and OLC to determine the availability of resources for collecting necessary information, and designate the staff responsible for obtaining information required to document the orphan designation.
3. Review, approve, and sign the Orphan Site Designation Memorandum once approved and signed by OLC.
4. Consult with Project Managers, OLC, and if appropriate, Collections, upon receipt of any new information that may indicate that a site may no longer be an “orphan” (e.g., new information indicates the existence of viable PRPs that were previously unidentified or documentation submitted to Collections for purposes of an ATP determination was false or misleading) to evaluate possible enforcement or cost recovery actions.
5. Charge time spent determining whether an orphan designation is appropriate for a site and time spent developing, finalizing, and processing an Orphan Site Designation Memorandum to the Site Code for the site being evaluated.

### **Office of Legal Counsel (OLC)**

As discussed in the orphan site designation procedures outlined above, OLC will:

1. Upon receipt of an EnviroStor Work Request, participate in a Triage Meeting with Project Managers, the Unit Supervisor and Branch Chief to determine whether an orphan site designation is appropriate. Once the Triage Meeting activity is concluded, close out the EnviroStor Work Request related to the activity.

2. Once a decision is made to classify a site as “orphan” and upon receipt of an EnviroStor Work Request, assist Program staff with the orphan designation process.
3. Coordinate with Project Managers, Unit Supervisor and Branch Chief to determine the availability of resources for collecting necessary information, and designate the staff responsible for obtaining this information required to document the orphan designation.
4. Work with Project Managers to revise and finalize the Orphan Site Designation Memorandum in the Admin Document Collaboration Site - Admin Doc Library. Ensure that no confidential information is attached to, or included in, the Orphan Site Designation Memorandum.
5. If necessary, assist Program staff in conducting PRP searches and completing the PRP Identification Memorandum in accordance with the procedures outlined in [DPM-CR-07, “Cost Recovery: Potentially Responsible Party \(PRP\) Searches.”](#)
6. If necessary, work with Program staff and Collections to complete ATP analyses in accordance with the procedures outlined in [DPM-CR-22, “Cost Recovery: Ability to Pay \(ATP\) Determinations.”](#)
7. Once finalized, sign and email the approved Orphan Site Designation Memorandum as a PDF to Project Managers for Unit Supervisor and Branch Chief approval and processing, and close out the EnviroStor Work Request related to the activity.
8. Consult with Project Managers, Unit Supervisor, Branch Chief, and if appropriate, Collections upon receipt of any new information that may indicate that a site may no longer be an “orphan” (e.g., new information indicates the existence of viable PRPs that were previously unidentified or documentation submitted to Collections for purposes of an ATP determination was false or misleading) to evaluate possible enforcement or cost recovery actions.
9. Charge time spent determining whether an orphan designation is appropriate for a site and time spent developing, finalizing, and processing an Orphan Site Designation Memorandum to the Site Code for the site being evaluated.

### **Collections and Resolution Unit (Collections)**

As discussed in the orphan site designation procedures outlined above, Collections will:

1. If necessary, work with Program staff to complete an ATP analyses in accordance with the procedures outlined in [DPM-CR-22, "Cost Recovery: Ability to Pay \(ATP\) Determinations."](#)
2. Upon request, consult with Project Managers, Unit Supervisor, Branch Chief, and OLC upon receipt of any new information that may indicate that a site may no longer be an "orphan" (e.g., new information indicates the existence of viable PRPs that were previously unidentified or documentation submitted to Collections for purposes of an ATP determination was false or misleading) to evaluate possible enforcement or cost recovery actions.

### **Cost Recovery Billing Unit (CRBU)**

As discussed in the orphan site designation procedures outlined above, CRBU will:

1. Change the billing status of the site in CRBS to "ORPHAN/STATE" or "ORPHAN/NPL" as indicated on the Orphan Site Designation Memorandum.
2. Classify existing and future unbilled costs in the CRBS cost tab to "CO" to identify costs associated as Orphan (will not be reported on the Incurred vs Invoiced report). Continue to monitor and classify future unbilled costs as "CO" and revisit the "orphan" site at least every 6 months to classify unbilled costs as "CO."
3. Adjust all outstanding invoice balances for the site in CRBS regardless if there is a lien on the site.
4. For billed costs, draft and send an adjustment memorandum to Accounting regarding the billed costs to be adjusted in California's official accounting system.
5. Once adjustments are complete, indicate that the Orphan Site Designation Memorandum was processed in the CRBS notes for the site and in the

Admin Document Collaboration Site – Admin Doc Library. Upload a copy to both systems.

### **Accounting Office (Accounting)**

As discussed in the orphan site designation procedures outlined above, Accounting will make appropriate accounts receivable adjustments in California's official accounting system upon receipt of the adjustment memorandum from CRBU. Adjustment of costs in California's official accounting system will apply regardless of whether a lien has been recorded on the "orphan" site.

### **Fiscal Systems Unit (FSU)**

As discussed in the orphan site designation procedures outlined above, FSU will follow processes outlined in the applicable Document Flow Charts, [DPM-CR-03, "Cost Recovery: Site Code, Project Code, and Work Phase Origination,"](#) and [DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System \(CRBS\) Closure,"](#) to process Accounting CALSTARS Project/Site Request Form (DTSC Form 1431) and Daily Log and Cost Recovery Billing System (CRBS) Closure Request (DTSC Form 1554) to open State/NPL Orphan Work Phase 17 and close any Work Phases in the Daily Log that are no longer applicable to the "orphan" site.<sup>11</sup>

**CONTACTS:** Please see the [Contact Links](#) for information on staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the [Cost Recovery Policies and Procedures](#) SharePoint page.

/s/

Terri Hardy

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Terri Hardy

Special Assistant for Program Review

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<sup>11</sup> Work Phase 62, however, should not be closed for Orphan/NPL Fund-Lead sites that utilize the Multi-Site Cooperative Agreement (MSCA) Grant for federal assistance.

/s/  
Reed Sato

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Reed Sato, Chief Counsel  
Office of Legal Affairs

/s/  
Stewart W. Black

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Stewart W. Black, Deputy Director  
Brownfields and Environmental Restoration Program

/s/  
Miriam B. Ingenito for

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Barbara A. Lee, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Suspension and Termination of Voluntary Cleanup Program Agreements	<b>Number:</b> DPM-CR-09
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department’s mission is to protect California’s people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.” The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM explains the Department’s procedures for suspending or terminating its oversight of investigation and/or cleanup activities conducted by a billable party (e.g., project proponent or responsible party) pursuant to a Voluntary Cleanup Program agreement in response to changes in the schedule of activities or a billable party’s failure to pay the Department’s response costs.<sup>1</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program staff overseeing the investigation and/or cleanup of a contaminated property by a billable party pursuant to a Voluntary Cleanup Program agreement.<sup>2</sup> This DPM also applies to

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department’s general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> Voluntary Cleanup Program agreements include: Voluntary Cleanup Agreements (VCAs), Schools Program Environmental Oversight Agreements (EOAs), Prospective Purchaser Agreements (PPAs),

Cost Recovery Billing Unit (CRBU),<sup>3</sup> Collections and Resolution Unit (Collections), and Office of Legal Counsel (OLC) staff providing support to the Cleanup Program when suspension or termination of a voluntary agreement may be warranted.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25355.5(a)(1)(C), 25360, and 25395.92, and former section 25398.2 (added by Stats. 1994, ch. 435, § 2, eff. Sept. 6, 1994 and repealed by Stats. 2012, ch. 39, § 77, eff. June 27, 2012)<sup>4</sup>
- Education Code sections 17213.1 and 17213.2

**PROCEDURES:**

**Cleanup Program Project Managers and Branch Liaisons**

**1. Suspension of Voluntary Agreements**

- a. A Project Manager, with Unit Supervisor concurrence, may suspend the Department's oversight of cleanup activities by a billable party pursuant to a voluntary agreement if there will be a gap in site activities for six months to a maximum of one year.
- b. If a decision is made to suspend Department oversight, then the Project Manager will update the site schedule and send a written confirmation notice to the billable party that the Department's oversight activities will be suspended for a period not to exceed one year.

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Expedited Remedial Action Program (ERAP) Agreements, and California Land Revitalization and Reuse Act (CLRRA) Agreements. These agreements are collectively referred to herein as "voluntary agreements." (See DPM-CR-05, "Cost Recovery: Voluntary Cleanup Program Agreements," for more information regarding voluntary agreements.)

<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>4</sup> Chapter 6.85 of the Health and Safety Code, which governed the Department's Expedited Remedial Action Program (ERAP), was repealed in 2012. Section 25398.2 was part of chapter 6.85 and there are sites where responsible parties are currently performing work under an ERAP agreement. Although ERAP was repealed, existing ERAP agreements are valid according to Health and Safety Code chapter 6.86, section 25396.

- i. If known, the Project Manager will include the date on which the Department's oversight of site activities will resume.
  - ii. The Project Manager will enclose the updated site schedule with the confirmation notice.
  - iii. The Project Manager will upload a copy of the written confirmation notice to the EnviroStor profile for the site as a public document and place a copy in the site file.
- c. The Project Manager will work with the Branch Liaison to close the Site Code and/or Work Phase in the Daily Log during the suspension period pursuant to the procedures outlined in DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure," in order to minimize the potential for inadvertent charges to the site.
  - i. Prior to requesting closure of the Site Code and/or Work Phase, the Project Manager will verify that:
    - 1. The schedule of activities in EnviroStor provides a date on which the Department's oversight of site activities will resume.
    - 2. All appropriate documents have been uploaded to EnviroStor and the site file is complete.
    - 3. There are no known conditions at the site that could pose an imminent or substantial endangerment to public health, safety, or the environment.
    - 4. No development is proposed at the site during the time the voluntary agreement is suspended.
    - 5. There are no ongoing operation and maintenance- or land use covenant-related activities required for a remedy installed at the site.
    - 6. There are no overdue or unpaid Department invoices.

- d. When the suspension period expires, the Project Manager will determine if the billable party will resume work in accordance with the previously agreed upon schedule.
- e. If the billable party will be resuming work, then the Project Manager will:
  - i. Discuss the site schedule with the billable party and prepare and issue a cost estimate pursuant to DPM-CR-01, "Cost Recovery: Administrative Site Management."
  - ii. Work with the Branch Liaison to reactivate the Site Code and/or Work Phase in the Daily Log. The Branch Liaison may email FSU requesting that a Site Code or Work Phase be reopened. FSU will notify CRBU when a Site Code and/or Work Phase is reopened. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for more information about reactivating Site Codes and/or Work Phases in the Daily Log.)
- f. If the billable party will not resume work, then the Project Manager will either terminate the voluntary agreement or renegotiate the schedule of activities with the billable party.
- g. The Project Manager, in consultation with the Unit Supervisor and, if necessary, Collections and OLC, may consider terminating the voluntary agreement in accordance with the termination procedures outlined below if:
  - i. The schedule of activities negotiated with the billable party anticipates a gap in site activities requiring Department oversight longer than one year.
  - ii. There is currently a gap in site activities longer than one year.
  - iii. A third collection letter has been issued by the Department to the billable party for the site. (See DPM-CR-19, "Cost Recovery: Collection Letters," for more information about the collection letter process.)

1. If a billable party has not paid the Department's oversight costs as a result of the submission of a timely invoice dispute, then the Project Manager will not terminate work under the voluntary agreement until and unless the billable party fails to pay the Department's oversight costs after resolution of the invoice dispute. (See DPM-CR-17, "Cost Recovery: Invoice Disputes," for more information about the invoice dispute resolution process.)

2. **Department-Initiated Termination of Voluntary Agreements**

- a. The Project Manager will consult with the Unit Supervisor, OLC, and, if necessary, Collections when considering whether to terminate a voluntary agreement. The Project Manager will submit an EnviroStor Work Request to OLC to discuss termination of a voluntary agreement.
- b. In considering whether to terminate a voluntary agreement, the Project Manager, Unit Supervisor, and OLC will evaluate various site-specific considerations, including, but not limited to:
  - i. The language in the voluntary agreement regarding termination by the Department.
  - ii. Whether the site poses or will pose an imminent and substantial endangerment to public health, safety, or the environment.
  - iii. The amount of the Department's unpaid costs.
  - iv. Whether the billable party is still conducting the site investigation/cleanup work and, if so, whether the response actions are close to being completed.
  - v. Whether the work is necessary for the Department to increase its potential to recover its costs (e.g., sale of the remediated property would allow the Department to recover its costs).
  - vi. The level of community and legislative interest in the site.

- c. If the Department decides to terminate a voluntary agreement for a site that **does not** pose an imminent and substantial endangerment to public health or the environment, then the Project Manager will perform the following activities:
  - i. If the voluntary agreement contains termination provisions, then the Project Manager must terminate the voluntary agreement in accordance with the terms of the agreement.<sup>5</sup>
  - ii. If the voluntary agreement does not contain termination provisions, the Project Manager will perform the following tasks to terminate the agreement:
    - 1. Draft a letter notifying the billable party that the Department intends to terminate the agreement, including the reasons for termination, and describe the actions the billable party can take to avoid termination of the voluntary agreement.
    - 2. Submit the draft notice of intent to terminate letter to the Unit Supervisor and OLC for review and approval.
    - 3. Upon approval by the Unit Supervisor and OLC, issue the notice of intent to terminate letter to the billable party, upload the final letter to the EnviroStor profile for the site as a public document, and place a copy of the letter in the site file.
  - iii. If the billable party pays the Department's outstanding response costs and fulfills any other conditions outlined by the Department to avoid termination, then the Project Manager will send a letter to the billable party withdrawing the Department's notice of termination.
    - 1. The Project Manager will consult with the Unit Supervisor and OLC to ensure that the billable party

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<sup>5</sup> In the event of a conflict between the termination procedures outlined in the DPM and the termination provisions of the voluntary agreement, the Project Manager must follow the termination provisions contained in the voluntary agreement. The Project Manager should consult with OLC if he or she has any questions about appropriate termination procedures.

fulfilled all conditions imposed by the Department to avoid termination of the voluntary agreement.

2. The Project Manager will upload a copy of the letter withdrawing the Department's notice of termination to the EnviroStor profile for the site as a public document and place a copy of the letter in the site file.
- iv. If the billable party submits an objection to a notice of intent to terminate the voluntary agreement, then the Project Manager will work with the Unit Supervisor and OLC to analyze and respond to the issues raised.
1. The Project Manager will upload a copy of the billable party's objections to the EnviroStor profile for the site as a public document and place a copy of the objections in the site file.
  2. If the billable party's argument is rejected, then the Project Manager will issue a termination letter following the procedures outlined herein.
  3. If the billable party's argument is accepted, then the Project Manager will work with necessary Department staff to address the issues raised by the billable party.
- v. If the billable party fails to (1) pay the Department's outstanding oversight costs, (2) submit a valid objection to the termination of the voluntary agreement prior to the expiration of the notice period required by the voluntary agreement, or (3) fulfill any other conditions outlined by the Department, then the Project Manager will:
1. Draft a letter terminating the voluntary agreement.
  2. Submit the draft termination letter to the Unit Supervisor and OLC for review and approval.
  3. Upon approval by the Unit Supervisor and OLC, issue the termination letter to the billable party, upload the final letter to the EnviroStor profile for the site as a public document, place a copy of the termination letter

in the site file, and provide a copy of the termination letter to CRBU.

- vi. Once the voluntary agreement is terminated, the Project Manager will:
  - 1. Change the status of the site in EnviroStor to “inactive – needs evaluation.”
  - 2. Continue to work with Collections and OLC as necessary to develop a comprehensive plan for recovery of the Department’s response costs. (See DPM-CR-20, “Cost Recovery: ‘Site and Collection Activities Summary’ (DTSC Form 1479)” for more information regarding the Department’s cost recovery options.)
  - 3. Once the Department’s cost recovery plan is executed, submit a Daily Log and Cost Recovery Billing System (CRBS) Closure Request Form (DTSC Form 1554) in accordance with the procedures outlined in DPM-CR-13, “Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure.”
- d. If the Department decides to terminate a voluntary agreement for a site that **does** pose an imminent and substantial endangerment to public health or the environment, then the Project Manager will perform the following activities:
  - i. Evaluate whether emergency response actions are required at the site. If emergency response actions are required, consult with the Unit Supervisor and Branch Chief regarding the necessary actions and work with the Department’s Emergency Response staff and/or the U.S. EPA Emergency Response Unit to stabilize the site.

- ii. The Project Manager will take steps to terminate the voluntary agreement in accordance with the voluntary agreement termination procedures outlined above.<sup>6</sup>
- iii. Upon termination of the voluntary agreement, the Project Manager will:
  - 1. Draft and issue an order in accordance with the steps outlined in DPM-CR-06, "Cost Recovery: Orders."
  - 2. Work with the Branch Liaison and FSU to close out the -11 Work Phase and add the -00 Work Phase to the site in the Daily Log. The Branch Liaison may email FSU to change the Work Phase of the site in this circumstance.

3. **Billable Party-Initiated Termination of a Voluntary Agreement**

- a. Upon notice from a billable party that it intends to terminate the voluntary agreement prior to receipt of a no further action determination or certification that the final remedy has been implemented, the Project Manager will determine whether the following conditions have been met to terminate the voluntary agreement:<sup>7</sup>
  - i. There are no un-invoiced or unbilled costs (other than current charges) or overdue invoices.
  - ii. There are no imminent and/or substantial endangerment conditions posing a threat to public health or to the environment.

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<sup>6</sup> In the event of a conflict between the termination procedures outlined in the DPM and the termination provisions of the voluntary agreement, the Project Manager must follow the termination provisions contained in the voluntary agreement. The Project Manager should consult with OLC if he or she has any questions about appropriate termination procedures.

<sup>7</sup> Other site-specific considerations may need to be evaluated by the Project Manager prior to terminating the voluntary agreement, and the Project Manager should consult with the Unit Supervisor regarding whether termination is appropriate.

- b. If there are no un-invoiced or unbilled costs (other than current charges) or overdue invoices, then the Project Manager will complete the following actions:
  - i. Within 30 calendar days of receipt of the billable party's termination notice, the Project Manager will draft and issue a letter concurring with the termination of the voluntary agreement conditioned upon payment of the final invoice.
    - 1. The Project Manager will obtain Unit Chief approval of the letter.
    - 2. The Project Manager will upload a copy of the letter to the EnviroStor profile for the site as a public document and place a copy of the letter in the site file.
  - ii. Submit DTSC Form 1554 in accordance with the procedures outlined in DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure." The Project Manager must complete the activities described in DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure" that need to take place before completing DTSC Form 1554 within 30 days of receipt of the Billable Party's notice to terminate the Agreement.
  - iii. Once the voluntary agreement is terminated, change the status of the site in EnviroStor to "inactive – needs evaluation."
- c. If there are overdue invoices, unbilled costs (other than current charges), and/or the site poses an imminent and substantial endangerment to public health or the environment, then the Project Manager will complete the following actions:
  - i. Notify the billable party, in writing, that they have not met the requirements to terminate the Agreement.
    - 1. The Project Manager will upload a copy of the letter to the EnviroStor profile for the site as a public document and place a copy of the letter in the site file.

- ii. If there are overdue invoices, work with Collections and OLC, as necessary, to develop a comprehensive plan for recovery of the Department's response costs. (See DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)" for more information regarding the Department's cost recovery options.)
- iii. If the site poses an imminent and substantial endangerment to public health and the environment, then the Project Manager will follow the procedures outlined in section 2.d, above, to evaluate the necessity of emergency response actions and issue an order in accordance with the procedures outlined in DPM-CR-06, "Cost Recovery: Orders."

#### **Cleanup Program Unit Supervisors**

1. The Unit Supervisor will work with the Project Manager, Branch Liaison, and OLC to determine whether to suspend or terminate a voluntary agreement and review and approve the draft notice of intent to terminate and termination letters.
2. The Unit Supervisor will work with the Project Manager, Branch Liaison, OLC, and Collections to evaluate further cost recovery options as necessary.
3. If emergency response actions are required, the Unit Supervisor will consult with the Project Manager and Branch Chief regarding the necessary actions and work with the Department's Emergency Response staff and/or the U.S. EPA Emergency Response Unit to stabilize the site.

#### **Cleanup Program Branch Chiefs**

If emergency response actions are required, the Branch Chief will consult with the Project Manager and Unit Supervisor regarding the necessary actions and work with the Department's Emergency Response staff and/or the U.S. EPA Emergency Response Unit to stabilize the site.

### **Cost Recovery Billing Unit (CRBU)**

1. Upon receipt of a termination letter from the Project Manager, the CRBU analyst assigned to the site will:
  - a. Upload a copy of the termination letter to CRBS.
  - b. Maintain the BILCRU billing status of the site in CRBS and continue to invoice any unbilled and outstanding costs incurred by the Department through the voluntary agreement termination date.
    - i. If the Department issues an order after terminating the voluntary agreement, CRBU will continue to invoice the billable party for any costs incurred by the Department related to the order.
  - c. If a DTSC Form 1554 requesting closure of a Site Code in CRBS is received from a Branch Liaison, the CRBU analyst assigned to the site will process the form in accordance with the procedures outlined in DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure."
2. As necessary, the CRBU analyst assigned to the site will update billable party information in CRBS based on information received from the Project Manager or Branch Liaison.

### **Fiscal Systems Unit (FSU)**

1. Upon receipt of the California State Accounting and Reporting System (CALSTARS) Project/Site Code Request Form (DTSC Form 1431) or a DTSC Form 1554 from a Branch Liaison, FSU will process the request to close or reopen the Site Code and/or Work Phase in the Daily Log. (See DPM- CR-03, "Cost Recovery: Site Code and Project Code Origination," and DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure," for more information about issuing and closing Site Codes and/or Work Phases.)
  - a. Where a voluntary agreement is no longer suspended, the Branch Liaison may email FSU requesting that FSU reopen a previously closed Site Code and/or Work Phase. FSU will notify CRBU when a Site Code and/or Work Phase is reopened.

- b. Where the Department terminates a voluntary agreement and issues an order, the Branch Liaison may email FSU requesting that it close the -11 Work Phase and add the -00 Work Phase to the site.

### **Office of Legal Counsel (OLC)**

1. Upon request, OLC will work with Cleanup Program staff and Collections to develop a comprehensive cost recovery plans for sites when a billable party has failed to pay the Department's invoices. (See DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)" for more information about the Form 1479 process.)
2. OLC will work with the Project Manager to terminate a voluntary agreement, including review of the terms of the voluntary agreement to ensure that the Department complies with the termination procedures outlined in the voluntary agreement.
3. When a voluntary agreement is terminated for a site that poses an imminent and substantial endangerment to human health, safety, and the environment, OLC will work with the Project Manager and Unit Supervisor, as needed, to issue an appropriate order and address any legal issues that arise during the agreement termination process and/or in issuing the appropriate order.

### **Collections and Resolution Unit (Collections)**

Upon receipt of DTSC Form 1479, Collections will work with Cleanup Program staff and OLC to develop a comprehensive cost recovery plan for the site for which a billable party has failed to pay the Department's invoices. (See DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)" for more information about the Form 1479 process.)

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost

Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Operation and Maintenance (O&M) Agreements and Financial Assurance Requirements	<b>Number:</b> DPM-CR-10
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the Department's procedures to preserve its ability to recover costs incurred during operation and maintenance (O&M) of a final remedy implemented pursuant to chapters 6.5, 6.8, 6.82, and 6.85 of the Health and Safety Code.<sup>1, 2</sup>

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> This DPM complements the Department's Management Memo, #EO-93-036-MM, "Operation and Maintenance Enforceable Agreement" (Feb. 1994), which is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and Management Memo, #EO-93-036-MM, staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating Management Memo, #EO-93-036-MM and staff will be notified when the update is issued.

**APPLICABILITY:** This DPM applies to Cleanup Program and Hazardous Waste Management Program (collectively referred to as “Program”) Project Managers responsible for overseeing O&M activities at sites, Hazardous Waste Management Program Financial Responsibility Unit staff responsible for reviewing and tracking financial assurance mechanisms, and Office of Legal Counsel (OLC) staff responsible for reviewing O&M Agreements and orders. This DPM also applies to Fiscal Systems Unit (FSU) and Cost Recovery Billing Unit (CRBU)<sup>3</sup> staff responsible for monitoring and tracking the Department’s response costs.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25200.10(b), and 25355.2
- California Code of Regulations title 22, sections 66264.143, 66264.101(b) and (c), and 66265.143
- EO-93-036-MM, “Operation and Maintenance Enforceable Agreement” (Feb. 1994)
- U.S. EPA, “Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action” (Sept. 2003)

**PROCEDURES:**

**O&M Agreements and Financial Assurance Requirements**

1. An O&M Agreement is required when:
  - a. The remedy requires O&M and the site is the subject of a voluntary agreement pursuant to the Department’s Voluntary Cleanup Program. (See DPM-CR-04, “Cost Recovery: Memorandum of Agreement (MOA) Process,” and DPM-CR-05, “Cost Recovery: Voluntary Cleanup Program Agreements,” for more information about Voluntary Cleanup Program agreements.)
  - b. The remedy requires O&M and the site is subject to an order that does not contain language requiring the billable party (e.g., project proponent or responsible party) to conduct O&M or provide financial assurance for O&M.<sup>4</sup> (See DPM-CR-06, “Cost Recovery:

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<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>4</sup> A billable party may still be required to provide financial assurance even if an O&M Agreement is not required if the order contains language consistent with the Department’s current model orders. The Project Manager will coordinate with the billable party(ies) and Financial Responsibility Unit to obtain the necessary financial assurance from the billable party(ies).

Orders,” for more information about orders.<sup>5</sup>) The Department’s current model orders are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.

- c. The remedy requires O&M and a party other than a billable party named in an order will be responsible for O&M of the final remedy.
2. Financial assurance is required:
    - a. For O&M of a final remedy for sites addressed by the Department pursuant to chapters 6.8, 6.82, and 6.85 of the Health and Safety Code unless the billable party qualifies for a waiver pursuant to Health and Safety Code section 25355.2(c).
    - b. At the time when a final remedy is selected for sites subject to corrective action pursuant to chapter 6.5 of the Health and Safety Code.

### **Cleanup Program Project Managers and Branch Liaisons**

1. During the development of remedial alternatives, the Project Manager will determine if the proposed remedial alternative, measure, or technology requires O&M after installation or implementation. If O&M activities are necessary, then the Project Manager will:
  - a. Determine whether an O&M Agreement is necessary pursuant to the criteria outlined above. If the Department has issued an order, then the Project Manager will review the order to determine whether an O&M Agreement is required. The Project Manager may submit an EnviroStor Work Request for OLC to assist in determining whether an O&M Agreement is required.
  - b. Include the O&M requirements, including the need for an O&M Agreement, in the description of the remedial alternative in the remedy selection document (e.g., Removal Action Workplan,

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<sup>5</sup> For the purpose of this DPM and DPM-CR-06, “Cost Recovery: Orders,” the term “order” includes Imminent and Substantial Endangerment Determination and Order and Remedial Action Order; Imminent and Substantial Endangerment Determination and Consent Order; Remedial Action Order; Corrective Action Consent Agreement; Agreement for Facility Initiated Corrective Action; and Enforcement Order for Corrective Action.

Response Plan, Remedial Action Plan, Record of Decision, Corrective Measures Study Report or Proposal, or Remedy Selection and Statement of Basis).

- c. Schedule the appropriate O&M activities for the site in EnviroStor (e.g., O&M Agreement, O&M Plan, financial assurance documentation).
2. If the Department's O&M oversight costs will be invoiced separately from the Department's oversight costs, then the Project Manager will work with the Branch Liaison to obtain a separate Site Code for O&M oversight costs from FSU in accordance with DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination."
  3. If an O&M Agreement is required, then the Project Manager will conduct the following activities:
    - a. The Project Manager will draft an O&M Agreement using the Department's model O&M Agreement and submit an EnviroStor Work Request for OLC to review the draft O&M Agreement. A link to the model O&M Agreement is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
    - b. The Project Manager will facilitate the review, approval, and signature of the O&M Agreement by the billable party(ies). Any changes to the model O&M Agreement language proposed by the billable party will also be reviewed and approved by OLC.
    - c. The Project Manager will coordinate with the billable party(ies), Financial Responsibility Unit, and, if necessary, OLC to obtain the necessary financial assurance from the billable party(ies).
      - i. The Project Manager will ensure that there is a current cost estimate uploaded to EnviroStor for purposes of determining the required amount of financial assurance. The Project Manager will follow applicable DTSC and U.S. EPA guidance documents for calculating the cost estimate.
      - ii. The Project Manager will submit an EnviroStor Work Request for the Financial Responsibility Unit to:

1. Participate in discussions with the billable party(ies) regarding financial assurance.
  2. Review and approve the financial assurance mechanism provided by the billable party(ies).
- d. When the O&M Agreement is fully executed, the Project Manager will:
  - i. Scan and upload the O&M Agreement to EnviroStor as a final document.
  - ii. Place the original O&M Agreement in the site file.
  - iii. If appropriate, provide updated billable party information and, if requested, a copy of the O&M Agreement to the CRBU analyst assigned to the site.
4. When the O&M Agreement is signed and the financial assurance mechanism is in place, the Project Manager will follow the procedures and the additional requirements in DPM-CR-11, "Cost Recovery: Site Completion," to certify the Site or operable unit, if appropriate.
5. While O&M is being conducted, the Project Manager will:
  - a. Monitor cost recovery in accordance with DPM-CR-01, "Cost Recovery: Administrative Site Management."
  - b. Oversee O&M activities and conduct periodic reviews of the remedy as described in the O&M Plan.
  - c. At least every five years, update the cost estimate for O&M activities for sites requiring financial assurance and submit an EnviroStor Work Request for Financial Responsibility Unit to review the adequacy of the current financial assurance mechanism.
6. If the billable party(ies) fails to comply with the requirements in an O&M Agreement, voluntary agreement, or order, then the Project Manager will work with the Unit Supervisor and OLC to determine whether to use the funds provided by a financial assurance mechanism, if available, for the site or facility.

### **Hazardous Waste Management Program Financial Responsibility Unit**

1. The Financial Responsibility Unit will assist the Project Manager by answering questions from the billable party regarding financial assurance mechanisms and working with the Project Manager and, if necessary, OLC to obtain the required financial assurance.
2. Upon receipt of an EnviroStor Work Request from the Project Manager requesting review of a financial assurance mechanism, the Financial Responsibility Unit will review the financial assurance mechanism to ensure compliance with applicable requirements.
3. The Financial Responsibility Unit will maintain the files of DTSC-approved financial assurance mechanisms and related documentation in accordance with the Department's document management and records retention policies.

### **Office of Legal Counsel (OLC)**

1. Upon receipt of an EnviroStor Work Request, OLC will work with the Project Manager to determine whether an O&M Agreement is necessary and/or review draft O&M Agreements to ensure compliance with applicable law, regulations, and the current model O&M Agreement. OLC will also review any changes to the model O&M Agreement proposed by the billable party and assist Cleanup Program staff in negotiating with billable parties and finalizing the O&M Agreement.
2. Upon receipt of an EnviroStor Work Request, OLC will assist the Financial Responsibility Unit and the Project Manager in reviewing financial assurance mechanisms and determining whether a billable party qualifies for a waiver from financial assurance requirements.

### **Cost Recovery Billing Unit (CRBU)**

1. Upon receipt of a signed O&M Agreement from the Project Manager, CRBU will change the billing classification of the site in Cost Recovery Billing System (CRBS) to indicate the site is in O&M (the BILCRBU billing status of the site in CRBS should not be changed). CRBU will immediately update billable party information, if necessary.
  - a. If only a portion of the site is in O&M, then changes to the CRBS billing classification may not be necessary (e.g., when a site is

divided into several operable units and only one operable unit is in O&M).

2. CRBU will invoice the billable party(ies) for O&M sites in accordance with DPM-CR-16, "Cost Recovery: Invoicing."

### **Fiscal Systems Unit (FSU)**

Upon receipt of a California State Accounting and Reporting System (CALSTARS) Project/Site Code Request Form (DTSC Form 1431) from a Branch Liaison, FSU will follow the procedures outlined in DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," to issue a new Site Code for the Department's O&M costs.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

**Subject:**

Cost Recovery: Site Completion

**Number:**

DPM-CR-11

**Date Issued:**

November 21, 2013

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the Department's procedures for evaluating its response costs when it makes a formal determination of the status of a site based on the results of its investigation or remediation (e.g., No Action or No Further Action determinations, site certifications, or Corrective Action Complete Determinations<sup>1</sup>).<sup>2</sup>

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<sup>1</sup> Corrective Action Complete Determinations are the equivalent of site certifications for corrective action sites addressed by the Department pursuant to chapter 6.5, division 20 of the Health and Safety Code. "Corrective Action Complete Without Controls" means that Corrective Action Objectives have been met and the area subject to the determination does not require any additional actions or measures to ensure that the remedy remains protective of human health and the environment.

<sup>2</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

**APPLICABILITY:** This DPM applies to Cleanup Program staff responsible for making formal determinations of the status of sites based on the results of the Department's investigation or remediation (e.g., No Action or No Further Action determinations, site certifications, and Corrective Action Complete Determinations). This DPM also applies to Cost Recovery Billing Unit (CRBU)<sup>3</sup> and Fiscal Systems Unit (FSU) staff responsible for administratively closing a site in the Cost Recovery Billing System (CRBS) and the Daily Log, and Office of Legal Counsel (OLC) staff assisting Cleanup Program staff in identifying potentially responsible parties (PRPs) responsible for the Department's response costs.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25187, 25360, 25360.4, 25395.97, and 25396, and former section 25398.15 (added by Stats. 1994, ch. 435, § 2, eff. Sept. 6, 1994 and repealed by Stats. 2012, ch. 39, § 77, eff. June 27, 2012)<sup>4</sup>
- OPP 86-22R, "Procedures for Certifying Completion of Hazardous Waste Site Remedial Action" (Nov. 1987)<sup>5</sup>

**PROCEDURES:**

**Site Status Determinations**<sup>6</sup>

1. At the conclusion of the Department's investigation or remediation activities, the Department makes a formal determination of the "status" of a site based on the results of the investigation or remediation.

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<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>4</sup> Chapter 6.85 of the Health and Safety Code, which governed the Department's Expedited Remedial Action Program (ERAP), was repealed in 2012. Section 25398.15 was part of chapter 6.85 and there are sites where responsible parties are currently performing work under an ERAP agreement. Although ERAP was repealed, existing ERAP agreements are valid according to Health and Safety Code chapter 6.86, section 25396.

<sup>5</sup> This DPM complements OPP 86-22R, "Procedures for Certifying Completion of Hazardous Waste Site Remedial Action" (Nov. 1987), which is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and OPP-86-22R, Department staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating the policies and staff will be notified when the updated policies are issued.

<sup>6</sup> This overview of the various Department site status determinations applies to Cleanup Program, CRBU, OLC, and FSU staff.

2. The Project Manager, with Unit Supervisor concurrence, is responsible for determining the appropriate site status, and may make one of the following status determinations (in bold):<sup>7</sup>

<b>Status Determination</b>	<b>EnviroStor Status</b>	<b>Daily Log</b>	<b>CRBS Billing Status</b>
<b>Active</b>	Active	Active	BILCRU <sup>8</sup>
<b>No Action Required</b>	No Action Required	Deactivate	Final Invoice then "CLOSED"
<b>No Further Action Required</b>	No Further Action	Deactivate	Final Invoice then "CLOSED"
<b>Certified O&amp;M Land Use Restriction (LUR)<sup>9</sup> Only</b>	Certified O&M– Land Use Restrictions Only	(Decision based on LUR requirements)	(Decision based on LUR requirements)
<b>Certified/ Operation and Maintenance</b>	Certified/ Operation & Maintenance	Active	BILCRU
<b>Certified</b>	Certified	Deactivate	Final Invoice then "CLOSED"

<sup>7</sup> In conjunction with each change in status, various administrative tasks also will be completed to reflect the status of the site or to close out the Site Code in the Daily Log and send a final invoice. The chart above shows the typical change in Daily Log, EnviroStor, and CRBS status for each status determination.

<sup>8</sup> The BILCRU status of a site in CRBS will be retained if the status determination is made only for a portion of the site or an operable unit within the site.

<sup>9</sup> Land Use Restrictions are also referred to as Land Use Covenants or "LUCs."

- a. A “**No Action**” determination is made for sites where a screening (e.g., Phase I Environmental Site Assessment) resulted in no “recognized environmental conditions” existing that would warrant further investigation.
  - b. A “**No Further Action**” determination is made for sites where field sampling analysis (e.g., Preliminary Endangerment Assessment) demonstrated that the site poses no significant risk to human health or the environment.
  - c. A “**Certified O&M – Land Use Restriction Only**” determination is made when a remedy is implemented and the selected remedy results in hazardous substances remaining at the site at concentrations above those acceptable for unrestricted use and a LUR or LUC has been recorded for the site.
  - d. A “**Certified/Operation and Maintenance**” determination is made when a remedy is implemented that requires ongoing monitoring, operation, and maintenance for an extended period of time.
  - e. A “**Certified**” determination is made for sites where the remedy is complete and the site is restored to unrestricted use. This includes “Corrective Action Complete Without Controls” determinations for corrective action sites addressed by the Department pursuant to Health and Safety Code division 20, chapter 6.5.
3. The Project Manager will ensure that the required site-related documents are uploaded to EnviroStor and that the activities documenting the status determination made by the Department for the site are completed in EnviroStor.
  4. The Project Manager will ensure that all the required site-related documents and correspondence are contained in the site file, and the Project Manager will follow the Cleanup Program’s record retention policy.
  5. Prior to issuing the final determination (e.g., no action letter, no further action letter, or site certification form), the Project Manager will check the CRBS “Invoice Balance” report and “Unbilled and Overdue Costs” report to verify that there are no un-invoiced or unbilled costs (other than current charges) or overdue invoices.

6. If there are no un-invoiced or unbilled costs (other than current charges) or overdue invoices and the site is not a state-funded site or an NPL Fund-lead site, then the Project Manager, CRBU, FSU, and OLC will follow the procedures outlined below to make a formal determination of the status of the site based on the results of the Department's investigation or remediation.
7. If there are un-invoiced or unbilled costs, or there are overdue invoices, and the site is not a state-funded site or an NPL Fund-lead site, then the following actions will be taken, and the Project Manager will not issue a final site status determination unless this action is contemplated as part of a coordinated plan for cost recovery:
  - a. If there are overdue invoices, then the Project Manager will follow the procedures in DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)," upon notification of the issuance of the third collection letter by the Accounting Office (Accounting).
  - b. If there are unbilled costs, then the Project Manager will refer to the Daily Log records to determine the reason for the unbilled costs and contact CRBU to obtain additional information that may indicate whether an invoice can be issued by CRBU for the unbilled costs. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about the invoicing process.)
8. If the site is a state-funded site or an NPL Fund-lead site, then the Project Manager will either identify potentially responsible parties (PRPs) to invoice, or work with the Unit Supervisor and OLC to identify the appropriate next steps to address the Department's incurred costs. Next steps may include, but are not limited to, performance of a PRP search, designating the site as an "orphan" site, placing a lien, and/or filing a cost recovery action.

### **Cleanup Program Project Managers and Unit Supervisors**

1. **"No Action" or "No Further Action" status determinations:** If the proper status determination for a site is "No Action Required" or "No Further Action," and the "Invoice Balance" and "Unbilled and Overdue Costs" reports verify that there are no un-invoiced or unbilled costs (other than current charges) or overdue invoices, then the Project Manager will:

- a. Prepare the appropriate no action required or no further action letter.
  - b. Review the site's administrative record and apply the appropriate record retention schedule. A link to the Department's current Record Retention Schedule is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  - c. Prepare the appropriate termination letter for the voluntary agreement or order indicating that the order or agreement governing the site will be terminated upon receipt of final payment by the Department from the billable party (e.g., project proponent or responsible party).
  - d. Follow the procedures in DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure," to administratively close the site in the Daily Log and CRBS.
  - e. Change the EnviroStor Site Status to reflect the appropriate status determination – "No Action Required" or "No Further Action."
2. **"Certified Operation and Maintenance (O&M) – Land Use Restriction Only" status determinations:** If the proper status determination for a site is "Certified O&M – Land Use Restriction Only"<sup>10</sup> and the "Invoice Balance" and "Unbilled and Overdue Costs" reports verify that there are no un-invoiced or unbilled costs (other than current charges) or overdue invoices, then the Project Manager will:
- a. Prepare the site certification package in accordance with the procedures outlined in OPP 86-22R, "Procedures for Certifying Completion of Hazardous Waste Site Remedial Action" (Nov. 1987), and ensure that all findings are documented in the certification package.

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<sup>10</sup> The Project Manager will ensure that a LUR is recorded for the site prior to issuing a "Certified O&M – Land Use Restriction Only" status determination.

- b. Determine future cost recovery needs and/or plans for long-term LUR monitoring:<sup>11</sup>
  - i. If there will be little or no long-term cost recovery needs (e.g., residential restriction only in commercial/industrial area or groundwater use restriction only in area of urban or suburban water utility district), then the Project Manager will:
    - 1. Prepare the appropriate voluntary cleanup agreement or order termination letter indicating that the order or agreement governing the site will be terminated upon receipt of final payment by the Department from the billable Party (e.g., project proponent or responsible party).
    - 2. Suspend the site code in the Daily Log. (Follow the procedures in DPM-CR-13, “Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure,” to administratively close the site.)
  - ii. If LUR monitoring warrants ongoing DTSC involvement due to continuing monitoring or soils management during property development, then the Project Manager will recommend maintaining an active project cost recovery account for reimbursement of ongoing DTSC oversight costs.
    - 1. In this case, termination of the applicable order or voluntary cleanup agreement may not be appropriate until development or active monitoring is complete.
    - 2. The Project Manager will maintain an active Site Code in CRBS and the Daily Log, and maintain the BILCRU status of the site in CRBS.
- c. Change the site status in EnviroStor to reflect the appropriate status determination: “Certified O&M – Land Use Restrictions Only.”

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<sup>11</sup> The Department is in the process of evaluating our cost recovery options and future obligations for these long-term land use restriction sites. The procedures outlined in this DPM may be updated based on the results of the Department’s evaluation.

- d. Schedule the LUR monitoring reports for the next five years and, if appropriate, the next five-year review as activities in EnviroStor.
  - e. Review the site's administrative record and apply the appropriate record retention schedule. A link to the Department's current Record Retention Schedule is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
3. **“Certified Operation and Maintenance (O&M)” status determinations:**  
If the proper status determination for a site is “Certified/Operation and Maintenance” and the “Invoice Balance” and “Unbilled and Overdue Costs” reports verify that there are no un-invoiced or unbilled costs (other than current charges) or overdue invoices, then the Project Manager will:
- a. Verify that the appropriate order or O&M Agreement is in place and a copy is uploaded to EnviroStor and placed in the site file. (See DPM-CR-10, “Cost Recovery: Operation and Maintenance (O&M) Agreements and Financial Assurance Requirements,” for more information about O&M agreements.) The Project Manager will also confirm that CRBU has a copy of the order or O&M Agreement, as well as current billable party information.
  - b. Ensure that the approved financial assurance mechanism is in place or update the Financial Assurance Required status in the EnviroStor project information screen if the site is exempt from financial assurance requirements. (See DPM-CR-10, “Cost Recovery: Operation and Maintenance (O&M) Agreements and Financial Assurance Requirements,” for more information about Project Manager financial assurance responsibilities.)
  - c. Prepare the site certification package in accordance with the procedures outlined in OPP 86-22R, “Procedures for Certifying Completion of Hazardous Waste Site Remedial Action” (Nov. 1987), and ensure that all findings are documented in the certification package.
    - i. Ensure that the Site Code remains active in CRBS and the Daily Log.

- ii. Change the site status in EnviroStor to “Certified/Operation & Maintenance.”
  - d. Review the site’s administrative record and apply the appropriate record retention schedule. A link to the Department’s current Record Retention Schedule is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
- 4. **“Certified” status determinations:** If the proper status determination for a site is “Certified” and the “Invoice Balance” and “Unbilled and Overdue Costs” reports indicate that there are no un-invoiced or unbilled costs (other than current charges) or overdue invoices, then the Project Manager will:
  - a. Prepare the site certification package in accordance with the procedures outlined in OPP 86-22R, “Procedures for Certifying Completion of Hazardous Waste Site Remedial Action” (Nov. 1987), and ensure that all findings are documented in the certification package.
  - b. Review the site’s administrative record and apply the appropriate record retention schedule. A link to the Department’s current Record Retention Schedule is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  - c. Prepare the appropriate voluntary cleanup agreement or order termination letter indicating that the order or agreement governing the site will be terminated upon receipt of final payment by the Department from the billable party.
  - d. Follow the procedures in DPM-CR-13, “Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure,” to administratively close the site in the Daily Log and CRBS.
  - e. Change site status in EnviroStor to reflect the appropriate status determination: “Certified.”

### **Cost Recovery Billing Unit (CRBU)**

1. CRBU will work with the Project Manager to determine why there are unbilled costs associated with a site and whether it can issue an invoice for the unbilled costs.
2. Upon receipt of a Daily Log and Cost Recovery Billing System (CRBS) Closure Request Form (DTSC Form 1554) from a Branch Liaison or Grant Administrator, CRBU will follow the procedures in DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure," to administratively close the site in CRBS.

### **Fiscal Systems Unit (FSU)**

Upon receipt of a DTSC Form 1554 from a Branch Liaison or Grant Administrator, FSU will follow the procedures in DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure," to administratively close the site in Daily Log.

### **Office of Legal Counsel (OLC)**

Upon request, OLC will assist the Project Manager and Unit Supervisor to develop and implement a coordinated plan for cost recovery.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Administering Land Use Covenants (LUCs)	<b>Number:</b> DPM-CR-12
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the procedures for evaluating the Department's potential to recover its costs incurred in administering, implementing, and/or enforcing (collectively, "administering") land use covenants (LUCs) executed by the Department and a property owner as part of a remedy for a site.<sup>1</sup>

**APPLICABILITY:** This DPM applies to the Cleanup Program and the Hazardous Waste Management Program (collectively referred to as "Program") Project Managers and Cleanup Program Branch Liaisons overseeing sites where the Department executed a LUC with the property owner as part of the remedy for the site. This DPM also applies to Office of Legal Counsel (OLC), Cost Recovery Billing Unit (CRBU),<sup>2</sup> Collections and Resolution Unit (Collections), Accounting

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

Office (Accounting), and Fiscal Systems Unit (FSU) staff assisting in the recovery of costs incurred by the Department in administering, implementing, and/or enforcing a LUC.<sup>3</sup>

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Civil Code section 1479
- Health and Safety Code sections 25117.13, 25202.5, 25223, 25224, 25355.5, and 25395.99
- California Code of Regulations title 22, division 4.5, chapter 39, section 67391.1
- OP-87-14, "Department's Development and Implementation of Land Use Covenants Policy" (June 1990)

**PROCEDURES:**

**Program Project Managers and Cleanup Program Branch Liaisons**

1. The Project Manager will review LUCs to determine if they fall into one of the following three categories:<sup>4</sup>
  - a. A LUC that contains both an annual inspection requirement and a cost recovery provision.<sup>5</sup>
  - b. A historical LUC that does not contain an annual inspection requirement or a cost recovery provision.
  - c. A historical LUC that contains an annual inspection requirement, but does not contain a cost recovery provision.

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<sup>3</sup> This DPM complements OP-87-14, "Department's Development and Implementation of Land Use Covenants Policy" (June 1990), which is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and OP-87-14, Department staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating OP-87-14 and staff will be notified when the updated policy is issued.

<sup>4</sup> The Project Manager will ensure that all LUCs are uploaded to EnviroStor.

<sup>5</sup> When a LUC is required as part of the remedy for a site, owners are required, pursuant to the LUC, to reimburse the Department for the costs it incurs in administering, implementing, and/or enforcing the LUC. This requirement is reflected in the Department's current model LUC, which is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.

2. Depending on the category in which the LUC falls, the Project Manager will follow the appropriate procedures outlined below:
  - a. **LUCs that contain both an annual inspection requirement and a cost recovery provision.**
    - i. For sites with LUCs that contain both an annual inspection requirement and a cost recovery provision as required by the Department's current model LUC,<sup>6</sup> the Project Manager will follow these procedures:
      1. The Project Manager will ensure that CRBU has the mailing address for the current property owner and any other billable party responsible for complying with the LUC provisions so that the Department may issue invoices for its LUC administration, implementation, and/or enforcement (collectively, "administration") costs. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about the Department's invoicing procedures.)
      2. The Project Manager will ensure that the inspection and/or monitoring reports for the next five years and, if required, Five-Year Reviews, are included in the EnviroStor schedule of activities for the site and that the submittal dates identified in EnviroStor are the same as the dates specified in the LUC.
        - a. The current model LUC includes a default submittal date of January 15th for annual inspection reports. This date will be used as the EnviroStor submittal date unless a different date is identified in the LUC for site-specific reasons (e.g., if the annual LUC inspection report is submitted at the same time as the due date for an Operation and Maintenance (O&M) Report).

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<sup>6</sup> Health and Safety Code sections 25223 and 25224 require the person requesting a variance or termination of a LUC to pay for the Department's costs related to the application.



2. If the site does not have an O&M Agreement or another reimbursement mechanism, the Project Manager will charge time spent administering the LUC to PCA Code 11025 (do not use with a Site Code). The Project Manager also will:
  - a. Schedule site inspection activities for the next five years and, if required, Five-Year Reviews, in the EnviroStor schedule of activities for the site. The current model LUC includes a default submittal date of January 15th for annual inspection reports. This date will be used as the EnviroStor submittal date.
  - b. Review the LUC to determine whether the site conditions and restrictions are appropriate for owner self-inspection (e.g., restrictions on sensitive land use; building foundation providing a cap over non-mobile contaminants). If owner self-inspection is permissible, contact the current property owner to encourage the property owner to perform the inspections.
    - i. Owner self-inspection reports may be in the form of a checklist with items corresponding to the restrictions and requirements included under Article IV of the LUC. A link to the model inspection checklist is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
    - ii. If the property owner refuses or fails to conduct an annual inspection, the Project Manager will consult the Unit Supervisor and/or Branch Chief regarding the next steps.

- c. If the current LUC contains requirements related to compliance with soil management plans, the Project Manager will charge time related to this activity to PCA Code 11025 (do not use with a Site Code).
- d. Department staff will charge the site's Site Code for time spent reviewing and responding to variance and termination requests.<sup>7</sup> For example, if the property owner requests changes to the LUC that relate to proposed development and/or construction that is outside of the scope of the soil management plan, this request should be considered a variance or termination request and the site's Site Code should be charged for the time spent reviewing and responding to the request.
  - i. The Project Manager will verify that the Site Code is active or will work with the Branch Liaison to either reopen the Site Code or request a new Site Code, as appropriate.
  - ii. The Project Manager will provide CRBU with billable party information.
- e. The Project Manager will work with the Unit Supervisor and, if necessary, Collections and/or OLC, to evaluate the Department's potential to recover its past LUC-related costs.
  - i. A No Further Cost Recovery Action (NFCRA) determination may be appropriate to address past costs incurred by the Department in administering historical LUCs that do not contain a cost recovery provision and

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<sup>7</sup> Health and Safety Code sections 25223 and 25224 require the person requesting a variance or termination of a LUC to pay for the Department's costs related to the application.

where an independent reimbursement mechanism does not exist for the Department's LUC administration costs. (See DPM-CR- 25, "Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations," for more information about the NFCRA process.)

c. **Historical LUCs that contain an annual inspection requirement, but do not contain a cost recovery provision.**

- i. For sites with historical LUCs that contain an annual inspection requirement, but do not contain a cost recovery provision, the Project Manager will follow these procedures:
  1. Ensure that the inspection reports for the next five years and, if required, Five-Year Reviews, are included in the EnviroStor schedule of activities for the site and that the submittal dates identified in EnviroStor are the same as the dates specified in the LUC.
    - a. The current model LUC includes a default submittal date of January 15<sup>th</sup> for annual inspection reports. This date will be used as the EnviroStor submittal date unless a different date is identified in the LUC for site-specific reasons (e.g., if the annual LUC inspection report is submitted at the same time as the due date for an O&M Report).
    - b. "Land Use Restriction Monitoring Report" will be identified in EnviroStor as the document type for a LUC annual inspection report. The definition provided in EnviroStor for this document type is: "A report summarizing the results of an inspection conducted by the property owner required by a LUC or deed restriction that addresses conditions at a deed restricted area of a site."

2. If the site has an O&M Agreement or another reimbursement mechanism, the Project Manager will charge time spent administering the LUC to the applicable Site Code for the site.
3. If the site does not have an O&M Agreement or another reimbursement mechanism, the Project Manager will charge time spent administering the LUC to PCA Code 11025 (do not use with Site Code).
4. If the LUC contains requirements related to compliance with soil management plans, the Project Manager will also charge time related to this activity to PCA Code 11025 (do not use with a Site Code).
5. If the property owner fails to submit an inspection report or fails to comply with another requirement of the LUC, the property owner may be in violation of the LUC. The Project Manager will consult with the Unit Supervisor and OLC regarding enforcement options. Department staff will charge the site's Site Code for time spent enforcing the provisions of the LUC.
6. Department staff will charge the site's Site Code for time spent reviewing and responding to variance and termination requests.<sup>8</sup> For example, if the property owner requests changes to the LUC that relate to proposed development and/or construction that is outside of the scope of the soil management plan, this request should be considered a variance or termination request and the site's Site Code should be charged for the time spent reviewing and responding to the request.
  - a. The Project Manager will verify that the Site Code is active or work with the Branch Liaison to either reopen the Site Code or request a new Site Code, whichever is appropriate.

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<sup>8</sup> Health and Safety Code sections 25223 and 25224 require the person requesting a variance or termination of a LUC to pay for the Department's costs related to the application.



### **Office of Legal Counsel (OLC)**

1. As requested, OLC will work with Program and/or Collections staff to determine whether the Department can recover its LUC administration costs pursuant to an existing LUC or another reimbursement mechanism.
2. As requested, OLC will assist Program staff in negotiating with site owners for new LUCs or submittal of voluntary annual inspection reports.
3. Upon receipt of an EnviroStor Work Request, OLC will work with Program and Collections staff to process NFCRA determinations for costs incurred by the Department related to sites with LUCs that do not contain cost recovery provisions. (See DPM-CR-25, "Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations," for additional information.)

### **Cost Recovery Billing Unit (CRBU)**

CRBU will make appropriate adjustments to the Cost Recovery Billing System upon receipt of an approved NFCRA from Collections. (See DPM-CR-25, "Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations," for additional information.)

### **Collections and Resolution Unit (Collections)**

As requested, Collections will work with Program and/or OLC staff to determine whether the Department can recover its LUC administration costs pursuant to the LUC or another reimbursement mechanism.

### **Fiscal Systems Unit (FSU)**

1. As requested, FSU will work with the Project Manager, Branch Liaison, and Accounting to create Fund 0458 accounts for sites where the Department's LUC administration costs will be reimbursed by Fund 0458.
2. FSU will work with the Project Manager or Branch Liaison and Accounting to close unnecessary Work Phases in the Daily Log and determine whether the old Site Code should be closed and a new Site Code/Work Phase established. FSU will ensure that the appropriate PCA Code (11999 or 22999) is enabled in the Daily Log so that Department staff may properly charge their time for all activities utilizing Fund 0458.

### **Accounting Office (Accounting)**

As requested, Accounting will work with the Project Manager, Branch Liaison, and FSU to create Fund 0458 accounts for sites where the Department's LUC administration costs will be reimbursed by Fund 0458.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Daily Log and Cost  
Recovery Billing System (CRBS)  
Closure

**Number:**

DPM-CR-13

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**Date Issued:**

November 21, 2013

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the procedures for concluding program cost account tracking and invoicing of the Department's response costs to billable parties (i.e., project proponents and responsible parties).<sup>1</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program and Hazardous Waste Management Program (collectively referred to as "Program") Project Managers, Branch Liaisons, and Grant Administrators with administrative responsibilities related to the certification of hazardous substance release sites, suspension or termination of the Department's oversight of remediation activities, or initiation of oversight or cleanup activities under new or different Site Codes or Project Codes. This DPM also applies to Cost Recovery Billing Unit (CRBU)<sup>2</sup> staff

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site- or project-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site or project.

<sup>2</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

responsible for invoicing billable parties for the Department's response costs, Fiscal Systems Unit (FSU) staff responsible for processing timesheets, timesheet corrections, and establishing Site Codes and Project Codes, including related Work Phases, used to monitor and track response costs incurred by the Department, and Collections and Resolution Unit (Collections) staff responsible for approving the transfer of site costs and/or a site credit balance from one Site Code to another .

#### **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25360 and 25269.6
- Government Code section 13943.2
- Department of General Services, State Administrative Manual (SAM) chapter 8700, section 8776.6

#### **PROCEDURES:**

##### **The Daily Log and Cost Recovery Billing System (CRBS) Closure Request Form (DTSC Form 1554)<sup>3</sup>**

1. The Daily Log and Cost Recovery Billing System (CRBS) Closure Request Form (DTSC Form 1554) will be completed to close a Site Code or Project Code in the Daily Log and/or a Site Code in the Cost Recovery Billing System (CRBS). DTSC Form 1554 and instructions are available at [http://dtscnet.dtsc.ca.gov/departmental/forms/fm\\_forms.cfm](http://dtscnet.dtsc.ca.gov/departmental/forms/fm_forms.cfm).
2. **Daily Log Site Code or Project Code Closure Requests**
  - a. Both Site Codes and Project Codes may be closed in the Daily Log using DTSC Form 1554. Examples of when Site Codes and Project Codes should be closed in the Daily Log include, but are not limited to:
    - i. When the Department certifies or completes the investigation and/or remediation of a site. (Refer to DPM-CR-11, "Cost Recovery: Site Completion," for more information regarding the site completion process). As soon as possible, and no later than 15 business days after work at a site has been

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<sup>3</sup> This overview of DTSC Form 1554 applies to Program, FSU, and CRBU staff.

completed or no further charges are anticipated, the Project Manager will work with the Branch Liaison to request closure of a Site Code or Project Code in the Daily Log.

- ii. When the Department terminates an order or finds that a party has satisfied the requirements and terms of an order. (Refer to DPM-CR-06, "Cost Recovery: Orders," for more information about orders).
- iii. When work under the current Site Code or Project Code is complete, but work will resume under a new Site Code or Project Code.
- iv. When a voluntary agreement is terminated and the Department's response costs have been paid or addressed.
- v. When the Department will not incur costs related to a site or project for a period of one year or more.
  1. If work is expected to be delayed or suspended at a site or project for an extended period of time, the Project Manager will request that the Site Code or Project Code and applicable Work Phase(s) be deactivated in the Daily Log to ensure that erroneous charges will not be incurred for the site or project.
  2. When work is expected to resume, the Site Code, Project Code, and/or Work Phase(s) can be reactivated within 24 hours. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for information about reactivating a Site Code, Project Code, and/or Work Phase(s) in the Daily Log.)
3. **CRBS Site Closure Requests:** Only Site Codes may be closed in CRBS (use DTSC Form 1554). Site Codes should be closed in CRBS when the Department completes its investigation and remediation of a site, such as under the following circumstances:
  - a. When a party to a voluntary cleanup agreement completes the work required by the agreement and reimburses the Department for all costs as required by the agreement.

- b. When the Department certifies or completes the investigation and/or remediation of a site. (See DPM-CR-11, “Cost Recovery: Site Completion,” for more information regarding the site completion process.)
  - i. A site should not be closed in CRBS when ongoing Operation and Maintenance (O&M) is required or when the Department will incur future response costs in administering a land use covenant. (See DPM-CR-10, “Cost Recovery: Operation and Maintenance (O&M) and Financial Assurance Requirements,” and DPM-CR-12, “Cost Recovery: Administering Land Use Covenants,” for more information regarding O&M and administering land use covenants.)
- c. When the Department issues a No Further Action determination. (See DPM-CR-25, “Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations,” for more information about the NFCRA process.)
- d. When the Department determines that the responsible party has satisfied the conditions of an order and the responsible party has reimbursed the Department for all costs as required by the order. (See DPM-CR-06, “Cost Recovery: Orders,” for more information about orders).
- e. When work under the current Site Code or Project Code is complete, but work will resume under a new Site Code or Project Code.

**Program Project Managers, Branch Liaisons, and Grant Administrators**

- 1. **Before Completing DTSC Form 1554.** Prior to completing DTSC Form 1554, the Project Manager, Branch Liaison, or Grant Administrator will:
  - a. Verify that all site- or project-related documents have been uploaded to EnviroStor and all necessary steps have been taken to ensure compliance with the Department’s record retention policy.
  - b. Ensure that all timesheets and timesheet corrections have been submitted to the Attendance Clerk (to submit to FSU and CRBU). If a recent timesheet amendment related to the site was made, then the Project Manager will provide a copy of the timesheet

amendment to the Branch Liaison or Grant Administrator to submit to FSU.

- c. The Project Manager will notify all Department staff and management working on the site that the site code is being closed and request that all Travel Expense Claims (TECs) be submitted to the Accounting Office (Accounting) within 30 days.

2. **Completing DTSC Form 1554.** The Project Manager, Branch Liaison, or Grant Administrator is responsible for completing DTSC Form 1554.

- a. A link to DTSC Form 1554 and instructions are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
- b. If the Project Manager completes DTSC Form 1554, then the Project Manager will deliver the completed DTSC Form 1554 to the Branch Liaison or Grant Administrator for submission to FSU and CRBU.

3. **Submitting DTSC Form 1554.** The Branch Liaison or Grant Administrator will review DTSC Form 1554 for accuracy and email the completed form to the CRBU analyst assigned to the site or project for closure in CRBS and/or FSU for closure in the Daily Log.<sup>4</sup>

- a. The Branch Liaison or Grant Administrator will email the completed DTSC Form 1554 to FSU at [ProjectCode@dtsc.ca.gov](mailto:ProjectCode@dtsc.ca.gov) and the CRBU analyst assigned to the site. To determine the CRBU analyst assigned to the project or site, see Contacts, below. The Branch Liaison or Grant Administrator will include the following information in the “Subject” line of the email: Site Code, Site Name, and purpose of the email.
- b. If a recent timesheet amendment related to the site was made, then the Branch Liaison or Grant Administrator will check the corresponding box in the “Supporting Documents/Reports” section of DTSC Form 1554 and submit a copy of the timesheet amendment to CRBU.

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<sup>4</sup> If the DTSC Form 1554 is for Daily Log closure only, email the form to FSU only. If the DTSC Form 1554 is for CRBS closure only, email the form to CRBU only.

- c. If the DTSC Form 1554 includes a write-off request of \$500 or more, then the Branch Liaison or Grant Administrator will submit an approved NFCRA Memorandum with the DTSC Form 1554. (See DPM-CR-25, “Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations,” for more information about the NFCRA process.)
4. If work is expected to be delayed or suspended at a site or project for an extended period of time, the Project Manager will request that the Site Code or Project Code and applicable Work Phase(s) be deactivated in the Daily Log to ensure that erroneous charges will not be incurred for the site or project.

### **Fiscal Systems Unit (FSU)**

1. Upon receipt of DTSC Form 1554, FSU will verify that the Site Code, Project Code, and/or Work Phase(s) submitted for deactivation have not been used in the Daily Log after the requested deactivation date. If the FSU analyst has any questions concerning DTSC Form 1554, then he or she will immediately contact the requestor via email in order to establish an audit trail.
2. Within several hours of verifying that the Site Code, Project Code, and/or Work Phase(s) have not been used in the Daily Log after the requested deactivation date, the FSU analyst will deactivate the Site Code, Project Code, and/or associated Work Phase(s) in the Daily Log.
3. FSU will immediately notify the requestor, Project Manager, CRBU (at [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov)), and anyone listed on DTSC Form 1554 via email that the Site Code, Project Code, and/or associated Work Phase(s) have been deactivated.
4. The FSU analyst will post updated Site Code and Project Code lists on the FSU SharePoint page on a monthly basis. A link to the FSU SharePoint page is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
5. FSU will promptly process timesheet corrections and inquire if any TECs are associated with the revised timesheet activity that requires correction.

## **Cost Recovery Billing Unit (CRBU)**

1. When CRBU receives a copy of the DTSC Form 1554, the CRBU analyst assigned to the site will take the following actions to close the Site Code in CRBS.
  - a. Update the Classification/Action information for the site in CRBS to acknowledge the closure request and commencement of the closure process.
  - b. Verify that the Site Code and/or associated Work Phase(s) are closed in the Daily Log.
    - i. If the Site Code and/or associated Work Phase(s) have been closed in the Daily Log for more than 120 days, then the CRBU analyst will take the actions detailed in subsection c, below.
    - ii. If the Site Code and/or associated Work Phase(s) have not been closed in the Daily Log for a minimum of 120 days:
      1. Email FSU to request closure of the Site Code and/or associated Work Phase(s) in the Daily Log.
      2. Keep the site open in CRBS for the closure period, up to 120 days, to ensure that any additional charges have been accounted for, including, but not limited to, time spent preparing the closure request, charges associated with TECs, TEC corrections, and timesheet corrections.
  - c. Depending on the type of site, the CRBU analyst will take the actions indicated.
    - i. **For Sites with a Zero Balance:** If Program staff requests closure of a Site Code in CRBS and the site account reflects a zero balance, the CRBU analyst will:
      1. After conclusion of the closure period, verify that the last Daily Log entry has been uploaded to CRBS and all costs have been settled in CRBS.

2. If unreimbursed costs remain after the conclusion of the closure period, refer the DTSC Form 1554 back to the Branch Liaison or Grant Administrator that submitted the form and discuss the next steps to resolve the unreimbursed costs.
- ii. **For Sites with an Outstanding Balance, Issue Final invoice:** If Program staff requests closure of a Site Code in CRBS and the site account reflects that an outstanding balance remains, the CRBU analyst will:
1. After conclusion of the closure period, verify that the last Daily Log has been uploaded to CRBS and all costs have been settled in CRBS.
  2. Issue a final invoice during the next quarterly billing cycle in accordance with DPM-CR-16, "Cost Recovery: Invoicing." CRBU will continue to invoice all uncollected costs until the account balance is paid in full unless an adjustment justification, write-off request or NFCRA is submitted by Program staff.
  3. Verify that payment was received for the final invoice.
- iii. **For Sites with a Positive (Credit) Balance, Issue a Refund:** If Program staff requests closure of a Site Code in CRBS and the site account reflects that a refund is owed to the billable party (e.g., project proponent or responsible party), the CRBU analyst will:
1. After conclusion of the closure period, verify that the last Daily Log entry has been uploaded to CRBS and all costs have been settled in CRBS.
  2. Before issuing a refund, determine if the billable party is liable for any remaining costs related to the site or any other costs associated with other sites.
    - i. If there are no remaining costs associated with the site and the billable party is not liable for

costs associated with any other sites, draft a refund memorandum.

- ii. If there are costs related to the site, issue an invoice during the next quarterly billing cycle in accordance with DPM-CR-16, "Cost Recovery: Invoicing."
- iii. If there are costs associated with another site for which the billable party is liable, CRBU will contact the billable party to discuss transferring the positive balance as a payment towards costs associated with the other site (see below for further information).

- 3. Upon approval by the CRBU Chief, submit the refund memorandum to the Accounts Receivable and Receipts Unit to issue a refund.
- 4. After the refund is issued to the billable party, record refund details and reconcile balance in CRBS.

iv. **When the billable party Requests Transfer of a Credit Balance or Costs to a Different Site Code:** If Program staff requests closure of a Site Code in CRBS and (1) requests that site costs be transferred to a different Site Code or Project Cost Account (PCA) Code; or (2) requests that a credit balance be transferred to a different Site Code, then the CRBU analyst will perform the following tasks:

1. **Transfer of site costs**

- i. For activities within California State Accounting and Reporting System (CALSTAR's) allowable timeframe to accept timesheet corrections (current fiscal year plus two prior fiscal years), advise the Branch Liaison to submit timesheet amendments to FSU to transfer site costs to a different Site Code.

- ii. For activity that exceeds CALSTAR's time limitations for timesheet corrections, advise the Branch Liaison to contact the Collections, requesting the transfer of costs from one site to another site or from one PCA Code to another PCA Code, and provide an explanation for the transfer and the specific amount to be transferred. Once approved, Collections will notify CRBU to shift costs accordingly.

**2. Transfer of credit balance**

- i. For activities within CALSTAR's allowable timeframe to accept timesheet corrections (current fiscal year plus two prior fiscal years), advise the Branch Liaison to submit timesheet amendments to FSU to transfer site costs to a different Site Code. If the credit balance is due to an advance payment, see next paragraph.
  - ii. For activity that exceeds CALSTAR's time limitations for timesheet corrections, advise the Branch Liaison to contact the Collections, requesting the transfer of a credit balance from one site to another site, and provide an explanation for the transfer and the specific amount to be transferred. Once approved, Collections will notify CRBU to shift costs accordingly.
    1. If a credit balance remains, follow step iii "For Sites with a Positive Balance, Issue a Refund" above.
3. After conclusion of the closure period, verify that the last Daily Log entry has been uploaded to CRBS and all costs have been settled in CRBS.

4. Apply cost adjustments as directed by Collections and upload any documentation that supports the adjustments to CRBS.

v. **For Sites with Costs less than \$500 Per Debtor:** If Program staff requests closure of a Site Code in CRBS and a write-off of costs less than \$500 per debtor, then after conclusion of the closure period, the CRBU analyst will verify the Department's remaining costs by running a billable party search in CRBS to determine if the debtor is liable for costs associated with any other sites.<sup>5</sup>

1. If the billable party is liable for more than \$500 in cleanup costs, the CRBU analyst will refer the DTSC Form 1554 back to the Branch Liaison or Grant Administrator that submitted the form, indicating that costs are greater than \$500 per debtor, and discuss the next steps to resolve unreimbursed costs (e.g., invoice the costs, write the costs off with a NFCRA Memorandum).
2. If cleanup costs are less than \$500 per debtor, the CRBU analyst will:
  - i. Verify that the last Daily Log entry has been uploaded to CRBS to ensure that all reimbursable costs to be written off are in CRBS.
  - ii. After approval by the CRBU Chief, adjust the remaining costs (totaling less than \$500 per debtor) to zero out account balance. If any adjustments are made to billed, but uncollected costs, submit an adjustment memorandum to the Accounts Receivable and Receipts Unit.

v. **Write-Off When Costs are more than \$500 Per Debtor:** If Program staff requests closure of a Site Code in CRBS and

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<sup>5</sup> Pursuant to section 13943.2 and section 8776.6 of chapter 8700 of the State Administrative Manual (SAM), the Department is not required to collect amounts of \$500 or less per debtor.

an adjustment of costs of more than \$500 per debtor, then the CRBU analyst will perform the following tasks:

1. After the conclusion of the closure period, verify that the last Daily Log entry has been uploaded to CRBS to ensure that all reimbursable costs to be written off are in CRBS.
2. Review and make adjustments in CRBS based on the approved NFCRA Memorandum, settlement agreement, judgment, or bankruptcy judgment.
3. Upload a copy of the NFCRA Memorandum, settlement agreement, judgment, or bankruptcy judgment to CRBS to support the adjustments.
4. If any adjustments are made to billed, but uncollected costs, submit an adjustment memorandum to the Accounts Receivable and Receipts Unit.
5. Verify that all site-related documents have been uploaded to the NFCRA Documents SharePoint page. (A link to the NFCRA Documents SharePoint page is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.)

vi. **When the Site has an ORPHAN Billing Status:** If Program staff requests closure of a Site Code in CRBS that has an ORPHAN billing status, then the CRBU analyst will perform the following tasks:

1. After the conclusion of the closure period, verify that the last Daily Log entry has been uploaded to CRBS to ensure that all reimbursable costs to be written off are in CRBS.
2. The CRBU analyst will adjust all un-invoiced (unbilled) costs to zero. If invoiced or billed costs exist for the “orphan” site then an approved NFCRA Memorandum is required to make appropriate adjustments in both

CRBS and CALSTARS. (See section 1.c.vi., Write-Off When Costs are more than \$500 Per Debtor, above, and DPM-CR-25, "Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations" for more information regarding write-off of invoiced (billed) costs.)

- d. After completing actions indicated in 1.c. for a particular type of site, the CRBU analyst will:
  - i. Change the billing status of the site account to "CLOSED" in CRBS after confirming that all costs have been settled.
  - ii. Verify that all site-related documents have been uploaded to the CRBU Project Files SharePoint page and all necessary steps have been taken to ensure compliance with the Department's record retention policy.
2. The CRBU analyst will take the following actions associated with the following CRBS updates:
  - a. When notified that site work is still active, but no costs will be incurred for an extended period of time, update the CRBS Billing Classification for the site to acknowledge that the site will incur costs infrequently.
  - b. When notified that active site work is complete, but the site will require ongoing O&M, update the CRBS Billing Classification for the site to reflect that the site has ongoing O&M.
  - c. If no costs are incurred for a site within 90 days from the date the Site Code was originated:
    - i. Email FSU to request closure of the Site Code in the Daily Log. CRBU is **not** required to complete and submit DTSC Form 1554.
    - ii. Close the Site Code in CRBS.
    - iii. Enter a project note in CRBS stating:

1. The date the Site Code was closed in the Daily Log.
2. The Site Code was closed in CRBS because no costs were incurred within the first 90 days after the Site Code was established.

### **Collections and Resolution Unit (Collections)**

1. Upon receipt of a request to transfer site costs from one Site Code to another or from one PCA Code to another, or transfer a credit balance from one Site Code to another, Collections will ensure that the request is for activities that exceed CALSTAR's time limitations for timesheet corrections (with the exception of credit balance transfer requests).
2. Once the transfer is approved, Collections will provide CRBU with adjustment instructions and any documentation necessary to support the adjustment.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: National Priorities List (NPL) Sites	<b>Number:</b> DPM-CR-14
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the Department's procedures for: (1) participating in the U.S. EPA's National Priorities List (NPL) listing process and managing proposed and listed NPL sites; and (2) preserving its cost recovery potential with respect to NPL sites.<sup>1,2</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program staff assigned to manage proposed or listed NPL sites. This DPM also applies to Office of Legal Counsel (OLC), Contracts and Business Management Branch (Contracts), Cost

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> The Department will develop additional procedures related to proposed and listed NPL sites in the future. Department staff will be notified when these additional procedures are available.

Recovery Billing Unit (CRBU),<sup>3</sup> and Accounting Office (Accounting) staff supporting Cleanup Program staff in managing proposed and listed NPL sites.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), sections 104(c)(3) and 121(f)(1)(F), (42 U.S.C. §§ 9604(c)(3), and 9621(f)(1)(F))
- Health and Safety Code section 25360

**PROCEDURES FOR PARTICIPATION IN THE NPL PROCESS:**

1. Participation in the NPL Listing Process
  - a. When U.S. EPA proposes listing a California site on the NPL, the Department will make a recommendation to the Cal/EPA Secretary that the State support or not support the NPL listing. This will include an evaluation of the potential for a proposed NPL site to become “Fund-lead,” which means that remediation of the site will be funded, at any point in the future, by the federal Hazardous Substance Superfund Trust Fund. Fund-lead NPL sites require unreimbursed state oversight during the investigation and remedy selection phases, a 10 percent state match for response action design and implementation, and state assumption of responsibility for 100 percent of operation and maintenance costs.
  - b. The Cal/EPA Secretary will brief the Governor’s Office regarding the recommendation.
2. Participation in the Superfund Cleanup Process
  - a. The Cleanup Program will assign a Project Manager to participate in U.S. EPA’s remedial investigation to ensure that the Site is sufficiently characterized to support the risk assessment and the evaluation of remedial alternatives.
  - b. The Project Manager will participate in U.S. EPA’s remedy evaluation and selection process to ensure that the Department’s interests are addressed (i.e., the remedy has clear and measurable

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<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

remedial objectives, will be successful and cost effective, and will have reasonable operation and maintenance costs if the NPL site will be, or has the potential to be, Fund-lead).

- c. If the U.S. EPA proposes to fund a cleanup at an NPL site using the federal Hazardous Substance Superfund Trust Fund, then the Department must decide whether the state concurs with the proposed remedy and is willing to enter into an State Superfund Contract (SSC) to provide the state's 10 percent matching funds for implementation and to fully fund any required operation and maintenance activities.
- d. If the U.S. EPA pursues responsible parties to fund a cleanup at an NPL site, the Department will coordinate with U.S. EPA to recover its oversight costs from those responsible parties.

**Cleanup Program Project Managers (or designated team)**<sup>4</sup>

1. As requested by the Deputy Director, the Project Manager will review the NPL site listing proposals and evaluate the potential for a proposed NPL site to become "Fund-lead," which means that remediation of the site will be funded, at any point in the future, by the federal Hazardous Substance Superfund Trust Fund. Fund-lead NPL sites require unreimbursed state oversight during the investigation and remedy selection phases, a 10 percent state match for response action design and implementation, and state assumption of responsibility for 100 percent of operation and maintenance costs.
2. The Project Manager will make a recommendation to the Deputy Director regarding whether the state should concur with the proposed listing of the site on the NPL. In formulating the recommendation, the Project Manager may consult with OLC.
3. The Project Manager will track the progress of the federal cleanup and enforcement process for each NPL site assigned to him or her by maintaining contact with the U.S. EPA Remedial Project Manager. The

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<sup>4</sup> The Deputy Director may designate a team of individuals and team leader to review NPL site listing proposals and evaluate the potential for a proposed NPL site to become Fund-lead. If this occurs, then the designated team and team leader must perform the Project Manager responsibilities outlined in this DPM.

Project Manager will consult with the Unit Chief if he or she encounters difficulties maintaining consistent communications with the U.S. EPA Remedial Project Manager.

4. The Project Manager will provide an annual cost estimate for the upcoming year to the Cleanup Program Grants Administration Unit.
5. The Project Manager will participate in U.S. EPA's remedy evaluation and selection process to ensure that the Department's interests are addressed (i.e., the remedy has clear and measurable remedial objectives, will be successful and cost effective, and will have reasonable operation and maintenance costs if the NPL site will be, or has the potential to be, Fund-lead). The Project Manager will regularly inform the Unit Chief and Branch Chief of the selected remedy and whether the Department's interests are being adequately protected during the NPL process.
6. The Project Manager will discuss with the U.S. EPA Remedial Project Manager the possibility of participating in U.S. EPA's potentially responsible party (PRP) search process or obtaining the results of U.S. EPA's PRP search and/or other NPL site-related information.
  - a. The Project Manager may need to work with OLC to obtain access to U.S. EPA's PRP search process and/or results. OLC may need to negotiate a confidentiality agreement between the Department and U.S. EPA governing the sharing of confidential information, such as PRP search results and any ability to pay analyses conducted by U.S. EPA, between the Department and U.S. EPA. The Project Manager will submit an EnviroStor Work Request to OLC to develop site-specific confidentiality agreements.
  - b. If U.S. EPA does not share its PRP search information or results, then the Project Manager will confer with the Unit Chief and Branch Chief regarding the next steps in the Department's cost recovery efforts, including, but not limited to, conducting its own PRP search or initiating enforcement activities. (See DPM-CR-07, "Cost Recovery: Potentially Responsible Party (PRP) Searches," and DPM-CR-06, "Cost Recovery: Orders," for more information about the Department's PRP search and order processes.)
7. The Project Manager will notify the Unit Chief, Branch Chief, and OLC if he or she receives notification under section 121(f)(1)(F) of CERCLA (42

U.S.C. § 9621(f)(1)(F)) of U.S. EPA negotiations with PRPs regarding the implementation of a remedial design and remedial action for an NPL site.

8. The Project Manager will participate in negotiations with PRPs for remedial design and remedial action, review technical issues in the proposed Consent Decree and Statement of Work, and advise OLC of the Department's position on technical issues.
9. The Project Manager, in consultation with the Unit Chief, Branch Chief, OLC, and the Attorney General's (AG's) Office, will formulate a recommendation regarding whether to join any proposed Consent Decree between the U.S. EPA and PRPs.
10. If the Department agrees to enter into a State Superfund Contract (SSC) for a Fund-lead NPL site, then the Project Manager will:
  - a. Submit a request to the Unit Chief and Branch Chief for funds from the state Site Remediation Account (SRA).
  - b. Work with OLC and the U.S. EPA Remedial Project Manager to draft the SSC language and scope of work.
  - c. Review and comment on U.S. EPA's cost estimate for the work to be covered under the SSC.
  - d. Once U.S. EPA's cost estimate is agreed upon, work with Contracts and OLC to execute the SSC.
  - e. Confer with the Unit Chief and Branch Chief as needed during the SSC negotiation and development process.

#### **Office of Legal Counsel (OLC)**

1. OLC will advise the Project Manager (or designated team) during the review of NPL listing proposals.
2. As requested by Cleanup Program staff, OLC will assist in tracking the progress of the federal process for listed or proposed NPL sites by maintaining contact with the U.S. EPA legal counsel.
3. If necessary, OLC will develop and negotiate site-specific confidentiality agreements governing the sharing of information between the Department and U.S. EPA regarding specific proposed or listed NPL sites, as well as

procedures for the management of any confidential information shared between the agencies pursuant to the agreement.

4. As requested by Cleanup Program staff, OLC will assist Cleanup Program staff in conducting PRP searches for information about PRPs related to a proposed or listed NPL site. (See DPM-CR-07, "Potentially Responsible Party (PRP) Searches," for more information about the PRP search process.)
5. OLC will coordinate Department participation in negotiations with PRPs regarding the implementation of the remedial design and remedial action for the Site, including obtaining information from CRBU about the Department's past response costs at the Site.
6. OLC will consult with the Project Manager, Unit Chief, and Branch Chief, and make a recommendation, in conjunction with the AG, as to whether the Department should join any proposed Consent Decree.
7. Upon request, OLC provides support to Cleanup Program staff regarding legal issues that arise regarding the Department's participation in the NPL list process and managing proposed and listed NPL sites.

**Cleanup Program Deputy Director (or designee)**

1. The Deputy Director will regularly communicate with U.S. EPA regarding NPL site listing proposals and the status of NPL sites.
2. When U.S. EPA proposes listing a California site on the NPL, the Deputy Director will designate a Project Manager, or a team of individuals with a designated team leader, to review and provide a recommendation regarding the NPL listing proposals.
3. Upon receiving the recommendation regarding a proposed NPL listing from the designated Project Manager or team, the Deputy Director will discuss the recommendation with the Department Director and with the Cal/EPA Office of the Secretary.
  - a. If the Department recommends supporting a proposed NPL listing, then the Deputy Director will support the Cal/EPA Office of the Secretary in preparing a letter supporting the NPL listing proposal and in briefing the Governor's Office.

- b. If the Department does not recommend supporting a proposed NPL listing, then the Deputy Director will discuss the recommendation with the Department Director and with the Cal/EPA Office of the Secretary. The Deputy Director will support the Director and/or Cal/EPA Secretary in communicating the recommendation to the Governor's Office.
4. As needed, the Deputy Director will work with his or her U.S. EPA counterpart to resolve issues raised by Cleanup Program staff, such as if Cleanup Program staff recommends that the Department not concur with U.S. EPA's selected remedy or believes that the Department's interests are not being met during the NPL process. If an issue(s) cannot be resolved by the Deputy Director and his or her U.S. EPA counterpart, then the Deputy Director will discuss the issue with the Director and provide any additional support needed to resolve the issue(s).
5. If the U.S. EPA proposes to fund a cleanup at an NPL site using the federal Hazardous Substance Superfund Trust Fund, then the Deputy Director will decide whether the state concurs and is willing to enter into an SSC to provide the state's 10 percent matching funds. The Deputy Director will negotiate the general framework for the SSC and, if delegated by the Director, sign the SSC. The Deputy Director will resolve any issues associated with an SSC amendment that cannot be addressed by his or her staff. If delegated by the Director, the Deputy Director signs the SSC amendment.
6. The Deputy Director, in consultation with the Branch Chief, OLC, and Accounting, will determine, consistent with the Settlement Agreement, how settlement funds for past and future costs will be managed.

#### **Cleanup Program Branch Chiefs**

1. The Branch Chief will regularly inform his or her Division Chief and/or the Deputy Director of the status of proposed or listed NPL sites managed by his or her staff, such as the status of PRP negotiations and settlements, remedy selection, and whether the Department's interests are being adequately protected during the NPL process.
2. For Department of Defense sites, the Branch Chief will sign the remedy decision document (Record of Decision) and, as necessary, seek concurrence from the Deputy Director.

3. The Unit Chief will consult with the Project Manager, Branch Chief, and OLC regarding notifications of U.S. EPA negotiations with PRPs regarding the implementation of a remedial design and remedial action for an NPL site and the negotiation and development of SSCs for Fund-lead NPL sites.
4. After reviewing the Project Manager's recommendation, the Branch Chief will decide whether the Department should join any proposed Consent Decree. The Branch Chief will sign the Consent Decree and, as necessary, seek concurrence from the Deputy Director.
5. The Branch Chief will work with his or her U.S. EPA counterpart to ensure adequate coordination between the agencies throughout the process for proposed or listed NPL sites managed by the Branch Chief's staff and, as needed, resolve any issues that cannot be resolved by his or her staff.

#### **Cleanup Program Unit Chiefs**

1. The Unit Chief will work with the U.S. EPA Unit Chief to resolve any communication issues between the Project Manager and the U.S. EPA Remedial Project Manager.
2. The Unit Chief will consult with the Project Manager, Branch Chief, and OLC regarding notifications of U.S. EPA negotiations with PRPs regarding the implementation of a remedial design and remedial action for an NPL site and formulate a recommendation regarding whether the Department should join in any proposed Consent Decree between the U.S. EPA and PRPs, and the negotiation and development of SSCs for Fund-lead NPL sites.
3. The Unit Chief will consult with the Project Manager, Branch Chief, Contracts staff, and OLC regarding the negotiation and development of SSCs for Fund-lead NPL sites.
4. The Unit Chief will regularly inform his or her Branch Chief of the status of proposed or listed NPL sites managed by his or her staff, such as the status of PRP negotiations and settlements, remedy selection, and whether the Department's interests are being adequately protected during the NPL process.

**Cleanup Program Grants and Program Support Branch, Grants Administration Unit**

1. Request an annual cost estimate from Cleanup Program Project Managers for each NPL site covered under the MSCA Grant.
2. Use the information provided by the project managers and the total amount allocated by U.S. EPA for this purpose to prepare the MSCA Grant application submitted to U.S. EPA.
3. Monitor expenditures and payments under the MSCA Grant, notifying Cleanup Program management if expenditures are not consistent with the workplan.

**Contracts and Business Management Branch (Contracts)**

If the Department agrees to enter into an SSC for a Fund-lead NPL site, then Contracts will work with Cleanup Program staff and OLC to develop and execute the SSC for the site.

**Cost Recovery Billing Unit (CRBU) and the Accounting Office (Accounting)**

As requested, CRBU and Accounting will work with Cleanup Program and OLC staff to provide documentation of response costs incurred by the Department related to NPL sites during Department settlement negotiations with U.S. EPA and PRPs regarding NPL sites.

**PROCEDURES FOR PRESERVING THE DEPARTMENT'S COST RECOVERY POTENTIAL:**

**Cleanup Program Project Managers and Branch Liaisons**

1. The Project Manager and Branch Liaison will comply, to the extent applicable, with DPM-CR-01, "Cost Recovery: Administrative Site Management," in managing the proposed or listed NPL site. The Project Manager's responsibilities will include, but are not necessarily limited to the following:
  - a. If a Site Code has not already been established for the NPL site, the Project Manager will work with the Branch Liaison to obtain a new Site Code for the NPL site after consulting with the Branch Chief. (See DPM-CR-03, "Cost Recovery: Site Code and Project

Code Origination,” for more information regarding the Site Code request process.)

- b. The Project Manager or Branch Liaison will create and/or update the EnviroStor profile for the NPL site.
  - c. Once a month, the Project Manager or Branch Liaison will review Daily Logs to verify that only authorized Department staff is charging to the Site Code and that sufficient detail is being included in the Daily Log descriptions to support the Department’s costs. The Project Manager or Branch Liaison will request any necessary timesheet revisions and verify that the revisions were made and processed.
  - d. If PRPs are identified, the Project Manager or Branch Liaison will provide CRBU with accurate billable party information, periodically verify that the billable party has paid its invoices and that payments are properly credited to the correct account, handle invoice disputes, monitor collection letters for past-due invoices, complete a “Site and Collection Activities Summary” (DTSC Form 1479) after receiving notification of a third collection letter, and work with Department staff to formulate a comprehensive plan for cost recovery if a PRP fails to pay the Department’s response costs.
2. The Project Manager will perform the following additional responsibilities for proposed and listed NPL sites:
- a. In consultation with OLC, monitor and coordinate with U.S. EPA on its cost recovery efforts, and consult with OLC regarding whether the Department should initiate its own cost recovery action.
  - b. For NPL sites where U.S. EPA has entered into settlements with PRPs, but for which the Department has unreimbursed costs, the Project Manager will coordinate with U.S. EPA to secure PRP search information and related documents so the Department may initiate its own cost recovery action.
    - i. OLC may need to negotiate a confidentiality agreement with U.S. EPA governing the sharing of confidential information, such as PRP search results and any ability to pay analyses conducted by U.S. EPA.

- ii. The Project Manager will submit an EnviroStor Work Request to OLC to develop site-specific confidentiality agreements.
- c. In consultation with OLC and the U.S. EPA Remedial Project Manager, calculate federal and state statute of limitations (SOL) dates for cost recovery at unreimbursed NPL sites. The Project Manager will provide the SOL dates to his or her Branch Liaison for inclusion in the quarterly cost recovery status report.
- d. Within one year after completion of construction a removal action or within one year after initiating construction activities for a remedial action (as tracked in the Branch Liaison's quarterly cost recovery status reports), consult with OLC and coordinate with the U.S. EPA Remedial Project Manager regarding the recovery of the costs incurred by the Department.<sup>5</sup>
  - i. If the Project Manager and OLC agree that the Department should initiate its own cost recovery action, then the Project Manager will comply with the OLC cost recovery referral procedures outlined in DPM-CR-26, "Cost Recovery: Cost Recovery Referrals to the Office of Legal Counsel (OLC)."
- e. If and when management of an NPL site is transferred from one Project Manager to another, the incumbent Project Manager will describe the cost recovery status in a written memorandum as part of the transition effort. Information that will be addressed includes, but is not limited to:
  - i. The status of U.S. EPA's PRP search, if still underway, including the location of any information that has been shared and whether a site-specific confidentiality agreement has been prepared (and if so, the location of the agreement).
  - ii. Whether a Department-led PRP search is needed.
  - iii. Any SOL calculations and a description of the triggering events.

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<sup>5</sup> If multiple removal actions are contemplated for the NPL site, the Project Manager must consult with OLC and coordinate with the U.S. EPA Remedial Project Manager regarding the recovery of the costs incurred by the Department within one year after completion of construction of the first removal action.

- iv. Whether the site has been referred to OLC and/or the AG's Office for cost recovery.
  - v. The status of U.S. EPA cost recovery efforts and whether the Department is participating in those efforts.
  - vi. Existence and copies of any settlement agreements and billable party contact information.
  - vii. Identification and location of any reimbursable agreements related to the NPL site.
  - viii. Description of site billing status in the Cost Recovery Billing System (CRBS).
  - ix. Any outstanding cost recovery issues (e.g., outstanding invoices, inability to invoice).
  - x. Existence of any Fund 0294 (Removal and Remedial Action Account) accounts.<sup>6</sup>
  - xi. Any other information pertinent to the Department's ability to recover its response costs related to the NPL site.
3. The Branch Liaison will perform the following additional responsibilities for proposed and listed NPL sites:
- a. Each quarter, the Branch Liaison will perform the following activities:
    - i. Check Site Codes and the cost recovery status for proposed or listed NPL sites by reviewing:
      - 1. CRBS for invoices, payments, and billable party information.
      - 2. The NPL site's EnviroStor page for uploaded voluntary agreements, contracts, or orders that may contain cost recovery provisions.

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<sup>6</sup> When the Department receives payments designated for the Department's future response costs (costs yet to be incurred by the Department) pursuant to settlements or judgments, those payments are deposited in Fund 0294 (Removal and Remedial Action Account). (See DPM-CR-18, "Cost Recovery: Payments," for more information about Fund 0294 accounts.)

3. Any Fund 0294 (Removal and Remedial Action Account) accounts established for Fund-lead response that may have been established specifically for the NPL site.<sup>7</sup>
- ii. Prepare and provide to the Branch Chiefs a report summarizing the cost recovery status for proposed and listed NPL sites that includes the following information for each proposed or listed NPL site for which the Department has unsettled or unreimbursed response costs:
1. The name of the proposed or listed NPL site.
  2. The amount of unsettled or unreimbursed costs.
  3. The calculated SOL date.
  4. An explanation of the cost recovery status, if available.
  5. Any pending or planned follow-up actions related to cost recovery, including timeframes and staff assigned for completing such actions.
  6. Any other information pertinent to the Department's ability to recover its response costs.
- b. The Branch Liaison, with input from the Project Manager and OLC, will monitor and track the Department's involvement in the cost recovery process for a listed or proposed NPL site.
- c. The Branch Liaison will consult with the Project Manager and OLC regarding the need to coordinate with U.S. EPA on its cost recovery efforts and whether the Department should initiate its own cost recovery action. For NPL sites where U.S. EPA has entered into settlements with PRPs, but for which the Department has unreimbursed costs, the Project Manager will coordinate with U.S. EPA to secure PRP search information and related documents so that the Department may initiate its own cost recovery action.

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<sup>7</sup> See footnote 6, above.

4. As necessary, the Branch Liaison and Project Manager will work together to prepare a cost recovery referral to the OLC and the AG's Office to recover the Department's costs related to a proposed or listed NPL site. (See DPM-CR-26, "Cost Recovery: Cost Recovery Referrals to the Office of Legal Counsel (OLC)," and DPM-CR-27, "Cost Recovery: Cost Recovery Referrals to the Attorney General's (AG's) Office," for more information about the OLC and AG referral process.)

#### **Office of Legal Counsel (OLC)**

1. For NPL sites where U.S. EPA has entered into settlements with PRPs, but for which the Department has unreimbursed costs, OLC will advise the Project Manager and the Branch Liaison regarding securing U.S. EPA's PRP search and related documents for possible cost recovery action.
2. No later than six months after receiving the Project Manager's referral to evaluate unrecovered costs (as tracked in the Branch Liaison's quarterly cost recovery status reports), OLC will evaluate the potential to recover these costs and decide whether preparation of a referral package to the AG's Office for the filing of a cost recovery complaint or other cost recovery action is appropriate.
3. If appropriate, OLC will prepare the referral package to the AG's Office so that it can file a cost recovery complaint against identified PRPs. (See DPM-CR-27, "Cost Recovery: Cost Recovery Referrals to the Attorney General's (AG's) Office," for more information about the AG referral process.)
4. OLC will formulate a recommendation as to whether the Department should participate in any U.S. EPA cost recovery action for a proposed or listed NPL site. If OLC recommends against participating in any U.S. EPA cost recovery action, then OLC will document the rationale for the decision and, if appropriate, the path forward for a separate departmental cost recovery action.
5. OLC will coordinate with Cleanup Program staff and the AG's Office on cost recovery efforts, including any litigation concerning the Department's response costs.
6. OLC will assist the Project Manager in calculating the applicable SOL dates for cost recovery at unreimbursed NPL sites.

### **Cleanup Program Branch Chiefs**

1. Within 30 days of receiving the latest quarterly report summarizing the cost recovery status for proposed and listed NPL sites from the Branch Liaison, the Branch Chief will share the report and discuss the unreimbursed costs with the Project Manager and, in consultation with the Project Manager and Branch Liaison, determine the next steps for recovering the Department's costs.
  - a. The next steps will likely include working with CRBU to issue invoices to the billable parties; working with the billable party or Accounting to address problems with invoices that are causing payment delays; coordinating with U.S. EPA's cost recovery efforts (in consultation with OLC); completing DTSC Form 1479; and/or initiating a Departmental cost recovery action (in consultation with OLC).
  - b. The Branch Chief will inform the Branch Liaison and Project Manager of the required follow-up actions, including timeframes for completing the actions.
2. As needed, and in consultation with OLC, the Project Manager, or the Unit Chief, the Branch Chief will discuss unreimbursed costs with U.S. EPA (either on a site-specific basis or at a U.S. EPA/Department NPL coordination meeting) to determine how U.S. EPA is approaching its cost recovery efforts.

### **Cost Recovery Billing Unit (CRBU) and Accounting Office (Accounting)**

1. CRBU and Accounting will follow the applicable DPMs associated with invoicing and payments to preserve the Department's ability to recover response costs related to proposed and listed NPL sites.
2. CRBU and Accounting will support Cleanup Program staff and OLC in preparing cost recovery referrals to the AG's Office in accordance with the procedures outlined in DPM-CR-27, "Cost Recovery: Cost Recovery Referrals to the Attorney General's (AG's) Office."

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Department of Defense and State Memorandum of Agreement (DSMOA)	<b>Number:</b> DPM-CR-15
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM clarifies the roles and responsibilities of Department staff with respect to the Department of Defense and State Memorandum of Agreement (DSMOA).<sup>1</sup>

**APPLICABILITY:** This DPM applies to the Cleanup Program Grants Unit, Cleanup Program Project Managers and Unit Chiefs, Federal Reporting Unit, Engineering and Special Projects Office (ESPO), Office of Legal Counsel (OLC), Fiscal Systems Unit (FSU), Accounting Office (Accounting), and Office of Environmental Information Management (OEIM) staff that assist in the management and administration of DSMOA and DSMOA Cooperative Agreements.

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site- or project-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site or project.

## **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- “Department of Defense and State Memorandum of Agreement” (Feb. 1993)
- “Department of Defense and State Memorandum of Agreement Cooperative Agreement” (June 2012)
- Department of Defense, *Working Together to Achieve Cleanup: A Guide to the Cooperative Agreement Process* (July 2006) (“DSMOA Cooperative Agreement Guide”)
- Department of Defense, *Department of Defense (DoD) Guidance for Dispute Resolution within the Defense and State Memorandum of Agreement (DSMOA) Program* (May 2013) (“Guidance Memorandum”)
- Department of Defense, *Defense and State Memorandum of Agreement (DSMOA) Program Eligibility* (May 2012) (“Eligibility Memorandum”)<sup>2</sup>

## **PROCEDURES:**

### **Cleanup Program Grants Unit**

1. DSMOA is administered by the U.S. Army Corps of Engineers (USACE). Most of the activities associated with DSMOA are recorded on the Department of Defense’s (DoD’s) Internet-based DSMOA Portal, which can be accessed at <https://dsmoa.usace.army.mil>.
2. The Department serves as the lead California state agency for administering DSMOA and is required to negotiate a new DSMOA Cooperative Agreement every two years.
  - a. The DSMOA Cooperative Agreement contains the list of sites and the monetary amounts that the DoD has approved for each funding source per military branch included in the DSMOA Cooperative Agreement.
  - b. Every two years, beginning in June of odd-numbered years (e.g., 2013, 2015, 2017), the Grants Unit will coordinate the application

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<sup>2</sup> DSMOA, the DSMOA Cooperative Agreement, and other DSMOA-related documents are available on the U: drive at <U:SM/ESPO/DSMOA>.

for the new DSMOA Cooperative Agreement using the six-step process outlined in DSMOA (details are covered in the DSMOA Portal). The outline of the process is as follows:

<b>Step Number</b>	<b>Month Range</b>	<b>Task(s)</b>
<b>1</b>	June	Election to Participate
<b>2</b>	July to October	Joint Execution Plan Development and Coordination
<b>3</b>	October to December	State Budget Estimate Development
<b>4</b>	December to March	Component Approval Amount
<b>5</b>	March to April	State Cooperative Agreement Development and Coordination
<b>6</b>	May to June	Cooperative Agreement Award

3. The Grants Unit will ensure that DSMOA invoices are issued by the Department's Federal Reporting Unit in a timely manner and are promptly paid.
  - a. For Department invoices, the Federal Reporting Unit will:
    - i. Provide Department staff with guidance on proper DSMOA charge coding and Daily Log description usage.
    - ii. Coordinate with Accounting regarding the generation of Daily Logs for submittal with invoice documents.
    - iii. Monitor invoice payment status with Accounting.
    - iv. Generate, present, and post monthly reports to track the DSMOA budget and costs incurred by the Department.
  - b. For other state agency invoices, the Federal Reporting Unit will:
    - i. Provide guidance to other state agencies on proper documentation procedures when submitting invoices.

- ii. Conduct an administrative review of invoices prior to submitting them to ESPO for technical review.
  - iii. Coordinate review and approval of properly submitted invoices with the ESPO liaison for technical review.
  - iv. Approve or disallow invoices based on administrative and technical reviews and submit approved or disallowed invoices to the Department's Contract Administration and Purchasing Unit and Federal Reporting Unit.
  - v. Upload invoices for other state agencies to the Grants Billing System.
4. USACE is not required to pay invoices that exceed the funded amount. Therefore, the DSMOA Cooperative Agreement requires the Department to request additional funding when 80 percent of the funded (obligated) amount is reached to ensure that invoices continue to be paid. (The DSMOA Cooperative Agreement is available on the U: drive at <U:SM/ESPO/DSMOA>.) The Grants Unit will report funding shortages and request for additional funding by:
- a. Each month, preparing a projection based on invoices paid and pending invoices, of the percent of funds remaining per fund type.
  - b. Informing the ESPO liaison if the invoiced amount exceeds 80 percent of the funded amount. The ESPO liaison will then consult with Cleanup Program management on whether the staff working on that particular fund should stop work.
  - c. If necessary, requesting additional funding from USACE following the specific procedures outlined in the DSMOA Cooperative Agreement Guide.
5. With the assistance of ESPO, the Grants Unit will develop contracts for work to be performed under the DSMOA Cooperative Agreement by other state agencies. The Grants Unit will maintain these inter-agency contracts by:
- a. Establishing and maintaining appropriate files for contract administration.

- b. Utilizing a tracking system to monitor the DSMOA budget and reporting the status of DSMOA funds on a monthly basis.
  - c. Coordinating amendments to the DSMOA Cooperative Agreement, as needed.
  - d. Processing invoices in a timely and efficient manner.
  - e. Assuring that invoices are issued in a timely manner so that timely payments are made to other state agencies.
6. The Grants Unit will monitor unbilled DSMOA costs in the Grants Billing System to ensure that unbilled costs are promptly resolved.
- a. Identify the cause of unbilled charges and coordinate resolution with ESPO and Federal Reporting Unit as necessary. For unrecoverable costs (e.g., charges to an inappropriate site) or if some portion of a charge is unrecoverable (e.g., performing work for which there is no authorized fund), coordinate completion of the No Further Cost Recovery (NFCRA) determination process for that amount. (See DPM-CR 25, "Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations," for more information about the NFCRA process.)
  - b. Promptly resolve fiscal disputes with USACE following the procedures outlined in DSMOA and the DoD's May 17, 2013 Guidance Memorandum. These documents can be found on the U: drive at <U:SM\ESPO\DSMOA>.
  - c. As necessary, the Grants Unit may work with ESPO and Federal Reporting Unit to resolve all issues where full payment is not received by the Department.
7. The Grants Unit will work with OEIM and FSU to ensure that only the Sites and Program Cost Account (PCA) codes listed on Attachment A (DSMOA Grant Site Codes and PCAs) to DSMOA can be used by Department staff in the Daily Log system.
- a. The Grants Unit will also work with FSU to ensure that only the Grants Unit can request a new DSMOA Site Code. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for

more information about requesting Site Codes.) FSU will only accept DSMOA Site Code additions or changes from the Grants Unit.

8. Upon receiving approval from ESPO, the Grant Unit will submit the completed Annual Joint Execution Plan (JEP) Progress Report to the DSMOA Portal.
9. The Grants Unit will deliver periodic training to Department staff regarding the DSMOA process.

### **Cleanup Program Project Managers and Unit Chiefs**

1. The Project Manager will ensure that timesheets are accurate by:
  - a. Providing correct timesheet coding in Daily Log entries. Refer to Attachment A (DSMOA Grant Site Codes and PCAs) to DSMOA for a list of the correct codes.
  - b. Describing work completely and accurately in Daily Log entries.
  - c. Ensuring all work performed is eligible for grant funding. The Project Manager will refer to the DSMOA Eligibility Memorandum, available on the U: drive at <U:SM\ESPO\DSMOA>, for more information regarding grant funding eligibility.
2. As described below, the Project Manager and Unit Chief will work with the Department's military counterpart and other state agencies to ensure that the six-step process for applying for new DSMOA Cooperative Agreements is completed correctly:
  - a. JEP Development and Coordination, Step 2 (July to October):
    - i. The Project Manager will: (1) in consultation with other state agencies, review and ensure that the JEP is accurate; (2) when prompted by the DSMOA Portal, enter the State Activities for various sites; and (3) obtain Unit Chief review and approval of State Activities.
    - ii. The Unit Chief will notify the Grants Unit by email regarding approval of State Activities.

- b. State Budget Estimate Development, Step 3 (October to December). The Project Manager will: (1) develop a two-year Resource Estimation Worksheet (REW) based on the JEP; and (2) share the JEP and REW with other state agencies to ensure that the other agencies' hours are accurately reflected in the REW.
3. In order to be reimbursed for work under DSMOA, the tasks and subtasks must be included in the JEP. The Project Manager will ensure that the tasks and subtasks conducted are reflected in the JEP to facilitate reimbursement to the Department.
  - a. If the Project Manager is asked to work on a task that is not identified in the JEP, then the Project Manager will inform the Department's military counterpart that Department staff cannot work on the task until it has been added to the JEP. The Project Manager will inform the Unit Supervisor and ESPO liaison of the request. The Project Manager also will inform the Grant Liaison if the JEP needs to be modified.
4. When prompted by the DSMOA Portal (in September of each year), the Project Manager will complete the Annual JEP Progress Report. The Project Manager will obtain Unit Chief review and approval of the Annual JEP Progress Report and notify the Grants Unit by email upon receipt of approval.
5. When prompted by the ESPO liaison, the Project Manager will review the site work for each site and determine if the workload per site for the next Fiscal Year will increase or decrease by 20 percent or more.
  - a. If the Project Manager estimates that the workload for a site will increase or decrease by 20 percent or more in the next Fiscal Year, then the Project Manager will notify the ESPO liaison.
  - b. To assist in the Project Manager's workload estimate, the ESPO liaison will provide the Project Manager with a report comparing the projected annual hours and actual hours charged per site for the current Fiscal Year.

6. ESPO will transmit invoices from other state agencies to the Project Manager. The Project Manager will approve the invoice(s) or respond to ESPO with questions within one week of receiving the invoice(s).
7. If, for any reason, the Project Manager believes a new Site Code needs to be generated, then the Project Manager will contact the Grants Unit for a determination as to whether a new Site Code may be generated.

### **Federal Reporting Unit**

1. The Federal Reporting Unit will invoice USACE on a monthly basis. (According to the DSMOA Cooperative Agreement, DTSC is required to invoice USACE at least every three months.)
2. After reconciling project cost expenditures, the Federal Reporting Unit analyst will prepare a cost documentation package consisting of the following documents:
  - a. Cover Letter to DoD.
  - b. Request for Reimbursement Number (RQN) (Invoice) Cost Detail Report.
  - c. Outstanding Obligation Balance Report.
  - d. Cost Breakdown Reimbursement Report.
  - e. Manual Reconciliation Package, including the manual reconciliation, CALSTARS Correction Report (if applicable), Q18 Reports, and macro report.
  - f. Obligation Deficits Report.
  - g. Request for Advance or Reimbursement (SF 270).
  - h. DTSC Project Cost Detail Reports.
  - i. RQN (Invoice) Agency Breakdown and DTSC Breakdown Reports.
  - j. RQN (Invoice) Billed/Unbilled Report.
  - k. Unbilled Charges Summary Report.

3. The Federal Reporting Unit analyst will upload the invoice (RQN Cost Detail Report) to the DSMOA Portal according to the instructions in the DSMOA Cooperative Agreement Guide.
4. The Federal Reporting Unit analyst will print a copy of the cost documentation package for review and signature by the Federal Reporting Unit supervisor. After approval, the cost documentation package is maintained in Federal Reporting Unit's files and retained in accordance with the Department's record retention policy.
5. The Federal Reporting Unit analyst will notify the Grants Unit if full payments from USACE are not received.
6. Upon request, the Federal Reporting Unit will work with the Grants Unit and ESPO to resolve all issues where full payment is not received by the Department.

**Engineering and Special Projects Office (ESPO)**

1. The ESPO liaison will perform the following tasks:
  - a. Ensure review and approval of DSMOA invoices by:
    - i. Reviewing Daily Log entries to ensure the descriptions of work performed are eligible for reimbursement.
    - ii. Reviewing Daily Log entries to ensure the timesheet codes are correct.
    - iii. Coordinating timesheet amendments when required.
    - iv. Providing DSMOA invoices to technical staff for review.
    - v. Providing DSMOA invoice approval or denial decisions to the Grants Unit for processing.
  - b. Coordinate Annual JEP Progress Reports by:
    - i. Notifying each Project Manager and Unit Chief of the timing and requirements of each Annual JEP Progress Report.

- ii. Maintaining a spreadsheet to track the progress of review and approval of each Annual JEP Progress Report.
  - iii. Providing reminders to the Project Managers as the deadline for each Annual JEP Progress Report approaches.
  - iv. Providing summaries of Annual JEP Progress Report approvals to the Grants Unit, so that the Grants Unit can administratively complete the process.
- c. If informed by the Grants Unit that, for any fund, the invoiced amount is at 80 percent of the funded amount, notify and brief the Cleanup Division Chief and Deputy Director. The Deputy Director will then determine whether staff working on sites in that fund will immediately stop work.
  - d. On a monthly basis, review the draft JEPs on the DSMOA Portal and, if needed, remind regional Unit Chiefs and Project Managers to enter State Activities on the DSMOA Portal.

#### **Office of Legal Counsel (OLC)**

- 1. Upon request, OLC will work with Department staff to address any changes, questions, or issues related to DSMOA or the DSMOA Cooperative Agreement.
- 2. OLC will also assist Department staff in resolving fiscal disputes with USACE following the procedures outlined in DSMOA and the Guidance Memorandum. These documents can be found on the U: drive at <U:SM\ESPO\DSMOA>.

#### **Fiscal Systems Unit (FSU)**

- 1. FSU will work with the Grants Unit and OEIM to ensure that only the Sites and PCA codes listed on Attachment A (DSMOA Grant Site Codes and PCAs) to DSMOA can be used by Department staff in the Daily Log system.
- 2. FSU will work with the Grants Unit to ensure that only the Grants Unit can request a new DSMOA Site Code. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for more information about

requesting Site Codes.) FSU will only accept DSMOA Site Code additions or changes from the Grants Unit.

**Accounting Office (Accounting)**

Accounting will assist the Grants Unit to generate Daily Logs for submittal with invoices and monitor invoice payments.

**Office of Environmental Information Management (OEIM)**

OEIM will work with the Grants Unit and FSU to ensure that only the Sites and PCA codes listed on Attachment A (DSMOA Grant Site Codes and PCAs) to DSMOA can be used by Department staff in the Daily Log system.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Invoicing

**Number:**

DPM-CR-16<sup>1</sup>

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**Date Issued:**

November 21, 2013

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM explains the Department's procedures for issuing invoices to billable parties (e.g., project proponents and responsible parties) for the Department's response costs.<sup>2</sup>

**APPLICABILITY:** This DPM applies to Cost Recovery Billing Unit (CRBU)<sup>3</sup> staff responsible for issuing invoices for the Department's response costs and Cleanup Program and Hazardous Waste Management Program (collectively referred to as "Program"), Office of Legal Counsel (OLC), Collections and Resolutions Unit (Collections), and Accounting Office (Accounting) staff that assist with the invoicing process.

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<sup>1</sup> This DPM supersedes DPM-CR-03, "Cost Recovery: Invoicing" (May 2013).

<sup>2</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25360 and 25269.6

**PROCEDURES:**

**Cost Recovery Billing System (CRBS) Billing Statuses<sup>4</sup>**

1. The Department issues invoices on a quarterly basis according to the following schedule:

<b>Cost Periods</b>	<b>Estimated Billing Date</b>
January - March	Mid-May/Early-June
April - June	Mid-August/Early-September
July - September	Mid-November/Early-December
October - December	Mid-February/Early-March

2. CRBU assigns appropriate billing statuses to sites in the Cost Recovery Billing System (CRBS) based on information provided in the California State Accounting and Reporting System (CALSTARS) Project/Site Code Request Form (DTSC Form 1431) and received from Branch Liaisons and Grant Administrators, as well as information subsequently provided by Program staff. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for more information about requesting Site Codes.)
3. The CRBS billing status of a site affects whether an invoice will be issued during the next quarterly billing cycle. Possible CRBS billing statuses (and definitions) include:
  - a. **BILCRU** (Bill Cost Recovery Billing Unit) indicates that the site is set for billing and invoices will be issued for the site during the next quarterly billing cycle.
  - b. **BILCRU/HOLD** (Bill Cost Recovery Billing Unit/Temporary Hold) indicates that the site has a BILCRU status, but invoicing has been temporarily suspended.
    - i. A change in the billing status of a site that results in a temporary or permanent hold on billing, with the exception of

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<sup>4</sup> This overview of CRBS billing statuses applies to CRBU, Program, OLC, Collections, and Accounting staff.

temporary holds based on pending or anticipated timesheet amendments, may be made only with Branch Chief Approval or after a request from OLC or Collections.

- c. **CLOSED** indicates that the site is no longer active and invoices are no longer being issued for the site.
- d. **HOLD/NEW** is the default billing status for new sites and indicates that CRBU has not yet received billable party information for the site.
  - i. New sites are uploaded to CRBS when a billable Site Code is originated through submission of DTSC Form 1431 and assigned a HOLD/NEW billing status in CRBS. CRBU will update the site's CRBS billing status to BILCRU when billable party information is provided on DTSC Form 1431. If the form does not include billable party information, the site billing status/reason will be changed to HOLD/RP SEARCH. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for more information about DTSC Form 1431.)
- e. **HOLD/RP SEARCH** (Hold/Responsible Party Search) indicates that invoicing for the site has been placed on hold because the Department has not identified billable parties for the site.
  - i. New sites are uploaded to CRBS when a billable Site Code is originated through submission of DTSC Form 1431 and assigned a HOLD/NEW billing status in CRBS. If billable party information is not provided on DTSC Form 1431, CRBU will change the site's CRBS billing status to HOLD/RP SEARCH. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for more information about DTSC Form 1431.)
- f. **HOLD/LEGAL** indicates that invoicing for the site has been placed on hold because OLC is handling negotiations, litigation, or other matters concerning the site. OLC approval is required to change the CRBS billing status to HOLD/LEGAL.
  - i. Refer to the site "classification" on the CRBS Action Report for an explanation of why a site has a HOLD/LEGAL billing



## **Cost Recovery Billing Unit (CRBU)**

1. DTSC Form 1431 requests information regarding billable parties that will be entered into CRBS by CRBU to assign a BILCRU billing status to the site in CRBS and invoice the site on a quarterly basis.
  - a. If the Site Code is for a Site Mitigation and Brownfields Reuse, Enforcement Lead, Reimbursement/Voluntary Cleanup Program, or School site (as those terms are used on DTSC Form 1431), then CRBU will invoice the billable party as soon as billable party information is provided to CRBU by Program staff.
    - i. If the Site Code is for an Enforcement Lead site and the billable party information was not provided on DTSC Form 1431, then CRBU will: (1) assign the site a HOLD/RP SEARCH billing status in CRBS; and (2) inform the Project Manager and/or Branch Liaison that he or she must supply the billable party information as soon as it is available.
  - b. If the Site Code is for a Hazardous Waste Management Program (HWMP) facility, corrective action site, or a Fee for Service/Standard (Reimbursement) Agreement signed by the Contracts and Business Services Branch, then CRBU will not invoice billable parties until it receives a copy of the document giving rise to the Department's ability to collect from the billable party (e.g., order, contract, judgment).
  - c. If a Site Code is for a site with an interagency agreement, then CRBU will refer the site to the Accounting Interagency Agreement Desk for invoicing.
2. CRBU will also perform the following tasks:
  - a. CRBU will maintain the accuracy of information contained in CRBS to facilitate the Department's cost recovery efforts.
  - b. CRBU will immediately process receipts and adjustments (i.e., settlements and NFCRA determinations).
  - c. CRBU will respond to inquiries emailed to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov) or received by phone.

- d. CRBU will conduct CRBS site billing maintenance, including, but not limited to:
  - i. When information is received from Department staff related to the billing status of a site, immediately responding, analyzing the information, and updating CRBS with the information and appropriate notations.
  - ii. Changing the default billing status of a site in CRBS from HOLD/NEW to BILCRU or other appropriate billing status based on input received from Department staff.
    - 1. A change in the billing status of a site that results in a temporary or permanent hold on billing, with the exception of temporary holds based on pending or anticipated timesheet amendments, may be made only with Branch Chief Approval or after a request from OLC or Collections.
    - 2. Upon notification of a pending or anticipated timesheet amendment, CRBU will change the billing status of the site to BILCRU/THOLD.
  - iii. Upon notification from the Fiscal Systems Unit (FSU) of new or reactivated Site Codes, CRBU will immediately follow up with Branch Liaisons and/or Project Managers to obtain billable party information and copies of voluntary agreements, orders, contracts, and other appropriate documents.
  - iv. At least every six months, CRBU will review sites for which billing is on a temporary or permanent hold, closed sites with outstanding balances, and NFCRA sites and follow up with Program staff for status updates regarding each of these sites. If CRBU changes the CRBS billing status of the site based on information provided by Program staff, then CRBU must note the new or changed status information in CRBS and update the new Classification/Action and Action Date.
- 3. **Pre-Billing.** Prior to issuing invoices for sites in CRBS, CRBU will perform the following tasks:

- a. CRBU will upload cost data, overhead rates, and interest rates into CRBS in preparation for the quarterly billing cycle.
  - b. CRBU will complete a final review of sites with a HOLD/RP SEARCH billing status in CRBS for potential billing in the upcoming quarterly billing cycle.
  - c. Using the Quarterly Billing Project Listing report, CRBU will review costs and notes and follow up on sites with a BILCRU/THOLD billing status for potential billing in the upcoming billing cycle.
4. **Billing.** When issuing invoices for sites in CRBS, CRBU will perform the following tasks:
- a. CRBU will prepare, print, and mail invoices to all billable parties identified in CRBS. CRBU will also print and mail copies of invoices to send to additional parties as requested by Program staff.
  - b. CRBS will record the invoice, update the invoice balance and cost tab, and store a copy of the invoice on the intranet.
  - c. CRBU will immediately log and follow up on returned invoices by contacting the Branch Liaison and/or Project Manager to obtain valid billable party information.
  - d. Upon receipt of a Daily Log and Cost Recovery Billing System (CRBS) Closure Request (DTSC Form 1554), CRBU will follow the procedures outlined in DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure," to administratively close out the site and issue final invoices as necessary.
5. Invoicing Sites with Payment Agreements
- a. Unless otherwise instructed by Program, Collections, or OLC staff, CRBU will continue to issue quarterly invoices to billable parties with whom the Department has entered into payment agreements. (See DPM-CR-21, "Cost Recovery: Payment Agreements," for more information regarding the payment agreement process.)
    - i. A change in the billing status of a site that results in a temporary or permanent hold on billing may be made only

with Branch Chief Approval or after a request from OLC or Collections.

6. Invoicing Fund 0294 or Fund 0458 Costs
  - a. On a quarterly basis, CRBU will invoice the Department's Accounting Office for sites reimbursed by Fund 0294 (Removal and Remedial Action Account) or Fund 0458 (Site Operation and Maintenance Account, Hazardous Substance Account). (See DPM-CR-18, "Cost Recovery: Payments," for more information about Fund 0249 and Fund 0458 sites.)
  
7. Invoicing Sites with Advance Payments
  - a. For contracts signed by the Contracts and Business Management Branch
    - i. Earned Advance: If the amount of the advance is equal to 100 percent of the estimated cost of the Department's activities, then the advance payment is an "earned advance."
      1. CRBU will invoice the site on a quarterly basis and earns (applies) the funds in CRBS as the costs are incurred by the Department. (See DPM-CR-18, "Cost Recovery: Payments," for more information on application of earned advances to CRBS costs.)
    - ii. Permanent Advance: If the amount of the advance is less than 100 percent of the estimated cost of the Department's activities, then the advance payment is a "permanent advance."
      1. CRBU will issue invoices for the Department's costs on a quarterly basis, but retain the permanent advance until the contract or agreement is completed or terminated. Invoices must be paid by the billable party in a timely manner. (See DPM-CR-18, "Cost Recovery: Payments," for more information regarding payment of invoices.)
      2. When the final invoice is issued, CRBU will earn (apply) the permanent advance to the costs covered

by the final invoice (as well as any additional costs incurred by the Department after the final invoice is issued) and issue a refund of any remaining advance to the billable party. (See DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System (CRBS) Closure," for more information regarding the site closure process.)

8. For voluntary agreements signed by the Cleanup Program
  - a. Advance payments received for sites being addressed under voluntary agreements signed by the Cleanup Program are treated as "earned advances." CRBU will invoice the site on a quarterly basis and apply the funds in CRBS as the costs are incurred by the Department. (See DPM-CR-18, "Cost Recovery: Payments," for more information on application of advance payments.)
9. Special invoicing procedures for bankruptcies
  - a. CRBU will cease invoicing billable parties for whom the Department has received a bankruptcy notice. (See DPM-CR-23, "Cost Recovery: Bankruptcy Notices," for more information about the Department's procedures for tracking bankruptcy notices.)
    - i. Where the bankruptcy debtor is only one of multiple billable parties for a site, on advice of OLC, then CRBU will temporarily suspend invoices to the bankruptcy debtor by turning off the print flag for the bankruptcy debtor in the Billable Parties list for that site in the Cost Recovery Billing System (CRBS) so that the bankruptcy debtor does not continue to receive invoices.
      1. However, CRBU will maintain the BILCRU status of the site in CRBS to ensure that invoices are sent to the remaining billable parties.
    - ii. If the bankruptcy debtor is the only billable party for a site, then CRBU will place a hold on invoicing for the entire site.
      1. CRBU will change the CRBS billing status of the site to HOLD/LEGAL and the CRBS classification to "LEGAL: Bankruptcy notice received."

- iii. CRBU will consult OLC prior to resuming invoicing the bankruptcy debtor.

### **Program Project Managers and Branch Liaisons**

1. In order to assist CRBU in issuing timely and accurate invoices to billable parties, the Project Manager and/or Branch Liaison will:
  - a. Immediately provide the CRBU analyst assigned to the site with the contact information for all billable parties that need to be invoiced and all parties that should receive copies of any invoices. For new sites, the Branch Liaison will include billable party information, if available, on DTSC Form 1431. (See DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination," for more information about DTSC Form 1431.)
  - b. Immediately provide the CRBU analyst assigned to the site with a PDF copy of or an EnviroStor link to all final, executed cost recovery documents, including, but not limited to, voluntary agreements, orders, contracts, Imminent and Substantial Endangerment (I/SE) Determinations, land use covenants, Operation and Maintenance (O&M) Agreements, or other documents establishing the billable party's obligation to pay the Department's costs.
  - c. Immediately notify CRBU of any changes to contact information for billable parties and other parties that should receive copies of invoices.
    - i. At least every six months, the Project Manager or Branch Liaison will review the Billable Parties Report to ensure the accuracy of contact information for billable parties and other parties that should receive copies of invoices. The Billable Parties Report can be accessed through the CRBS Reports SharePoint page. A link to the CRBS Reports SharePoint page is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
    - ii. Changes in billable party information may be sent directly to the assigned CRBU analyst or submitted to

[billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov). Include the following information in the “Subject” line of the email: Site Code, Site Name, and purpose of the email.

- d. Maintain communication with the CRBU analyst assigned to the site on matters:
  - i. Affecting the accuracy or support of costs invoiced.
  - ii. Affecting the site billing status or classification of a site in CRBS. A change in the billing status of a site that results in a temporary or permanent hold on billing, with the exception of temporary holds based on pending or anticipated timesheet amendments, may be made only with Branch Chief Approval or after a request from OLC or Collections.
  - iii. Required to resolve unbilled costs identified on the Incurred versus Invoiced Charges Report on CRBS.
  - iv. Related to site completion and closure and final billing.
- e. Submit accurate timesheets and travel claims to the Attendance Clerk. The Project Manager and Branch Liaison will immediately submit timesheet corrections to the Attendance Clerk and notify CRBU of any timesheet corrections.
- f. Review site Daily Logs prior to the end of the month to ensure the accuracy of reimbursable site activity.

**Office of Legal Counsel (OLC)**

- 1. OLC will work with CRBU to ensure that a HOLD/LEGAL billing status for a site in CRBS is appropriate.
- 2. Assist Department staff in determining whether invoicing for a site should be temporarily or permanently suspended and the CRBS billing status of a site should be changed to BILCRU/THOLD.
- 3. OLC will immediately notify the CRBU analyst assigned to a site regarding any matters affecting the CRBS billing status or classification of a site.
- 4. OLC will provide legal advice to Department staff regarding any matters affecting the site CRBS billing status or classification of a site.

### **Collections and Resolution Unit (Collections)**

1. Collections will immediately notify the CRBU analyst assigned to a site regarding any matters affecting the site billing status or classification of the site in CRBS.
2. Collections will immediately notify the CRBU analyst assigned to the site regarding matters affecting the accuracy or support of costs related to payment agreements, NFCRA determinations, invoice dispute resolution, write-off amounts, and cost shifts from one Site Code or Program Cost Account (PCA) Code to another.
3. Assist Department staff in determining whether invoicing for a site should be temporarily or permanently suspended and the CRBS billing status of a site should be changed to BILCRU/THOLD.

### **Accounting Office (Accounting) Interagency Agreement Desk**

The Accounting Interagency Agreement Desk will invoice sites that are the subject of an interagency agreement.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Invoice Disputes	<b>Number:</b> DPM-CR-17
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the Department's invoice dispute process for invoices issued by the Department.<sup>1</sup>

**APPLICABILITY:** This DPM applies to all Cleanup Program and Hazardous Waste Management Program (collectively referred to as "Program"), Collections and Resolution Unit (Collections), Cost Recovery Billing Unit (CRBU),<sup>2</sup> Accounting Office (Accounting), and Office of Legal Counsel (OLC) staff handling sites for which a billable party (e.g., project proponent or responsible party) is invoiced and submits an invoice dispute to the Department.

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

## **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25187.2, 25187.5, 25206.2, and 25360
- Department of Toxic Substances Control, Cost Recovery and Reimbursement Policy (Nov. 2013)

## **PROCEDURES:**

### **The Invoice Dispute Resolution Process**<sup>3</sup>

1. The Cost Recovery and Reimbursement Policy (Nov. 2013) summarizes DTSC's cost recovery policies and billing procedures, as required by Health and Safety Code section 25269.2(b).<sup>4</sup> A link to a copy of the Cost Recovery and Reimbursement Policy is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
2. As outlined in the Cost Recovery and Reimbursement Policy, a billable party may file an invoice dispute regarding charges or related services appearing on invoices issued by the Department by notifying the Department of the dispute in writing within 45 calendar days of the date of the invoice.
  - a. The invoice dispute notice will be mailed to the following address:  
  
Chief, Collections and Resolution Unit  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806  
  
A copy of the invoice dispute notice should also be sent to the "Regional Branch Chief" at the address identified at the end of the billing letter.

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<sup>3</sup> This overview of the invoice dispute resolution process applies to all Department staff handling sites where a billable party submits an invoice dispute.

<sup>4</sup> A copy of the Cost Recovery and Reimbursement Policy is provided with every invoice issued by the Department.

- b. The invoice dispute notice will:
  - i. Identify the name of the site, Site Code, invoice number(s), invoice date(s), charges contested, employee name(s) associated with the contested charges, and the amount(s) disputed for each invoice.
    - 1. If only a portion of the costs invoiced by the Department are disputed, then the billable party is required to pay the undisputed amounts within the 30-day payment period. Filing an invoice dispute will not stay the imposition of interest charges or undisputed costs.
  - ii. Include a detailed statement of the legal and/or factual basis for the dispute and the remedy sought.
- 3. There may be occasions when a billable party contacts the Project Manager or Unit Supervisor directly regarding an invoice dispute. If this occurs, then the Project Manager and/or Unit Supervisor will follow the procedures outlined below to handle the invoice dispute.
- 4. Unless otherwise instructed by Collections, OLC, or the Branch Chief, Department staff will charge time spent analyzing and resolving invoice disputes to Program Cost Account (PCA) Code 11195. The "Site-WP" and "Short Site Name" fields should be left blank.
  - a. If PCA Code 11195 is used, the site name, Site Code, and the term "invoice dispute" will be identified in the "Comments" section of the Daily Log to assist the Department in tracking invoice dispute costs related to specific sites if necessary.

#### **Collections and Resolution Unit (Collections)**

- 1. Collections will notify the Project Manager regarding receipt of an invoice dispute from a billable party and provide a copy of the invoice dispute notice to the Project Manager to place in the site file and upload to EnviroStor as an "Other Legal Document" (a confidential document on EnviroStor).
  - a. If the billable party requests information supporting the Department's charges from Collections, Collections will provide the billable party with information within five business days of the

request, including, but not limited to the “Daily Log with Comments Report.”

2. The submission of an invoice dispute neither places an automatic hold on the issuance of invoices for costs incurred by the Department nor stops the issuance of collection letters. Collections, in consultation with the Branch Chief and/or OLC as necessary, will determine whether it is appropriate to place a temporary or other hold on invoices for the site due to the submission of the invoice dispute or stop the issuance of collection letters for past-due invoices. (See DPM-CR-16, “Cost Recovery: Invoicing,” and DPM-CR-19, “Cost Recovery: Collection Letters,” for more information on the Department’s invoicing and collection letter procedures.) Collections will conduct research regarding the invoice dispute and draft initial findings and recommendations for prompt resolution of the invoice dispute.
  - a. Collections will work with the Project Manager and, if necessary, OLC to develop an acceptable recommendation for resolution of the invoice dispute.
    - i. If necessary, Collections will submit an EnviroStor Work Request to OLC for assistance with legal issues associated with the dispute.
  - b. If the Project Manager, Collections, and OLC are unable to reach a consensus on how to resolve the dispute, then it will be elevated to appropriate staff for resolution as follows:
    - i. First, to the Unit Chief and the Chief of Collections.
    - ii. Then to the Branch Chief, the Chief of Financial Planning and Business Management, and the Assistant Chief Counsel.
3. Working with the Project Manager and, if necessary, OLC, Collections will prepare final written findings and recommendations outlining the Department’s position regarding the invoice dispute.
4. Collections will notify the billable party regarding the Department’s position by providing the billable party with the written findings and recommendations. A copy of the final written findings and recommendations will be provided to the Project Manager to place in the site file and upload to EnviroStor as an “Other Legal Document” (a confidential document on EnviroStor).

5. If the Department and the billable party are able to resolve the invoice dispute, then Collections will work with all necessary Department staff, including Program, Accounting, CRBU, and OLC staff to formalize the resolution of the dispute, obtain payment from the billable party, and make appropriate adjustments to the California State Accounting and Reporting System (CALSTARS) and the Cost Recovery Billing System (CRBS).
6. If the Department and the billable party are not able to resolve the invoice dispute and the Department's invoice(s) remain unpaid, then Collections will refer the site back to Program staff to complete a "Site and Collection Activities Summary" (DTSC Form 1479) for the site. (See DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)" for more information about the Form 1479 process.)

**Program Project Managers, Branch Liaisons, Unit Supervisors, and Branch Chiefs**

1. If contacted directly by a billable party with questions or concerns regarding the Department's charges to a site, the Project Manager and/or Unit Supervisor may work with the billable party to resolve the billable party's concerns and facilitate full payment of the invoice.
  - a. Within five business days of a request from the billable party, the Project Manager will provide the billable party with documentation, including, but not limited to, the "Daily Log with Comments Report," supporting the Department's charges.
  - b. The Project Manager and/or Unit Supervisor may consult with Collections and OLC as necessary to resolve the billable party's concerns.
2. The Project Manager should notify Collections if the Project Manager and/or Unit Supervisor are unable to resolve the billable party's concerns or if the billable party wants to pay less than the full invoice.
3. The Project Manager will review Daily Log entries related to the disputed invoice(s) to ensure that all charges are correct and notify Collections regarding any charges that may be incorrect.
  - a. The Project Manager will send an email to any Department employees with the incorrect charges and request that they amend their timesheets. The Project Manager will copy the employees'

unit supervisor, the CRBU analyst, and Collections on the email request. Incorrect charges could be charges to an incorrect site code or charges that are inconsistent with the work requested.

4. Upon receipt of the invoice dispute notice from Collections, the Project Manager will place it in the site file and upload it to EnviroStor as an “Other Legal Document” (a confidential document on EnviroStor).
5. The Project Manager will work with Collections and, if necessary, OLC to develop initial and final written findings and recommendations regarding the invoice dispute. If the Project Manager, Collections, and OLC are unable to reach a consensus on how to resolve the dispute, then it will be elevated to appropriate staff for resolution as follows:
  - a. First, to the Unit Chief and the Chief of Collections.
  - b. Then to the Branch Chief, the Chief of Financial Planning and Business Management, and the Assistant Chief Counsel.
6. Upon receipt of the final written findings and recommendations from Collections, the Project Manager will place the findings and recommendations in the site file and upload it to EnviroStor as an “Other Legal Document” (a confidential document on EnviroStor).
7. If the Department and the billable party are able to resolve the invoice dispute, then the Project Manager will work with all necessary Department staff, including Collections, Accounting, CRBU, and OLC staff to formalize the resolution of the dispute, obtain payment from the billable party, and make appropriate adjustments to CALSTARS and CRBS.
8. If the Department and the billable party are not able to resolve the invoice dispute and the Department’s invoice(s) remains unpaid, then the Project Manager or Branch Liaison will complete a DTSC Form 1479 for the site. (See DPM-CR-20, “Cost Recovery: ‘Site and Collection Activities Summary’ (DTSC Form 1479)” for more information about the DTSC Form 1479 process.)

#### **Cost Recovery Billing Unit (CRBU)**

1. If a billable party contacts CRBU directly regarding an invoice dispute, then CRBU staff will immediately notify Collections and Project Manager

and provide them with a copy of any written invoice dispute correspondence submitted by the billable party.

2. During the invoice dispute resolution process, if it is appropriate to temporarily suspend invoices, with Branch Chief approval, or at the direction of Collections or OLC, CRBU will change the billing status of the site in CRBS so that invoices will be suspended temporarily. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information regarding the invoicing process.)
3. CRBU will work with the Project Manager, Collections, Accounting, and/or OLC to make appropriate adjustments to CRBS based on how the invoice dispute is resolved.

### **Accounting Office (Accounting)**

1. When appropriate during the invoice dispute resolution process and at the direction of the Branch Chief, Collections, or OLC, Accounting will stop issuing collection letters for sites with a BILCRU billing status in CRBS. (See DPM-CR-19, "Cost Recovery: Collection Letters," for information about other circumstances in which the Department stops issuing collection letters.)
2. Accounting will work with the Project Manager, Collections, CRBU, and/or OLC to make appropriate adjustments to CALSTARS based on resolution on the invoice dispute.

### **Office of Legal Counsel (OLC)**

Upon request, OLC will work with Collections and Program staff to resolve invoice disputes, including, but not limited to, reviewing Collections' written findings and recommendations for handling the invoice dispute, acting as the Department lead for invoice dispute negotiations with the billable party, and formalizing the resolution of invoice disputes.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on

the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Payments

**Number:**

DPM-CR-18<sup>1</sup>

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**Date Issued:**

February 5, 2015

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of Department staff with respect to cost recovery. This DPM explains the Department's procedures for accepting and processing payments received from billable parties (i.e., project proponents and responsible parties) for invoices issued by the Cost Recovery Billing Unit (CRBU).<sup>2</sup> This DPM also discusses payments received through advances, payment agreements, settlement agreements (settlements) and judgments, Cal-Mortgage payments, Cleanup Loans and Environmental Assistance for Neighborhoods (CLEAN) loan payments, and payments related to Multi-Site Cooperative Agreement (MSCA) Grant sites.<sup>3</sup>

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<sup>1</sup> This DPM supersedes DPM-CR-18, Cost Recovery: Payments" (Nov. 21, 2013).

<sup>2</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>3</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

**APPLICABILITY:** This DPM applies to Accounting Office (Accounting) and Cost Recovery Billing Unit (CRBU) staff with responsibilities related to the acceptance and processing of payments. This DPM also applies to Cleanup Program Technical and Administrative Project Managers and Hazardous Waste Management Program Project Managers (collectively referred to as “Project Managers”), Office of Legal Counsel (OLC), and Collections and Resolution Unit (Collections) staff assisting Accounting and CRBU in processing payments.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- [Health and Safety Code sections 25360 and 25269.6](#)
- [Government Code section 16580](#)
- [Department of General Services, State Administrative Manual \(SAM\)](#) chapter 8200; chapter 8700, section 8776; chapter 10400, section 10408; and chapter 10400, section 10409
- [DTSC, Cost Recovery and Reimbursement Policy \(Nov. 2013\)](#)
- [Procedures for Handling Checks: Restrictive Endorsement Memorandum \(Jan. 2015\)](#)
- [Cost Recovery Settlement and Judgment Tracking Procedures Memorandum \(Feb. 2015\)](#)
- [Settlement/Judgment Payment Guide \(Feb. 2015\)](#)
- [Memorandum of Understanding \(MOU\) between the Department and the Cal-Mortgage Loan Insurance Division of the Office of Statewide Health Planning and Development \(May 2002\).](#)
- Brownfields and Environmental Restoration (Cleanup Program): SharePoint Site, Administrative Document Collaboration (a.k.a. Collaboration Site) - Document Flow Charts ([Document Flow Charts](#))

**PROCEDURES:**

**Payment Procedures**

**1. Payment Information**

- a. The Department’s payment procedures and information are outlined in its [Cost Recovery and Reimbursement Policy](#), a copy of which is enclosed with every invoice issued by the Department.
- b. Project Managers and OLC will ensure that settlements, orders, voluntary cleanup agreements, and contracts direct billable parties

to note the Site Code and Invoice Number or Agreement to which the payment applies on all payments. It is the billable party's responsibility to ensure that all payments, regardless of the method of payment, reference the Site Code and Invoice Number or Agreement Number to which the payment applies.

2. **Payment Address**

- a. All invoices, settlements, orders, voluntary cleanup agreements, and contracts must have language that directs billable parties to send payments to the following address:

Accounting Office  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

- b. If a billable party sends a payment to a regional office, the person who receives the payment will immediately forward the payment to the Regional Administrative Services staff. The Regional Administrative Services staff will then take the following actions for check and cash payments:

- i. **Checks:** Upon receipt of a check, Regional Administrative Services staff will follow procedures outlined in the [Procedures for Handling Checks: Restrictive Endorsement Memorandum](#), immediately notify Accounting at (916) 327-1189 or at [accounting@dtsc.ca.gov](mailto:accounting@dtsc.ca.gov), and then transfer the check to Accounting.
- ii. **Cash:** Regional Administrative Services staff will immediately notify Accounting at (916) 327-1189 or at [accounting@dtsc.ca.gov](mailto:accounting@dtsc.ca.gov) upon receipt of cash payment. Regional Administrative Services staff will send the cash to Accounting when \$100.00 has accumulated or at the end of each calendar month. Regional Administrative Services staff will convert the cash to a cashier's check or money order before sending it to Accounting.

3. **Payment Methods.** Billable parties may make payments by check, credit card, or Electronic Funds Transfer (EFT).

- a. Credit card payments:
  - i. The [Credit Card Authorization Form \(DTSC Form 1492\)](#) is included with every CRBU invoice.
  - ii. To ensure the confidentiality of credit card information, billable parties should fax, email, or mail the completed credit card authorization form and a copy of the invoice to:

Fax: (916) 322-0274

Email: [accounting@dtsc.ca.gov](mailto:accounting@dtsc.ca.gov)

Mail: Accounting Office  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

- b. Electronic Fund Transfer (EFT): Billable parties should contact DTSC at (916) 327-8514 or [accounting@dtsc.ca.gov](mailto:accounting@dtsc.ca.gov) to obtain the Department's bank information to complete an EFT.

4. **Payment Due Dates.** As detailed below, payment due dates may vary.

- a. **Sites invoiced by CRBU:** Payments are due within 30 calendar days from the invoice date; however, the Department does not begin assessing interest charges until 60 calendar days from the invoice date.<sup>4</sup> Unpaid invoices accrue interest from the date of the invoice until a payment is received by Accounting.

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<sup>4</sup> Prior to July 1, 2014, payments for school sites were due within 60 calendar days from the invoice date; however, the Department did not begin assessing interest charges until 180 calendar days from the invoice date. See the Department's November 24, 2003 Memorandum entitled "[AB 1651 Interest Implementation issue: School Sites](#)" and February 17, 2005 correspondence regarding "[Proposed Changes to Cost Recovery Policy for School Districts](#)" for more information about the Department's school district collection policy.

In spring 2014, the Department notified school districts that, effective July 1, 2014, DTSC would be changing its interest calculation procedures in order to make our billing process uniform. School districts were informed that all bills issued on or after July 1, 2014, would be due within 30 calendar days of invoice date and, in accordance with Health and Safety Code section 25360.1, would accrue interest if the payment was not received within 60 calendar days of the invoice date.

- b. **Payment Agreements:** Payments required by payment agreements are due in accordance with the terms of the payment agreement. (See [DPM-CR-21, “Cost Recovery: Payment Agreements,”](#) for more information about payment agreements.)
- c. **Advance Payments:** Advance payments are due in accordance with the terms of the Standard (Reimbursement) Agreement or other voluntary agreement.
- d. **Settlements and Judgments:** Payments made pursuant to settlements and judgments are due in accordance with the terms of the settlement agreement or judgment. Project Managers, OLC, CRBU and Accounting will follow procedures outlined in the [Cost Recovery Settlement and Judgment Tracking Procedures Memorandum](#) and [Settlement/Judgment Payment Guide](#) to ensure settlements and judgments, and associated payments, are tracked in the Cost Recovery Billing System (CRBS), California’s official accounting system, EnviroStor and the Admin Document Collaboration Site – Admin Doc Library.
- e. **Cal-Mortgage Payments:** Advance payments are due in accordance with the terms of the [Memorandum of Understanding \(MOU\) between the Department and the Cal-Mortgage Loan Insurance Division of the Office of Statewide Health Planning and Development \(May 2002\)](#).

## **ROLES AND RESPONSIBILITIES:**

### **Cost Recovery Billing Unit (CRBU)<sup>5</sup> and Accounting<sup>6</sup>**

#### **1. General Application of Payments**

- a. CRBU will record and reconcile payments received for costs incurred by the Department that are uploaded into CRBS.

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<sup>5</sup> CRBU is also responsible for responding to inquiries from billable parties sent to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov) regarding indirect rates, interest calculations, application of payments, statements of account, and refunds.

<sup>6</sup> Additional Accounting-specific responsibilities are outlined below in a separate section.

- b. CRBU will identify the Site Code to which the payment relates and record the Check Number, Check Date, Date to Accounting and CID Number (using the “Received Date” and “CID Number” stamped on a payment document), Payer, and Total Check Amount in CRBS.<sup>7</sup>
  - i. If the payment is for a site that has been settled or for which a judgment has been entered, CRBU will follow additional instructions in the Cost Recovery Settlement and Judgment Tracking Procedures Memorandum and Settlement/Judgment Payment Guide.
- c. CRBU will apply payments to billed CRBS costs in the following manner:
  - i. If the payee does not specify the invoice(s) for which payment is provided, then CRBU will apply the payment to the oldest outstanding invoice and respective interest balance, if any, on a pro-rata basis.
  - ii. If the payee specifies the invoice(s) for which payment is provided, then CRBU will apply the payment to the specified invoice and respective interest balance, if any, on a pro-rata basis.
  - iii. If payment is in excess of the specified invoice(s), then payment will be applied to the oldest outstanding invoice and respective interest balance, if any, on a pro-rata basis.
- d. CRBU will record each payment in CRBS and provide Accounting with a copy of the payment receipt record for each payment recorded in CRBS.
- e. If CRBU is not able to determine the Site Code to which the payment relates, CRBU will:
  - i. Notify Accounting (cashier desk) to record the payment in the Uncleared Account and provide Accounting with a copy

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<sup>7</sup> CRBU will refer to the “CRBS II User Guide” for more information regarding entering data in CRBS.

of the payment receipt record after the payment is recorded in CRBS (Step 1.d., above).

- ii. Accounting will update the [Uncleared Receipts Report](#) in SharePoint so that Project Managers are aware of payments that need to be identified.
- iii. After CRBU identifies or receives site identification information to which the payment relates, CRBU will rerecord the payment in CRBS to the correct site code and provide Accounting with a copy of the payment receipt record.
- iv. Accounting will update the Uncleared Receipts Report in SharePoint to reflect the receipt of site information to which the payment relates.
- v. Accounting will contact Collections for assistance in clearing items from the Uncleared Receipts Report as needed.

## 2. **Application of Credit Memos**

- a. Credit memos are the result of corrections processed (e.g., timesheet corrections, invoice coding corrections) after an invoice has been issued for the respective time period.
- b. CRBU will apply credits to CRBS costs in the following manner:
  - i. Credits are applied to the oldest outstanding invoice and respective interest balance, if any, on a pro-rata basis, and until exhausted.
  - ii. If no outstanding invoice balance exists, then credits will be recorded as advance payment to be applied towards future invoiced charges.

### 3. **Application of Settlement or Judgment Payments<sup>8</sup>**

- a. CRBU will apply payments received pursuant to settlements (including consent decrees) and judgments in accordance with the terms of the settlement agreement or judgment.
  - i. CRBU makes adjustments in CRBS only when all settlement or judgment conditions are fulfilled (e.g., the final payment per the settlement or judgment has been received).
- b. If the Department receives payments pursuant to a settlement or judgment for the Department's future response costs (costs yet to be incurred by the Department), then Accounting will deposit those funds into Fund 0294 (Removal and Remedial Action Account) or Fund 0458 (Site Operation and Maintenance Account, Hazardous Substance Account) or apply the payment as an advance to the site.<sup>9</sup>
  - i. On a quarterly basis, CRBU will invoice Accounting for sites reimbursed by Fund 0294 or Fund 0458.
  - ii. Upon receipt of the invoice, Accounting will transfer funds from Fund 0294 or Fund 0458 to Fund 0557 (Toxic Substance Control Account) or Fund 0014 (Hazardous Waste Control Account) and will provide CRBU with documentation of the transfer of funds.
  - iii. Upon receipt of the transfer document, CRBU will record the transfer as a reimbursement payment for the site in CRBS.

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<sup>8</sup> Project Managers and OLC staff will ensure that copies of all executed settlements, payment agreements, consent decrees and judgments entered by a court are provided to CRBU staff. Upon receipt, CRBU will upload executed settlements, payment agreements, consent decrees or judgments entered by a court, to the CRBS project notes for the site. The Settlement/Judgment Payment Guide is a mandatory document that will be uploaded to the Admin Document Collaboration Site – Admin Doc Library for the site.

<sup>9</sup> Fund 0294 (Removal and Remedial Action Subaccount) monies pay for Fund 0557 (Toxic Substances Control Account, TSCA) costs only. Fund 0458 (Site Operation and Maintenance Account, Hazardous Substance Account) monies pay for both Fund 0557 (TSCA) and Fund 0014 (Hazardous Waste Control Account) costs pursuant to the Budget Act.

- c. CRBU and Accounting will follow the procedures outlined in the Cost Recovery Settlement and Judgment Tracking Procedures Memorandum and Settlement/Judgment Payment Guide to ensure they have updated information for outstanding costs that reflect all adjustments made for settlements and judgments paid and reduced in CRBS

4. **Application of Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Loan Payments (Fund 2003)**

- a. The Department Cleanup Loans and Environmental Assistance to Neighborhoods (CLEAN) Loan Program (Fund 1003) allows Fund 1003 monies to be used to reimburse DTSC oversight costs at loan properties when funds are available.
  - i. On a quarterly basis, CRBU will invoice Accounting for sites reimbursed by Fund 1003.
  - ii. Upon receipt of the invoice, Accounting will transfer funds from Fund 1003 to Fund 0557 (Toxic Substance Control Account) and will provide CRBU with documentation of the transfer of funds.
  - iii. Upon receipt of the transfer document, CRBU will record the transfer as a reimbursement payment for the site in CRBS.

5. **Application of Multi-Site Cooperative Agreement (MSCA) Grant Payments**

- a. On a monthly basis, Accounting will submit a request for reimbursement of eligible costs to U.S. EPA for sites covered by the MSCA Grant. Accounting will provide documentation to CRBU after payment is received from U.S. EPA.
- b. CRBU will record payments for the sites covered by the MSCA Grant funded site in CRBS.

6. **Application of Payments Pursuant to Payment Agreements**

- a. CRBU and Accounting will apply payments received in CRBS and California's official accounting system in accordance with the terms of the payment agreement. (See [DPM-CR-21, "Cost Recovery:](#)

[Payment Agreements](#),” for more information about payment agreements.)

## 7. Application of Advance Payments

- a. Advance payments are often required by the Department’s Standard (Reimbursement) Agreements. Advance payments may also be required by the Department’s voluntary agreements.
- b. Application of advance payments by CRBU depends on whether the advance payment is an “earned advance” or a “permanent advance.”
  - i. Earned Advance: If the amount of the advance is equal to 100 percent of the estimated cost of a project, then the advance payment is an “earned advance.” (See [DPM-CR-16, “Cost Recovery: Invoicing](#),” for more information about earned advances.) Voluntary agreements signed by the Cleanup Program often require “earned” advances.
    1. CRBU will invoice the site on a quarterly basis and earn (apply) the funds in CRBS as the costs are incurred by the Department.
  - ii. Permanent Advance: If the amount of the advance is less than 100 percent of the estimated cost of a project, then the advance payment is a “permanent advance.” (See [DPM-CR-16, “Cost Recovery: Invoicing](#),” for more information about permanent advances.)
    1. CRBU will issue invoices for the Department’s costs on a quarterly basis, but retain the permanent advance until the contract or agreement is completed or terminated.
    2. When the final invoice is issued, CRBU will earn (apply) the permanent advance to the costs covered by the final invoice (as well as any additional costs incurred by the Department after the final invoice is issued) and issue a refund of any remaining permanent advance to the billable party. (See [DPM-CR-13, “Cost Recovery: Daily Log and Cost Recovery](#)

[Billing System \(CRBS\) Closure](#),” for more information regarding the site closure process.)

**8. Application of Payments for Cal-Mortgage**

- a. Cal-Mortgage applicants will mail their application, supporting documents, and an advance check for \$1,500 to Accounting. DTSC will not establish a Site Code for the Cal-Mortgage site until it receives the advance, required documentation, and verifies the billable party.
- b. Upon receipt of the advance payment, Cal-Mortgage application, or other Cal-Mortgage related documents, Accounting will:
  - i. Promptly deposit payments; and
  - ii. File PDF copies of the check and all Cal-Mortgage documents accompanying the check; and
  - iii. Forward the PDF file to CRBU Analyst.
- c. The CRBU Analyst will forward the PDF file provided by Accounting to the Administrative Project Manager for the Cal-Mortgage site.
- d. After verifying the billable party information with the Technical Project Manager, the Administrative Project Manager will submit documentation to establish a Site Code. (See [DPM-CR-3, “Cost Recovery: Site Code and Project Code Origination](#),” for more information about the site code origination process.)
- e. After the Site Code has been established and the billable party information entered into CRBS, CRBU will ensure the advance is correctly applied to the established Site Code.

**Accounting**

As discussed in the payments procedures outlined above, Accounting will also:

1. Stamp the “Received Date” on checks, credit card authorization forms, EFTs and all supporting documents that accompany a payment. The “Received Date” for a payment is the date Accounting was in receipt of payment (check or EFT), credit card payment form, or the email

notification date from Regional Administrative Services staff for cash received.

2. Provide a copy of the payment document and any supporting document(s) accompanying the payment to the Accounting Unit responsible for originating the invoice to which the payment applies (e.g., CRBU).
3. Provide copies of payments received pursuant to a settlement or judgment to CRBU.
4. Update the Uncleared Receipts Report in SharePoint no less than monthly.
5. Provide documentation to CRBU after payment is received from U.S. EPA for a site covered by a MSCA Grant.

### **Project Managers**

As discussed in the payments procedures outlined above, Project Managers will:

1. Upon request, provide billable parties with DTSC's payment information.
2. Immediately forward payments received in regional offices to Regional Administrative Services staff in accordance with the Procedures for Handling Checks: Restrictive Endorsement Memorandum.
3. Review the Uncleared Receipts Report posted to SharePoint at least monthly and assist in identifying appropriate sites to which payments apply.
4. Provide CRBU with information necessary to apply payments received from billable parties to the appropriate Site Code, including, but not limited to, following the Cost Recovery Settlement and Judgment Tracking Procedures to complete the Settlement/Judgment Payment Guide to assist CRBU in processing payments received pursuant to a settlement or judgment.

### **Office of Legal Counsel (OLC)**

As discussed in the payments procedures outlined above, OLC will:

1. Upon request, provide billable parties with the Department's payment information.

2. Ensure that all settlements, including consent decrees, and judgments, direct billable parties to:
  - a. Include the Site Code and Site Name on all payments submitted to the Department; and
  - b. Send all payments to the following address:

Accounting Office  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806
3. Upon request, assist Project Managers in completing the Settlement/Judgment Payment Guide to provide the necessary information for CRBU to make appropriate adjustments in CRBS to reflect any payments received pursuant to a settlement agreement or judgment.

#### **Collections and Resolution Unit (Collections)**

As discussed in the payments procedures outlined above, Collections will:

1. Upon request from Accounting, assist in clearing items from the Uncleared Receipts Report.

**CONTACTS: CONTACTS:** Please see the [Contact Links](#) for information on staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the [Cost Recovery Policies and Procedures](#) SharePoint page.

/s/

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Terri Hardy  
Special Assistant for Program Review

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Reed Sato, Deputy Director  
Chief Counsel, Office of Legal Affairs

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Stewart W. Black, Deputy Director  
Brownfields and Environmental Restoration  
Program

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Miriam Barcelona Ingenito for

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Barbara A. Lee, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Collection Letters

**Number:**

DPM-CR-19<sup>1</sup>

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**Date Issued:**

October 3, 2014

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and cleanup activities (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of Department staff in cost recovery. This DPM describes the Department's procedures for issuing collection letters for past-due invoices.<sup>2</sup>

**APPLICABILITY:** This DPM applies to Cost Recovery Billing Unit (CRBU)<sup>3</sup> staff responsible for issuing collection letters for past-due invoices. This DPM also applies to Cleanup Program Technical and Administrative Project Managers and Hazardous Waste Management Program Project Managers (collectively referred to as "Project Managers"), Office of Legal Counsel (OLC) staff, and Collections

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<sup>1</sup> This DPM supersedes DPM-CR-19, "Cost Recovery: Collection Letters" (November 2013).

<sup>2</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

and Resolution Unit (Collections) staff handling sites for which collection letters should be or have been sent.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- [Health and Safety Code](#) sections 25360, 25269.8, and 25269.9
- [Department of Finance, State Administrative Manual \(SAM\) chapter 8700, section 8776.6](#)

**PROCEDURES:**

**CRBU Collection Letter Desk**

1. For invoices issued **on or after** July 1, 2011,<sup>4</sup> and beginning 60 calendar days after the invoice date, CRBU will send a sequence of three collection letters at 30 calendar day intervals for sites that: (1) have a BILCRU billing status in the Cost Recovery Billing System (CRBS); and (2) have an outstanding invoice balance for which payments are 65-70, 90, or 120 calendar days past due. Sites with invoice balances where the late payment interest assessed is equal to or greater than the outstanding invoice balance will not receive a collection letter.
  - a. On a weekly basis, a CRBU Accounting Officer will review and monitor the existing Collection Letter Log to identify past due invoices and potential collection letters for the upcoming week and ensure that collection letters are issued to billable parties as required.
2. CRBU will send collection letters in the following sequence:<sup>5</sup>

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<sup>4</sup> Cleanup Program Administrative Project Managers are responsible for reviewing invoices issued prior to July 1, 2011, to determine whether it is appropriate to send a collection letter. If the Cleanup Administrative Project Manager determines that a collection letter is appropriate, then he or she will consult with the Program Technical Project Manager and submit a request to CRBU at [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov) to issue a collection letter. The Site Code, Site Name, and purpose of the email should be identified in the "Subject" line of the email. If CRBU issues a collection letter for an invoice issued prior to July 1, 2011, at the Administrative Project Manager's request, then CRBU will follow the collection letter logging and tracking procedures outlined in this DPM.

<sup>5</sup> Prior to July 1, 2014, the Department provided schools (generally identified by a "4" as the third digit of the Site Code) with a 180 calendar day grace period to pay invoices issued by the Department. Collection letters to schools were sent on the following schedule: 180-185, 210, and 240 calendar days past due from

- a. **First collection letter:** CRBU will issue the first collection letter 65 to 70 calendar days after the invoice date.
    - i. As required by statute, the Department provides a 60-calendar day grace period for payment of invoices prior to charging interest. The Department does not issue the first collection letter until 65 to 70 days after the invoice date to allow for processing of payments received or postmarked within the 60 day timeframe to be reflected in CRBS.
    - ii. If the payment is not postmarked within the 60 calendar day grace period and received by the Department within 65 to 70 days of the invoice date, then CRBS will generate and issue the first collection letter to send to the billable party(ies).
  - b. **Second collection letter:** If payment is not received from the billable party(ies) within 30 calendar days after issuance of the first collection letter, then CRBU will send a second collection letter.
  - c. **Third collection letter:** If payment is not received from the billable party(ies) within 30 calendar days after issuance of the second collection letter, then CRBU will send a third collection letter. The third letter is sent by certified mail, unless otherwise requested by Project Managers or other program staff after consultation with Project Managers, and will be logged in the “Special Request” section of the collection letter log maintained by CRBU. The name of the Project Manager making the request to not use certified mail will be included in the “Special Request” section of the log.
3. The three collection letters are drafted using a sequence of three different model letters approved by OLC.
    - a. Model collection letters are available on the Cost Recovery Billing Unit SharePoint site or by clicking <http://dtsc-share/PP/CostRecovery/default.aspx> .

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the invoice date. The Department ceased this practice on July 1, 2014. CRBU now issues collection letters for school sites on the same 65-70, 90, and 120 calendar day schedule as other sites billed by CRBU.

- b. CRBU will review special handling instructions or requests in the “Special Request” section of the Collection Letter Log on SharePoint (discussed below) before mailing collection letters.
    - i. Lien properties will receive collection letters for past-due invoices.
    - ii. Sites for which a [“Site and Collection Activities Summary” \(DTSC Form 1479\)](#) has been submitted will receive collection letters for past-due invoices.
  - c. CRBU will print and prepare the collection letters for mailing.
  - d. CRBU will issue collection letters to each billable party identified in CRBS. CRBU will send copies to additional parties upon request.
  - e. CRBU will save a copy of each collection letter on its LAN drive and upload a PDF copy of the collection letters to the [Collection Letter SharePoint page](#).
    - i. The following naming convention will be used for all collection letters uploaded to SharePoint: “[invoice number]-[site code number]-[collection letter number].”
  - f. CRBU will input collection letter issuance dates in the Collection Letter Log (discussed below).
  - g. CRBU will consult and follow the written desk procedures to weekly update and monitor the collection letter log.
4. CRBU will maintain and update the [Collection Letter Log](#) stored on its LAN and on SharePoint for invoices issued after July 1, 2011.
- a. CRBU will enter all collection letter issuance dates in the Collection Letter Log, note all special handling instructions or requests in the “Special Request” section of Collection Letter Log, and update the Collection Letter Log when new information is identified (i.e., change of site status, payment of invoice).
  - b. CRBU will email the Project Managers, Collections, and OLC a weekly summary report of third collection letters. The [weekly report of third collection letters](#) can be found on CRBU’s SharePoint site.

5. Upon receipt of written notification by Collections or OLC to hold, resume, or cease issuing collection letters, CRBU staff will take the following actions:
  - a. CRBU staff will document requests to hold collection letters by entering the requestor's name, unit, date, site, and reason in the CRBS Collection Letter Log.
  - b. Delete or bypass record for sites to resume collection letter issuance.
  - c. Upload written notification in CRBS project notes to document request to hold, resume, or cease collection letter issuance. CRBU will stop issuing collection letters for sites with a BILCRU billing status in CRBS upon request from Collections or OLC. CRBU will record all requests to hold, resume, or cease issuing collection letters in the "Special Request" section of the [Collection Letter Log](#).
  - d. Upon notification by Collections, CRBU will stop issuing collection letters for invoices falling within the scope of a payment agreement executed by the Department and a billable party. (See [DPM-CR-21, "Cost Recovery: Payment Agreements](#)," for more information about payment agreements.)
  - e. CRBU may cease issuing collection letters due to bankruptcy proceedings to comply with the bankruptcy stay, depending on whether the bankruptcy debtor is the only billable party for the site or whether multiple billable parties exist. (See [DPM-CR-23, "Cost Recovery: Bankruptcy Notices](#)," for more information about the Department's procedures for tracking bankruptcy notices.)
    - i. If the bankruptcy debtor is only one of multiple billable parties for a site, then CRBU will temporarily suspend invoices to the bankruptcy debtor by turning off the print flag for the bankruptcy debtor in the Billable Parties list for the site in CRBS so that the bankruptcy debtor does not receive additional invoices.
      1. However, CRBU will maintain the BILCRU status of the site in CRBS to ensure that invoices continue to be sent to the remaining billable parties. (See-DPM-

CR-16, “Cost Recovery: Invoicing,” for more information about CRBS statuses.)

- ii. If the bankruptcy debtor is the only billable party for a site, CRBU will place a hold on invoicing for the entire site.
  - 1. At the direction of OLC, CRBU will change the CRBS billing status of the site to HOLD/LEGAL, and the classification to “LEGAL: Bankruptcy notice received.” (See [DPM-CR-16, “Cost Recovery: Invoicing,”](#) for more information about CRBS statuses and classifications.)
  - 2. CRBU will cease issuing collection letters for the project or site based on the change in billing status.
- f. If, pursuant to Program Branch Chief approval or a request from OLC or Collections, the billing status of a site has been changed in CRBS that results in a permanent hold on billing, then CRBU will cease issuing collection letters for that site based on the change in billing status. (See [DPM-CR-16, “Cost Recovery: Invoicing,”](#) for more information about CRBS billing statuses.)
- 6. CRBU will respond to inquiries emailed to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov) or received by phone. Responses may require CRBU to:
  - a. Provide copies of invoices (electronic, fax, or mail), information on account balances, or billable party information to the requestor.
  - b. Forward questions regarding site activities to Project Managers, complex invoice issues to a CRBU analyst, and invoice disputes or declarations of inability to pay to Collections.

**Cost Recovery Billing Unit (CRBU)**

- 1. CRBU will immediately update CRBS to reflect changes to a site’s billing status, billable parties, and project notes. CRBU also will follow up regarding each site as necessary.
- 2. If the bankruptcy debtor is the only billable party for a site, then CRBU will place a hold on invoicing for the entire site.

- a. CRBU will change the CRBS billing status of the site to HOLD/LEGAL, and the classification to “LEGAL: Bankruptcy notice received.” (See [DPM-CR-16, “Cost Recovery: Invoicing,”](#) for more information about CRBS statuses and classifications.)
3. At least every six months, CRBU will review sites for which billing is on a temporary or permanent hold, closed sites with outstanding balances, and NFCRA sites, and will follow up with Administrative Project Managers for status updates regarding each of these sites. If CRBU changes the CRBS billing status of the site based on information provided by Project Managers or other program staff, then CRBU must note the new or changed status information in CRBS and update the new Classification/Action and Action Date.
4. Upon receipt of returned mail, CRBU will immediately inform the Administrative Project Manager that mail was returned and obtain updated contact information. CRBU will copy Accounting on the notification to the Administrative Project Manager. CRBU will also make a note in CRBS regarding the returned mail.

#### **Cleanup Program Administrative Project Managers**

1. For invoices issued **before July 1, 2011**:
  - a. The Administrative Project Manager will review outstanding invoices issued before July 1, 2011, and direct CRBU to issue collection letters for any invoices deemed appropriate.
  - b. Collection letter requests for invoices issued before July 1, 2011, should be sent to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov).
2. For invoices issued **after July 1, 2011**:
  - a. The Administrative Project Manager will review site invoices that are past due. (See [DPM-CR-01, “Cost Recovery: Administrative Site Management,”](#) for more information.)
  - b. The Administrative Project Managers will review the [weekly summary report of third collection letters](#) issued and emailed by CRBU.

- c. Within 20 business days of the date of the third collection letter for a site, the Administrative Project Manager will consult with the Project Manager and will contact Collections to determine if a Form 1479 is required. (See [DPM-CR-20, "Cost Recovery: 'Site Collection and Activities Summary' \(DTSC Form 1479\)](#)," for more information about the DTSC Form 1479 process.)
3. The Administrative Project Manager will consult with the Project Manager and ensure that information about billable parties and site billing statuses in CRBS are accurate.
  - a. Pursuant to [DPM-CR-16, "Cost Recovery: Invoicing](#)," the Administrative Project Manager will review the Billable Parties Report to ensure the accuracy of contact information for billable parties at least every six months. The [Billable Parties Report](#) can be accessed through the CRBS Reports SharePoint page.
  - b. Immediately notify the CRBU analyst handling the site of any changes. To determine the CRBU analyst assigned to your site, see the Contacts section at the end of this document.
4. The Administrative Project Manager will immediately notify CRBU of any special handling instructions or other needs.
  - a. Changes or requests, other than requests for CRBU to hold, cease, or resume issuing collection letters, can be emailed to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov). Include the following information in the "Subject" line of the email: Site Code, Site Name, and purpose of the email.
  - b. Administrative Project Manager requests for CRBU to hold, cease, or resume issuing of collection letters will be submitted to Collections for approval.
    - i. Only Collections and OLC have the authority to approve a request that CRBU cease issuing collection letters for sites with a BILCRU billing status in CRBS.
    - ii. Collections, or OLC if the original request originated outside of the Collections unit, will review requests from Administrative Project Managers for CRBU to hold, cease, or resume issuing collection letters. If approved, Collections or

OLC will request that CRBU hold, cease, or resume issuing collection letters by sending an email to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov).

1. Include the following information in the “Subject” line of the email: Site Code, Site Name, and purpose of the email.

### **Collections and Resolution Unit (Collections)**

1. Collections will immediately notify CRBU to hold, cease, or resume issuing collection letters for a particular invoice or site if necessary for dispute resolution, payment plans, adjustments, write-offs, or other special circumstances.
  - a. Notifications or requests from Collections for CRBU to hold, cease, or resume issuing collection letters may be sent to CRBU via email to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov). Include the following information in the “Subject” line of the email: Site Code, Site Name, and purpose of the email.
2. Collections will immediately notify CRBU if the stop issuing collection letters instruction results in a change to the billing status.
3. Collections will promptly review requests for CRBU to cease issuing collection letters received from Program staff. If appropriate, Collections will notify CRBU to hold, cease, or resume issuing collection letters for a specific invoice or site.
4. On a monthly basis, Collections will follow up on the sites with a BILCRU billing status in CRBS for which collection letters have ceased to determine whether the issuance of collection letters should resume or continue to be suspended.
5. If requested by CRBU, Collections will assist in responding to invoice disputes or declarations of inability to pay emailed to [billing@dtsc.ca.gov](mailto:billing@dtsc.ca.gov) or received by phone.

### **Office of Legal Counsel (OLC)**

OLC will immediately notify CRBU of any special handling instructions or needs due to bankruptcy, litigation, settlement, or other special circumstances affecting the issuance of collection letters.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

*/s/*

**Miriam Barcellona Ingenito**

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Miriam Barcellona Ingenito, Acting Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: "Site and Collection Activities Summary" (DTSC Form 1479)	<b>Number:</b> DPM-CR-20 <sup>1</sup>
	<b>Date Issued:</b> November 21, 2103

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the procedures for completing the "Site and Collection Activities Summary" (DTSC Form 1479) to facilitate the Department's recovery of unpaid costs from billable parties (e.g., project proponents and responsible parties).<sup>2</sup>

**APPLICABILITY:** This Departmental Procedures Memorandum (DPM) applies to Cleanup Program and Hazardous Waste Management Program (collectively referred to as "Program"), Collections and Resolution Unit (Collections), and Office of Legal Counsel (OLC) staff handling sites for which the Department has

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<sup>1</sup> This DPM supersedes DPM-CR-05, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)" (May 2013).

<sup>2</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

sent three collection letters and payment has not been received from the billable party(ies).

#### **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code section 25360
- Department of General Services, State Administrative Manual (SAM) chapter 8700, section 8776.6

#### **PROCEDURES:**

##### **Program Project Managers, Branch Liaisons, and Branch Chiefs**

1. Accounting will email the Branch Liaisons, Collections, OLC, and the Cost Recovery Billing Unit (CRBU)<sup>3</sup> a weekly summary report of third collection letters issued by Accounting. A link to a copy of the weekly summary report is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. (See DPM-CR-19, “Cost Recovery: Collection Letters,” for more information regarding the Department’s procedures for issuing collection letters.)
2. Within 20 business days of the date of the third collection letter for a site handled by the Branch Liaison or Project Manager identified on the Collection Letter Log, the Project Manager or Branch Liaison will submit DTSC Form 1479 to Collections.<sup>4</sup>
  - a. A link to DTSC Form 1479 is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  - b. If Program staff is already working with Collections and/or OLC in pursuing cost recovery against the billable party(ies) for a site, then the Project Manager is not required to complete DTSC Form 1479 unless requested by Collections and/or OLC.
  - c. In most cases, the Project Manager or Branch Liaison will only need to complete one DTSC Form 1479 per site, regardless of the

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<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>4</sup> There may be additional circumstances in which DTSC Form 1479 will need to be completed by Program staff to facilitate the Department’s evaluation of unpaid costs, such as when requested by OLC to facilitate its evaluation of a site for potential referral to the Attorney General’s Office.

number of past-due invoices that are the subject of the collection letter process.

- d. Where the billable party pays the past-due invoices that were the subject of the initial DTSC Form 1479, but subsequently fails to pay additional invoices, the Project Manager or Branch Liaison may need to complete an additional DTSC Form 1479. Because the circumstances requiring completion of a subsequent DTSC Form 1479 may be site-specific, the Project Manager or Branch Liaison should consult with Collections on whether an additional form is needed.
3. Prior to submitting the DTSC Form 1479, the Project Manager or Branch Liaison will ensure that all documentation necessary for analysis of the DTSC Form 1479 by Collections and OLC is uploaded to EnviroStor. Uploaded documentation should include, but is not limited to, any agreements or orders, collection letters, cost estimates, lien documents, technical reports, and correspondence.
  4. The Project Manager or Branch Liaison will upload the completed DTSC Form 1479 to the internal EnviroStor profile for the site as a draft document with the following activity type: "Form 1479 – Site and Collection Summary." Documents under this activity are **confidential** and not accessible by the public. The final document should be scheduled for completion in 90 to 120 days to allow sufficient time for review by Collections and development of a coordinated plan for cost recovery by Program, Collections, and OLC staff.
    - a. When a DTSC Form 1479 is uploaded to EnviroStor, an automated email notification will be sent to [Form1479@dtsc.ca.gov](mailto:Form1479@dtsc.ca.gov), which is managed by Collections, regarding the new DTSC Form 1479.
  5. After submission of DTSC Form 1479, the Project Manager and/or Branch Liaison will work with Collections and OLC to develop a coordinated plan for cost recovery.
  6. Once a coordinated plan for cost recovery is developed, the Project Manager shall insert the date of the coordination meeting between Program, Collections, and OLC and describe the next cost recovery steps on DTSC Form 1479. The Project Manager shall then upload the updated

DTSC Form 1479 to the internal EnviroStor profile for the site as a final document.

### **Collections and Resolution Unit (Collections)**

1. Upon uploading of a DTSC Form 1479 to EnviroStor, EnviroStor will send an automated email notification to [Form1479@dtsc.ca.gov](mailto:Form1479@dtsc.ca.gov) regarding the new DTSC Form 1479. Collections is responsible for managing the [Form1479@dtsc.a.gov](mailto:Form1479@dtsc.a.gov) email address.
2. Within 30 business days of receipt of a DTSC Form 1479 EnviroStor email notification, Collections will review DTSC Form 1479 and any related information and begin working with the Branch Liaison and/or Project Manager, and OLC to develop a coordinated plan for cost recovery.
  - a. Future cost recovery efforts may include, but are not limited to, informal negotiations with the debtor, referrals to OLC and the Attorney General's Office for settlement negotiations or to initiate a cost recovery action, and recording a lien against the property to secure the Department's costs.
  - b. Collections will submit an EnviroStor Work Request if it would like OLC to participate in the development of a coordinated cost recovery plan.
3. Both the Branch Liaison and Project Manager will be notified and consulted before Collections pursues any collection efforts.

### **Office of Legal Counsel (OLC)**

Upon receipt of an EnviroStor Work Request from Collections, OLC will work with Collections and Program staff to develop a coordinated plan for cost recovery.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns

regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Payment Agreements	<b>Number:</b> DPM-CR-21
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department’s mission is to protect California’s people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.” The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the Department’s procedures for entering into payment agreements with billable parties (e.g., project proponents and responsible parties) to facilitate payment of the Department’s response costs.<sup>1</sup>

**APPLICABILITY:** This DPM applies to Collections and Resolution Unit (Collections), Cleanup Program and Hazardous Waste Management Program (collectively referred to herein as “Program”), Accounting Office (Accounting), Cost Recovery Billing Unit (CRBU), and Office of Legal Counsel (OLC) staff responsible for entering into and tracking payment agreements between the Department and billable parties for the Department’s response costs.

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department’s general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

## **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code section 25187, 25205.7, and 25360
- Department of General Services, State Administrative Manual (SAM) chapter 8700, section 8776.6

## **PROCEDURES:**

### **Collections and Resolution Unit (Collections)**

1. Upon receipt of a "Site and Collection Activities Summary" (DTSC Form 1479), Collections will contact the Project Manager and/or Branch Liaison and OLC to develop a comprehensive cost recovery plan to recover the Department's response costs. (See DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)," for more information about the DTSC Form 1479 process.)
2. Collections, the Project Manager and/or Branch Liaison, and OLC may determine that a payment agreement with the billable party is an appropriate method of facilitating payment of the Department's response costs when the following conditions exist:
  - a. Work on the site is at or near completion; and
  - b. All Department costs have been invoiced.<sup>2</sup>
3. Upon approval by the Project Manager and/or Branch Liaison and OLC, Collections will contact the billable party to discuss payment of the amount due, including the possibility of entering into a payment agreement.
4. If the billable party is unable to pay the entire balance and is interested in entering into a payment agreement with the Department, then Collections will advise the billable party of the following terms and conditions:
  - a. A 10 percent down payment is immediately due and payable upon execution of the payment agreement.

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<sup>2</sup> In some circumstances, special payment agreement arrangements may be made under the direction of OLC. OLC will notify Collections when the Department enters into special payment agreements so that the requisite down payment and subsequent payments can be accurately tracked.

- b. The term of the payment agreement is 12 or 24 months from the date of execution of the agreement. (The duration of the payment agreement is determined by Collections.)
  - c. Monthly payments are due at the beginning of each month and are considered late if the payment is not received by the 10th day of the month.
  - d. Failure to make a payment may result in the Department filing a breach of contract or cost recovery complaint against the billable party.
  - e. Any invoices issued for costs that fall outside the scope of the payment agreement (i.e., future response costs) will be due and payable in accordance with the Department's Cost Recovery Reimbursement Policy and cannot be added to the payment agreement. A link to a copy of the Cost Recovery and Reimbursement Policy is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  - f. For Chapter 6.8 sites (Cleanup Program sites), if the property owner is a signatory to the payment agreement, failure to make a payment may result in termination of the payment agreement, in which case the Department may place a lien on the property without going through the hearing procedures for liens since the property owner waived his or her right to hearing procedures under the payment agreement.<sup>3</sup> (See DPM-CR-24, "Cost Recovery: Lien Placement," for more information about the Department's lien placement procedures.)
5. Upon verbal acceptance of the above terms and conditions by the billable party, Collections will draft the payment agreement using the Department's model Payment Agreement, compile a list of outstanding invoices covered by the agreement (Attachment A to the payment agreement), and a Payment Schedule (Attachment B to the payment agreement). A link to a PDF of the model Payment Agreement for the Department's response

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<sup>3</sup> The Department does not have the same express statutory authority to place this type of lien on sites for costs incurred under chapter 6.5 of the Health and Safety Code.

costs is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.

6. Collections will send the draft payment agreement to the Project Manager or Branch Liaison for review and comment and highlight the areas where additional information is needed from the Project Manager or Branch Liaison to finalize the draft payment agreement.
7. After finalizing the draft payment agreement with the Project Manager or Branch Liaisons, Collections will submit an EnviroStor Work Request to OLC to review and approve the draft payment agreement.
8. After finalizing the payment agreement with the assistance of OLC, Collections will send the final payment agreement to the Project Manager and/or Branch Liaison as a PDF document for execution by the billable party and the Branch Chief. Any deviations from the model payment agreement requested by the billable party will be reviewed and approved by OLC.
9. After Collections receives the fully executed payment agreement from the Project Manager or Branch Liaison, Collections will forward a copy of the fully executed payment agreement to CRBU to assist CRBU in applying payments received from the billable party. Collections will also forward a copy of the fully executed payment agreement to the Accounting Collection Letter Desk to ensure that no further collection letters are sent for the invoices covered by the payment agreement.
10. Collections will check the Cost Recovery Billing System (CRBS) to confirm that the ten percent down payment is received from the billable party within five business days of the "Effective Date" of the payment agreement. If the billable party fails to make the required down payment, Collections will notify the Project Manager or Branch Liaison and either: (1) work with the Project Manager or Branch Liaison to contact the billable party regarding status of the down payment; and/or (2) notify the billable party in writing that the payment agreement is null and void.
11. On a monthly basis, Collections will monitor the status of all payment agreements to ensure that payments are being received. When a billable party makes all payments required by a payment agreement (and fulfills any other conditions), Collections will notify the billable party and the Project Manager or Branch Liaison in writing that the billable party has fulfilled its obligations pursuant to the payment agreement.

12. If the billable party fails to make a required monthly payment, then Collections will:
  - a. Notify the Project Manager or Branch Liaison regarding the billable party's failure to make a monthly payment.
  - b. Notify the billable party that the payment agreement has been terminated and that payment in full is due immediately. Collections and the Project Manager and/or Branch Liaison may, however, determine that a preliminary telephone call to the billable party is appropriate to determine the status of any late payments and inform the billable party that the agreement will be terminated unless the past-due payment is received immediately.
  - c. Formal termination of the payment agreement will be issued in writing by Collections via a letter to the billable party. A copy of the termination letter will be provided to the Project Manager and/or Branch Liaison, CRBU, and Accounting. Collections will retain a copy of the termination letter in accordance with the Department's record retention policy.
  - d. Work with the Project Manager and/or Branch Liaison (and OLC, if necessary) to discuss additional cost recovery options in accordance with the DTSC Form 1479 process. (See DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)," for more information about the DTSC Form 1479 process.)

### **Cleanup Program Project Managers and Branch Liaisons**

1. The Project Manager or Branch Liaison will submit DTSC Form 1479 to Collections and coordinate with Collections and OLC to develop a comprehensive cost recovery plan to recover the Department's response costs. (See DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)," for more information about the DTSC Form 1479 process.)
2. The Project Manager and Branch Liaison will work with Collections and OLC to evaluate whether a payment agreement with the billable party is an appropriate method of facilitating payment of the Department's response costs.

- a. The Project Manager and/or Branch Liaison will work with Collections and OLC to develop special payment agreements that may not meet all of the payment agreement criteria outlined above. The Project Manager or Branch Liaison will notify Collections regarding all special payment agreements to ensure that:
  - i. There is a proper protocol for ceasing collection letters and processing payments received by billable parties pursuant to the agreement.
  - ii. Payments made by billable parties pursuant to the payment agreement are tracked.
3. If, after speaking with Collections, the billable party verbally agrees to enter into a payment agreement with the Department, then Collections will send the draft payment agreement to the Project Manager or Branch Liaison for review and comment and highlight the areas where additional information is needed from the Project Manager or Branch Liaison to finalize the draft payment agreement. The Project Manager or Branch Liaison will review the draft payment agreement and insert any additional information necessary for Collections to finalize the draft payment agreement.
4. Upon receipt of the final PDF payment agreement from Collections (after OLC review and approval), the Project Manager or Branch Liaison will contact the billable party to obtain the necessary signature(s) on the payment agreement.
5. The Project Manager or Branch Liaison will obtain OLC review and approval of any deviations from the model Payment Agreement requested by the billable.
6. Once the billable party executes the payment agreement, the Project Manager or Branch Liaison will obtain the Branch Chief's signature on the payment agreement. The Project Manager or Branch Liaison will send a copy of the fully executed payment agreement to the billable party. The Project Manager or Branch Liaison will retain the original fully executed payment agreement. The Project Manager or Branch Liaison will place the original fully executed payment agreement in the file for the site and upload a copy of the fully executed payment agreement to the internal EnviroStor profile for the site.

7. The Project Manager or Branch Liaison will check CRBS to confirm that the ten percent down payment is received within five business days of the “Effective Date” of the payment agreement. If the billable party fails to make the required down payment, the Project Manager or Branch Liaison will work with Collections to either: (1) contact the billable party regarding the status of the down payment; and/or (2) notify the billable party in writing that the payment agreement is null and void.
8. If the billable party fails to comply with the terms of the payment agreement and the Department terminates the agreement, then the Project Manager or Branch Liaison will also place a copy of the payment agreement termination letter in the file for the site and upload a copy of the termination letter to the internal EnviroStor profile for the site.
9. When the billable party makes all payments required by a payment agreement (and fulfills all other conditions), Collections will notify the billable party and the Project Manager or Branch Liaison in writing that the billable party has fulfilled its obligations pursuant to the payment agreement. The Project Manager or Branch Liaison will place a copy of this notification in the file for the site and upload a copy of the notification to the internal EnviroStor profile for the site.
10. If the billable party fails to make a required monthly payment, then the Project Manager and/or Branch Liaison will work with Collections and, if necessary, OLC, to determine whether to terminate the payment agreement. If the payment agreement is terminated by Collections, then the Project Manager and/or Branch Liaison will discuss further cost recovery efforts with Collections and OLC.
11. For Chapter 6.8 sites, if the property owner is a signatory to the payment agreement, then the Department may record a lien on the property. Collections and the Project Manager and/or Branch Liaison will consult with OLC when determining if recording a lien may be appropriate. (See DPM-CR-24, “Cost Recovery: Liens” for more information about the lien placement process.)

#### **Office of Legal Counsel (OLC)**

1. OLC will participate in discussions with Collections and the Project Manager and/or Branch Liaison to develop a comprehensive cost recovery plan to facilitate recovery of the Department’s response costs.

2. Upon request, OLC will work with Collections and the Project Manager and/or Branch Liaison to finalize the payment agreement for execution by the billable party and the Department.
3. OLC will review and approve any modifications to the model payment agreement requested by the billable party.
4. OLC will work with Collections and the Project Manager and/or Branch Liaison to determine next steps, including termination of a payment agreement, when a billable party fails to make a required monthly payment.
5. OLC will work with Collections and Cleanup Program staff to develop special payment agreements that may not meet all of the payment agreement criteria outlined above.

#### **Cost Recovery Billing Unit (CRBU)**

1. Upon receipt of a copy of a signed payment agreement from Collections, CRBU will upload the agreement to CRBS.
2. CRBU will use the payment agreement as a reference when applying payments to invoices covered by the payment agreement. (See DPM-CR-18, "Cost Recovery: Payments," for information regarding the application of payments from payment agreements.)
3. CRBU will continue to issue invoices for the site on a quarterly basis unless otherwise instructed by Cleanup Program, Collections, or OLC staff.<sup>4</sup> (See DPM-CR-16, "Cost Recovery: Invoicing," for more information regarding the Department's invoicing process.)

#### **Accounting Office Collection Letter Desk (Accounting)**

1. Upon receipt of a copy of a signed payment agreement from Collections, Accounting will take the steps necessary to ensure that no further collection letters are sent for the invoices covered by the agreement. (See DPM-CR-19, "Cost Recovery: Collection Letters," for more information on the collection letter process.)

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<sup>4</sup> A change in the billing status of a project or site that results in a temporary or permanent hold on billing may be made only with Branch Chief approval, or by OLC or Collections.

2. Accounting will also receive and process payments received pursuant to payment agreements in accordance with the payment processing procedures outlined in DPM-CR-18, "Cost Recovery: Payments."

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Ability to Pay (ATP) Determinations	<b>Number:</b> DPM-CR-22
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department’s mission is to protect California’s people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.” The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM describes the procedures for assessing the financial condition of billable parties (i.e., project proponents or responsible parties) that assert they are unable to pay the Department’s response costs, which is also referred to as an ability to pay (ATP) analysis.<sup>1,2</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program, Collections and Resolution Unit (Collections), Office of Legal Counsel (OLC), Cost Recovery Billing

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department’s general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> This DPM applies to cleanup sites, including corrective action sites. This DPM does not apply to enforcement or penalty cases. The ATP analysis for enforcement or penalty cases should be referred to the Collections and Resolutions Unit.

Unit (CRBU),<sup>3</sup> and Accounting Office (Accounting) staff handling sites where billable parties claim they are unable to pay the Department's response costs.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Health and Safety Code sections 25187(b)(1)(B), 25360 et seq., and 25390 et seq.
- U.S. EPA, "General Policy on Superfund Ability to Pay Determinations" (Sept. 1997)

**PROCEDURES:**

**The Ability to Pay (ATP) Analysis**<sup>4</sup>

1. When a Department employee is contacted by a billable party that claims an inability to pay the Department's response costs, the employee will immediately notify the Project Manager for the site regarding the billable party's claim.
  - a. The Project Manager or Branch Liaison will prepare a letter to the billable party requesting financial information necessary to evaluate the billable party's inability to pay claim.
    - i. The type of information requested from the billable party will depend on whether the billable party claiming an inability to pay is an individual or a corporation/business entity. A link to the model ATP financial information request letters is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  - b. If the billable party is a corporation or business entity, then the Department requires the following financial information to conduct the ATP analysis:

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<sup>3</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

<sup>4</sup> This overview of the ATP process applies to all Department staff handling sites where billable parties claim an inability to pay the Department's response costs.

- i. Federal and state income tax returns for the last three years, including all schedules, exhibits, and attachments.
  - ii. Financial statements for the last three years (the same period of time).<sup>5</sup>
  - iii. The current financial statement.
  - iv. The most recent 12 months of bank statements for any and all checking, savings, lines of credit, and investment accounts.
- c. If the billable party is an individual, then the Department requires the following financial information to conduct the ATP analysis:
- i. Federal and state income tax returns for the last three years, including all schedules, exhibits, and attachments.
  - ii. A current financial statement using the sample financial statement format, which is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  - iii. The most recent 12 months of bank statements for any and all checking, savings, credit cards, loans, lines of credit, and investment accounts.
- d. If the billable party refuses or fails to produce the requested information or documentation, or any other information necessary to conduct the ATP analysis, then the ATP analysis is concluded with the determination that the billable party has failed to establish its inability to pay claim.
- i. The Project Manager or Branch Liaison will send a letter to the billable party stating that the ATP claim was denied due to the billable party's failure to provide the information and/or

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<sup>5</sup> If the corporation or business entity indicates that it does not regularly prepare financial statements, then it should provide a financial statement using the sample financial statement format available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.

documents necessary to establish the claim. The Project Manager will place the letter in the site's confidential file.

- ii. The Project Manager will prepare a memorandum documenting the billable party's failure to establish its claim and upload it to the site's internal EnviroStor profile.
- e. If the billable party provides the requested financial information or documentation, the Project Manager will enter the financial information obtained into one of U.S. EPA's enforcement economic models.<sup>6</sup> The models are available at: <http://www2.epa.gov/enforcement/penalty-and-financial-models>. The billable party's financial information will be kept confidential at all times.
- f. The Project Manager, Unit Supervisor, and, if necessary, the Branch Chief will meet to discuss the model results.
- g. The Project Manager or Branch Liaison will prepare a memorandum documenting the results of the ATP analysis and outlining the Cleanup Program's recommendation for the next cost recovery step (ATP Memorandum).
- i. If the model demonstrates that the billable party has the ability to pay for the Department's response costs, then the Project Manager will:
  - 1. Notify the billable party in writing that the ATP claim has been denied.
  - 2. Refer the site to Collections for further handling as an invoice dispute or complete a "Site and Collection Activities Summary" (DTSC Form 1479) for the site. (See DPM-CR-17, "Cost Recovery: Invoice Disputes," and DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)," for more

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<sup>6</sup> U.S. EPA models analyze the financial aspects of a responsible party's ability to pay for enforcement actions, compliance costs, cleanup costs, and/or civil penalties. The models are modified annually as part of U.S. EPA's routine update process. Updates to the models include financial information (i.e., current tax rates, inflation rates, discount/compound rates), and utility enhancement. The models relevant to this DPM are: 1) ABEL - Evaluates a corporation's or partnership's ability to pay; 2) INDIPAY - evaluates an individual's ability to pay; and 3) MUNIPAY - Evaluates a municipality's or regional utility's ability to pay.

information about the invoice dispute and DTSC Form 1479 processes.)

- ii. If the model results do not clearly show that the billable party has the ability to pay for the Department's response costs, the following options may be considered:
  - 1. Propose the site be referred to Collections for further ATP analysis.
    - a. The Project Manager and/or Branch Liaison will discuss the site and the initial ATP model results with Collections.
    - b. If Collections agrees that additional ATP analysis is appropriate, it will determine if additional information is needed.
      - i. The Project Manager, Branch Liaison, or Collections will issue a letter requesting the additional information from the billable party.
      - ii. If the additional information is not received, Collections will follow the procedures outlined above for denial of the ATP claim.
    - c. Once the information is received, Collections will perform its ATP analysis and issue the ATP Memorandum with its ATP determination.
    - d. The Project Manager and Collections will discuss the findings and determine the appropriate next steps for cost recovery. These steps may include, but are not limited to: negotiating a payment agreement following the procedures in DPM-CR-21, "Cost Recovery: Payment Agreements"; a determination of viability following the procedures in DPM-CR-08, "Cost Recovery: Classifying 'Orphan' Sites in the Cost Recovery Billing System (CRBS)"; or referral of the site to OLC for further cost recovery action following the procedures in DPM-CR-26, "Cost Recovery: Cost Recovery Referrals to the Office of Legal Counsel (OLC)."

2. Propose referring the site to OLC for assistance in cost recovery.
  - a. The Project Manager and/or Branch Liaison will submit an EnviroStor request for OLC assistance.
  - b. Once an OLC attorney is assigned, OLC, the Project Manager, and/or Branch Liaison will discuss the site and initial ATP results and identify the appropriate next cost recovery steps.
  - c. The Project Manager will include the next cost recovery steps in the ATP Memorandum describing the ATP determination.
    - i. The Project Manager, the Project Manager's supervisor, and, if appropriate, Collection, and/or OLC will be copied on the ATP Memorandum.
    - ii. The Project Manager will place the ATP Memorandum in the site's confidential file and upload it to the site's internal EnviroStor profile as "Other Legal document."
    - iii. Only the ATP Memorandum is placed in the site's confidential file and uploaded to EnviroStor. The billable party's financial information and/or documents must not be placed in the site file or uploaded to EnviroStor.
  - h. The Project Manager or Branch Liaison will send the billable party's financial information to Collections upon completion of the ATP analysis. A copy should not be retained in the site file.
    - i. Collections is responsible for securely maintaining a billable party's financial information submitted in connection with an ATP analysis.



settlement agreement to the billable party for review and concurrence.

3. Once the billable party and the Department agree on the settlement agreement language, OLC will forward a final settlement agreement to the billable party for signature.
  4. Once the billable party signs the settlement agreement, OLC will forward it to the Project Manager who will obtain the Branch Chief's signature.
  5. The Project Manager will provide a copy of the signed settlement agreement to the billable party, OLC, Collections, and CRBU. The Project Manager will upload a scanned copy of the settlement agreement to the site's public EnviroStor profile.
- e. If the Department and billable party are unable to settle the Department's response costs, Collections, the Project Manager and OLC will discuss further cost recovery efforts.
  - f. A potentially responsible party (PRP) search may be necessary to identify other parties that may be liable for the Department's response costs. (See DPM-CR-07, "Cost Recovery: Potentially Responsible Party (PRP) Searches" for more information regarding the PRP search process.)
  - g. If, after conducting a PRP search, the Department determines that there are no other viable PRPs, then the Department will follow the procedures outlined in DPM-CR-08, "Cost Recovery: Classifying 'Orphan' Sites in the Cost Recovery Billing System (CRBS)," to classify the site as an "orphan site."

### **Cleanup Program Project Managers**

The Project Manager will conduct the following activities related to ATP claims made by billable parties:

1. Model financial information request letters to the billable party requesting information and/or documentation necessary for Collections to evaluate the billable party's ATP claim.

2. Communicate with the billable party to obtain information and/or documents necessary for an ATP analysis.
3. Maintain the confidentiality of a billable party's financial information submitted in connection with an ATP analysis.
4. If the Project Manager conducted the ATP analysis, draft a confidential ATP Memorandum with recommendations regarding the billable party's ability to pay the Department's response costs and identifying the proposed next cost recovery steps. Coordinate with Collections and OLC, as needed, on this step.
5. Notify the billable party regarding the denial or acceptance of the billable party's ATP claim.
6. If a billable party fails or refuses to provide information and/or documentation necessary for an evaluation of the party's ATP claim, draft an ATP Memorandum documenting the billable party's failure to establish its claim and issue a letter notifying the billable party that the billable party's ATP claim was denied due to its failure to provide the information and/or documents necessary to establish the claim.
7. Place all documentation in appropriate site files, send the billable party's financial information to Collections for maintenance in its confidential files and upload the ATP memorandum, billable party notification letter, and any other appropriate documents to EnviroStor, as instructed above.
8. Work with OLC and Collections, as necessary, to evaluate a billable party's ATP claim, settle the Department's response costs based on the Department's ATP analysis, and/or develop further cost recovery efforts.
9. If applicable, work with CRBU and/or Accounting to make appropriate adjustments to the California State Accounting and Reporting System (CALSTARS) and Cost Recovery Billing System (CRBS) based on settlements with billable parties that establish they are unable to pay the Department's response costs.
10. If necessary, the Project Manager will conduct a PRP search according to DPM-CR-07, "Cost Recovery: Potentially Responsible Party (PRP) Searches," to identify additional parties that may be liable for the Department's response costs.

11. If, after conducting a PRP search, the Department determines that there are no other viable PRPs, then the Project Manager will follow the procedures outlined in DPM-CR-08, "Cost Recovery: Classifying 'Orphan' Sites in the Cost Recovery Billing System (CRBS)," to classify the site as an "orphan site."

### **Collections and Resolution Unit (Collections)**

Collections will conduct the following activities related to ATP claims made by billable parties:

1. Upon notification of a billable party's ATP claim, work with Cleanup Program and, as necessary, OLC staff to determine whether to conduct an ATP analysis.
2. Work with the Project Manager to issue information request letters and other necessary correspondence to the billable party claiming it is unable to pay the Department's response costs, and answer any questions the Project Manager has about the process.
3. If Collections performs the ATP analysis, review the billable party's financial information and/or documentation in order to evaluate the party's ability to pay the Department's response costs and reach a conclusion. Notify the Project Manager if additional information and/or documentation is necessary to complete the ATP analysis.
4. If Collections performed the ATP analysis, draft an ATP Memorandum outlining its conclusions regarding the billable party's ability to pay the Department's response costs.
5. Ensure that a billable party's financial information and/or documentation is secured in a confidential manner, accessible only by authorized Department staff.
6. If Cleanup Program staff and OLC are not able to reach settlement with the billable party based upon the ATP determination, work with Cleanup Program staff and OLC to develop further cost recovery efforts.
7. If applicable, work with CRBU and/or Accounting to make appropriate adjustments to CALSTARS and CRBS based on settlements with billable parties that establish they are unable to pay the Department's response costs.

### **Office of Legal Counsel (OLC)**

1. As necessary, OLC will work with Cleanup Program and Collections staff to obtain the financial information necessary to conduct the ATP analysis, including review of information request letters drafted by the Project Manager.
2. As necessary, OLC will work with Cleanup Program and Collections staff to evaluate a billable party's ATP claim, settle the Department's response costs with the billable party, and/or discuss further cost recovery efforts.
3. As necessary, OLC will work with CRBU and/or Accounting to make appropriate adjustments to CALSTARS and CRBS based on settlements with billable parties that establish they are unable to pay the Department's response costs.
4. If necessary, OLC will work with the Project Manager to conduct a PRP search pursuant to DPM-CR-07, "Cost Recovery: Potentially Responsible Party (PRP) Searches," to identify additional parties that may be liable for the Department's response costs.
5. If, after conducting a PRP search, the Department determines that there are no other viable PRPs, then OLC will work with the Project Manager to classify the site as an "orphan" site pursuant to DPM-CR-08, "Cost Recovery: Classifying 'Orphan' Sites in the Cost Recovery Billing System (CRBS)."

### **Cost Recovery Billing Unit (CRBU) and/or Accounting Office (Accounting)**

As necessary, CRBU and/or Accounting will make appropriate adjustments to CALSTARS and CRBS based on settlements with billable parties that establish they are unable to pay the Department's response costs.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost

Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: Bankruptcy Notices	<b>Number:</b> DPM-CR-23 <sup>1</sup>
	<b>Date Issued:</b> November 21, 2013

**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM outlines the Department's procedures for tracking bankruptcy notices and "notices of general assignment for benefit of creditors"<sup>2</sup> with the assistance of a Bankruptcy Point Person or "BPP" located in the Office of Legal Counsel.<sup>3</sup>

**APPLICABILITY:** This DPM applies to the BPP and all Department staff that receive a bankruptcy notice for a bankruptcy debtor or a "notice of general

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<sup>1</sup> This DPM supersedes EO-93-006-PP, Department Response to Bankruptcy Notices (Feb.1994).

<sup>2</sup> In California, a business can go out of business, liquidate its assets, and distribute the proceeds to known creditors without declaring bankruptcy. If Department staff receives a "notice of general assignment for benefit of creditors," these notices should also be sent to the BPP. The BPP, in consultation with the OLC, can then follow up as necessary to ensure that if assets are available, then the Department will be in line to receive a distribution.

<sup>3</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

assignment for benefit of creditors” when the debtor may be liable for the Department’s response costs. This DPM also applies to Cleanup Program and Hazardous Waste Management Program (collectively referred to as “Program”), Office of Legal Counsel (OLC), Cost Recovery Billing Unit (CRBU),<sup>4</sup> Accounting Office (Accounting), Financial Responsibility Unit, Enforcement and Emergency Response Division (EERD), and Office of Criminal Investigations (OCI) staff assisting the Department in evaluating the bankruptcy notice or notice of general assignment and providing documentation in support of the Department’s claims.

#### **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq.
- U.S. Bankruptcy Code, 11 U.S.C. § 101 et seq.
- Health and Safety Code chapters 6.5 (§ 25100 et seq.), 6.8 (§ 25300 et seq.), 6.82 (§ 25395.60 et seq.), and 6.83 (§ 25395.110 et seq.)

#### **PROCEDURES:**

##### **All Department Staff**

1. When a Department employee receives a bankruptcy notice or “notice of general assignment for benefit of creditors” (collectively referred to herein as “bankruptcy notice”), the employee will inform the Unit Supervisor, scan the bankruptcy notice as a PDF with OCR for text search capability, and email the bankruptcy notice to the BPP.
  - a. Unit supervisors will ensure that all bankruptcy notices are immediately forwarded to the BPP.
  - b. The contact information for the BPP is located on the Cost Recovery Policies and Procedures SharePoint page. (See Contacts, below.)

##### **Bankruptcy Point Person (BPP)**

1. The BPP will serve as the contact person and focal point to track the information associated with bankruptcies. The BPP will coordinate the

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<sup>4</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

research necessary to determine the Department's likely claims in bankruptcy proceedings, compile information regarding bankruptcy debtors for the Department, and track the status and disposition of bankruptcies. Once a bankruptcy notice is forwarded to the BPP, the BPP will follow the procedures outlined below to track the status and disposition of the bankruptcy proceeding.

2. BPP Initial Investigation of the Bankruptcy Notice. The BPP will coordinate the bankruptcy notice process by:
  - a. Ensuring that, before referral to OLC for a determination of the next steps, all appropriate databases have been checked to determine whether the bankruptcy debtor is or may be responsible for the Department's response costs.
    - i. Appropriate databases include, but are not limited to:<sup>5</sup>
      1. Permitting and Cleanup EnviroStor pages.
      2. Statewide Toxic Activities Report System (STARS).
      3. Cost Recovery Billing System (CRBS).
      4. EPANET for the interagency Electronic Data Exchange (EDE).
      5. The Daily Log.
    - ii. If the bankruptcy debtor is named as a respondent in any order issued by the Department, then the BPP will immediately contact OLC to determine the next steps.
  - b. Sending a copy of the bankruptcy notice to the appropriate Project Manager, Branch Liaisons, and/or Unit Supervisors for further investigation and follow-up as necessary.
  - c. Entering information regarding the bankruptcy notice and database search information into a spreadsheet for tracking purposes.

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<sup>5</sup> Links to databases are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.

- i. The BPP will note all important milestones and filings associated with each bankruptcy in the tracking spreadsheet.
  - ii. On a monthly basis, the BPP will follow up with OLC to update the tracking spreadsheet with the most recent information regarding the status of the bankruptcy proceeding.
  - iii. When there is a change to be noted in the tracking spreadsheet regarding the bankruptcy debtor, the BPP will coordinate with OLC and the assigned Deputy Attorney General for cases referred to the Attorney General's (AG's) Office so that the tracking spreadsheet has up to date information on the status of the bankruptcy.
3. Departmental Investigation of Bankruptcy Debtor.
  - a. The BPP will coordinate any and all Department staff necessary to establish the current and potential liability of the bankruptcy debtor for all sites associated with the bankruptcy debtor.
  - b. As appropriate, the BPP and/or Program staff will contact the Financial Responsibility Unit to determine if the bankruptcy debtor has any financial assurance mechanisms in place and the amount and type of the mechanisms.
  - c. EERD and OCI staff will determine if the Department has any actions pending against the bankruptcy debtor and relay this information to the BPP and the appropriate OLC staff.
  - d. When the BPP has compiled the necessary information, the BPP will prepare a referral packet with all the appropriate information and forward the packet to OLC for evaluation.
4. OLC Review of Bankruptcy Notice Site Information. If OLC determines that a referral to the AG's Office is appropriate, then the BPP will submit a request to CRBU to prepare a Summary by Activity (SBA) Report. OLC will submit a copy of the SBA Report for all sites associated with the bankruptcy debtor to the AG's Office with the referral.

5. Implementing the Bankruptcy Stay.

- a. In consultation with OLC, the BPP will direct CRBU to place a hold on invoicing the bankruptcy debtor and Accounting to place a hold on sending collection letters to the bankruptcy debtor. OLC, the BPP, Program staff, and CRBU will determine whether the CRBS billing status of the site should be changed to "HOLD/LEGAL" and/or the billing classification of the site should be changed to "LEGAL: Bankruptcy notice received."
- b. The BPP, CRBU, and Accounting will consult with OLC before resuming invoicing or sending collection letters to the bankruptcy debtor.
- c. If a hold is placed on invoicing at the direction of OLC as a result of a bankruptcy notice, the BPP will contact all Department staff who have charged to that Site Code in the last year to advise those employees of the bankruptcy filing and the fact that the invoicing and collection letters for the site are on hold. The BPP will notify the employees that future charges to that Site Code by Department employees may require supervisor approval and consultation with OLC.

6. Financial Assurance. The BPP and Financial Responsibility Unit will investigate and advise OLC as to whether the bankruptcy debtor has financial assurance of any kind.

- a. The Financial Responsibility Unit and the BPP will consult with OLC if the mechanism is a letter of credit or a deposit account at a bank. When directed to do so by OLC, the BPP and/or Financial Responsibility Unit staff will coordinate the transfer of the letter of credit funds into the standby trust account, or perform the necessary steps to ensure that the financial assurance mechanism is not lost or compromised by the bankruptcy.
- b. If the funds are in a bank deposit account, when directed to do so by OLC as noted below, the Project Manager will instruct Accounting to withdraw the funds and apply them to Fund 0294 (Removal and Remedial Action Account) or Fund 0458 (Site Operation and Maintenance Account, Hazardous Substance Account) for use as needed at the site and/or to pay the Department's past and/or future costs as authorized pursuant to the

underlying document for which the financial assurance was put in place with the approval of OLC and the assigned Deputy AG for cases referred to the AG's Office.<sup>6</sup>

7. Bankruptcy Court Determinations. The BPP will note any bankruptcy determinations in the tracking spreadsheet. The BPP will also scan and email bankruptcy-related documents to appropriate Department staff to upload to EnviroStor and place in the file for the site.
8. Return to Ordinary Course of Business.
  - a. If the bankruptcy concludes and the bankruptcy debtor was not liquidated, then the BPP, after consulting with OLC, will advise CRBU and Accounting regarding whether, and how to, resume invoicing and the sending of collection letters to the bankruptcy debtor for those sites and costs for which the bankruptcy debtor remains liable following the bankruptcy.
  - b. If the bankruptcy concludes and the bankruptcy debtor is liquidated, then the BPP, after consulting with OLC, will advise appropriate Department staff regarding the next steps for handling the Department's costs.
9. Bankruptcy Proceeds. The BPP will monitor the distribution of bankruptcy proceeds. The BPP will communicate with Accounting regarding receipt of bankruptcy proceeds. In the event of multiple bankruptcy distributions, or a single distribution with multiple Site Codes, the BPP will consult with OLC regarding proper application of funds.

#### **Program Project Managers, Branch Liaisons, and Unit Supervisors**

1. The Project Manager, Branch Liaison, and Unit Supervisor will ensure that all bankruptcy notices and "notices of general assignment for benefit of creditors" are immediately scanned and emailed to the BPP.

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<sup>6</sup> Fund 0294 (Removal and Remedial Action Account) monies pay for Fund 0557 (Toxic Substances Control Account) costs. Fund 0458 (Site Operation and Maintenance Account, Hazardous Substance Account) monies pay for Fund 0557 (Toxic Substances Control Account) and Fund 0014 (Hazardous Waste Control Account) costs pursuant to the Budget Act.

2. During the Department's investigation of the bankruptcy debtor, the Project Manager, Branch Liaison, and/or Unit Supervisor staff will perform the following activities:
  - a. Upon receipt of a bankruptcy notice from the BPP, the Project Manager and/or Branch Liaison will ensure that all site history, potentially responsible party, site activity, and other information is updated in EnviroStor.
  - b. The Project Manager, Branch Liaison, and Unit Supervisor will compile and send to the BPP any information regarding any current or potential liabilities associated with the bankruptcy debtor. Types of bankruptcy debtor liabilities include, but are not limited to, fines, penalties, fees, and response costs incurred by the Department.
  - c. The Project Manager, Branch Liaison, and/or Unit Supervisor will estimate, explain, and send to the BPP anticipated future costs related to the sites with which the bankruptcy debtor is associated.
  - d. The Project Manager, Branch Liaison, and/or Unit Supervisor will work with the BPP and Financial Responsibility Unit in determining whether the bankruptcy debtor has any financial assurance mechanisms in place and the amount and type of such mechanisms.
  - e. The Project Manager, Branch Liaison, and Unit Supervisor will immediately respond to requests for information from the BPP and assist the BPP in investigating the bankruptcy debtor to establish the current and potential liability of the bankruptcy debtor for all sites associated with the bankruptcy debtor.
3. The Project Manager, Branch Liaison, and/or Unit Supervisor will assist OLC in preparing a referral to the AG's Office to file a proof of claim in the bankruptcy proceeding and during the course of the bankruptcy proceeding, as necessary.
4. The Project Manager, Branch Liaison, and/or Unit Supervisor will work with OLC and Accounting to determine whether a new Site Code should be obtained to track the administrative costs associated with the bankruptcy.
5. The Project Manager, Branch Liaison, and/or Unit Supervisor will work with OLC and Accounting to develop an appropriate allocation of

bankruptcy proceeds if there are multiple Site Codes associated with the bankruptcy debtor.

**Office of Legal Counsel (OLC)**

1. OLC will work with the BPP and Program staff to investigate the bankruptcy debtor to establish its current and potential liability for all associated sites.
2. OLC will review all information provided by the BPP (and EERD and OCI, if applicable) regarding the bankruptcy debtor and determine whether to track the bankruptcy or make a referral to the AG's Office to file a proof of claim and any necessary subsequent legal filings associated with the bankruptcy.
  - a. If the bankruptcy debtor is named as a respondent in an order issued by the Department, then OLC will work with the BPP and Program staff to determine next steps. For example:
    - i. If the bankruptcy debtor is named as a respondent in an existing consent agreement or consent order, then OLC will determine what further actions may be needed.
    - ii. If the bankruptcy debtor was the subject of a pending consent agreement, then OLC will determine whether a unilateral order should be issued or what other action should be taken.
3. OLC will work with the BPP to ensure that the bankruptcy tracking spreadsheet is accurate and current.
4. If appropriate, OLC will prepare the referral to the AG's Office to file a proof of claim in the bankruptcy proceeding. OLC will submit a copy of an SBA Report for all sites associated with the bankruptcy debtor to the AG's Office with the referral.
  - a. If OLC makes a referral to the AG's Office, then OLC will coordinate all actions necessary to represent the Department in the bankruptcy proceeding.

- b. If additional time is needed to determine the amount of the Department's claim against the bankruptcy debtor,<sup>7</sup> OLC will ask the AG's Office to file a claim for an indefinite amount with prove up of the amount of the claim during the bankruptcy.
- c. OLC will inform the BPP of the status of the bankruptcy proceeding and all bankruptcy court determinations that affect the Department.
- d. In consultation with Program staff and Accounting, OLC will determine whether and when a new Site Code should be obtained to track the administrative costs associated with the bankruptcy.
- e. OLC will work with the BPP and the Financial Responsibility Unit in determining whether the bankruptcy debtor has any financial assurance mechanisms in place and the amount and type of such mechanisms.
  - i. If the financial assurance mechanism is a letter of credit or a deposit account at a bank, then OLC will direct the BPP and/or the Financial Responsibility Unit to coordinate the transfer of the letter of credit funds into the standby trust account, or perform the steps necessary to ensure that the financial assurance mechanism is not lost or compromised by the bankruptcy.
  - ii. If the funds are in a bank deposit account, then OLC, in consultation with the AG's Office, will determine whether the Project Manager should withdraw the funds and apply them to Fund 0294 (Removal and Remedial Action Account) or Fund 0458 (Site Operation and Maintenance Account, Hazardous Substance Account) for use as needed at the site and/or to pay the Department's past and/or future costs as authorized pursuant to the underlying document for which the financial assurance was put in place.
  - iii. In consultation with the AG's Office, OLC will evaluate whether further steps may be necessary in the bankruptcy court to ensure that the bankruptcy debtor remains in

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<sup>7</sup> The bankruptcy debtor may be responsible for multiple sites and there may be multiple bankruptcy debtor entities involved in the bankruptcy.

compliance with financial assurance requirements and that the Department does not lose access to any financial assurance funds it is relying on for cleanup, closure, post-closure, or corrective action.

5. OLC will work with Program staff, CRBU, and Accounting to implement the bankruptcy stay by placing a hold on invoicing the bankruptcy debtor and on sending collection letters. OLC will work with Program staff, the BPP, and CRBU to determine whether the CRBS billing status of the site should be changed to "HOLD/LEGAL" and/or the billing classification of the site should be changed to "LEGAL: Bankruptcy notice received." If the bankruptcy concludes, and depending on the outcome of the proceeding, OLC will advise CRBU and Accounting as to whether and how to resume invoicing and sending collection letters to the bankruptcy debtor and/or the next steps for handling the Department's costs.
6. OLC will instruct Accounting on where to deposit bankruptcy proceeds received by the Department and work with Program staff and Accounting to develop an appropriate allocation of bankruptcy proceeds if there are multiple Site Codes related to the bankruptcy debtor. If the bankruptcy distribution is only available as stock in a new entity (e.g., General Motors), OLC will coordinate with the AG's Office to ensure that Accounting has access to an appropriate brokerage account for the Department to receive and sell the stock and disburse the proceeds appropriately.

#### **Accounting Office (Accounting)**

1. At the direction of the BPP and OLC, Accounting will stop sending collection letters to bankruptcy debtors and note the bankruptcy, including to whom collection letters will cease and continue, in the "Special Request" section of the Collection Letter Log. (See DPM-CR-19, "Cost Recovery: Collection Letters," for more information about the Department's collection letter procedures.) Accounting will consult with the BPP and OLC prior to resuming sending collection letters to the bankruptcy debtor.
2. Accounting will work with Program staff and OLC to determine whether and when a new Site Code should be obtained to track the administrative costs associated with the bankruptcy.
3. Accounting will inform the BPP regarding the receipt of bankruptcy proceeds and deposit bankruptcy proceeds into the appropriate account as required

by the court and/or as directed by OLC. If there are multiple Site Codes associated with the bankruptcy debtor, Accounting will work with Program staff and OLC to develop an appropriate allocation of bankruptcy proceeds.

### **Cost Recovery Billing Unit (CRBU)**

1. Upon request, CRBU will generate an SBA Report for all sites associated with the bankruptcy debtor to include in the referral to the AG's Office.
2. At the direction of the BPP and OLC, CRBU will stop issuing invoices to bankruptcy debtors.
  - a. If the bankruptcy debtor is the only billable party for a site, then CRBU will place a hold on invoicing for the entire site. CRBU will change the CRBS billing status of the site to "HOLD/LEGAL" and the billing classification to "LEGAL: Bankruptcy notice received." (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about CRBS statuses and classifications.)
  - b. If the bankruptcy debtor is only one of multiple billable parties for a site, then CRBU will temporarily suspend invoices to the bankruptcy debtor by turning off the print flag for the bankruptcy debtor in the Billable Parties list for that site in CRBS so that the bankruptcy debtor does not continue to receive invoices.
    - i. CRBU will maintain the BILCRU status of the site in CRBS to ensure that invoices are sent to the remaining billable parties. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about CRBS statuses.)
3. CRBU will consult with the BPP and OLC prior to resuming invoicing or sending collection letters to the bankruptcy debtor.

### **Financial Responsibility Unit**

1. The Financial Responsibility Unit will assist the BPP in determining whether the bankruptcy debtor has any financial assurance mechanisms in place and the amount and type of the mechanisms.
2. The Financial Responsibility Unit and the BPP will consult with OLC if the mechanism is a letter of credit or a deposit account at a bank.

3. When directed to do so by OLC, the BPP and/or Financial Responsibility Unit staff will coordinate the transfer of the letter of credit funds into the standby trust account, or perform the steps necessary to ensure that the financial assurance mechanism is not lost or compromised by the bankruptcy.

#### **Enforcement and Emergency Response Division (EERD)**

1. EERD will assist the BPP in determining whether the Department has any actions pending against the bankruptcy debtor.
2. EERD will relay relevant information including, but not limited to, penalties assessed against bankruptcy debtor to the BPP and to OLC.

#### **Office of Criminal Investigations (OCI)**

OCI will assist the BPP in determining whether the Department has any actions pending against the bankruptcy debtor and relay relevant information to the BPP and to OLC.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

<b>Subject:</b> Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations	<b>Number:</b> DPM-CR-25 <sup>1</sup>
	<b>Date Issued:</b> February 20, 2015

**PURPOSE:** The Department’s mission is to protect California’s people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as “response costs.” The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of Department staff with respect to cost recovery. This DPM describes the Department’s procedures for documenting its decision not to pursue billable parties (e.g., project proponents and responsible parties) for costs incurred by the Department in a No Further Cost Recovery Action (NFCRA) Memorandum (DTSC Form 1557).<sup>2</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program Technical and Administrative Project Managers and Hazardous Waste Management Program Project Managers (collectively referred to as “Project Managers”), Unit Supervisors, and Branch Chiefs responsible for concluding that a NFCRA

<sup>1</sup> This DPM supersedes DPM-CR-25, “Cost Recovery: No Further Cost Recovery Action (NFCRA) Determinations” (Nov. 21, 2013).

<sup>2</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department’s general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

determination may be necessary for costs incurred at a site or project.<sup>3</sup> This DPM also applies to Office of Legal Counsel (OLC), Cost Recovery Billing Unit (CRBU),<sup>4</sup> Collections and Resolution Unit (Collections), and Accounting Office (Accounting) staff assisting in making NFCRA determinations and with the development and processing of NFCRA Memoranda.

#### **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- [Health and Safety Code section 25269.8](#)
- [Government Code](#) sections 16580 et seq. and 13940 et seq
- State Administrative Manual (SAM) [chapter 8700](#), section 8776.6
- [Department of Finance, Accounts Receivable Toolkit](#)
- [Cost Recovery Settlement and Judgment Tracking Procedures Memorandum \(Feb. 2015\)](#)
- [Settlement/Judgment Payment Guide \(Feb. 2015\)](#)
- [DTSC Guidance for State Administrative Manual – 8776.6 Nonemployee Accounts Receivable, Accounts Receivables of \\$25 and Under per Debtor](#)
- [DTSC Guidance for State Administrative Manual – 8776.6 Nonemployee Accounts Receivable, Accounts Receivables of \\$500 and Under per Debtor](#)
- [Sample Language for No Further Cost Recovery Action \(NFCRA\) Memoranda \(June 13, 2014\)](#)
- Brownfields and Environmental Restoration (Cleanup Program): SharePoint Site, Administrative Document Collaboration (a.k.a. Collaboration Site) - Document Flow Charts ([Document Flow Charts](#))

#### **PROCEDURES:**

##### **Scope of DPM**

1. A NFCRA determination is usually the last step in the cost recovery process and pursued only when the Department has considered and rejected all other reasonable cost recovery alternatives. A NFCRA Memorandum is used to make adjustments, based on the Department's

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<sup>3</sup> "Site" and "project" are collectively referred to herein as "site." Refer to [DPM-CR-03, "Cost Recovery: Site Code and Project Code Origination](#)," for definitions of "site" and "project."

<sup>4</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

determination regarding the potential (or lack of potential) to recover its costs, to:

- a. Unbilled costs in the Cost Recovery Billing System (CRBS); and/or
- b. Billed costs in CRBS and in California's official accounting system.

**“NFCRA” Definition**

1. For the purposes of this DPM, “NFCRA” refers to a decision not to pursue costs related to a particular site where the Department has considered and rejected all other reasonable cost recovery alternatives.
  - a. Examples of when a NFCRA determination **is required** to make adjustments in CRBS and/or California's official accounting system include, but are not necessarily limited to, when:<sup>5</sup>
    - i. OLC confirms there is a legal basis that may prohibit the Department from recovering its costs.
    - ii. A cost recovery mechanism providing for recovery of the Department's costs does not exist (e.g., if the Department incurs costs negotiating a voluntary agreement that is never executed), and the Department has no other legal basis to recover its costs.
    - iii. The cost of pursuing billable parties to recover the Department's costs exceeds the amount that is potentially recoverable from the billable parties.
    - iv. The Attorney General's Office recommends the Department not pursue a cost recovery claim in federal or state court, and the Department agrees with the recommendation.
  - b. Examples of special circumstances in which a NFCRA determination **may or may not be required** include, but are not necessarily limited to:

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<sup>5</sup> The examples provided in this DPM are not exhaustive, and there may be other circumstances in which a NFCRA Memorandum may be appropriate and necessary to make adjustments in CRBS and/or California's official accounting system based on the Department's determination regarding the potential (or lack of potential) to recover its costs.

- i. **Orphan Sites.** If, after following the procedures outlined in [DPM-CR-08, “Cost Recovery,” Classifying ‘Orphan’ Sites in the Cost Recovery Billing System \(CRBS\)](#),” the Department approves an Orphan Site Designation Memorandum for a site, then a separate NFCRA Memorandum **is not required** to make adjustments in CRBS or California’s official accounting system for costs incurred by the Department related to the “orphan” site. (See [DPM-CR-08, “Cost Recovery,” Classifying ‘Orphan’ Sites in the Cost Recovery Billing System \(CRBS\)](#),” for more information on the orphan designation process.)
- ii. **Settlement Agreements (Settlements) (including Judicial Consent Decrees and Orders) and Judgments**
  1. A NFCRA Memorandum **is not required** to make adjustments in CRBS and/or California’s official accounting system when the Department executes a settlement (including judicial consent decrees and orders) with a billable party or a court enters a judgment against a billable party resolving the billable party’s liability for **all** Department costs (past and future) **and** no other viable billable parties remain. CRBU and/or Accounting may make appropriate adjustments in CRBS and/or California’s official accounting system based on the settlement or judgment itself.
  2. In some circumstances, however, the settlement or judgment may resolve only a portion of a billable party’s liability (e.g., past or future costs) or apply to only one of multiple billable parties for a site. Project Managers will consult with OLC if it is unclear whether a NFCRA is required to adjust costs.
    - a. A NFCRA Memorandum **is not required** to make adjustments in CRBS and/or California’s official accounting system to costs falling **within the scope** of the settlement or judgment. CRBU and/or Accounting may make appropriate adjustments in CRBS and/or

California's official accounting system based on the settlement or judgment itself.

- b. A NFCRA Memorandum **is required** to make adjustments in CRBS and/or California's official accounting system to costs **falling outside** the scope of the settlement or judgment. The Department must consider its reasonable cost recovery alternatives regarding the remaining costs in making a NFCRA determination in this circumstance.

3. Project Managers and CRBU will follow procedures outlined in the [Cost Recovery Settlement and Judgment Tracking Procedures Memorandum \(Feb. 2015\)](#) and [Settlement/Judgment Payment Guide \(Feb. 2015\)](#) to ensure settlements and judgments, and associated payments are tracked in EnviroStor, CRBS, and the [Admin Document Collaboration Site – Admin Doc Library](#).

iii. **Bankruptcies**

1. A NFCRA determination may not be appropriate when one billable party declares bankruptcy and the Department has determined there are other viable billable parties related to the site. The Department must consider cost recovery alternatives regarding the other billable parties. If no other reasonable cost recovery alternatives remain, then a NFCRA determination may be appropriate.
2. If only one billable party exists for a site and all the Department's costs were discharged in a bankruptcy proceeding, then a NFCRA Memorandum **is not required** to make appropriate adjustments in CRBS and/or California's official accounting system. CRBU and, if appropriate, Accounting may make appropriate adjustments in CRBS and/or California's official accounting system based on the bankruptcy discharge itself.

- iv. **Writing off costs of: (1) \$25 and under per debtor or (2) \$500 and under per debtor on sites to be closed in CRBS and which will incur no future costs.**
1. A NFCRA Memorandum **is not required** for the Department to adjust costs of \$25 or less or \$500 or less per debtor on sites to be closed in CRBS and for which the Department will not incur future costs. Department staff will follow procedures outlined in [DPM-CR-13, “Daily Log and Cost Recovery Billing System \(CRBS\) Closure,” DTSC Guidance for State Administrative Manual – 8776.6 Nonemployee Accounts Receivable, Accounts Receivables of \\$25 and Under per Debtor](#), and [DTSC Guidance for State Administrative Manual – 8776.6 Nonemployee Accounts Receivable, Accounts Receivables of \\$500 and Under per Debtor](#) as applicable in order to make adjustments in CRBS and/or California’s official accounting system.

### **NFCRA Determination Process**

#### **1. Triage Meeting**

- a. Upon determining that a NFCRA determination might be appropriate, and prior to drafting a NFCRA Memorandum, Project Managers will follow the steps in the [Document Flow Chart](#) to initiate a Triage Meeting that will include Project Managers, Unit Supervisor, Branch Chief, OLC, and if necessary, CRBU to confirm that all cost recovery alternatives have been evaluated and/or exhausted and that an appropriate reason(s) for a NFCRA determination exists.
  - i. Project Managers will schedule an EnviroStor Activity for “Triage Meeting” and send an EnviroStor Work Request to OLC to have an attorney assigned to the site for consultation purposes.
- b. Prior to the Triage Meeting, Project Managers will ensure that documents supporting the potential NFCRA determination are identified as activities and uploaded to EnviroStor, including but not

limited to, settlements (including judicial consent decrees and orders), bankruptcy orders, and Potentially Responsible Party (PRP) Identification Memoranda.

**2. NFCRA Memorandum (DTSC Form 1557) Preparation, Collaboration, Submission, and Approval Process<sup>6, 7</sup>**

- a. A NFCRA Memorandum is an administrative cost recovery document created by using a template in the [Admin Document Collaboration Site - Admin Doc Library](#) and following the processes outlined in the applicable Document Flow Chart for NFCRA determination.
- b. Project Managers will verify that documents supporting the NFCRA determination are identified as activities and uploaded to EnviroStor, including but not limited to, settlements (including consent decrees and orders), bankruptcy orders, and PRP Identification Memoranda.
- c. Project Managers will schedule an EnviroStor Activity for “No Further Cost Recovery Action (NFCRA)” and send an EnviroStor Work Request to OLC to have an attorney assigned to the site to help develop the NFCRA Memorandum.
- d. Program and OLC staff will charge time spent determining whether a NFCRA determination is appropriate for a site and time spent developing, finalizing, and processing a NFCRA Memorandum to Program Cost Account (PCA) Code 11195 (unless otherwise instructed by OLC or a Branch Chief). The “Site-WP” and “Short Site Name” fields should be left blank.
  - i. When using PCA Code 11195, staff will identify the Site Name, Site Code, and the term “NFCRA” in the “Comments” section of the Daily Log to assist the Department in tracking NFCRA costs.

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<sup>6</sup> Sample language for the NFCRA Memorandum can be found in [Sample Language for No Further Cost Recovery Action \(NFCRA\) Memorandum \(June 13, 2014\)](#).

<sup>7</sup> The NFCRA Memorandum is a public document. Confidential information and documents must not be included in or attached to the NFCRA Memorandum, placed in the public file, or uploaded to EnviroStor as public documents.

- ii. If no future costs will be incurred by the Department for the site, Department staff will follow the applicable Document Flow Chart and, as appropriate, [DPM-CR-11, “Cost Recovery: Site Completion,”](#) and [DPM-CR-13, “Cost: Recovery: Daily Log and Cost Recovery Billing System \(CRBS\) Closure.”](#)
- e. The NFCRA Memorandum will include the following non-confidential information:
  - i. **Site Name:** Identify the name of the site that is the subject of the NFCRA Memorandum, as commonly identified in both EnviroStor and CRBS.
  - ii. **Site Code:** Identify the Site Code(s) assigned to the site that is the subject of the NFCRA Memorandum.
  - iii. **Billable Party(ies):** Identify the name of the billable party(ies) for the site, as identified in the CRBS Billable Parties Report.
  - iv. **Site Address:** Identify the physical address of the site that is the subject of the NFCRA Memorandum.
  - v. **Reason for the NFCRA Decision:** This section will include the following:
    - 1. A detailed explanation of the Department’s cost recovery efforts related to the site. For example, this explanation should include information regarding all settlements, consent decrees, judgments, liens, and other documents and activities related to the Department’s cost recovery efforts. If the basis for the decision is that there are no PRPs, include a confirmation that a PRP search was performed. ([See DPM-CR-07, “Cost Recovery: Potentially Responsible Party \(PRP\) Searches,”](#) for more information about PRP searches.)
      - i. An explanation of why it is not reasonable or cost effective for the Department to undertake further cost recovery efforts with respect to the costs covered by the NFCRA Memorandum.

ii. For **unbilled** costs, or costs for which the Department has not otherwise made a demand to the billable party(ies), also explain why the costs are unbilled or invoices were not sent and why it would not be productive to engage in further cost recovery efforts. The fact that costs were never billed is not itself a sufficient basis for a NFCRA determination.

iii. For **billed** costs, or costs for which the Department has made a demand to the billable party(ies), also describe whether three collection letters were sent for each unpaid invoice and why it would not be productive to engage in further cost recovery efforts. If three collection letters were not sent, explain why collection letters were not sent and why it would not be productive to send the collection letters.

2. A conclusory statement as to why the decision is appropriate with respect to the costs covered by the NFCRA Memorandum.

vi. **Site Description:** Include information on the address of the site, and a brief description of the business that operated or activities that were conducted on the property.

vii. **Description of Department Response Actions:** Provide a brief description of the response actions conducted by the Department that form the basis for the costs that are the subject of the NFCRA Memorandum and the current status of the Department's remediation efforts. Information regarding whether the Department may incur costs in the future related to the site should also be included.

viii. **Period Covered by NFCRA Decision:** Provide the time period (month/year to month/year) covered by the NFCRA Memorandum. The dates should coincide with the dates the costs were incurred by the Department.

- ix. **Total Amount Not to be Pursued:** Provide the total amount of billed and unbilled costs that will be adjusted in either CRBS and/or California's official accounting system as a result of the NFCRA Memorandum.
1. Project Managers will utilize the following CRBS reports to determine the total amount not to be pursued:<sup>8</sup>
    - i. Cost Detail Report;
    - ii. Summary By Activity (SBA) Report;
    - iii. Incurred vs Invoiced Charges Report; and/or
    - iv. Invoice Balance Report.
  2. For billed costs, Project Managers will identify the Invoice Numbers covered by the NFCRA Memorandum.
  3. Project Managers may check the box indicating that "all associated interest is to be included in total amount not to be pursued." Checking this box allows CRBU to independently adjust additional interest charges that may have accrued on the costs covered by the NFCRA Memorandum.
- x. **Source of Cost Data:** Identify the source of the cost data that is the subject of the NFCRA Memorandum and the CRBS reports (identified above) used to calculate the total amount of costs not to be pursued.
- xi. **Department Collection Activities:** Project Managers will review all available files and databases and will check the appropriate boxes for all "collection activities" that were performed by the Department.
- xii. **Attachments:** If a reason for the NFCRA determination is that the applicable statute of limitations has likely expired,

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<sup>8</sup> If cost data is obtained from a report or source that is not listed on the NFCRA Memorandum, Project Managers will identify the name of the report or source in the NFCRA Memorandum.

then Project Managers will attach a copy of the statutory provision describing the statute of limitations.<sup>9</sup> Copies of applicable statutory provisions are available on the [Cost Recovery Policies and Procedures SharePoint site](#).

- f. Before considered final, the NFCRA Memorandum must be reviewed and signed by the OLC, Unit Supervisor and Branch Chief (the Deputy Director must sign NFCRA amounts of \$1 million and above). The Branch Chief/Deputy Director is the final approval authority.

### 3. Post-NFCRA Determination Approval Procedures

- a. Project Managers will follow the Document Flow Chart for NFCRA determination and ensure the final copy is routed and filed as follows:
  - i. Upload a PDF copy of the approved NFCRA Memorandum to the Admin Document Collaboration Site - Admin Doc Library;
  - ii. Upload a copy of the approved NFCRA Memorandum to the EnviroStor public profile for the site; and
  - iii. Place a hardcopy of the approved NFCRA Memorandum in the public file for the site.
- b. Upon receipt of an approved NFCRA Memorandum via the Admin Document Collaboration Site - Admin Doc Library, CRBU and Accounting will perform the following tasks as applicable:<sup>10</sup>
  - i. **Unbilled Costs.** CRBU will make the appropriate adjustments to unbilled costs in CRBS.
  - ii. **Billed Costs.** CRBU will make appropriate adjustments to billed costs in CRBS.

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<sup>9</sup> The State Controller's Office requires that a copy of the relevant statutory provision(s) be attached if a discharge of accountability is due to the expiration of the applicable statute of limitations. See the [Sample Language for No Further Cost recovery Action \(NFCRA\) Memoranda \(June 13, 2014\)](#) for examples of sample language when referencing statutory provisions.

<sup>10</sup> Adjustments of costs will apply regardless of whether a lien has been recorded for the site.

1. CRBU will draft and send an adjustment memorandum to Accounting regarding the billed costs to be adjusted in California's official accounting system.
  2. Accounting will adjust billed costs in California's official accounting system in accordance with the instructions outlined in the adjustment memorandum.
- iii. If a discrepancy exists between the costs described in the NFCRA Memorandum and the costs as reported in CRBS, then CRBU will follow the Document Flow Chart for NFCRA determination to perform the following tasks:
1. If the discrepancy is a result of the imposition of additional interest charges related to the costs covered by the NFCRA Memorandum **and** the box on the NFCRA Memorandum indicating that "all associated interest is to be included in the amount not to be pursued" **is checked**, then the CRBU analyst will also adjust the interest associated with the costs covered by the NFCRA Memorandum.
  2. If the discrepancy is unrelated to the imposition of additional interest charges related to the costs covered by the NFCRA Memorandum **or** the box on the NFCRA Memorandum indicating that "all associated interest is to be included in the amount not to be pursued" **is not checked**, then the CRBU analyst will consult with Collections to resolve the discrepancy. Any changes to the total amount subject to the NFCRA determination and to be adjusted in CRBS and/or California's official accounting system will be handwritten on the NFCRA Memorandum and initialed by the CRBU or Collections staff person authorizing the change.
- iv. Once adjustments are complete, CRBU will indicate that the NFCRA Memorandum was processed in the CRBS notes for the site and in the Admin Document Collaboration Site –

Admin Doc Library. CRBU will upload a copy of the NFCRA Memorandum to both systems.

## **ROLES AND RESPONSIBILITIES:**

### **Project Managers**

As discussed in the NFCRA procedures outlined above Project Managers will:

1. Initiate and participate in a Triage Meeting (if necessary) with the Unit Supervisor, Branch Chief, OLC, and if necessary, CRBU to determine whether a NFCRA determination is appropriate for a site.
  - a. Schedule a Triage Meeting activity in EnviroStor and submit an EnviroStor Work Request to OLC to request an attorney to participate in the Triage Meeting.
  - b. Prior to the Triage Meeting, verify that documents relevant to and supporting the NFCRA determination are uploaded to EnviroStor, including but not limited to, settlements (including judicial consent decrees and orders), bankruptcy orders, and PRP Identification Memoranda.<sup>11</sup>
2. Schedule a NFCRA activity in EnviroStor and submit an EnviroStor Work Request to OLC to have an attorney assigned to the site to assist with the NFCRA determination process once a decision is made to pursue a NFCRA determination.
3. Coordinate with the Unit Supervisor, Branch Chief, and OLC to determine the availability of resources for collecting necessary information, and designate the staff responsible for obtaining information required to document the NFCRA determination.
4. Develop and finalize the NFCRA Memorandum following the applicable Document Flow Chart for NFCRA determination.
5. Close any Work Phases that no longer apply to the site in the Daily Log pursuant to [DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery"](#)

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<sup>11</sup> The NFCRA Memorandum is a public document. Confidential information and documents must not be included in or attached to the NFCRA Memorandum placed in the public file, or uploaded to EnviroStor as public documents.

[Billing System \(CRBS\) Closure](#),” and the associated Document Flow Chart.

6. Obtain OLC, Unit Supervisor, Branch Chief, and Deputy Director’s (Deputy Director signature required on NFCRA determinations of \$1 million and above) approval of, and signatures on, the final NFCRA Memorandum.
7. Once approved, follow the Document Flow Chart for NFCRA determination and ensure the final copy is routed and filed as follows:
  - a. Upload a PDF copy of the approved NFCRA Memorandum to the Admin Document Collaboration Site - Admin Doc Library;
  - b. Upload a copy of the approved NFCRA Memorandum to the EnviroStor public profile for the site; and
  - c. Place a hardcopy of the approved NFCRA Memorandum in the public file for the site.
8. Charge time spent consulting on NFCRA determinations and time spent developing, finalizing, and processing a NFCRA Memorandum to PCA Code 11195 (unless otherwise instructed by OLC or the Branch Chief). Include the Site Name, Site Code and the term NFCRA in the comments section of the Daily Log entry.

#### **Unit Supervisor and Branch Chief/Deputy Director**

As discussed in the NFCRA procedures outlined above the Unit Supervisor, Branch Chief, and Deputy Director (if required) will:

1. Participate in a Triage Meeting with the Project Manager, OLC, and if necessary, CRBU to determine whether a NFCRA determination is appropriate and work with the Project Manager to develop and finalize the NFCRA Memorandum.
2. Coordinate with the Project Manager and OLC to determine the availability of resources for collecting necessary information, and designate the staff responsible for obtaining information required to document the NFCRA determination.
3. Review, approve, and sign the NFCRA Memorandum once approved and signed by OLC. The Program Deputy Director must review, approve and sign NFCRA Memoranda for \$1 million and above.

4. Charge time spent consulting on NFCRA determinations and time spent developing, finalizing, and processing the NFCRA Memorandum to PCA Code 11195 (unless otherwise instructed by OLC or the Branch Chief). Include the Site Name, Site Code and the term NFCRA in the comments section of the Daily Log entry.

### **Office of Legal Counsel (OLC)**

As discussed in the NFCRA procedures outlined above, OLC will:

1. Upon receipt of an EnviroStor Work Request, participate in a Triage Meeting with Project Managers, Unit Supervisor, and Branch Chief, and if necessary, CRBU, to determine whether a NFCRA determination is appropriate for a site. Once the Triage Meeting activity is concluded, OLC will close out the EnviroStor Work Request related to the activity.
2. Once a decision is made to pursue a NFCRA determination and upon receipt of an EnviroStor Work Request, assist Program staff with the NFCRA process.
3. Coordinate with Project Managers, Unit Supervisor, and Branch Chief to determine the availability of resources for collecting necessary information, and designate the staff responsible for obtaining information required to document the NFCRA determination.
4. Work with Project Managers to revise and finalize the NFCRA Memorandum in the Admin Document Collaboration Site - Admin Doc Library. OLC will ensure that no confidential information is attached to, or included in, the NFCRA Memorandum.
5. Once finalized, sign and email the approved NFCRA Memorandum as a PDF to Project Managers for Unit Supervisor, Branch Chief, and Deputy Director (if required) approval. OLC will close out the EnviroStor Work Request related to the activity.
6. Charge time spent consulting on NFCRA determinations and time spent developing, finalizing, and processing the NFCRA Memorandum to PCA Code 11195 (unless otherwise instructed by OLC or a Branch Chief). Include the Site Name, Site Code and the term NFCRA in the comments section of the Daily Log entry.

## **Cost Recovery Billing Unit (CRBU)**

As discussed in the NFCRA procedures outlined above, CRBU will:

1. Upon request, participate in a Triage Meeting with Program staff and OLC to determine whether a NFCRA determination is appropriate for a site.
2. Upon request, generate a Summary by Activity (SBA) Report for costs that are the subject of the NFCRA Memorandum.
3. Upon receipt of the approved NFCRA Memorandum from Project Managers, make appropriate adjustments to unbilled and billed costs in CRBS. Adjustments of costs will apply regardless of whether a lien has been recorded for the site.
  - a. If the box **is checked** on the NFCRA Memorandum indicating that “all associated interest is to be included in the amount not to be pursued”, then the CRBU analyst will also adjust the interest associated with the costs covered by the NFCRA Memorandum.
  - b. If a discrepancy in costs is unrelated to the imposition of additional interest charges or the box on the NFCRA Memorandum indicated that “all associated interest is to be included in the amount not to be pursued” **is not checked**, then the CRBU analyst will consult with Collections to resolve the discrepancy. Any changes to the total amount subject to NFCRA determinations and to be adjusted in CRBS and/or California’s official accounting system will be handwritten on the NFCRA Memorandum and initialed by the CRBU or Collections staff person authorizing the change.
  - c. CRBU will record any changes made to the amount in the Admin Document Collaboration Site - Admin Doc Library and in the CRBS notes for the site.
4. If billed costs are affected by the NFCRA Memorandum, draft and send an adjustment memorandum to Accounting regarding the billed costs to be adjusted in California’s official accounting system.
5. Once adjustments are complete, indicate that the NFCRA Memorandum was processed in the CRBS notes for the site and in the Admin Document Collaboration Site – Admin Doc Library. CRBU will upload a copy of the NFCRA Memorandum to both systems.

### **Collections and Resolutions Unit (Collections)**

As discussed in the NFCRA procedures outlined above, Collections will work with CRBU to resolve discrepancies between costs in the NFCRA Memorandum submitted to CRBU for processing and costs as reported in CRBS. Any changes to the total amount subject to a NFCRA determination and to be adjusted in CRBS and/or California's official accounting system will be handwritten on the NFCRA Memorandum and initialed by the CRBU or Collections staff person authorizing the change.

### **Accounting Office (Accounting)**

As discussed in the NFCRA procedures outlined above, Accounting will make appropriate accounts receivable adjustments to billed costs in California's official accounting system upon receipt of an adjustment memorandum from CRBU. Adjustments of costs will apply regardless of whether a lien has been recorded for the site.

### **Fiscal Systems Unit (FSU)**

As discussed in the NFCRA procedures outlined above, FSU will process the Cost Recovery Billing System (CRBS) Closure Request (DTSC Form 1554) to close any Work Phases in the Daily Log pursuant to the procedures outlined in [DPM-CR-13, "Cost Recovery: Daily Log and Cost Recovery Billing System \(CRBS\) Closure."](#)

**CONTACTS:** Please see the [Contact Links](#) for information on staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the [Cost Recovery Policies and Procedures](#) SharePoint page.

/s/  
Terri Hardy

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Terri Hardy  
Special Assistant for Program Review

/s/  
Reed Sato

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Reed Sato, Chief Counsel  
Office of Legal Affairs

/s/  
Stewart W. Black

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Stewart W. Black, Deputy Director  
Brownfields and Environmental Restoration Program

/s/  
Miriam Barcellona Ingenito for

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Barbara A. Lee, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Cost Recovery  
Referrals to the Office of Legal  
Counsel (OLC)

**Number:**

DPM-CR-26

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**Date Issued:**

November 21, 2013

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM describes the Department's procedures for referring sites to the Office of Legal Counsel to file a cost recovery action against or initiate settlement negotiations with billable parties (e.g., project proponents or responsible parties) for the Department's response costs.<sup>1</sup>

**APPLICABILITY:** This DPM applies to Cleanup Program and Hazardous Waste Management Program (collectively referred to as "Program") and Office of Legal Counsel (OLC) staff evaluating sites with unpaid response costs to file a cost recovery action against or initiate settlement negotiations with billable parties for the Department's response costs. This DPM also applies to Collections and Resolution Unit (Collections), Cost Recovery Billing Unit (CRBU),<sup>2</sup> Accounting

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

Office (Accounting), Financial Responsibility Unit, Contracts and Business Services Branch (Contracts), Fiscal Systems Unit (FSU), and Grants and Program Support Branch (Grants) staff assisting with the cost recovery referral process or providing documentation supporting the Department's response costs.

#### **AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.
- Part 300 of title 40 of the Code of Federal Regulations (National Oil and Hazardous Substances Pollution Contingency Plan)
- Health and Safety Code sections 25187 and 25300 et seq.
- EO-94-004-MM, "Identification of the Administrative Record" (Aug. 1994)<sup>3</sup>

#### **PROCEDURES:**

##### **Program Project Managers and Branch Liaisons**

1. Prior to making a referral to OLC to file a cost recovery action against or initiate settlement negotiations with billable parties for the Department's response costs, the Project Manager and/or Branch Liaison will follow the procedures outlined in DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)," to complete and submit DTSC Form 1479 to Collections and assist in the development of a coordinated plan for future cost recovery efforts.<sup>4</sup>
2. After discussing DTSC Form 1479, if the Project Manager and/or Branch Liaison, Collections, and OLC agree that a referral to OLC to file a cost recovery action against or initiate settlement negotiations with billable

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<sup>3</sup> This DPM complements the Department's Management Memo #EO-94-004-MM, "Identification of the Administrative Record" (Aug. 1994). A link to EO-94-004-MM is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and EO-94-004-MM, Department staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating EO-94-004-MM and staff will be notified when the updated policy is issued.

<sup>4</sup> There may be additional circumstances that fall outside the DTSC Form 1479 process that warrant a referral to OLC for a cost recovery evaluation. Program staff and/or Collections should contact OLC to discuss whether a cost recovery referral may be appropriate. However, a DTSC Form 1479 may still be required in connection with the potential cost recovery referral to facilitate OLC's analysis of the site.

parties is appropriate, then the Project Manager and/or Branch Liaison will:

- a. Make sure that the EnviroStor profile for the site is fully up to date and that all relevant documents are uploaded.
- b. Submit an EnviroStor Work Request to OLC requesting assistance with a cost recovery referral to file a cost recovery action against or initiate settlement negotiations with billable parties for the Department's response costs.
- c. After an OLC attorney is assigned to the work request, contact the assigned attorney to discuss preparation of the cost recovery referral package, including what documents the attorney and Project Manager and/or Branch Liaison deem necessary to include as attachments to the "Office of Legal Counsel (OLC) Cost Recovery Referral Memorandum" (OLC Referral Memorandum). A link to the model OLC Referral Memorandum is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  - i. The model OLC Referral Memorandum contains a list of "Supporting Documentation" that the Project Manager and/or Branch Liaison should consider including as attachments to the cost recovery referral. The list of documents identified as "Supporting Documentation," however, is not exclusive, and the Project Manager, Branch Liaison, and OLC should consider what additional documents should be included as attachments to the OLC Referral Memorandum to facilitate OLC's analysis of the site to determine whether to file a cost recovery action against or initiate settlement negotiations with billable parties for the Department's costs.
- d. Work with other units to gather the documents necessary to initiate settlement negotiations with billable parties or refer the site to the Attorney General's (AG's) Office to file a cost recovery action.
- e. Prepare a referral package utilizing the model OLC Referral Memorandum as a cover document for the referral and send the referral package, including supporting documents, to the assigned attorney.

- i. The Project Manager or Branch Liaison will complete all sections of the OLC Referral Memorandum, providing OLC with detailed information regarding the site to facilitate OLC's evaluation of the site, including a summary of the Department's evidence establishing the liability of billable parties for the Department's response costs. Documents supporting the liability of billable parties for the Department's response costs (e.g., title search reports demonstrating ownership of site, hazardous waste manifests demonstrating that the billable party arranged for the disposal of waste at the site) must be attached to the OLC Referral Memorandum.
    - ii. For each supporting document identified in the OLC Referral Memorandum, the Project Manager or Branch Liaison will indicate whether the document is attached to the memorandum or available electronically on EnviroStor.
  - f. Review Daily Logs for the site to ensure that all charges are accurate and appropriate and that no confidential information is contained in the Daily Log descriptions.
  - g. Work with OLC and Collections to analyze the cost recovery potential of the site, provide additional documents and information to OLC to facilitate its evaluation of the site, and perform any other tasks necessary for the Department to maximize its cost recovery potential with respect to the site.
- 3. If the assigned attorney and the Project Manager and/or Branch Liaison agree that the site should be referred to the AG's Office to file a cost recovery action against billable parties for the Department's response costs, then the Project Manager and/or Branch Liaison will assist the attorney in developing the referral in accordance with the procedures outlined in DPM-CR-27, "Cost Recovery: Cost Recovery Referrals to the Attorney General's (AG's) Office."
  - a. The Project Manager and Branch Liaison will consult with the assigned attorney regarding the tasks outlined in DPM-CR-27, "Cost Recovery: Cost Recovery Referrals to the Attorney General's (AG's) Office," to facilitate the referral to the AG's Office (e.g., compiling the administrative record, reviewing the site file, and collecting supporting documentation from appropriate units).

4. The Project Manager and Branch Liaison will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs. The Project Manager and Branch Liaison will also work with OLC to implement the litigation hold by notifying appropriate Department staff regarding the litigation hold and, if necessary, collecting and maintaining site-related documents.

#### **Office of Legal Counsel (OLC)**

1. As necessary, OLC will work with Collections and Program staff to develop a coordinated plan for future cost recovery efforts after the submission of DTSC Form 1479 by the Project Manager or Branch Liaison. (See DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)," for more information about the DTSC Form 1479 process.)
2. After receipt of an EnviroStor Work Request regarding a cost recovery referral, the assigned attorney will coordinate with the Project Manager and/or Branch Liaison regarding the information and documents that should be submitted with the OLC Referral Memorandum.
  - a. The model OLC Referral Memorandum contains a list of "Supporting Documentation" that the Project Manager or Branch Liaison should consider including as attachments to the cost recovery referral. A link to the model OLC Referral Memorandum is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. The list of documents identified as "Supporting Documentation," however, is not exclusive, and the Project Manager, Branch Liaison, and OLC should consider what additional documents should be included as attachments to the OLC Referral Memorandum to facilitate OLC's analysis of the site to determine whether to file a cost recovery action against or initiate settlement negotiations with billable parties for the Department's response costs.
3. The assigned attorney will work with necessary Department staff to collect additional information and documents necessary to formulate a recommendation as to the specific cost recovery efforts that should be taken by the Department.

4. The assigned attorney will evaluate the information and documents submitted with the OLC Referral Memorandum and work with Program staff and, if necessary, Collections to formulate a recommendation regarding whether to conduct settlement negotiations with the billable party or refer the site to the AG's Office to file a cost recovery action.
5. If the assigned attorney and Program staff agree that the site should be referred to the AG's Office to file a cost recovery action against billable parties for the Department's response costs, then the attorney will follow the procedures outlined in DPM-CR-27, "Cost Recovery: Cost Recovery Referrals to the Attorney General's (AG's) Office," to complete the referral.
  - a. The assigned attorney will implement a litigation hold for the site or, if one was previously implemented, send out a litigation hold update to appropriate Department staff.<sup>5</sup> The assigned attorney will also implement the litigation hold in the Proofpoint archive.
    - i. The assigned attorney, in consultation with the Project Manager and/or Branch Liaison, will identify all employees that have worked on the site and notify them of their obligation to preserve all relevant records (hardcopy and electronic (e.g., Word documents and emails)) as evidence. If necessary, the assigned attorney will direct Department staff to forward relevant records to the Project Manager or Branch Liaison to review.
    - ii. The assigned attorney will contact appropriate administrative units (e.g., CRBU, Accounting, Collections, FSU, Financial Responsibility Unit, Grants, Contracts) to notify them of the litigation hold.
    - iii. The assigned attorney will also contact the file room employees for the regional office that maintains the hardcopy file to notify file room staff of the litigation hold.
  - b. The assigned attorney will consult with the Project Manager and/or Branch Liaison regarding the tasks outlined in DPM-CR-27, "Cost

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<sup>5</sup> A litigation hold should be issued by the assigned attorney as soon as litigation is reasonably anticipated, which may be earlier than when OLC receives an OLC Referral Memorandum from Program staff.

Recovery: Cost Recovery Referrals to the Attorney General's (AG's) Office," to facilitate the referral process (e.g., compiling the administrative record, reviewing the site file, and collecting supporting documentation from appropriate units).

6. As necessary, the assigned attorney will communicate with CRBU regarding the proper Cost Recovery Billing System (CRBS) billing status and classification to be assigned to the site and whether invoices to billable parties should be issued or placed on hold for the site in light of the Department's cost recovery plan for the site. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about CRBS billing statuses.)
  - a. The assigned attorney will consider whether the CRBS billing classification of "HOLD/LEGAL" is appropriate for the site. The "HOLD/LEGAL" billing status indicates that invoicing for the site has been placed on hold because OLC is handling negotiations, litigation, or other matters concerning the site. OLC approval is required to change the CRBS billing status to "HOLD/LEGAL."
  - b. Regardless of the CRBS billing status for the site, the assigned attorney will consider whether the CRBS billing classification of the site should be changed to: "LEGAL: Referred to AG"; "LEGAL: Settlement negotiation in process"; or "LEGAL: Litigation in process."
7. As necessary, the assigned attorney will determine whether collection letters to billable parties for the site should be placed on hold in light of the Department's cost recovery plan for the site. The assigned attorney will notify Accounting if collection letters to billable parties for the site should be placed on hold. Collection letters will automatically cease if invoices for the site are placed on hold due to a change in CRBS billing status. (See DPM-CR-19, "Cost Recovery: Collection Letters," for more information about the collection letter process.)

### **Collections and Resolution Unit (Collections)**

1. Upon receipt of the DTSC Form 1479 from Program staff, Collections will comply with the procedures outlined in DPM-CR-20, "Cost Recovery: 'Site and Collection Activities Summary' (DTSC Form 1479)," to initiate discussions with Program staff and OLC regarding further cost recovery efforts.

2. Collections will work with Program staff and OLC to implement the Department's coordinated plan for cost recovery. Collections will consult with and include Program staff and OLC in discussions regarding future cost recovery efforts and copy Program staff and OLC on any related correspondence.
3. Upon request, Collections will provide Program staff with documentation supporting the cost recovery referral to OLC. Documents include, but are not limited to, copies of approved No Further Cost Recovery Action (NFCRA) Memoranda, payment agreements and related documentation, ability-to-pay documentation, and invoice dispute documentation. Collections will consult with Program staff regarding whether the documents should be provided in electronic or hardcopy format.
4. Collections will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs.

#### **Cost Recovery Billing Unit (CRBU)**

1. CRBU will communicate with Program staff and OLC regarding the proper CRBS billing status and classification to be assigned to the site and whether invoices to billable parties should be placed on hold for the site in light of the Department's cost recovery plan for the site. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about CRBS billing statuses.)
2. Upon request, CRBU will provide Program staff and/or OLC with documentation and information supporting the cost recovery referral to OLC. Documents and information include, but are not limited to: the date when costs first began to accrue; the date of the first invoice and to whom the invoice was issued; the total amount of costs billed/unbilled in CRBS; a copy of the most recent billing package, including the most recent invoice; payments received; the Summary By Activity (SBA) Report; and CRBS reports. CRBU will consult with Program staff and OLC regarding whether the documents and information should be provided in electronic or hardcopy format.
3. If the assigned attorney and Program staff agree that the site should be referred to the AG's Office to file a cost recovery action against billable parties for the Department's response costs, then CRBU may need to

provide records identified on the Site Cost Documentation Checklist in accordance with the procedures outlined in DPM-CR-27, "Cost Recovery: Cost Recovery Referrals to the Attorney General's (AG's) Office," to support the cost recovery action.

4. CRBU will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs.

#### **Accounting Office (Accounting)**

1. Accounting will consult with Program staff, OLC, and/or Collections to stop issuing collection letters, if appropriate. (See DPM-CR-16, "Cost Recovery: Invoicing," and DPM-CR-19, "Cost Recovery: Collection Letters," for more information about CRBS billing statuses and the collection letter process.)
2. Upon request, Accounting will provide Program staff and/or OLC with documentation supporting the cost recovery referral to OLC. Documents include, but are not limited to, collection letters, timesheets, Daily Logs, and Travel Expense Claims (TECs). Accounting will consult with Program staff and/or OLC regarding whether the documents should be provided in electronic or hardcopy format.
3. Accounting will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs.

#### **Financial Responsibility Unit, Contracts and Business Services Branch (Contracts), Fiscal Systems Unit (FSU), and Grants and Program Support Branch (Grants)**

1. Upon request, the Financial Responsibility Unit, Contracts, FSU, and Grants will: (1) provide Program staff and/or OLC with documentation supporting the cost recovery referral to OLC; and (2) consult with Program staff and/or OLC regarding whether the documents should be provided in electronic or hardcopy format.
2. Grants, Contracts, FSU, and the Financial Responsibility Unit will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director



## DEPARTMENTAL PROCEDURES MEMORANDUM

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**Subject:**

Cost Recovery: Cost Recovery  
Referrals to the Attorney General's  
(AG's) Office

**Number:**

DPM-CR-27

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**Date Issued:**

November 21, 2013

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**PURPOSE:** The Department's mission is to protect California's people and environment from the harmful effects of hazardous substances, in part, through the restoration of contaminated resources. In fulfilling its mission, the Department incurs costs overseeing the investigation and cleanup of contaminated sites (oversight costs) and may also incur costs performing investigation and/or cleanup activities itself (cleanup costs). The oversight, cleanup, and other costs incurred by the Department are collectively known as "response costs." The Department is authorized to recover its response costs from responsible parties.

In developing various Departmental Procedures Memoranda (DPMs), the Department seeks to maximize its recovery of response costs by defining the roles and responsibilities of all Department staff with respect to cost recovery. This DPM describes the Department's procedures for referring a site to the Attorney General's Office to file a cost recovery action against responsible parties for the Department's response costs.<sup>1</sup>

**APPLICABILITY:** This DPM applies to Office of Legal Counsel (OLC) staff referring a site to the Attorney General's (AG's) Office to initiate a cost recovery action against responsible parties for the Department's response costs. This DPM also applies to Cleanup Program and Hazardous Waste Management Program (collectively referred to as "Program"), Cost Recovery Billing Unit (CRBU),<sup>2</sup> Accounting Office (Accounting), Collections and Resolution Unit (Collections), Grants and Program Support Branch (Grants), Contracts and Business Services Branch (Contracts), Fiscal Systems Unit (FSU), and Financial

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<sup>1</sup> This DPM is not a rule and does not create any legal obligations on behalf of the Department. This DPM outlines the Department's general procedures with respect to the subject area addressed herein. There may be site-specific circumstances that require Department staff to deviate from these procedures, and the extent to which the Department applies this DPM may depend on the facts of each case. Department staff should consult with their immediate supervisors if they have questions regarding the applicability of this DPM to their site.

<sup>2</sup> The Cost Recovery Billing Unit (CRBU) was formerly known as the Cost Recovery Unit (CRU).

Responsibility Unit staff assisting with the cost recovery referral process or providing documentation supporting the Department's response costs.

**AUTHORITIES, POLICIES, PROCEDURES, AND GUIDANCE:**

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.
- Part 300 of title 40 of the Code of Federal Regulations (National Oil and Hazardous Substances Pollution Contingency Plan (NCP))
- Health and Safety Code sections 25187 and 25300 et seq.
- EO-94-004-MM, "Identification of the Administrative Record" (Aug. 1994)<sup>3</sup>

**PROCEDURES:**

**Office of Legal Counsel (OLC)**

1. Pursuant to DPM-CR-26, "Cost Recovery: Cost Recovery Referrals to the Office of Legal Counsel (OLC)," Program staff is required to submit an "Office of Legal Counsel (OLC) Cost Recovery Referral Memorandum" (OLC Referral Memorandum) to OLC to evaluate whether the Department should file a cost recovery action against or initiate settlement negotiations with billable parties (e.g., project proponents or responsible parties).
2. If, after reviewing the OLC Referral Memorandum and consulting with Program and, if necessary, Administrative Services staff, the assigned attorney determines that a site should be referred to the AG's Office to file a cost recovery action against responsible parties for the Department's response costs, the assigned attorney will perform the following tasks:
  - a. The assigned attorney will implement a litigation hold for the site or, if one was previously implemented, send out a litigation hold update

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<sup>3</sup> This DPM complements the Department's Management Memo #EO-94-004-MM, "Identification of the Administrative Record" (Aug. 1994). A link to EO-94-004-MM is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. In the event of a conflict between the procedures outlined in this DPM and EO-94-004-MM, Department staff is instructed to follow the procedures outlined in this DPM. The Department is in the process of updating EO-94-004-MM and staff will be notified when the updated policy is issued.

to appropriate Department staff.<sup>4</sup> The assigned attorney will also implement the litigation hold in the Proofpoint archive.

- i. The assigned attorney, in consultation with the Project Manager and/or Branch Liaison, will identify all employees that have worked on the site and notify them of their obligation to preserve all relevant records (hardcopy and electronic (e.g., Word documents and emails)) as evidence. If necessary, the assigned attorney will direct Department staff to forward relevant records to the Project Manager or Branch Liaison to review.
  - ii. The assigned attorney will contact appropriate administrative units (e.g., CRBU, Accounting, Collections, FSU, Financial Responsibility Unit, Grants, Contracts) to notify them of the litigation hold.
  - iii. The assigned attorney will also contact the file room employees for the regional office that maintains the hardcopy file to notify file room staff of the litigation hold.
- b. The assigned attorney will draft a confidential memorandum regarding the site that includes the following information:
- i. Site background, including, but not limited to, the history of hazardous substances use and releases or threatened releases at the site, response actions taken by the Department at the site, and the current site status.
  - ii. Identification and description of potentially responsible parties (PRPs), including a summary of the Department's evidence establishing the liability of the PRPs for the Department's response costs.
  - iii. Previous cost recovery efforts pursued by the Department.
  - iv. Authority for recovery of the Department's costs.

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<sup>4</sup> A litigation hold should be issued by the assigned attorney as soon as litigation is reasonably anticipated, which may be earlier than when OLC receives an OLC Referral Memorandum from Program staff.

- v. A discussion of potential legal obstacles that may impact the Department's ability to recover its response costs, including, but not limited to, viability of PRPs (e.g., bankruptcy), statute of limitations, and compliance with the NCP.
  
- c. The assigned attorney will circulate the draft confidential memorandum to: (1) appropriate Program staff (e.g., Project Manager, Branch Liaison, Unit Chief, and/or Branch Chief); and (2) the assigned attorney's supervisor for review and approval.
  
- d. Upon approval of the confidential memorandum by Program staff and the assigned attorney's supervisor, the assigned attorney will prepare a referral package to the AG's Office utilizing the model "Attorney General (AG) Cost Recovery Referral Transmittal Memorandum" (AG Referral Transmittal Memorandum) as a cover document for the referral. A link to the model AG Referral Transmittal Memorandum is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  
- i. The assigned attorney will review the "Supporting Documentation" checklist contained in the OLC Referral Memorandum and determine what additional documents should be provided in connection with the referral to the AG's Office. The assigned attorney will work with Program staff to collect additional supporting documentation and include the documents as part of the referral package. An "Index of Supporting Documentation" must be included in the referral package.
  - 1. The assigned attorney will ensure that documents supporting the liability of each PRP are attached to the AG Referral Transmittal Memorandum. Documents include, but are not limited to, title search reports demonstrating site ownership, and hazardous waste manifests demonstrating that the PRP arranged for the disposal of waste at the site.
  
- ii. The assigned attorney will contact CRBU and request that the CRBU analyst assigned to the site begin collecting cost documentation related to the site. The assigned attorney will

provide CRBU with the site name, Site Code, and years for which cost documentation is required.

1. A list of cost documents collected by CRBU is available on CRBU's Site Cost Documentation Checklist. A link to the Site Cost Documentation Checklist is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
  2. CRBU will need at least six weeks to prepare the cost documentation necessary to support the Department's cost recovery claims.<sup>5</sup> The length of time CRBU requires to collect cost documentation may depend on the volume of cost documents related to the site.
  3. If available, the assigned attorney will attach CRBU site cost documentation to the AG Referral Transmittal Memorandum.
- iii. The assigned attorney, with help from the Project Manager and/or Branch Liaison and Administrative Services staff, may need to retrieve documents sent to archives if needed to support the cost recovery action.
  - iv. The assigned attorney will work with the Project Manager and/or Branch Liaison to contact appropriate units for documents supporting the Department's cost recovery claim.
- e. The assigned attorney will circulate the complete referral package to: (1) appropriate Program staff (e.g., Project Manager, Branch Liaison, Unit Chief, and/or Branch Chief); (2) the assigned attorney's supervisor; and (3) the Office of Legal Affairs Chief Counsel for review and approval.
  - f. Upon review and approval of the referral package, the assigned attorney will:

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<sup>5</sup> Due to the length of time necessary for CRBU to collect cost documentation, the assigned attorney should consider submitting a cost documentation request to CRBU as soon as the attorney anticipates that a referral will be made to the AG's Office to initiate a cost recovery action.

- i. Email and/or mail the complete referral package to the AG's Office for assignment of a Deputy Attorney General.
  - ii. Provide a copy of the referral package to: (1) appropriate Program staff (e.g., Project Manager, Branch Liaison, Unit Chief, and/or Branch Chief); (2) the assigned attorney's supervisor; and (3) the Office of Legal Affairs Chief Counsel's Administrative Assistant.
- g. The assigned attorney will work with the Project Manager and/or Branch Liaison to ensure that the EnviroStor profile for the site is fully up to date and that all relevant documents are uploaded.
- h. The assigned attorney will work with the Project Manager and/or Branch Liaison to make sure the site file is up to date, organized in chronological order, and all privileged and confidential information is segregated and maintained in a separate file.
  - i. It is the Project Manager's and/or Branch Liaison's responsibility to conduct the initial file review.
  - ii. The assigned attorney will review the file after the Project Manager and/or Branch Liaison completes the initial file review.
- i. The assigned attorney will work with the Project Manager and/or Branch Liaison to ensure that the administrative record for the site is compiled in accordance with Management Memo #EO-94-004-MM, "Identification of the Administrative Record" (Aug. 1994). A link to EO-94-004-MM is available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>.
- i. If the Department's site-related activities are ongoing, then the Project Manager or Branch Liaison will ensure that the administrative record for the site is compiled and up to date through the date of the referral to the AG's Office and will supplement the administrative record as necessary until the Department's site-related activities are complete.
- j. The assigned attorney will communicate with CRBU regarding the proper Cost Recovery Billing System (CRBS) billing status and

classification to be assigned to the site and whether invoices to responsible parties should be issued or placed on hold for the site in light of the Department's cost recovery plan for the site. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about CRBS billing statuses.)

- i. The assigned attorney will consider whether the CRBS billing classification of "HOLD/LEGAL" is appropriate for the site. The "HOLD/LEGAL" billing status indicates that invoicing for the site has been placed on hold because OLC is handling negotiations, litigation, or other matters concerning the site. OLC approval is required to change the CRBS billing status to "HOLD/LEGAL."
  - ii. Regardless of the CRBS billing status for the site, the assigned attorney will consider whether the CRBS billing classification of the site should be changed to: "LEGAL: Referred to AG"; "LEGAL: Settlement negotiation in process"; or LEGAL: Litigation in process."
- k. The assigned attorney will determine whether collection letters to responsible parties for the site should be placed on hold in light of the Department's cost recovery plan for the site. The assigned attorney will notify Accounting if collection letters to responsible parties for the site should be placed on hold. Collection letters will automatically cease if invoices for the site are placed on hold due to a change in CRBS billing status. (See DPM-CR-19, "Cost Recovery: Collection Letters," for more information about the collection letter process.)

### **Program Project Managers and Branch Liaisons**

1. The Project Manager and/or Branch Liaison will review the entire referral package to the AG's Office to ensure the accuracy of all information contained therein and, if necessary, facilitate approval of the referral package by his or her supervisor. The Project Manager will place a copy of the final referral package in the confidential file for the site.
2. The Project Manager and/or Branch Liaison will work with OLC and other Administrative Services staff to collect documents necessary to support the Department's cost recovery claims.

3. The Project Manager and/or Branch Liaison will work with OLC to review the site file to ensure that the public file is complete (updated, and in chronological order), does not contain any confidential or privileged information, and that confidential files are maintained separately.
  - a. It is the Project Manager's and/or Branch Liaison's responsibility to conduct the initial file review.
  - b. The assigned attorney will review the file after the Project Manager and/or Branch Liaison completes the initial file review.
4. The Project Manager and/or Branch Liaison will make sure that the administrative record for the site is compiled in accordance with Management Memo #EO-94-004-MM, "Identification of the Administrative Record" (Aug. 1994). (See link to Management Memo #EO-94-004-MM, "Identification of the Administrative Record," (available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>) for the Department's procedures for identifying the administrative record for removal and remedial actions.)
  - a. If the Department's site-related activities are ongoing, then the Project Manager and/or Branch Liaison will ensure that the administrative record for the site is compiled and up to date through the date of the referral to the AG's Office and will supplement the administrative record as necessary until the Department's site-related activities are complete.
  - b. Once the administrative record is compiled, it is the Project Manager's and/or Branch Liaison's responsibility to create an Administrative Record List that identifies all of the documents that were relied on or considered when selecting the removal or remedial action alternative implemented by the Remedial Action Plan (RAP). The Project Manager is responsible for ensuring that an Administrative Record List is included in the Executive Summary of the draft and final RAP. If the response action does not require a RAP, the Project Manager will include the Administrative Record List in the Removal Action Completion Form.
5. The Project Manager and Branch Liaison will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the

Department's response costs. The Project Manager and Branch Liaison will also work with OLC to implement the litigation hold by notifying appropriate Department staff regarding the litigation hold and, if necessary, collecting and maintaining site-related documents.

### **Cost Recovery Billing Unit (CRBU)**

1. Within five (5) business days of a request for cost documentation related to a site to support a cost recovery referral, CRBU will contact the assigned attorney regarding the request and anticipated timeframes for collecting cost documentation.
2. CRBU will collect cost documentation identified on the Site Cost Documentation Checklist for each fiscal year requested by the assigned attorney. CRBU will continue to communicate with the assigned attorney regarding the anticipated date for completion of document and information collection efforts. CRBU will consult with Program staff and OLC regarding whether the documents should be provided in electronic or hardcopy format.
2. CRBU will communicate with Program staff and OLC regarding the proper CRBS billing status and classification to be assigned to the site and whether invoices to responsible parties should be placed on hold for the site in light of the Department's cost recovery plan for the site. (See DPM-CR-16, "Cost Recovery: Invoicing," for more information about CRBS billing statuses.)
3. CRBU will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs.

### **Accounting Office (Accounting)**

1. Accounting will consult with Program staff, OLC, and/or Collections to stop issuing collection letters, if appropriate. (See DPM-CR-19, "Cost Recovery: Collection Letters," for more information about collection letters.)
2. Upon request, Accounting will provide Program staff and/or OLC with documentation (e.g., collection letters) supporting the cost recovery referral to the AG's Office. Accounting will consult with Program staff and/or OLC regarding whether the documents should be provided in electronic or hardcopy format.

3. Accounting will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs.

### **Collections and Resolution Unit (Collections)**

1. Upon request, Collections will provide Program staff and/or OLC with documentation supporting the cost recovery referral to the AG's Office. Documents include, but are not limited to, copies of approved No Further Cost Recovery Action (NFCRA) Memoranda, payment agreements and related documentation, ability-to-pay documentation, and invoice dispute documentation. Collections will consult with Program staff and/or OLC regarding whether the documents should be provided in electronic or hardcopy format.
2. Collections will work with Program staff and OLC to implement the Department's coordinated plan for cost recovery. Collections will consult with and include Program staff and OLC in discussions regarding future cost recovery efforts and copy Program staff and OLC on all related correspondence.
3. Collections will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs.

### **Grants and Program Support Branch (Grants), Contracts and Business Services Branch (Contracts), Fiscal Systems Unit (FSU), and Financial Responsibility Unit**

1. Upon request, Grants, Contracts, FSU, and the Financial Responsibility Unit will: (1) provide Program staff and/or OLC with documentation supporting the cost recovery referral to the AG's Office; and (2) consult with Program staff and/or regarding whether the documents should be provided in electronic or hardcopy format.
2. Grants, Contracts, FSU, and the Financial Responsibility Unit will comply with any litigation hold implemented by OLC related to a site for which the Department filed or may file a cost recovery action against responsible parties for the Department's response costs.

**CONTACTS:** Please see the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Links/AllItems.aspx> for information about staff to contact if you have questions or concerns regarding this DPM.

All DPMs and cost recovery-related policies, procedures, guidance, forms, model documents, and links to the materials referenced in the DPMs are available on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/default.aspx>. Questions, comments, and concerns regarding this DPM, as well as the other DPMs, can be posted on the Cost Recovery Policies and Procedures SharePoint page at <http://dtsc-share/PP/CostRecovery/Lists/Feedback/AllItems.aspx>.

/s/

Miriam Ingenito for

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Deborah O. Raphael, Director

**Department of Toxic Substances Control**  
**Official Policy**

**STATUTORY LIEN POLICY AND PROCEDURES**

**DTSC-15-001**

Subject/Title of Policy

Official Policy Number

November 6, 2015

Date Issued/Effective Date

Lien Placement Policy and Procedure (EO-96-007-PP) (Jan. 16, 1997)

Supersedes Number(s)

All Staff

Brownfields and Environmental Restoration Program

Target Audience

Issuing Unit

Barbara A. Lee

Director

Name

Title of Approving Authority



11/6/15

Signature

Date Signed

Statutory Reference(s):

California Health and Safety Code section 25365.6

# TABLE OF CONTENTS

	Page
I. POLICY STATEMENT .....	3
II. PURPOSE .....	3
III. STATUTORY AUTHORITY .....	3
IV. DEFINITIONS .....	4
V. STATUTORY LIEN PLACEMENT PROCEDURES .....	4
VI. STATUTORY LIENS FOR SUBSEQUENTLY INCURRED RESPONSE COSTS .....	14
VII. SATISFACTION AND RELEASE OF STATUTORY LIENS .....	15
VIII. INQUIRIES .....	16
IX. TABLE OF APPENDICES .....	16

## I. POLICY STATEMENT

It is the policy of the Department of Toxic Substances Control (DTSC or the "Department") to utilize statutory liens pursuant to Health & Safety Code section 25365.6 ("Section 25365.6") as a tool to secure unreimbursed response costs incurred by the Department in conducting or overseeing response actions pursuant to the Hazardous Substance Account Act (HSAA), Health & Safety Code division 20, chapter 6.8, section 25300 et seq. A statutory lien is one cost recovery tool available to the Department and will be used, individually or with other available cost recovery tools, when appropriate and in the Department's sole discretion.<sup>1</sup>

## II. PURPOSE

The purpose of this document is to establish guidance on the use of statutory liens and set forth the Department's procedures for recording statutory liens pursuant to Section 25365.6 to secure recovery of the Department's unreimbursed response costs.<sup>2</sup>

## III. STATUTORY AUTHORITY

Section 25365.6, "Lien for costs and damages," expressly provides:

(a) Any costs or damages incurred by the department or regional board pursuant to this chapter constitutes a claim and lien upon the real property owned by the responsible party that is subject to, or affected by, the removal and remedial action. This lien shall attach regardless of whether the responsible party is insolvent. A lien established by this section shall be subject to the notice and hearing procedures required by due process of the law and shall arise at the time costs are first incurred by the department or regional board with respect to a response action at the site.

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<sup>1</sup> This policy and any internal procedures adopted for its implementation are intended solely as guidance. This policy does not constitute a rulemaking by the Department and may not be relied upon to create a specific right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Department may take action at variance with this policy or any internal implementing procedures.

<sup>2</sup> This policy does not apply to judgment liens—liens imposed pursuant to judgments issued by a court of law, including Hazardous Waste Control Law administrative orders that have been converted to civil judgments. A judgment lien on real property is created by recording an abstract of a money judgment in the county recorder's office of the county or counties in which real property owned by the judgment debtor is located. (Civ. Code, § 697.310, subd. (a).)

(b) The department shall not be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c) The lien provided by this section shall continue until the liability for these costs or damages, or a judgment against the responsible party, is satisfied. However, if it is determined by the court that the judgment against the responsible party will not be satisfied, the department may exercise its rights under the lien.

(d) The lien imposed by this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain the legal description of the real property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll. The lien shall also contain a legal description of the property which is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

(e) All funds recovered pursuant to this section shall be deposited in the state account.

#### **IV. DEFINITIONS**

Relevant terms are defined in Appendix A for ease of reference only. Statutory terms and definitions may change as a result of legislative amendments. The most recent statutory code sections should always be consulted for current definitions.

#### **V. STATUTORY LIEN PLACEMENT PROCEDURES**

Section 25365.6, subdivision (a), provides that "[a]ny costs or damages incurred by the department ... pursuant to this chapter [the HSAA] constitutes a claim and lien upon the real property owned by the responsible party that is subject to, or affected by, the removal and remedial action." "A lien established by this section shall be subject to the notice and hearing procedures required by due process of the law and shall arise at the time costs are first incurred by the department ... with respect to a response action at the site."

Although Section 25365.6 provides that a lien arises when response costs are first incurred by the Department, certain conditions must be met in order to create a

legally enforceable lien for unreimbursed response costs. The Department must "perfect" a statutory lien on real property "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA by: (1) providing notice and an opportunity to be heard to the current property owner; and (2) recording the lien with the county recorder's office in the county where the real property is located. (Health & Saf. Code, § 25365.6, subds. (a), (d).)

Remediating on-site contamination often increases the value of the real property, and recording a statutory lien protects the Department by securing any unreimbursed response costs incurred by the Department and providing an avenue for the Department to potentially recover those costs. The Department may record a statutory lien on real property during or after completion of the response action. However, if the Department records a statutory lien on real property during a response action, the Department may record another statutory lien to secure any unreimbursed response costs incurred by the Department after recording the initial lien (see Section VI, Statutory Liens for Subsequently Incurred Response Costs).

#### **A. Initial Considerations**

As discussed in more detail below, a statutory lien may be recorded if, based on the information available to the Department, the Department has a reasonable basis to believe that:

1. The current property owner is a "responsible party" pursuant to the HSAA;
2. The lien amount to be imposed or increased does not exceed the Department's unreimbursed response costs;
3. The real property was "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA;
4. The current property owner failed to establish a valid defense pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. (CERCLA)<sup>3</sup>; and

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<sup>3</sup> The current property owner bears the burden of establishing defenses to liability and challenging the Department's unreimbursed response costs as inconsistent with the National Contingency Plan (see 42 U.S.C. § 9607(a)(4)(A)).

5. A statutory lien may be recorded on the real property in compliance with Section 25365.6.

The decision to initiate the statutory lien process by issuing a Notice of Intent to Record Statutory Lien is discretionary, and the Department will carefully evaluate whether to record a statutory lien whenever the Department's response costs remain unreimbursed. A number of factors may be relevant to the Department's decision to record a statutory lien, including, but not limited to:

- The amount of response costs incurred by the Department that remains unreimbursed.
- The value of the property post-remediation.
- The likelihood that the current property owner will file for bankruptcy.
- The likelihood that the current property owner will sell the property.
- Whether the real property is the chief or a substantial asset of the owner.

#### **B. Statutory Lien Filing Record**

In order to determine whether it is appropriate to issue a Notice of Intent to Record Statutory Lien, the Department will compile a Lien Filing Record. The Lien Filing Record will form the basis for the Department's decision to issue a Notice of Intent to Record Statutory Lien and will consist of documents and information supporting the Department's position that recording a lien pursuant to Section 25365.6 is appropriate. At the time of the issuance of the Notice of Intent to Record Statutory Lien, the Lien Filing Record will include, at a minimum, the following:

1. Documents and information confirming the identity of the current property owner<sup>4</sup> and detailing the current property owner's ownership of the property (e.g., deed, title search, Tax Assessor and/or county recorder's office documents), as well as a legal description of the real property on which the Department seeks to record the statutory lien;

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<sup>4</sup> Section 25365.5, subdivision (d), requires the Department to identify the current owner of record as shown on the latest Tax Assessor's equalized assessment roll.

2. Documents and information supporting the Department's determination that the current property owner is a "responsible party" as defined in the HSAA;
3. Documents and information demonstrating that the real property was "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA;
4. Documents and information demonstrating that the amount of the lien or lien increase reflects the unreimbursed response costs incurred by the Department; and
5. Invoices, collection letters, demand letters, invoice dispute letters, including Department responses, and any other documents demonstrating the Department's billing and collection efforts and the current property owner's opportunities to dispute the Department's unreimbursed response costs (see Section V.C.1, Billing and Collection Efforts).

If, based on the documents and information in the Lien Filing Record, the Department elects to issue a Notice of Intent to Record Statutory Lien, the following additional documents and information will be added to the Lien Filing Record:

1. The Notice of Intent to Record Statutory Lien package (see Section V.C.2, Issuance of a Notice of Intent to Record Statutory Lien to the Current Property Owner);
2. The current property owner's response, if any, to the Notice of Intent to Record Statutory Lien package, as well as any written correspondence exchanged between the current property owner and the Department regarding the notice (see Section V.C.3, The Department's Response to Objections by or Requests from the Current Property Owner);
3. If the current property owner requests a hearing challenging the recording of a statutory lien on real property:
  - a. The Notice of Assignment of Neutral DTSC Official package (see Appendix B, Section 2, Selection of Neutral DTSC Official);
  - b. The Notice of Statutory Lien Hearing (see Appendix B, Section 3, Scheduling the Statutory Lien Hearing);

- c. Any and all documents related to any communications between the Neutral DTSC Official and any parties or interested persons, including any ex parte communications that occurred, regarding the real property "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA (see Appendix B, Section 4, Prohibition on Ex Parte Communications);
  - d. Any and all documents related to the current property owner's request, if any, for disqualification of the Neutral DTSC Official (see Appendix B, Section 5, Disqualification of Neutral DTSC Official);
  - e. The Notice of Statutory Lien Hearing Transcript package (see Appendix B, Section 6, Form of the Hearing); and
  - f. The Notice of Statutory Lien Hearing Decision (see Appendix B, Section 7, Statutory Lien Hearing Decision).
4. The Statutory Lien Transmittal Letter package and Notice of Recording of Statutory Lien package (see Section V.D, Recording the Statutory Lien); and
  5. The Satisfaction and Release of Statutory Lien Transmittal Letter package and Notice of Recording of Satisfaction and Release of Statutory Lien package, if the statutory lien has been released (see Section VII, Satisfaction and Release of Statutory Liens).

The Lien Filing Record will be maintained by Department staff in the regional office overseeing the response action for the real property that is subject to, or potentially subject to, the statutory lien, and will be maintained in connection with the site file. Upon reasonable notice to the Department, the Lien Filing Record will be made available to the public, including the current property owner, for review at the appropriate regional office. Alternatively, a person may pay the Department to make a copy of the Lien Filing Record and send it to the requestor within 10 business days of the request. The cost to the requestor is \$0.15 per page. A request for a copy of the Lien Filing Record must be made in writing. A person seeking a copy of the Lien Filing Record may also arrange for a copy service to make a copy of the record at the requestor's expense.

### **C. Decision to Record Statutory Lien**

Department staff seeking to record a statutory lien on real property "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA will involve a "Department Attorney" in the decision-making process. The Department Attorney is assigned by DTSC's Office of Legal Counsel. The Department Attorney will also represent the Department in communicating, if necessary, with the current property owner, or the current property owner's legal representative, if one is identified, regarding the statutory lien and in the hearing before a Neutral DTSC Official, if a hearing is requested by the current property owner.

As further described below, prior to recording a statutory lien, the Department will:

1. Conduct billing and collection efforts with respect to the current property owner;
2. If the Department's billing and collection efforts are unsuccessful, issue a Notice of Intent to Record Statutory Lien; and
3. Respond to objections and/or requests by the current property owner, and, if requested, hold a hearing and issue a final decision (issued by the Neutral DTSC Official) regarding the current property owners' challenges to the recording of the statutory lien.

#### **1. Billing and Collection Efforts**

Prior to issuing a Notice of Intent to Record Statutory Lien, the Department will conduct billing and collection efforts with respect to the current property owner for the Department's unreimbursed response costs.

The Department will attempt to issue at least one (1) invoice and two (2) collection letters (at approximately 60 and 90 days after the invoice date) to the current property owner for all unreimbursed response costs potentially subject to the lien prior to issuing a Notice of Intent to Record Statutory Lien. There may be circumstances, however, where it may not be feasible or reasonable for the Department to wait to issue one (1) invoice and two (2) collection letters to the current property owner prior to issuing a Notice of Intent to Record Statutory Lien. In such cases, the Department will send a demand letter to the current property owner via Certified Mail requesting reimbursement of the Department's

unreimbursed response costs. Included with the demand will be a Cost Recovery Billing Unit-generated invoice for the unreimbursed response costs.

Included with every invoice, including those enclosed with a demand letter, will be a copy of the Department's Cost Recovery and Reimbursement Policy, which provides parties with 45 calendar days from the date of the invoice within which to submit an invoice dispute. The Department may not issue a Notice of Intent to Record Statutory Lien during the 45-calendar day invoice dispute period. If the current property owner disputes the Department's invoice, then the Department may not issue a Notice of Intent to Record Statutory Lien until it ensures that it has reasonably attempted to respond to and resolve all inquiries and/or disputes from the current property owner regarding the unreimbursed response costs potentially subject to the statutory lien. If the response costs remain unreimbursed despite reasonable invoice dispute resolution efforts, then the Department may proceed to issue a Notice of Intent to Record Statutory Lien, provided the Department continues to have a reasonable basis to believe that a statutory lien may be recorded on the real property in compliance with Section 25365.6.

Department staff will place copies of invoices, collection letters, demand letters, invoice dispute letters, including Department responses, and any other documents or information demonstrating the Department's billing and collection efforts and the current property owner's opportunities to dispute the Department's unreimbursed response costs in the Lien Filing Record.

## **2. Issuance of a Notice of Intent to Record Statutory Lien to the Current Property Owner**

Section 25365.6, subdivision (a), provides that "[a] lien established by this section shall be subject to the notice and hearing procedures required by due process of the law ...." Accordingly, if any Department response costs remain unreimbursed after it has conducted the billing and collection efforts described above and the Department reasonably believes, based on documents and/or information contained in the Lien Filing Record, that it may record a statutory lien on the real property pursuant to Section 25365.6, then the Department will send the current property owner a Notice of Intent to Record Statutory Lien via Certified Mail.

The Notice of Intent to Record Statutory Lien will identify and describe the real property on which the Department seeks to record the statutory lien, outline the Department's basis for recording the lien pursuant to Section 25365.6, and detail

the Department's previous billing and collection efforts. The Notice of Intent to Record Statutory Lien will also provide the current property owner with 30 calendar days within which to request to review or obtain a copy of the Lien Filing Record, submit written objections, documents, or information challenging the recording of the lien, and/or request a hearing before a Neutral DTSC Official to challenge the recording of the statutory lien.

Enclosed with the Notice of Intent to Record Statutory Lien will be a copy of the proposed Statutory Lien, marked "Draft." Pursuant to Section 25365.6, subdivision (d), the proposed Statutory Lien must "contain the legal description of the real property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll." If the hazardous substance release occurred on a separate property, the "lien shall also contain a legal description of the property which is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property." The proposed Statutory Lien will also identify the amount of the Department's lien and a description of the scope and enforceability of the statutory lien as stated in Section 25365.6.

A copy of the Department's Statutory Lien Policy and Procedures will also be enclosed with the Notice of Intent to Record Statutory Lien.

The Notice of Intent to Record Statutory Lien package will be sent to the current property owner via Certified Mail.<sup>5</sup> If the current property owner refuses to accept service of the package via Certified Mail, the Department will institute alternative service pursuant to California law. Upon service to the current property owner, a copy of the Notice of Intent to Record Statutory Lien package will be placed in the Lien Filing Record and uploaded to the EnviroStor<sup>6</sup> profile for the site.

### **3. The Department's Response to Objections or Requests by the Current Property Owner**

Within 30 calendar days from the date of receipt of the Notice of Intent to Record Statutory Lien, the current property owner may:

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<sup>5</sup> The Notice of Intent to Record Statutory Lien will also contain information on how the current property owner can elect to be served with future correspondence by email rather than Certified Mail.

<sup>6</sup> The Department's EnviroStor database is an electronic database that provide information to the public regarding environmental cleanups and permitted facilities in their communities. EnviroStor can be accessed at <http://www.envirostor.dtsc.ca.gov/public/>.

1. Request to review or obtain a copy of the Lien Filing Record;
2. Submit written objections, documents, or information challenging the recording of the statutory lien; and/or
3. Request a hearing before a Neutral DTSC Official challenging the recording of the statutory lien.

Although the Department's response may differ depending on the current property owner's response, general guidelines for responding are outlined below. The Department's response(s) to the current property owner will be sent via Certified Mail unless the current property owner has consented to electronic service. Copies of all correspondence with the current property owner regarding the Department's Notice of Intent to Record Statutory Lien will be placed in the Lien Filing Record. If any documents were served via email, copies of the transmittal emails will also be placed in the Lien Filing Record.

**a. If the Current Property Owner Fails to Respond**

If the current property owner does not respond within 30 calendar days from the date of receipt of the Notice of Intent to Record Statutory Lien and the Department continues to have a reasonable basis to believe that a statutory lien may be recorded on the real property in compliance with Section 25365.6, then the Department may proceed to record the statutory lien pursuant to the procedures outlined below (see Section V.D., Recording the Statutory Lien).

**b. If the Current Property Owner Timely Requests to Review or Obtain a Copy of the Lien Filing Record**

If the current property owner timely requests to view the Lien Filing Record, then Department staff will work with the current property owner to identify a mutually acceptable date and time for the current property owner to visit the appropriate regional office to view the Lien Filing Record. Alternatively, the current property owner may pay the Department to make a copy of the Lien Filing Record and send it to the current property owner within 10 business days of the request. The cost for copies is \$0.15 per page. A request for a copy of the Lien Filing Record must be made in writing. The current property owner may also arrange for a copy service to make a copy of the Lien Filing Record at the current property owner's expense.

**c. If the Current Property Owner Timely Submits Written Objections, Documents, or Information Challenging the Recording of the Statutory Lien**

The current property owner may timely submit written objections, documents, or information challenging the recording of the statutory lien. The written correspondence must include a detailed statement of the legal and/or factual basis for the current property owner's challenge. Documents and information supporting the current property owner's contentions must be enclosed with the written correspondence. The Department will review the current property owner's written submission to determine whether the current property owner's contentions alter the Department's position that recording a statutory lien pursuant to Section 25365.6 is appropriate.

If the Department agrees with the current property owner's contentions, then the Department will notify the current property owner in writing that the Department will not proceed with its plan to record the statutory lien.

If the current property owner's submission does not alter the Department's position that recording a statutory lien pursuant to Section 25365.6 is appropriate, then the Department will notify the current property owner in writing that the Department believes that recording a lien is appropriate. The Department will proceed to record the statutory lien unless the current property owner has requested a hearing before a Neutral DTSC Official challenging the Department's recording of the lien. If the current property owner has not requested a hearing before a Neutral DTSC Official, then the Department will proceed to record the statutory lien pursuant to the procedures outlined below (see Section V.D, Recording the Statutory Lien).

**d. If the Current Property Owner Timely Requests a Hearing Before a Neutral DTSC Official**

If the current property owner timely requests a hearing before a Neutral DTSC Official challenging the recording of the statutory lien, then the Department will follow the Statutory Lien Hearing Procedures outlined in Appendix B.

The Department may not record a Statutory Lien in the county recorder's office for the county where the property is located unless and until, at the conclusion of the hearing process, the Neutral DTSC Official issues a Notice of Neutral DTSC Official Statutory Lien Hearing Decision concluding that the Department may appropriately record a statutory lien pursuant to Section 25365.6.

#### **D. Recording the Statutory Lien**

If, after following the procedures outlined above, the Department determines that recording a statutory lien is appropriate, then it will record the lien with the county recorder's office in the county where the real property is located.

The Department will "perfect" the statutory lien by sending a Statutory Lien Transmittal Letter to the county recorder's office in the county in which the Department seeks to record the statutory lien. Enclosed with the Statutory Lien Transmittal Letter will be the final and signed Statutory Lien, Verification of Statutory Lien, and Notary Acknowledgment of Verification of Statutory Lien. The Statutory Lien Transmittal Letter package may be sent to the county recorder's office via regular or Certified Mail.

Upon receipt of a copy of the recorded Statutory Lien from the County Recorder's office, the Department will send a Notice of Recording of Statutory Lien to the current property owner notifying the owner of the date the lien was recorded and enclosing a copy of the recorded Statutory Lien. The Notice of Recording of Statutory Lien package will be sent via Certified Mail unless the current property owner has consented to electronic service.

A copy of the Statutory Lien Transmittal Letter package, recorded Statutory Lien, and Notice of Recording of Statutory Lien package will be placed in the Lien Filing Record. A copy of the recorded Statutory Lien will be uploaded to the EnviroStor profile for the site. If any documents were served via email, copies of the transmittal emails will also be placed in the Lien Filing Record.

#### **VI. STATUTORY LIENS FOR SUBSEQUENTLY INCURRED RESPONSE COSTS**

If, after recording a statutory lien, the Department incurs additional response costs related to the same real property, then the Department may consider recording another statutory lien for any subsequently incurred response costs that remain unreimbursed. The Department will carefully evaluate whether to record a statutory lien for unreimbursed response costs subsequently incurred by the Department in conducting or overseeing a response action pursuant to the HSAA, taking into consideration the same factors outlined in Section V.A, Initial Considerations.

Department staff will follow the same process outlined in Section II, Statutory Lien Placement Procedures in recording a statutory lien for unreimbursed response costs subsequently incurred by the Department in conducting or overseeing a

response action pursuant to the HSAA, including creating a new Lien Filing Record for the subsequent statutory lien.

## **VII. SATISFACTION AND RELEASE OF STATUTORY LIENS**

A statutory lien is deemed satisfied when the Department is reimbursed for all of the costs secured by the lien. The Department may also agree to release all or part of the lien pursuant to a settlement with a party—typically, the current property owner—when all settlement conditions have been satisfied. Any settlement that contemplates the release of all or part of a statutory lien will be negotiated with the assistance of the Office of Legal Counsel. Prior to recording a Satisfaction and Release of Statutory Lien with the county recorder's office in the county in which a statutory lien was recorded, which is required to release a lien, Department staff will verify that the Department has received payment for unreimbursed costs secured by the statutory lien and/or that all settlement conditions have been satisfied.

The Satisfaction and Release of Statutory Lien will describe the statutory lien that was satisfied and/or is being released, including the amount of the lien, date the lien was recorded, and county recorder's office information (i.e., book and page number) of the lien, and the address of the real property, including the city, county, and Assessor's Parcel Number(s), as well as a legal description of the property.

The Department will send a Satisfaction and Release of Statutory Lien Transmittal Letter to the county recorder's office for the county in which the statutory lien was recorded. Enclosed with the Satisfaction and Release of Statutory Lien Transmittal Letter will be the Satisfaction and Release of Statutory Lien, Acknowledgment of Satisfaction and Release of Statutory Lien, Verification of Acknowledgment of Satisfaction and Release of Statutory Lien, and Notary Acknowledgment of Verification of Satisfaction and Release of Statutory Lien. The Satisfaction and Release of Statutory Lien Transmittal Letter package may be sent to the county recorder's office via regular or Certified Mail.

Upon receipt of a copy of the recorded Satisfaction and Release of Statutory Lien from the county recorder's office, the Department will send a Notice of Recording of Satisfaction and Release of Statutory Lien to the current property owner notifying the owner of the date the Satisfaction and Release of Statutory Lien was recorded and enclosing a copy of the recorded Satisfaction and Release of Statutory Lien. The Notice of Recording of Satisfaction and Release of Statutory Lien package will be sent via Certified Mail unless the current property owner has consented to electronic service.

A copy of the Satisfaction and Release of Statutory Lien Transmittal Letter package, recorded Satisfaction and Release of Statutory Lien, and Notice of Recording of Satisfaction and Release of Statutory Lien package will be placed in the Lien Filing Record. A copy of the recorded Satisfaction and Release of Statutory Lien will be uploaded to the EnviroStor profile for the site. If any documents were served via email, copies of the transmittal emails will also be placed in the Lien Filing Record.

## **VIII. INQUIRIES**

Administration of this policy is the responsibility of the Deputy Director for the Brownfields and Environmental Restoration Program and the Chief Counsel of the Office of Legal Affairs. Specific questions regarding this policy should be directed to the Deputy Director for the Brownfields and Environmental Restoration Program and the Chief Counsel of the Office of Legal Affairs.

## **IX. TABLE OF APPENDICES**

- A. Definitions
- B. Statutory Lien Hearing Procedures

## APPENDIX A: DEFINITIONS<sup>7</sup>

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As used in this policy, the terms below have the following meanings:

1. **"CERCLA"** means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.
2. **"Damages"** includes any natural resource damages incurred by the Department pursuant to Health & Safety Code section 25352, as well as damages imposed by the Department pursuant to Health & Safety Code section 25359.
3. **"Department"** means the Department of Toxic Substances Control, or DTSC. (Health & Saf. Code, § 25312.)
4. **"Department Attorney"** is the Office of Legal Counsel (OLC) attorney assigned to: (1) assist the Department in the lien-placement decision process; and (2) represent the Department in communicating, if necessary, with the current property owner, or the current property owner's legal representative, if one is identified, regarding the statutory lien and in the hearing before the Neutral DTSC Official, if a hearing is requested by the current property owner.
5. **"Hazardous substance"** is defined by Health & Safety Code section 25316. Certain exclusions from the definition of "hazardous substance" are outlined in Health & Safety Code section 25317. (Health & Saf. Code, § 25316.)
6. **"HSAA"** means the Carpenter-Presley-Tanner Hazardous Substance Account Act, Health & Safety Code division 20, chapter 6.8, section 25300 et seq.
7. **"Neutral DTSC Official"** is the OLC attorney assigned by the Chief Counsel of the Office of Legal Affairs to oversee a hearing requested by a current property owner, consistent with the Department's Statutory Lien Hearing Procedures (Appendix B).
8. **"Perfecting"** a statutory lien refers to the process of recording a statutory lien securing the Department's unreimbursed response costs on real property by: (1) providing notice and an opportunity to be heard to the current property owner; and (2) recording the statutory lien with the county recorder's office in the county where the real property is located.

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<sup>7</sup> Relevant terms are defined in this Appendix for ease of reference only. Statutory terms and definitions may change as a result of legislative amendments. The most recent statutory code sections should always be consulted for current definitions.

9. **"Remedy" or "remedial action"** includes "[t]hose actions that are consistent with a permanent remedy, that are taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance into the environment, as further defined in section 101(24) of CERCLA, 42 U.S.C. § 9601(24)." "Remedy or "remedial action" also includes "[t]hose actions that are necessary to monitor, assess, and evaluate a release or threatened release of a hazardous substance" and "site operation and maintenance." (Health & Saf. Code, § 25322.)
10. **"Remove" or "removal"** "includes the cleanup or removal of released hazardous substances from the environment or the taking or other actions as may be necessary to prevent, minimize, or mitigate damage which may otherwise result from a release or threatened release, as further defined by" section 101(23) of CERCLA, 42 U.S.C. § 9601(24). (Health & Saf. Code, § 25323.)
11. **"Response," "respond," or "response action"** has the same meaning as defined in section 101(25) of CERCLA, 42 U.S.C. § 9601(25). "The enforcement and oversight activities of the department ... are included within the meaning of 'response,' 'respond,' or 'response action.'" (Health & Saf. Code, § 25323.3).
12. **"Responsible party" or "liable person,"** with certain exceptions outlined in Health & Safety Code section 25323.5, subdivisions (a)(2) and (c), includes those persons described in section 107(a) of CERCLA, 42 U.S.C. §9607(a), and generally includes the following categories of persons: (1) a current owner or operator of a facility; (2) a past owner or operator of a facility at the time of a disposal of hazardous substances; (3) an arranger for disposal or treatment of hazardous substances; and (4) a transporter of hazardous substances for disposal or treatment. (42 U.S.C. § 9607(a)(1)-(4).) "[T]he defenses available to a responsible party or liable person" include the defenses outlined in sections 101(35) and 107(b) of CERCLA, 42 U.S.C. §§ 9601(35), 9607(b)." (Health & Saf. Code, § 25323.5.)
13. **"Statutory lien"** means a lien placed or recorded by the Department pursuant to Health & Safety Code division 20, chapter 6.8, section 25365.6 to secure the Department's costs or damages in conducting or overseeing a response action on real property on which a release or threatened release of hazardous substances exists. (Health & Saf. Code, § 25365.6.)

## APPENDIX B: STATUTORY LIEN HEARING PROCEDURES

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The Department will follow the procedures outlined in these Statutory Lien Hearing Procedures if a current property owner requests a hearing challenging the recording of a statutory lien by the Department on real property "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA. If a current property owner requests a hearing, then the Department may not record a lien in the county recorder's office for the county where the property is located until, at the conclusion of the hearing process, the Neutral DTSC Official issues a written decision confirming that the Department has a reasonable basis to believe that the current property owner is a "responsible party" pursuant to the HSAA, the lien amount to be imposed or increased does not exceed the Department's unreimbursed response costs, the real property was "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA,<sup>8</sup> the current property owner failed to establish a valid defense pursuant to CERCLA,<sup>9</sup> and that a statutory lien may be recorded on the real property in compliance with Health & Safety Code section 25365.6 ("Section 25365.6").

A copy of these Statutory Lien Hearing Procedures will be provided to the current owner of property on which the Department seeks to record a statutory lien as an enclosure to the following two documents: (1) Notice of Intent to Record Statutory Lien (see Section V.C.2, Issuance of a Notice of Intent to Record Statutory Lien to the Current Property Owner); and (2) Notice of Assignment of Neutral DTSC Official, Statutory Lien Hearing Procedures, and Availability of Lien Filing Record (see Appendix B, Section 2, Selection of Neutral DTSC Official).

### 1. AUTHORITY

Section 25365.6 requires that "[a] lien established by this section shall be subject to the notice and hearing procedures required by due process of the law ...." (Section 25365.6, subd. (a).) Accordingly, upon a timely request by the current property owner, the Department will conduct a hearing to address a current property owner's contention that the recording of a statutory lien on the real property in question would be improper.

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<sup>8</sup> "HSAA" means the Carpenter-Presley-Tanner Hazardous Substance Account Act, Health & Safety Code division 20, chapter 6.8, section 25300 et seq.

<sup>9</sup> "CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. The current property owner bears the burden of establishing defenses to liability and challenging the Department's unreimbursed response costs as inconsistent with the National Contingency Plan (see 42 U.S.C. § 9607(a)(4)(A)).

The Department's hearing process complies with the mandatory informal hearing requirements of the California Administrative Procedures Act (APA) (Gov't Code, ch. 4.5, § 11400 et seq.). The formal hearing requirements of the APA (Gov't Code, ch. 5, § 11500 et seq.) do not apply to the Department's hearing process.

## **2. SELECTION OF NEUTRAL DTSC OFFICIAL**

Within 10 business days of receipt of a request from a current property owner for a hearing, the Department will assign a "Neutral DTSC Official" to hear the matter. The Neutral DTSC Official will be an attorney with the Office of Legal Counsel (OLC) and will be assigned by the Chief Counsel of the Office of Legal Affairs.

The Neutral DTSC Official will not perform during the hearing process and should not have previously performed any prosecutorial, investigative, or supervisory functions in connection with the property or site on which the Department seeks to record the statutory lien. (See Gov't Code, § 11425.30, subd. (a)(1).) The Neutral DTSC Official will also not be subject to the authority, direction, or discretion of a person who has served as an investigator, prosecutor, or advocate in connection with the property or site on which the Department seeks to record a lien. (See Gov't Code, § 11425.30, subd. (a)(2).)

Once selected, the Neutral DTSC Official will obtain the Lien Filing Record from Department staff, which will contain the relevant documents noted in Section V.B, Lien Filing Record.

Within 15 business days of being assigned, the Neutral DTSC Official will issue a Notice of Assignment of Neutral DTSC Official, Statutory Lien Hearing Procedures, and Availability of Lien Filing Record ("Notice of Assignment") to the current property owner and the current property owner's legal representative, if any, and Department representatives<sup>10</sup> (collectively referred to as "parties") via Certified Mail. In the Notice of Assignment, the Neutral DTSC Official will:

1. Introduce him/herself as the Neutral DTSC Official—the Department representative charged with overseeing the hearing;
2. Notify the parties that the Neutral DTSC Official will contact the parties to set up a mutually acceptable date and time for the hearing;
3. Provide the parties with a copy of these Statutory Lien Hearing Procedures;

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<sup>10</sup> For purposes of representing the Department in a hearing, "Department representatives" will generally include the Project Manager(s) and Department Attorney assigned to the matter. "Department representatives" may also include the Unit Supervisor and/or Branch Chief.

4. Request that the parties accept service of documents electronically; and
5. Remind the parties that the Lien Filing Record is available for review or copying.<sup>11</sup>

The Neutral DTSC Official will place a copy of the Notice of Assignment package in the Lien Filing Record.

### **3. SCHEDULING THE STATUTORY LIEN HEARING**

Within 10 business days of issuing the Notice of Assignment, the Neutral DTSC Official will contact the parties to schedule the hearing. Scheduling of the hearing by the Neutral DTSC Official will occur via teleconference or by email correspondence with all parties. The hearing may be conducted in person or by telephone, or other electronic means, so long as all participants have an opportunity to meaningfully participate in the proceeding. The Neutral DTSC Official, however, will not grant a party's request to conduct the hearing by telephone or other electronic means if another party to the proceeding objects. (See Gov't Code, § 11440.30.)

The Neutral DTSC Official will issue a Notice of Statutory Lien Hearing to the parties confirming the date, time, location, and nature of the hearing (i.e., in person or telephonic). The Notice of Statutory Lien Hearing will be sent to the parties via Certified Mail unless the parties have consented to electronic service. The Neutral DTSC Official will place a copy of the Notice of Statutory Lien Hearing in the Lien Filing Record. If the Notice of Statutory Lien Hearing was served via email, the Neutral DTSC Official will also place a copy of the transmittal email in the Lien Filing Record.

### **4. PROHIBITION ON EX PARTE COMMUNICATIONS**

The Neutral DTSC Official will comply with the provisions of article 7 of the Government Code, commencing with section 11430.10, which prohibits, with limited exceptions, direct or indirect communication regarding the proceeding between any party (or any interested person), including the Director (see Gov't Code, § 11430.80), and a fact-finder like the Neutral DTSC Official regarding the proceeding without notice and an opportunity for all parties to participate in the communication.

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<sup>11</sup> If the current property owner requests to view the Lien Filing Record, then Department staff will work with the current property owner to identify a mutually acceptable date and time for the current property owner to visit the appropriate regional office to view the Lien Filing Record. Alternatively, the current property owner may pay the Department to make a copy of the Lien Filing Record and send it to the current property owner with 10 business days of the request. The cost for copies is \$0.15 per page. A request for a copy of the Lien Filing Record must be made in writing. The current property owner may also make arrangements for a copy service to make a copy of the Lien Filing Record at the current property owner's expense.

The Neutral DTSC Official will refrain from discussing the property or site that is the subject of the hearing with any parties to the proceeding or interested persons until the hearing concludes (i.e., when the DTSC Neutral Official issues the Notice of Neutral DTSC Official Statutory Lien Hearing Decision), unless all parties participate in the communication or the communication is authorized by article 7 of the Government Code. If the DTSC Neutral Official receives an ex parte communication, the Neutral DTSC Official will provide all parties with notice and opportunity to comment on the communication as provided in Government Code section 11430.50. The Neutral DTSC Official will place copies of any notifications and correspondence regarding potential ex parte communications in the Lien Filing Record.

## **5. DISQUALIFICATION OF NEUTRAL DTSC OFFICIAL**

Receipt by the Neutral DTSC Official of an ex parte communication in violation of article 7 of the Government Code may be grounds for disqualification. (See Gov't Code, § 11430.60.) Additionally, pursuant to Government Code section 11425.40, the current property owner may seek to disqualify the Neutral DTSC Official for bias, prejudice, or interest in the proceeding at any time prior to the conclusion of the hearing. The presumption of impartiality of the Neutral DTSC Official may only be overcome by specific evidence demonstrating actual bias or circumstances creating an unacceptable risk of bias.

The following grounds, however, are not themselves grounds for disqualification of the Neutral DTSC Official without further evidence of bias, prejudice, or interest:

1. The Neutral DTSC Official is a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group.
2. The Neutral DTSC Official has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding.
3. The Neutral DTSC Official has, as a lawyer or public official, participated in the drafting of laws or regulations or in the effort to pass or defeat laws or regulations, the meaning, effect, or application of which is in issue in the proceeding.

(Gov't Code, § 11425.40, subd. (b).)

A request for disqualification of the Neutral DTSC Official must be made in writing and sent to the Neutral DTSC Official, with a copy to all parties. Upon receipt of a request for disqualification, the Neutral DTSC Official will immediately notify the Chief Counsel of the Office of Legal Affairs. The Chief Counsel will evaluate and make a decision

regarding the request for disqualification of the Neutral DTSC Official. If the Chief Counsel denies the request for disqualification, then the Neutral DTSC Official will proceed with the hearing as outlined herein. If the Chief Counsel approves the request for disqualification, then the Chief Counsel will appoint another OLC attorney to serve as the Neutral DTSC Official. Notice of the Chief Counsel's decision will be provided via Certified Mail unless the parties have consented to electronic service. The existing or, if the existing Neutral DTSC Official is disqualified, new Neutral DTSC Official will place a copy of the Chief Counsel's decision in the Lien Filing Record. If the Chief Counsel's decision was served via email, the existing or new Neutral DTSC Official will also place a copy of the transmittal email in the Lien Filing Record.

## **6. THE STATUTORY LIEN HEARING**

### **A. Optional Pre-Hearing Briefing Schedule**

The Neutral DTSC Official may, in his or her discretion, set a briefing schedule for the parties to submit written arguments in support of their respective positions prior to the hearing. The Neutral DTSC Official may allow the parties to submit written arguments concurrently (e.g., simultaneous briefs) or consecutively (e.g., with DTSC to submit the moving and reply briefs and the current property owner to submit the opposition brief) and may also ask the parties to respond to specific questions or issues identified by the Neutral DTSC Official.

If required to submit pre-hearing briefs, the parties will ensure that all parties to the hearing receive copies of the briefs. The Neutral DTSC Official will place a copy of the briefing schedule and copies of the parties' briefs in the Lien Filing Record. If the briefing schedule and/or parties' briefs were served via email, the Neutral DTSC Official will also place copies of the transmittal emails in the Lien Filing Record.

### **B. Hearing Participants**

The persons at the hearing will include: (1) the Neutral DTSC Official; (2) Department representatives; and (3) the current property owner and/or the current property owner's legal representative, if any. The persons at the hearing may also include witnesses presented by the parties in support of their respective positions regarding the propriety of recording the statutory lien pursuant to Section 25365.6.

The hearing will be open to the public. (See Gov't Code, § 11425.20, subd. (a).) However, the Neutral DTSC Official may order the closure of or limit the hearing consistent with the provisions of Government Code section 11425.20.

### **C. Scope of the Hearing**

The scope of the hearing is intended to be broad, encompassing all documents and information in the Lien Filing Record and all evidence and testimony introduced prior to and at the hearing related to the propriety of recording the statutory lien pursuant to Section 25365.6. The issues that may be raised include, but are not necessarily limited to: whether the current property owner is a "responsible party" pursuant to the HSAA; the lien amount to be imposed or increased was proper; the real property was "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA; the current property owner failed to establish a valid defense pursuant to CERCLA; and/or that a statutory lien may be recorded on the real property in compliance with Section 25365.6.

### **D. Form of the Hearing**

The hearing will be transcribed by a certified shorthand reporter retained by DTSC. The Neutral DTSC Official will begin the hearing by making the following opening statement, to be read verbatim:

*This proceeding is informal, and is not bound by the rules of evidence or the provisions of the Administrative Procedure Act. Neither DTSC nor the property owner waives any claims or defenses by the conduct of the meeting or the outcome. As the Neutral DTSC Official, I will make a decision, based on relevant documents and information in the Lien Filing Record and any relevant evidence and testimony introduced prior to or at this hearing, regarding whether DTSC has a reasonable basis to believe that the current property owner is a "responsible party" pursuant to the HSAA, the lien amount to be imposed or increased was proper, the real property was "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA, the current property owner failed to establish a valid defense pursuant to CERCLA, and that a statutory lien may be recorded on the real property in compliance with Section 25365.6.*

The Neutral DTSC Official will conduct an orderly and fair hearing, providing both parties with reasonable opportunities to introduce evidence and testimony regarding the propriety of recording the statutory lien. The Neutral DTSC Official should place no limitations other than reasonableness on the volume of evidence and testimony introduced during the hearing. The Neutral DTSC Official may also allow discussion and interchange between the parties, including responses to questions to the extent deemed appropriate. It is not the Department's intent, however, to provide the parties with an

opportunity to engage in direct examination or cross-examination of witnesses. The Neutral DTSC Official may also engage in discussion with and address questions to parties and witnesses during the hearing.

The Neutral DTSC Official may, in his or her discretion, allow the parties to submit post-hearing briefs to further address issues relevant to the hearing. If required to submit post-hearing briefs, the parties will ensure that all parties to the hearing receive copies of the briefs. The Neutral DTSC Official will place a copy of the briefing schedule and copies of the parties' briefs in the Lien Filing Record. If the briefing schedule and/or parties' briefs were served via email, the Neutral DTSC Official will also place copies of the transmittal emails in the Lien Filing Record.

After completion of the hearing, the certified shorthand reporter will provide the Neutral DTSC Official with a copy of the hearing transcript, including copies of any exhibits introduced by the parties during the hearing. Within 10 business days of receipt of the hearing transcript, the Neutral DTSC Official will provide the parties with a Notice of Statutory Lien Hearing Transcript enclosing a copy of the hearing transcript, including copies of any exhibits. The Notice of Statutory Lien Hearing Transcript will be sent to the parties via Certified Mail unless the parties have consented to electronic service. The Neutral DTSC Official will place a copy of the Notice of Statutory Lien Hearing Transcript, including the hearing transcript, in the Lien Filing Record. If the Notice of Statutory Lien Hearing Transcript was served via email, the Neutral DTSC Official will also place a copy of the transmittal email in the Lien Filing Record.

## **7. STATUTORY LIEN HEARING DECISION**

In making his or her decision, the Neutral DTSC Official will consider all documents and information in the Lien Filing Record and all evidence and testimony introduced prior to, at, or after the hearing relevant to the propriety of recording the statutory lien pursuant to Section 25365.6. The Neutral DTSC Official will issue a written decision regarding whether the Department has a reasonable basis to believe that the current property owner is a "responsible party" pursuant to the HSAA, the lien amount to be imposed or increased does not exceed the Department's unreimbursed response costs, the real property was "subject to, or affected by," a "response action" conducted or overseen by the Department pursuant to the HSAA, the current property owner failed to establish a valid defense pursuant to CERCLA, and that a statutory lien may be recorded on the real property in compliance with Section 25365.6. The Neutral DTSC Official's written decision will outline in detail the legal and factual basis for his or her decision.

The Neutral DTSC Official will send the parties a Notice of Neutral DTSC Official Statutory Lien Hearing Decision within 90 calendar days of the date of the Notice of

Statutory Lien Hearing Transcript. The Notice of Neutral DTSC Official Statutory Lien Hearing Decision will be sent via Certified Mail unless the parties have consented to electronic service. The Neutral DTSC Official will place a copy of the Notice of Neutral DTSC Official Statutory Lien Hearing Decision in the Lien Filing Record. If the Notice of Neutral DTSC Official Statutory Lien Hearing Decision was served via email, the Neutral DTSC Official will also place a copy of the transmittal email in the Lien Filing Record.

## **8. POST-STATUTORY LIEN HEARING PROCEDURES**

Within 10 business days of issuing the Notice of Neutral DTSC Official Statutory Lien Hearing Decision, the Neutral DTSC Official will ensure that all relevant documents have been placed in the Lien Filing Record, close the Lien Filing Record, and send the Lien Filing Record to the Department Attorney. The Department Attorney will have 10 business days within which to review the Lien Filing Record for completeness and send the Lien Filing Record back to Department staff in the regional office overseeing the response action at the property or site that was the subject of the hearing.

Department staff will maintain the Lien Filing Record in accordance with applicable document management policies and procedures and Records Retention Schedules, and, at a minimum, shall be kept for as long as the statutory lien remains in place. Department staff will make the Lien Filing Record available to the public upon request pursuant to the California Public Records Act or any other applicable provision of law.

The Department may issue a Notice of Intent to Record Statutory Lien with an opportunity to be heard with respect to the same property, following the procedures outlined in the Department's Statutory Lien Policy and Procedures, if new information indicates that a previous decision not to record a lien was in error or to update a prior lien when the Department incurs additional response costs related to the same property pursuant to the HSAA that remain unreimbursed.