

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

Fiscal Year 2015-16	Business Unit 3960	Department Department of Toxic Substances Control	Priority No. 6
Budget Request Name 3960-107-BCP-BR-2015-MR		Program 3620011 Site Mitigation & Brownfields Reuse	Subprogram

Budget Request Description
 Expedited Remedial Action Program—Orphan Share Payment

Budget Request Summary

Chapter 6.85 of the Health and Safety Code created the Expedited Remedial Action Program within the Department of Toxic Substances Control (DTSC). One aspect of this program enables the parties who completed the investigation and cleanup at a site to receive reimbursement for the portion of the project for which there is no responsible party—the orphan share. DTSC is requesting an appropriation of \$3.4 million from the Expedited Site Remediation Trust Fund to make the orphan share payment for the Golden Technology site. This proposal also requests a reversion of the unencumbered balance of the fiscal year 2014/15 appropriation.

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 No	Code Section(s) to be Added/Amended/Repealed	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

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

FSR SPR Project No. Date:

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

Prepared By <i>[Signature]</i>	Date 5/12/2015	Reviewed By <i>[Signature]</i>	Date 5/12/15
Department Director <i>[Signature]</i>	Date 5/12/2015	Agency Secretary <i>[Signature]</i>	Date 5/13/15

Department of Finance Use Only

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

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA: Date submitted to the Legislature

Analysis of Problem

A. Budget Request Summary

DTSC is requesting an appropriation of \$3.4 million and a reversion of the unencumbered balance of the 2014/15 appropriation from the Expedited Site Remediation Trust Fund to reimburse SR Land Company and the Richard N. Clayton 1981 Trust for the orphan share associated with their cleanup activities at the Golden Technology Site in the City of Santa Rosa in Sonoma County. On June 30, 2010, DTSC signed an Apportionment of Liability allocating 76 percent to the orphan share. SR Land Company and the Richard N. Clayton 1981 Trust have spent over \$4.5 million investigating and cleaning up the soil and groundwater at the site. This included the removal of over 3,200 tons of soil containing volatile organic compounds and the in-place treatment of groundwater. A land use covenant will be signed restricting future uses of the site.

The requested appropriation will also necessitate a transfer from the Toxic Substances Control Account to the Expedited Site Remediation Trust Fund of \$652,000.

B. Background/History

Senate Bill 923 (Calderon, Chapter 435, Statutes of 1994) created the Expedited Remedial Action Reform Act of 1994 (ERAP). ERAP is a pilot project administered by DTSC's Site Mitigation and Brownfields Reuse Program (SMBRP) to promote the cleanup of up to 30 hazardous substance release sites.

ERAP provides significant incentives for redeveloping contaminated properties by promoting cleanups based on the planned land use, providing a covenant not to sue, and outlining a fair and equitable liability scheme. ERAP was designed to test alternative methods for addressing cleanups and has provided ideas for future programmatic changes. Since 1994, 19 sites have been designated to participate in the pilot program and nine sites have been certified as being satisfactorily remediated. Eight sites are currently undergoing remediation activities under ERAP. ERAP also provides orphan share funding for up to ten sites where one or more responsible parties are either insolvent or cannot be located or identified. To date, five sites have received orphan share funding exceeding \$5.8 million. Whether or not a site will be eligible for orphan share funding is determined through the ERAP application and approval process. In order to receive the orphan share funding, one or more of the responsible parties must complete investigating and remediating the site and pay for all of DTSC's oversight costs. Once the site is certified, the responsible parties can submit a claim for payment of the orphan share.

The Golden State Technology Site is the only site designated to receive orphan share funding that has not obtained the funds. Work at the Golden Technology Site is completed and DTSC is completing the administrative actions necessary to certify the site.

C. State Level Considerations

DTSC's mission is to provide the highest level of safety and to protect public health and the environment from toxic harm. Approval of this proposal supports DTSC's mission and 2014-2018 Strategic Plan, Goal 1: Ensure DTSC's cleanup efforts protect communities, hold responsible parties accountable, and recover DTSC's costs.

ERAP is a State authorized program. Funds in the Expedited Site Remediation Trust Fund come from fines and penalties paid by violators of hazardous substance cleanup statutes. The Expedited Site Remediation Trust Fund has a balance of \$2.7 million to pay orphan shares. Approving this proposal with transfer authority will provide DTSC the expenditure authority necessary to reimburse the orphan share claim it expects to receive in the budget year.

D. Justification

DTSC approved the final cleanup plan for the Golden Technology Site in 2010 and approved the Remedial Design for the final cleanup in 2012. Implementation of the final remedy began in the spring of 2012, with additional groundwater treatment occurring in late 2013 / early 2014. Subsequently, it

Analysis of Problem

was determined that subsurface vapor concentrations of site contaminants may pose a potential indoor air quality concern. Additional work was done to verify that indoor air and vapor intrusion from the subsurface into indoor air should not pose an unacceptable health risk to commercial or industrial users of the property. This unanticipated work delayed the completion of the land use covenant and documents required to ensure that the final remedy is operated and maintained so that DTSC can verify that natural processes continue to reduce the concentrations of the volatile organic compounds in groundwater. DTSC anticipates completion of the site certification in July 2015.

DTSC does not have expenditure authority from the Expedited Site Remediation Trust Fund in the proposed budget to make the orphan share payment. Approval of this proposal including the transfer authority will provide DTSC with the necessary budget authority to make the orphan share payment.

E. Outcomes and Accountability

Payment of the orphan share will fulfill DTSC's obligation under the contract it entered into with the responsible party when the Golden Technology Site was accepted into the ERAP. DTSC staff are currently reviewing a draft application for completeness and ensuring that there is sufficient documentation of the costs incurred. The final application will be submitted when the Site is certified. Once the documentation is verified, DTSC will be able to make the orphan share payment upon approval of the Budget Act of 2015.

F. Analysis of All Feasible Alternatives

Alternative 1 – Appropriate \$3.4 million and revert the unencumbered balance from the FY 2014/15 appropriation from the Expedited Site Remediation Trust Fund for the orphan share payment.

Pros:

- Allows DTSC to fulfill contract obligations

Cons:

- Requires a reappropriation and an augmentation to the budget

Alternative 2 – Status Quo

Pros:

- Does not require an augmentation or reappropriation to the budget

Cons:

- DTSC would be in violation of the contract, which may result in a lawsuit
- Would require a Fall proposal to add budget authority delaying the orphan share payment another year

G. Timetable

Upon approval of the Budget Act of 2015, DTSC would be able to process the orphan share payment.

- July 2015 – Site Certification
- July – September 2015 - Secure and review application for orphan share
- September 2015 - Process orphan share payment

H. Supplemental Information

Not applicable

I. Recommendation

Alternative 1 – approve this proposal for augmentation, reappropriation, and transfer authority. Approval allows DTSC to fulfill its contractual obligations concerning the Golden Technology Site. If the responsible party is forced to sue DTSC to obtain its funding, the cost to DTSC would include court costs as well as the orphan share.

Analysis of Problem

3960-495—Reversion, Department of Toxic Substances Control. As of June 30, 2015, the unencumbered balance of the appropriation provided in the following citation shall revert to the balance in the funds from which the appropriation was made:

(1) Item 3960-001-0456, Budget Act of 2014 (Ch. 25, Stats. 2014)

Item 3960-001-0456 - For support of Department of Toxic Substances Control, payable from the Expedited Site Remediation Trust Fund \$3,425,000

Schedule:

(1) 3620011 – Other Site Mitigation Activities \$3,425,000

Provisions:

1. Notwithstanding any other provision of law, upon request of the Department of Toxic Substances Control, and approval by the Department of Finance, the Controller shall augment the appropriation in this item to pay costs associated with the orphan shares at the Golden Technology Site for the Expedited Site Remediation Pilot Program from uncommitted funds in the Expedited Site Remediation Trust Fund.
2. The amount appropriated in this item includes revenues derived from the assessment of fines and penalties imposed as specified in Section 13332.18 of the Government Code.

3960-013-0557 - For transfer by the Controller from the Toxic Substances Control Account to the Expedited Site Remediation Trust Fund (\$652,000)

