

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 03/13)

| | | | | |
|--|--------------|-------------------|---|-------------------|
| Fiscal Year 2014-15 | BCP No. 1 | Org. Code 3960 | Department Toxic Substances Control (DTSC) | Priority No. 1 |
| Program 12 - Site Mitigation & Brownfields Reuse 13 - Hazardous Waste Management | | | Element | Component |

Proposal Title
 Cost Recovery

Proposal Summary

The Department of Toxic Substances Control (DTSC) incurs direct cleanup costs and oversight costs in remediating contaminated properties and DTSC is authorized to recover these costs from responsible parties (i.e., those parties responsible for the contamination). However, DTSC's efforts to ensure that polluters pay the costs for cleaning up their contamination have been impeded by the lack of clear policies and procedures and adequate resources to address a backlog of unbilled and billed but uncollected costs.

This proposal requests additional resources needed to enable DTSC to maximize the recovery of its past, present, and future response costs. Specifically, DTSC is requesting \$1.618 million and fourteen (14) two-year limited term positions from the Toxic Substances Control Account and Hazardous Waste Control Account to its cost recovery backlog. These positions will evaluate and take action on the backlog of unbilled/uncollected costs for site cleanup work dating back to the 1980s, and ensure timely billing and collection of future cost-recoverable expenditures.

| | |
|---|--|
| 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 No | Code Section(s) to be Added/Amended/Repealed |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 California Technology Agency, or previously by the Department of Finance.

| | | |
|---|-------------|-------|
| <input type="checkbox"/> FSR <input type="checkbox"/> SPR | Project No. | Date: |
|---|-------------|-------|

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

| | | | |
|---|----------------|--|------------------|
| Prepared By | Date | Reviewed By <i>Sara Benson</i> | Date 1/6/2014 |
| Department Director <i>Deborah Q. Paul</i> | Date 1/6/14 | Agency Secretary <i>[Signature]</i> | Date 1/7/14 |

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Technology Agency

BCP Type: Policy Workload Budget per Government Code 13308.05

| | |
|------|-----------------------------------|
| PPBA | Date submitted to the Legislature |
|------|-----------------------------------|

Fiscal Summary
(Dollars in thousands)

| BCP No. | Proposal Title | | | Program | | |
|--|----------------|------|------------|---------|---------|---------|
| 1 | Cost Recovery | | | Summary | | |
| Personal Services | Positions | | | Dollars | | |
| | CY | BY | BY + 1 | CY | BY | BY + 1 |
| Total Salaries and Wages ¹ | 0.0 | 14.0 | 14.0 | \$0 | \$1,023 | \$1,023 |
| Total Staff Benefits ² | | | | 0 | 434 | 434 |
| Total Personal Services | 0.0 | 14.0 | 14.0 | \$0 | \$1,457 | \$1,457 |
| Operating Expenses and Equipment | | | | | | |
| General Expense | | | | | 28 | 28 |
| Printing | | | | | | |
| Communications | | | | | 14 | 14 |
| Postage | | | | | | |
| Travel-In State | | | | | 14 | 14 |
| Travel-Out of State | | | | | | |
| Training | | | | | | |
| Facilities Operations | | | | | 77 | 77 |
| Utilities | | | | | | |
| Consulting & Professional Services: Interdepartmental ³ | | | | | | |
| Consulting & Professional Services: External ³ | | | | | | |
| Data Center Services | | | | | 28 | 28 |
| Information Technology | | | | | | |
| Equipment ³ | | | | | | |
| Other/Special Items of Expense: ⁴ | | | | | | |
| | | | | | | |
| | | | | | | |
| Total Operating Expenses and Equipment | | | | \$0 | \$161 | \$161 |
| Total State Operations Expenditures | | | | \$0 | \$1,618 | \$1,618 |
| Fund Source | Item Number | | | | | |
| | Org | Ref | Fund | | | |
| General Fund | | | | | | |
| Special Funds ⁵ | 3960 | 001 | see detail | \$0 | \$1,618 | \$1,618 |
| Federal Funds | | | | | | |
| Other Funds (Specify) | | | | | | |
| Reimbursements | | | | | | |
| Total Local Assistance Expenditures | | | | \$0 | \$0 | \$0 |
| Fund Source | Item Number | | | | | |
| | Org | Ref | Fund | | | |
| General Fund | | | | | | |
| Special Funds ⁵ | | | | | | |
| Federal Funds | | | | | | |
| Other Funds (Specify) | | | | | | |
| Reimbursements | | | | | | |
| Grand Total, State Operations and Local Assistance | | | | \$0 | \$1,618 | \$1,618 |

¹ Itemize positions by classification on the Personal Services Detail worksheet.

² Provide benefit detail on the Personal Services Detail worksheet.

³ Provide list on the Supplemental Information worksheet.

⁴ Other/Special Items of Expense must be listed individually. Refer to the Uniform Codes Manual for a list of standard titles.

⁵ Attach a Fund Condition Statement that reflects special fund or bond fund expenditures (or revenue) as proposed.

Fiscal Summary
(Dollars in thousands)

| BCP No. | Proposal Title | Program | | | | |
|--|----------------|----------------------------------|--------|---------|---------|---------|
| 1 | Cost Recovery | 12-Site Mitigation & Brownfields | | | | |
| Personal Services | Positions | | | Dollars | | |
| | CY | BY | BY + 1 | CY | BY | BY + 1 |
| Total Salaries and Wages ¹ | 0.0 | 12.6 | 12.6 | \$0 | \$921 | \$921 |
| Total Staff Benefits ² | | | | 0 | 391 | 391 |
| Total Personal Services | 0.0 | 12.6 | 12.6 | \$0 | \$1,312 | \$1,312 |
| Operating Expenses and Equipment | | | | | | |
| General Expense | | | | | 25 | 25 |
| Printing | | | | | | |
| Communications | | | | | 13 | 13 |
| Postage | | | | | | |
| Travel-In State | | | | | 13 | 13 |
| Travel-Out of State | | | | | | |
| Training | | | | | | |
| Facilities Operations | | | | | 38 | 38 |
| Utilities | | | | | | |
| Consulting & Professional Services: Interdepartmental ³ | | | | | | |
| Consulting & Professional Services: External ³ | | | | | | |
| Data Center Services | | | | | 25 | 25 |
| Information Technology | | | | | | |
| Equipment ³ | | | | | | |
| Other/Special Items of Expense: ⁴ | | | | | | |
| | | | | | | |
| | | | | | | |
| Total Operating Expenses and Equipment | | | | \$0 | \$114 | \$114 |
| Total State Operations Expenditures | | | | \$0 | \$1,426 | \$1,426 |
| Fund Source | Item Number | | | | | |
| | Org | Ref | Fund | | | |
| General Fund | | | | | | |
| Special Funds ⁵ | 3960 | 001 | 0557 | \$0 | \$1,426 | \$1,426 |
| Federal Funds | | | | | | |
| Other Funds (Specify) | | | | | | |
| Reimbursements | | | | | | |
| Total Local Assistance Expenditures | | | | \$0 | \$0 | \$0 |
| Fund Source | Item Number | | | | | |
| | Org | Ref | Fund | | | |
| General Fund | | | | | | |
| Special Funds ⁵ | | | | | | |
| Federal Funds | | | | | | |
| Other Funds (Specify) | | | | | | |
| Reimbursements | | | | | | |
| Grand Total, State Operations and Local Assistance | | | | \$0 | \$1,426 | \$1,426 |

¹ Itemize positions by classification on the Personal Services Detail worksheet.

² Provide benefit detail on the Personal Services Detail worksheet.

³ Provide list on the Supplemental Information worksheet.

⁴ Other/Special Items of Expense must be listed individually. Refer to the Uniform Codes Manual for a list of standard titles.

⁵ Attach a Fund Condition Statement that reflects special fund or bond fund expenditures (or revenue) as proposed.

Fiscal Summary
(Dollars in thousands)

| BCP No. | Proposal Title | Program | | | | |
|--|----------------|---------------------------|--------|---------|-------|--------|
| 1 | Cost Recovery | 13- Hazardous Waste Mngmt | | | | |
| Personal Services | Positions | | | Dollars | | |
| | CY | BY | BY + 1 | CY | BY | BY + 1 |
| Total Salaries and Wages ¹ | 0.0 | 1.4 | 1.4 | \$0 | \$102 | \$102 |
| Total Staff Benefits ² | | | | 0 | 43 | 43 |
| Total Personal Services | 0.0 | 1.4 | 1.4 | \$0 | \$145 | \$145 |
| Operating Expenses and Equipment | | | | | | |
| General Expense | | | | | 3 | 3 |
| Printing | | | | | | |
| Communications | | | | | 1 | 1 |
| Postage | | | | | | |
| Travel-In State | | | | | 1 | 1 |
| Travel-Out of State | | | | | | |
| Training | | | | | | |
| Facilities Operations | | | | | 39 | 39 |
| Utilities | | | | | | |
| Consulting & Professional Services: Interdepartmental ³ | | | | | | |
| Consulting & Professional Services: External ³ | | | | | | |
| Data Center Services | | | | | 3 | 3 |
| Information Technology | | | | | | |
| Equipment ³ | | | | | | |
| Other/Special Items of Expense: ⁴ | | | | | | |
| | | | | | | |
| | | | | | | |
| Total Operating Expenses and Equipment | | | | \$0 | \$47 | \$47 |
| Total State Operations Expenditures | | | | \$0 | \$192 | \$192 |
| Fund Source | Item Number | | | | | |
| | Org | Ref | Fund | | | |
| General Fund | | | | | | |
| Special Funds ⁵ | 3960 | 001 | 0014 | \$0 | \$192 | \$192 |
| Federal Funds | | | | | | |
| Other Funds (Specify) | | | | | | |
| Reimbursements | | | | | | |
| Total Local Assistance Expenditures | | | | \$0 | \$0 | \$0 |
| Fund Source | Item Number | | | | | |
| | Org | Ref | Fund | | | |
| General Fund | | | | | | |
| Special Funds ⁵ | | | | | | |
| Federal Funds | | | | | | |
| Other Funds (Specify) | | | | | | |
| Reimbursements | | | | | | |
| Grand Total, State Operations and Local Assistance | | | | \$0 | \$192 | \$192 |

¹ Itemize positions by classification on the Personal Services Detail worksheet.

² Provide benefit detail on the Personal Services Detail worksheet.

³ Provide list on the Supplemental Information worksheet.

⁴ Other/Special Items of Expense must be listed individually. Refer to the Uniform Codes Manual for a list of standard titles.

⁵ Attach a Fund Condition Statement that reflects special fund or bond fund expenditures (or revenue) as proposed.

Supplemental Information

(Dollars in thousands)

| | |
|--------------|---------------------------------|
| BCP No. 1 | Proposal Title Cost Recovery |
|--------------|---------------------------------|

| Equipment | CY | BY | BY +1 |
|---------------------|-----|-----|-------|
| Standard Complement | | | |
| | | | |
| Total | \$0 | \$0 | \$0 |

| Consulting & Professional Services | CY | BY | BY +1 |
|------------------------------------|-----|-----|-------|
| | | | |
| | | | |
| Total | \$0 | \$0 | \$0 |

| Facility/Capital Costs | CY | BY | BY +1 |
|------------------------|-----|-----|-------|
| | | | |
| | | | |
| Total | \$0 | \$0 | \$0 |

One-Time/Limited-Term Costs Yes No

| Description | BY | | BY +1 | | BY +2 | |
|--------------|-----------|---------|-----------|---------|-----------|---------|
| | Positions | Dollars | Positions | Dollars | Positions | Dollars |
| LT Positions | 14.0 | 1,457 | 14.0 | 1,457 | 0.0 | 0 |
| LT O&E | | 161 | | 161 | | |
| | | | | | | |
| | 14.0 | \$1,618 | 14.0 | \$1,618 | 0.0 | \$0 |

Full-Year Cost Adjustment Yes No

Provide the incremental change in dollars and positions by fiscal year.

| Item Number | BY | | BY +1 | | BY +2 | |
|--------------|-----------|---------|-----------|---------|-----------|---------|
| | Positions | Dollars | Positions | Dollars | Positions | Dollars |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total | 0.0 | \$0 | 0.0 | \$0 | 0.0 | \$0 |

Future Savings Yes No

Specify fiscal year and estimated savings, including any decrease in positions.

| Item Number | BY | | BY +1 | | BY +2 | |
|--------------|-----------|---------|-----------|---------|-----------|---------|
| | Positions | Dollars | Positions | Dollars | Positions | Dollars |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Total | 0.0 | \$0 | 0.0 | \$0 | 0.0 | \$0 |

Analysis of Problem

A. Proposal Summary

The Department of Toxic Substances Control (DTSC) requests \$1.618 million and 14 two-year limited term positions funded by the Toxic Substances Control Account (TSCA) (\$1.426 million and 12.6 positions) and the Hazardous Waste Control Account (HWCA) (\$192,000 and 1.4 positions) to address DTSC's cost recovery backlog of unbilled and billed but uncollected costs and to ensure that future costs are not added to this backlog.

Addressing the cost recovery backlog is one of the highest priorities for DTSC, and is a significant workload for several programs within DTSC. This work cannot be absorbed using existing resources. Immediate action to evaluate and triage potential cost recovery cases is necessary in order to prevent DTSC's potential claims from being time-barred due to statutes of limitations.

The 14 positions being requested include: four (4) Attorney III positions and (1) Legal Analyst in the Office of Legal Affairs (OLA); six (6) Associate Governmental Program Analyst (AGPA) positions in the Brownfields and Environmental Restoration Program (BERP); one (1) Accounting Officer (Specialist) in the Administrative Services Cost Recovery Unit; and two (2) Accounting Administrator I (Specialist) positions in the Administrative Services Collections and Resolutions Unit.

B. Background/History

The mission of DTSC is to protect California's people and environment from the harmful effects of toxic substances, in part, through the restoration of contaminated properties and other environmental resources. In fulfilling its mission, DTSC incurs cleanup costs and oversight costs (collectively, "response costs") in investigating and remediating contaminated properties and is authorized and required by Health and Safety Code § 25360 to recover its costs from responsible parties (i.e., those parties responsible for the contamination). DTSC relies on the recovery of its response costs so that other TSCA revenues (e.g., the environmental tax and fines and penalties) can be used to fund additional remediation activities, including remediating contaminated properties where there are no financially viable responsible parties. In addition, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. § 9601 et seq., and the California Hazardous Substances Account Act (HSAA), Health & Safety Code § 25300 et seq., both authorize DTSC to file a civil action for the recovery of response costs. For these reasons, it is DTSC's policy to maximize its recovery of past, present, and future response costs.

Currently, there are an estimated 90,000 properties throughout the State - including former industrial properties, school sites, military bases, small businesses, landfills, and dry cleaners - that are contaminated, or believed to be contaminated, with some level of toxic chemicals. Some of these are "brownfield" sites that often sit idle or underused, contributing to both urban blight and urban sprawl. DTSC has spent approximately \$1 billion since 1987 overseeing the cleanup of these contaminated properties conducted by other parties or cleaning up contaminated properties itself.

Depending on the nature of the contamination, DTSC will initiate cleanup efforts on a site using State Superfund bond funds, grants, and/or environmental tax revenues to initiate work on a site. In many cases, DTSC is able to recover the costs of these cleanup efforts from the responsible parties who contributed to the contamination. However, sometimes the responsible parties do not have the money to pay, refuse to pay, simply cannot be found, or are recalcitrant. Where there is an imminent and substantial endangerment to human health or the environment, and no viable responsible party can be found or the parties are recalcitrant, the State's Site Remediation Account or other funding is used to conduct the necessary investigation and cleanup. DTSC procures contracts to conduct architectural, engineering, and remediation work for these sites. DTSC is required to ensure that the work is done in compliance with the Department of General Services contract requirements, and follows state and federal laws so that it will be able to take cost recovery actions to recoup these costs.

Even in the absence of a responsible party, DTSC has an obligation to clean up contaminated properties that pose an imminent and substantial endangerment to human health or the environment. DTSC's cleanup efforts not only protect the health and safety of Californians, but also facilitate the

Analysis of Problem

reuse and redevelopment of previously contaminated properties and avoid more costly cleanups "downstream," which would result, for example, if contamination has spread from the soil to groundwater over time.

On December 23, 2011, DTSC issued its Financial Integrity and State Managers' Accountability (FISMA) report, which identified \$70 million in potentially recoverable costs that had not been invoiced since 2004. The report stated that 60 percent of those costs (about \$42 million) represented cleanup sites considered "orphans," where no financially viable responsible party had been identified to invoice. Recognizing the enormity of the situation DTSC's Director immediately took action to address the problem. First, she directed her staff to research the extent of the unrecovered costs. Because the information stretched back 26 years, it took considerable time to fully understand the extent of this problem. Second, she began taking steps to correct the problems by forming a Cost Recovery Team and ensuring that a viable system of collecting costs was in place. As the Cost Recovery Team dug into the backlog, it discovered that DTSC's cost problem was larger than what was reflected in the 2011 FISMA report.

As of April 24, 2013, DTSC identified unbilled and billed, but uncollected response costs of approximately \$184.4 million for the period of July 1987 through December 2012. These costs were categorized as follows: DTSC invoiced \$44.4 million of those costs, but had not yet received payment; \$37.3 million was tied up due to litigation, bankruptcy, or other legal considerations; and the remaining \$102.7 million was not billed for various reasons still being investigated and evaluated by DTSC as part of its current cost recovery efforts.

DTSC's past cost recovery efforts have been impeded by various factors, including, but not limited to, the lack of updated cost recovery policies and procedures that clearly define the roles and responsibilities of all DTSC staff with respect to the cost recovery process, historical and current technological infrastructure limitations, and a lack of communication among DTSC staff regarding cost recovery-related issues. In addition, for years DTSC prioritized the cleanup of contaminated properties over the process of pursuing responsible parties for reimbursement of DTSC's response costs. As a result of these impediments, a portion of the DTSC's past response costs either have not been billed to responsible parties or have been billed, but remain uncollected.

The Cost Recovery Team was directed to develop a comprehensive set of new cost recovery policies and procedures to ensure that DTSC maximizes its recovery of response costs going forward and to address the lack of updated cost recovery policies and procedures. Twenty-seven (27) comprehensive procedures memoranda were issued in November 2013 in an effort to improve DTSC's cost recovery process and to avoid the future accumulation of unbilled and billed but uncollected costs. These cost recovery procedures clearly define the roles and responsibilities of DTSC cleanup program, administrative, legal, and support staff with respect to the cost recovery process. Mandatory training on these procedures will follow in January and February 2014.

DTSC is currently drafting comprehensive cost recovery policies with a projected issuance date of June 2014. These cost recovery policies will use the previously developed cost recovery procedures as a foundation to ensure that the accumulation of unbilled and billed but uncollected costs will not occur in the future.

Cost Recovery Resource History
(Dollars in thousands)

| Program Budget | FY 2009-10 | FY 2010-11 | FY 2011-12 | FY 2012-13 | FY 2013-14 |
|-------------------------|------------|------------|------------|------------|------------|
| Authorized Expenditures | 685 | 725 | 805 | 834 | 862 |
| Actual Expenditures | 667 | 729 | 755 | 807 | 862 |
| Authorized Positions | 9.0 | 9.0 | 9.0 | 9.0 | 9.0 |
| Filled Positions | 8.8 | 9.0 | 9.0 | 9.0 | 9.0 |
| Vacancies | .2 | 0 | 0 | 0 | |

Analysis of Problem

C. State Level Considerations

This proposal supports the Cost Recovery component of DTSC's "Fixing the Foundation" initiative with the goal to maximize the recovery of DTSC's past, present, and future response costs by comprehensively evaluating its unbilled and billed but uncollected costs.

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

DTSC is authorized by Health and Safety Code § 25360 to recover costs from responsible parties (i.e., those parties responsible for the contamination). In addition, the CERCLA and HSAAs authorize DTSC to file a civil action for the recovery of response costs.

The Legislature has shown an interest in DTSC's cost recovery efforts as Assembly Member Luis A. Alejo requested an audit of the effectiveness of DTSC's cost recovery actions. In August 2013, the Joint Legislative Audit Committee approved the request for an audit.

D. Justification

DTSC faces a significant backlog of complex cases with unrecovered response costs. On April 24, 2013 DTSC reported that data through December 31, 2012 indicated that the amount of unbilled and billed, but uncollected costs was approximately \$184.4 million. This figure is tied to 2,143 sites with unbilled costs and 433 sites with billed but uncollected costs. As of August 8, 2013 there remain approximately 1,430 with unbilled costs and 365 sites with billed but uncollected costs, collectively totaling approximately \$173.3 million. Addressing this backlog of unbilled and billed but uncollected costs represents one DTSC's highest priorities.

These positions will be placed in several DTSC programs (described below) to evaluate and address the backlog of unbilled and billed but uncollected costs, and ensure that future costs are not added to this backlog.

Office of Legal Affairs

The Office of Legal Affairs (OLA) is requesting to establish four (4) two-year limited term Attorney III positions to conduct the analysis of all unbilled and billed but uncollected costs in order to identify the cases that are appropriate for referral to the Attorney General's Office (AGO) for further cost recovery efforts, as well as to determine further internal cost recovery efforts (i.e., liens, collection letters, and settlement negotiations). OLA is also requesting one (1) two-year limited term Legal Analyst to review, analyze, and organize legal documents, and provide pre-filing and post-filing document management, case preparation, and litigation support for at least 20 to 30 cases that are anticipated to be referred to the AGO in the next two years. The Legal Analyst will also serve as the contact person and focal point to track, analyze, and follow up on the information associated with bankruptcy cases that may involve parties responsible for the Department's response costs.

This is a new, substantial workload for OLA that cannot be managed within existing resources. OLA has redirected one attorney to evaluate and triage these potential cost recovery cases, however, additional resources are necessary in order to prevent DTSC's potential claims from being time-barred due to statutes of limitations. It is not feasible for OLA to redirect additional resources because OLA's existing resources have already had to absorb the workload of the redirected attorney and also are fully committed in providing support to existing mission-critical Department programs.

If this proposal is not approved, DTSC would stand to lose millions of dollars in potential cost recovery revenues as OLA cannot afford to redirect resources from other mission-critical work. For example, redirecting resources currently allocated to support California's new Safer Consumer Products program would likely impede the implementation of this ground-breaking program given the potential for court challenges expected from those who would want to delay the program. DTSC also cannot afford to reduce OLA support for its Hazardous Waste Management program. DTSC has been criticized for allegedly weak performance in its permitting and enforcement activities within the Hazardous Waste

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Management Program; these activities cannot be postponed or delayed because of statutes of limitations that apply to enforcement cases, and other legal deadlines associated with permitting projects. OLA also cannot redirect additional resources from the core Brownfields and Environmental Restoration Program. OLA drafts cleanup orders and negotiates cleanup agreements with responsible party representatives, as well as providing legal advice to program staff on cleanup decisions and other matters. Failure to perform this vital legal work would prevent DTSC from taking appropriate cleanup action to protect the public health and environment from toxic exposures, and would prevent the beneficial reuse of contaminated land.

Brownfields Environmental Restoration Program

The Technical Project Managers (TPM) in the Brownfields Environmental Restoration Program (BERP) are team leaders for a project/site and provide oversight and management of the investigation, classification, planning, execution, and completion, and are also responsible for performing administrative tasks. Historically, TPMs have prioritized the cleanup of contaminated properties over the process of pursuing responsible parties for reimbursement of DTSC's response costs. This has been one of the factors that have resulted in DTSC's past response costs either having not been billed to responsible parties or having been billed, but uncollected.

BERP is requesting to establish six (6) two-year limited term Associate Governmental Program Analyst (AGPA) positions to conduct the immediate analysis of unbilled and billed but uncollected costs to identify the status and make a determination on how to proceed and to act as Administrative Project Managers (APM), which will be utilized to develop an Administrative Site Management pilot program dedicated to performing administrative tasks currently tasked to the TPMs. The six (6) AGPAs will be placed in various branches statewide as they will work closely with the TPMs in each office to not only resolve the backlog issues but they will also be responsible for the following administrative tasks that will avoid future cost recovery issues:

- Coordinating and conducting Potentially Responsible Party searches, including conducting title searches, overseeing work tasked to the potential responsible parties search contract, issuing and following up on information request letters, drafting and coordinating the review of potential responsible parties final reports;
- Working with the Cost Recovery Unit, Collections and OLA on addressing overdue invoices and unbilled costs, coordinating ability-to-pay analyses, drafting "No Further Cost Recovery Action" determinations, as appropriate, and, if necessary, preparing referral packets for the AGO;
- Ensuring contracts, agreements, and orders are in place with applicable cost recovery language to recoup our costs;
- Issuing cost estimates timely and monitoring spending against these cost estimates and coordinating updates to cost estimates, as needed;
- Ensuring billing information is provided to the Cost Recovery Unit, working with technical staff to monitor charges against project site codes, and following up with technical staff and proponents on non-payments;
- Monitoring contracts expenditures, terms of contracts (expiration dates), and processing invoices to ensure that DTSC will be able to recoup our costs through cost recovery actions;
- Coordinating reviews of cost estimates and financial assurance documents between technical staff and Financial Assurance staff;
- Monitoring land use restrictions imposed by DTSC on properties where some contamination is left in place; and

Analysis of Problem

- Conducting other administrative tasks necessary to ensure that projects are managed effectively and efficiently.

Because the APMs will be responsible for only the administrative tasks associated with site cleanup management, each APM will be able to manage the administrative tasks for many projects. These positions are vital to the success of building an efficient Cost Recovery Program and it will allow the TPMs to focus on the technical aspects of cleanup projects and will enhance DTSC's cost recovery efforts.

If technical staff resources are directed to work on the backlog the State would see a reduction in the numbers of removal and remedial actions completed, sites approved for reuse, and school sites made available for use. DTSC has shifted the administrative tasks to existing analysts in the branches; however, with the backlog and the volume of sites DTSC is actively working on six (6) additional positions are needed on a limited term basis. If DTSC is unable to establish the six (6) positions, DTSC would see further cost recovery issues as existing staff would not be able to keep up with current cost recovery tasks and the administrative functions related to the projects and handle the cost recovery backlog in the time frame DTSC has set to resolve its cost recovery issues. In addition, federal grant management would be impacted, jeopardizing approximately \$12 million in federal funding.

Administrative Services

Administrative Services is requesting to establish one (1) two-year limited term Accounting Officer (Specialist) (AO) position in the Cost Recovery Unit and two (2) two-year limited term Accounting Administrator I (Specialist) (AAI) positions in the Collections Unit. The AO and AAI positions are necessary to carry out the workload that will be generated from the OLA and BERP positions requested to address the backlog of unbilled and billed but uncollected costs.

This is a new, substantial workload for Administrative Services and the existing Cost Recovery and Collections staff are already working on current and past cost recovery efforts and if required to take on the workload generated from the cost recovery backlog project, current billings, invoice disputes, collection efforts, and ability to pay determinations could be further backlogged resulting in loss of cash flow and revenue.

The positions requested for Cost Recovery and Collections will work with OLA, project managers, and BERP administrative staff to evaluate and address the backlog of unbilled and billed but uncollected costs. The staff in Administrative Services will research and evaluate invoice disputes from billable parties, contact billable parties to set up payment schedules, assist program with potentially responsible party searches, provide documentation for referrals to AGO, research data in the billing system and make adjustments as necessary, conduct ability-to-pay determinations, review No Further Cost Recovery Action determinations.

E. Outcomes and Accountability

One of the primary outcomes to measure the success of this proposal will be the amount that is recovered of the unbilled and billed but uncollected costs. To determine an amount several factors must be taken into consideration. Some of the costs date back as much as 26 years, which raises concerns regarding the accuracy and reliability of the data. A significant number of the cleanup sites are likely to be "orphans," where no financially viable responsible party had been identified to invoice in order to recover costs. This could represent as much as 60 percent of the sites in the cost recovery backlog. Additionally, a preliminary review identified some sites as unbilled that had actually been funded or satisfied through settlement agreements, advances, grants, or state funding. There are also sites where the statutes of limitations to file a cost recovery action have expired, or there was a responsible party identified but the responsible party has gone bankrupt or lacks the resources to pay the costs.

Analysis of Problem

DTSC expects to resolve most of the sites on the unbilled/uncollected list by the end of the two-year limited term period. At which time an accurate estimate of recoverable costs should be available except for sites where DTSC has initiated legal cost recovery action. We hope to recover as much as 15 percent up to 20 percent of unbilled and billed but uncollected costs. However, until the end of the two-year period and the finalization of legal cost actions, an accurate accounting of recoverable costs is not possible.

At the end of the two-year period for the six (6) limited term AGPA positions, BERP will be able to determine the success of the Administrative Site Management pilot program in relation to whether cost recovery has improved as a result of the pilot program. A key component of this assessment will be to determine the effectiveness of utilizing the APMS to perform administrative tasks instead of the TPMs who will have been focusing on the technical aspects of site cleanup activities. Depending on the level of success of the pilot program BERP may determine that permanent resources are warranted.

In addition, DTSC is developing performance metrics to evaluate the effectiveness of DTSC's comprehensive cost recovery policies and procedures, including an evaluation of response costs incurred by DTSC and recovered from responsible parties. The performance metrics will include a quarterly reporting requirement in order to evaluate DTSC's progress in evaluating its unbilled and billed but uncollected costs and initiating collection efforts.

F. Analysis of All Feasible Alternatives

Alternative 1: Approve resources as requested.

Pros:

- This alternative provides the necessary resources to review, evaluate, and adjudicate unbilled and billed but uncollected costs incurred by DTSC in an effort to maximize DTSC cost recovery.
- DTSC will recover an estimated 15 – 20 percent in site cleanup costs (an estimated \$26 – \$35M).
- The return on investment for the requested resources is greater than the cost of the requested resources.
- DTSC will gain additional funding for future remediation of contaminated properties where there are no financially viable responsible parties.
- Recovery or adjudication of unbilled and billed but uncollected costs will bolster the public's confidence in DTSC's stewardship.
- Technical Project Managers will be able to focus on technical work rather than administrative tasks.

Cons:

- Results in the expenditure of additional funds to attain new resources.

Alternative 2: Approve seven and one-half (7.5) positions as four-year limited term.

Pros:

- This alternative provides resources, however, it will take longer to review, evaluate, and adjudicate unbilled and billed but uncollected costs incurred by DTSC rather than two years.
- DTSC will gain additional funding for future remediation where there are no financially viable responsible parties; however, a smaller amount will be available.

Analysis of Problem

Cons:

- DTSC will likely recover less than the estimated 15 – 20 percent in site cleanup costs due to delays in reviewing and analyzing costs, which will result in the expiration of the statute of limitations at some sites.
- Administrative cost recovery tasks, such as monitoring costs against cost estimates and following-up on outstanding payments will not be performed, leading to continued large outstanding balances that may not be recovered.
- Will prevent DTSC from effectively managing and tracking cost recovery related data, and will significantly impact the recovery of past costs and cost recovery for future site cleanup costs.
- Lack of project management for numerous information technology systems that support the cost recovery will result in project delays and reduced returns.
- Failure to meet the public's expectation due to DTSC not being able to maximize the recovery of costs for site cleanup activities.

Alternative 3: Redirect existing resources to meet the workload need.

Pros:

- Does not involve the expenditure of additional funds.

Cons:

- This alternative does not provide the necessary resources to review, evaluate, and adjudicate unbilled and billed but uncollected costs incurred by DTSC in an effort to maximize DTSC cost recovery.
- DTSC will recover less than the estimated 15 – 20 percent recovery due to delays in reviewing and analyzing costs, which will result in the expiration of the statutes of limitations at some sites.
- Administrative cost recovery tasks, such as monitoring costs against cost estimates and following-up on outstanding payments will not be performed, leading to continued large outstanding balances that may not be recovered.
- Will prevent DTSC from effectively managing and tracking cost recovery related data, and will significantly impact the recovery of past costs and cost recovery for future site cleanup costs.
- OLA will have to reduce/eliminate support of other high priority programs in order to support the new cost recovery workload, even at the reduced level of effort contemplated by this alternative.
- Lack of project management for numerous information technology systems that support cost recovery will result in project delays and reduced returns.
- Failure to meet the public's expectation due to DTSC not being able to maximize the recovery of costs for site cleanup activities.

Alternative 4: Do Nothing

Pros:

- Does not involve the expenditure of additional funds.

Cons:

Analysis of Problem

- Results in no new resources to review and handle unbilled and billed but uncollected costs in a timely manner, which will result in less recovery of costs.
- DTSC will be unable to recover a substantial portion of the response costs incurred by the DTSC.
- No review or analysis of cleanup costs will result in the expiration of the statutes of limitations at some sites resulting in no cost recovery.
- Administrative cost recovery tasks, such as monitoring costs against cost estimates and following-up on outstanding payments, will not be performed leading to continued large outstanding balances that may not be recovered.
- Will prevent DTSC from effectively managing and tracking cost recovery related data, and will significantly impact the recovery of past costs and cost recovery for future site cleanup costs.
- Lack of project management for numerous information technology systems that support cost recovery will result in project delays and reduced returns.
- Failure to meet the public's expectation due to DTSC not being able to maximize the recovery of costs for site cleanup activities.

G. Implementation Plan

July 2014 – Upon enactment of the FY 2014 budget act, begin the recruitment process to fill the fourteen (14) positions.

July 2014 – Issue comprehensive cost recovery policies.

July 2014 – Establish performance metrics and quarterly reporting system to evaluate progress in evaluating and acting on unbilled/uncollected costs.

June 2015 – Most, if not all, backlogged unbilled/uncollected costs will be identified and a determination made on the status of each cost recovery account (e.g., collection, lien, settlement, referral to AGO for litigation, bankruptcy, State-funded orphan site, write-off as uncollectible).

H. Supplemental Information (Check box(es) below and provide additional descriptions.)

None Facility/Capital Costs Equipment Contracts Other _____

I. Recommendation

DTSC recommends adopting **Alternative 1**. This alternative maximizes cost recovery potential and ensures that DTSC has the resources necessary to address past unbilled/uncollected costs associated with site cleanup costs as well as the recovery of site cleanup costs in the future.

**DEPARTMENT OF TOXIC SUBSTANCES CONTROL
Workload Analysis Chart -**

BCP TITLE: Cost Recovery

PRIORITY: 1

| ACTIVITY/TASK | PROJECTED PY for TWO YEARS | | | | | |
|---------------|--------------------------------|------------------------------|------------------------------------|----------------------------|------------------------|--------------------------------|
| | HOURS TO COMPLETE TASK CLEANUP | HOURS TO COMPLETE TASK LEGAL | HOURS TO COMPLETE TASK COLLECTIONS | HOURS TO COMPLETE TASK CRU | NUMBER OF TASKS /SITES | NUMBER OF HOURS NEEDED (2 Yrs) |

Part I, Phase I : Review of sites with unbilled cost balance of \$5,000 and above

| | | | | | | |
|--|---------------|---------------|---------------|--------------|-----------------|------------------|
| Evaluate Statute of Limitations Worksheets with Legal Office, Cost Recovery Unit, and Collections | | 20.00 | 4.00 | 4.00 | 477 | 13,356.00 |
| Prepare No Further Cost Recovery Action (NFCRA) for costs exceeding the statute of limitations. | 40.00 | 20.00 | 12.00 | 6.00 | 257 | 20,046.00 |
| Prepare potentially responsible party (PRP) searches work orders for contract Review PRP search results | 28.00 | 20.00 | | | 70 | 3,360.00 |
| a. Preparation of Statement of Facts for referral to AG's office | 160.00 | 260.00 | 80.00 | 24.00 | 17 | 8,908.00 |
| b. Preparation of a No Further Cost Recovery Action (NFCRA) | 40.00 | 20.00 | 12.00 | 6.00 | 35.00 | 2,730.00 |
| c. Begin billing RPs | 2.00 | | | | 17.00 | 34.00 |
| d. Billing Disputes | 4.00 | | 60.00 | | 13.00 | 832.00 |
| Data cleanup - review charges and amend time sheets as necessary. Review amended time sheets and update data in cost recovery billing system | 2.00 | | 2.00 | 6.00 | 145 | 1,450.00 |
| TOTAL PART I, PHASE I | 276.00 | 340.00 | 170.00 | 46.00 | 1,031.00 | 50,716.00 |

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Workload Analysis Chart -

BCP TITLE: Cost Recovery

PRIORITY: 1

| ACTIVITY/TASK | PROJECTED PY for TWO YEARS | | | | | |
|--|--------------------------------|------------------------------|------------------------------------|----------------------------|------------------------|--------------------------------|
| | HOURS TO COMPLETE TASK CLEANUP | HOURS TO COMPLETE TASK LEGAL | HOURS TO COMPLETE TASK COLLECTIONS | HOURS TO COMPLETE TASK CRU | NUMBER OF TASKS /SITES | NUMBER OF HOURS NEEDED (2 Yrs) |
| Part I, Phase II: Review sites currently being billed with historical unbilled costs. | | | | | | |
| a. Preparation and review NFCRAs | 40.00 | 20.00 | 12.00 | 6.00 | 33.00 | 2,574.00 |
| b. Determination of Cost Recovery potential - | 160.00 | 260.00 | 100.00 | 10.00 | 11.00 | 5,830.00 |
| c. Possible orphan - PRP Search | 40.00 | 20.00 | 20.00 | 4.00 | 6.00 | 504.00 |
| d. Bill | - | - | - | 3.00 | 20.00 | 60.00 |
| TOTAL PART I, PHASE II | 240.00 | 300.00 | 132.00 | 23.00 | 70.00 | 8,968.00 |
| Part I, Phase III: Review of Litigation and Bankrupt sites with unbilled costs balance above \$5,000 | | | | | | |
| Program coordination with Legal to ensure classification is correct and to determine next step in cost recovery effort | | | | | - | - |
| a. Program review - possible time sheet amendments | 2.00 | | 2.00 | 4.00 | 1.00 | 8.00 |
| b. Preparation and review of NFCRAs | 40.00 | 20.00 | 12.00 | 6.00 | 6.00 | 468.00 |
| d. Review sites for potential cost recovery potential | 160.00 | 260.00 | 100.00 | 10.00 | 4.00 | 2,120.00 |
| TOTAL PART I, PHASE III | 202.00 | 280.00 | 114.00 | 20.00 | 11.00 | 2,596.00 |
| Part I, Phase IV: Review of closed sites with an unbilled balance of \$5,000 and above. | | | | | | |

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Workload Analysis Chart -

BCP TITLE: Cost Recovery

PRIORITY: 1

| ACTIVITY/TASK | PROJECTED PY for TWO YEARS | | | | | |
|--|--------------------------------|------------------------------|------------------------------------|----------------------------|------------------------|--------------------------------|
| | HOURS TO COMPLETE TASK CLEANUP | HOURS TO COMPLETE TASK LEGAL | HOURS TO COMPLETE TASK COLLECTIONS | HOURS TO COMPLETE TASK CRU | NUMBER OF TASKS /SITES | NUMBER OF HOURS NEEDED (2 Yrs) |
| QA / QC list of NFCRAs on file | 80.00 | | 60.00 | | 1.00 | 140.00 |
| Analysis of remaining NFCRA and unbilled costs.- Prepare and review NFCRAs | 40.00 | 20.00 | 12.00 | 6.00 | 90.00 | 7,020.00 |
| TOTAL PHASE I, PART IV | 120.00 | 20.00 | 72.00 | 6.00 | 91.00 | 7,160.00 |
| Part II, Phase I: Review sites that constitute top 90% of billed but uncollected costs. | | | | | | |
| Program to prepare SOL analysis | 12.00 | 20.00 | 4.00 | 4.00 | 45.00 | 1,800.00 |
| a. Enhanced PRP Search to identify additional viable PRPs | 24.00 | | | | 54.00 | 1,296.00 |
| b. Prepare / review NFCRAs | 40.00 | 20.00 | 12.00 | 6.00 | 25.00 | 1,950.00 |
| c. Prepare Lien for referral to the AG's Office to convert into a judgment lien | 320.00 | 20.00 | 10.00 | 4.00 | 13.00 | 4,602.00 |
| d. Preparation of Statement of Facts, support to Legal and AG in preparation of cost recovery case, monitoring subsequent cost recovery trial. | 160.00 | 260.00 | 80.00 | 24.00 | 6.00 | 3,144.00 |
| TOTAL PART II, PHASE I | 556.00 | 320.00 | 106.00 | 38.00 | 143.00 | 12,792.00 |
| Part II, Phase II: Review of remaining sites with uncollected costs. | | | | | | |
| Analysis - have collection letters been sent | 4.00 | | | 4.00 | 178.00 | 1,424.00 |
| a. Prepare and send out Collection Letters | | | | 6.00 | 160.00 | 960.00 |

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Workload Analysis Chart -

BCP TITLE: Cost Recovery

PRIORITY: 1

| ACTIVITY/TASK | PROJECTED PY for TWO YEARS | | | | | |
|---|--------------------------------|------------------------------|------------------------------------|----------------------------|------------------------|--------------------------------|
| | HOURS TO COMPLETE TASK CLEANUP | HOURS TO COMPLETE TASK LEGAL | HOURS TO COMPLETE TASK COLLECTIONS | HOURS TO COMPLETE TASK CRU | NUMBER OF TASKS /SITES | NUMBER OF HOURS NEEDED (2 Yrs) |
| b, Complete Form requesting Legal and Collections help with collecting 120 past due invoices generated from collection letters | 80.00 | 80.00 | 60.00 | 10.00 | 120.00 | 27,600.00 |
| TOTAL PART II, PHASE II | 84.00 | 80.00 | 60.00 | 20.00 | 458.00 | 29,984.00 |
| Site Administration - cost estimates, monitoring contracts, coordinating review of cost estimates and financial assurance documents, monitoring land use restrictions | 20.00 | | | | 400.00 | 8,000.00 |
| TOTAL HOURS REQUIRED (2 YEARS) | | | | | | 120,216.00 |
| NUMBER OF PY NEEDED (2 YEARS) | | | | | | 27.99 |
| NUMBER OF PY NEEDED PER YEAR (HRS/1718) | | | | | | 14.00 |