



FACT SHEET



MEET-AND-CONFER PROCESS AND COST RECOVERY FOR CORRECTIVE ACTION PROCESS AND OVERSIGHT FOR FACILITIES THAT DO NOT HAVE EXISTING CORRECTIVE ACTION CONSENT AGREEMENTS

The California Environmental Protection Agency (Cal/ EPA), Department of Toxic Substances Control (DTSC)

BACKGROUND:

Assembly Bill (AB) 1651 (Chap. 576, Statutes of 1996) added provisions regarding oversight costs to the Health and Safety Code (HSC). This Fact Sheet summarizes the cost recovery process established by AB 1651 for hazardous waste management facilities that must undertake corrective action to clean up one or more releases of hazardous waste. For the specific legislative language, see the enclosed copy of Chapter 6.66.

STEPS IN THE PROCESS:

Identify Tasks. For facilities for which a Resource Conservation Recovery Act Facility Assessment (RFA) or equivalent assessment has not been conducted, the DTSC Project Manager assigned to the project will conduct a preliminary review of the facility file, the Phase 1 Checklist, and any other pertinent information, and identify the corrective action needs of the facility.

Identify Project Team. The Project Manager will identify the DTSC staff, programs and resources needed to address the corrective action needs of the facility.

Meet-and-Confer. Within five (5) working days of the initiation of the project, the Project Manager will call the facility to set up a meet-and-confer session. The Project Manager will prepare a transmittal letter confirming the date, time and location of the meet-and-confer session, and provide the facility with a draft of the project tasks. This package will be sent to the facility at least five (5) working days prior to the meet-and-confer

session. During the meet-and-confer session, the scope of work, prioritization of tasks, scheduling, procedures for resolving disputes regarding technical issues, and other elements of the project will be discussed. Additionally, staff will go over DTSC's cost recovery policies and procedures, and provide the facility with a copy of DTSC's Summary of Cost Recovery Policies.

Develop Cost Estimate. In consultation with the Project Team, the Project Manager will develop detailed cost estimates for the project. The type and complexity of the project, level of uncertainty about the extent of contamination, and community issues must be considered in developing the cost estimate. The estimate will be presented in the form of a spreadsheet. Each spreadsheet must include the hourly rates for the staff classifications expected to participate in the project. The hourly contract rates are set by DTSC's Fiscal Systems Branch and are updated annually. The number of hours projected by support staff (e.g., Geologists, Public Participation Specialists, etc.) are provided by those staff. All cost estimates must include a line item adding 10% to 15% for general project management. Projects with a high degree of uncertainty (e.g., uncertainty about how far contamination has migrated) should include an appropriate contingency amount.

Develop Project Schedule. In consultation with the Project Team members, the Project Manager will develop a draft project schedule for the tasks identified.

Consent Agreement. A Corrective Action Consent

Agreement that details the tasks to be accomplished, the responsibilities of all parties, DTSC's costs and the project schedule will be developed, agreed upon, and signed by the facility and DTSC.

Implement Project. The Project Manager will implement the project based on the agreed-upon scope of work and pursuant to the Corrective Action Consent Agreement and the understandings laid out in the meet-and-confer session.

Followup Meetings. The Project Manager, facility representative(s), and, as appropriate, Project Team members, will meet at agreed-upon intervals to review the project, and discuss and resolve any issues that may have arisen.

Subsequent Phases. For subsequent phases of Corrective Action needed at a facility (e.g., any interim measures that are needed to prevent exposures or immediately control a release), a process similar to that described above will be followed.

ADDITIONAL INFORMATION:

DTSC Personnel Changes. Because of DTSC staff changes, it may be necessary to change Project Managers during the course of a Corrective Action project. People leave DTSC, change jobs, and receive promotions without regard for the status of Permitting projects. If it becomes necessary to reassign a project, every effort will be made to provide project continuity. Whenever possible, the outgoing Project Manager will work with the new Project Manager to get that person conversant with the project. Additionally, the Supervisor for the original Project Manager will help clarify project status. This will help maintain the planned schedule for the project, and assure consistency with the original agreements between DTSC and the facility. Time spent on internal DTSC coordination to transition a project will be billed to a general DTSC Permitting function, rather than to the facility.

California Environmental Quality Act (CEQA).
Environmental Impact Report (EIR). If development of an Initial Study identifies potentially

significant impacts, preparation of an EIR may be necessary. Pursuant to Public Resources Code section 21089, the Lead Agency may pursue cost recovery for costs incurred in the development of an EIR. For most projects, however, DTSC enters into a third-party Memorandum of Understanding with the facility to contract with a private consultant to prepare the EIR. DTSC's costs would be limited to EIR review and approval and coordination with the contractor. Negative Declarations. Pursuant to the decision made by the Fee Reform Task Force, after July 1, 1998, DTSC will no longer pursue reimbursement for the development of a Negative Declaration under CEQA. CEQA development hours will not be part of costs for Corrective Action Consent Agreements initiated after July 1, 1998.

Billing Procedures. DTSC's Accounting Office sends quarterly billings. Each facility's billing comes directly from DTSC's CalStars Information Retrieval System (CIRS) that consolidates the data, sorted by site code and activity code, from each DTSC staff member's monthly time sheet. In addition to the standard time sheet, each DTSC Staff person keeps a detailed Daily Log of activities that includes the date, number of hours, activity code, site code, and a description of the work that was done. If, when a facility receives its bill, the facility believes that the bill is in error, a 45-day period in which to dispute the bill is available.

SUMMARY OF COST RECOVERY POLICIES:

In General: DTSC is required to recover all identifiable State costs related to the discovery, evaluation and cleanup of hazardous substance and hazardous waste release sites and facilities. In addition to direct costs incurred by DTSC contractors and DTSC staff who are working on site-specific activities, DTSC also bills its indirect costs associated with direct staff costs. Such indirect costs are applied only to DTSC direct labor

costs and not to DTSC contractor costs or DTSC staff travel costs.

Program Specific Indirect Rates: DTSC calculates separate indirect cost rates for DTSC overhead associated with each of its major programs. Because of the ratio of direct to indirect costs varies among DTSC's various programs, the indirect cost rates associated with those programs will also vary. These indirect cost rates are updated every six months.

AB 1651: Effective January 1, 1997, several changes to the Health and Safety Code were made by Assembly Bill 1651 (AB 1651) which affected our billing process. AB 1651 eliminated the 10 percent administrative charge, and billings after January 1, 1997 will no longer reflect this charge unless it is mandated by a pre-existing agreement. DTSC will also waive previously billed 10 percent administrative charges unless such charges were specified in an agreement or were charged in a period which has been settled.

AB 1651 imposes interest, applied from the date of demand at the same rate of return earned on investment in the Surplus Money Investment Fund, on DTSC billings issued after January 1, 1997. It is DTSC's policy to waive the interest charges if the payment is received within 60 days (or other time period specified by a pre-existing agreement) of the date of the invoice. The interest rate will be specified in the billing letter.

Quarterly Billing Statements: In general, DTSC submits bills to persons liable for costs on a quarterly basis. These billings, together with a summary of the work performed by DTSC, identify the names of staff and the number of hours staff directly charged to each site for the billing period.

Time Sheets: DTSC staff keep tract of their work activities on a daily basis and submit monthly time sheets accounting for all of their time. In addition, DTSC staff keep daily logs to further substantiate site-specific work activities. Time sheets and daily logs are available for review upon request.

Communication Concerning Project Costs: DTSC's policy is to meet with persons liable for costs whenever necessary and appropriate to discuss project work plans, time lines, budget and cost estimates, outputs, and related issues. Such discussions are initiated at the outset of each new project and at the beginning of each new major phase of activity for ongoing projects. DTSC's projected budgets are comprehensive and include estimates of all DTSC charges which include staff hours which are anticipated to be directly charged to the project and estimated indirect charges. The estimates are updated as necessary, based on emerging information and project-specific developments.

Resolution of Disputed Bills: If you have a dispute regarding the charges or related services appearing on the invoice you received from DTSC, you may file a formal dispute by notifying DTSC in writing within 45 days from the date of the invoice. The notice must state the reasons for the dispute and should be addressed to:

Special Assistant for Cost Recovery and
Reimbursement Policy
Department of Toxic Substances Control
Post Office Box 806
Sacramento, California 59812-0806

If you are disputing an invoice for recovery of site cleanup costs, a copy of the notice of dispute letter should also be sent to the Regional Branch Chief. If you are disputing only a portion of the costs included in the invoice, you should pay for those costs that are not being disputed. Filing a formal dispute will not stay the imposition of the interest charges that were discussed previously in the AB 1651 section of this policy summary. Payments for the undisputed costs received within 60 days of the date of the invoice will waive the interest related to those costs.

