### STATE OF CALIFORNIA

**Budget Change Proposal - Cover Sheet**

DF-46 (REV 02/15)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Business Unit</th>
<th>Department</th>
<th>Priority No.</th>
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<tbody>
<tr>
<td>2016/17</td>
<td>3960</td>
<td>Toxic Substances Control</td>
<td>12</td>
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<table>
<thead>
<tr>
<th>Budget Request Name</th>
<th>Program</th>
<th>Subprogram</th>
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<tbody>
<tr>
<td>3960-112-BCP-BR-2016-GB</td>
<td>3620 Site Mitigation and Brownfields Reuse</td>
<td></td>
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<tr>
<td></td>
<td>3625 Hazardous Waste Management</td>
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<td></td>
<td>9900100 Administration</td>
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<td>9900200 Distributed Administration</td>
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**Budget Request Description**

*Ability to Pay: Cost Recovery (AB 276 (Ch. 459/2015))*

**Budget Request Summary**

The Department of Toxic Substances Control (DTSC) requests $200,000 and 2.0 permanent positions from the Toxic Substances Control Account ($180,000) and the Hazardous Waste Control Account ($20,000) to implement the expanded information request authority pursuant to Assembly Bill (AB) 276 (Assembly Committee on Environmental Safety and Toxic Materials, Chapter 459, Statutes of 2015). AB 276 allows DTSC to require a potentially responsible party (PRP) to provide information regarding the party's ability to pay for a response action at a site where there has been, or may be, a release of hazardous waste, hazardous substances, or hazardous materials in the environment.

**Requires Legislation**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Code Section(s) to be Added/Amended/Repealed</th>
</tr>
</thead>
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**Does this BCP contain information technology (IT) components?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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*If yes, departmental Chief Information Officer must sign.*

**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.**

<table>
<thead>
<tr>
<th>FSR</th>
<th>SPR</th>
<th>Project No.</th>
<th>Date</th>
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**If proposal affects another department, does other department concur with proposal?**

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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*Attach comments of affected department, signed and dated by the department director or designee.*

**Prepared By**

<table>
<thead>
<tr>
<th>Date</th>
<th>Reviewed By</th>
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<tr>
<td>1/14/16</td>
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**Department Director**

<table>
<thead>
<tr>
<th>Date</th>
<th>Agency Secretary</th>
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<td>1/14/16</td>
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**Department of Finance Use Only**

**Additional Review:**

- Capital Outlay
- ITCU
- FSCU
- OSAE
- CALSTARS
- Dept. of Technology

**BCP Type:**

- Policy
- Workload Budget per Government Code 13308.05

**PPBA**

<table>
<thead>
<tr>
<th>Date submitted to the Legislature</th>
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Analysis of Problem

A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests $200,000 and 2.0 permanent positions from the Toxic Substances Control Account ($180,000) and the Hazardous Waste Control Account ($20,000) to implement the expanded information request authority pursuant to Assembly Bill (AB) 276 (Assembly Committee on Environmental Safety and Toxic Materials, Chapter 459, Statutes of 2015). AB 276 allows DTSC to require a potentially responsible party (PRP) to provide information regarding the party’s ability to pay for a response action at a site where there has been, or may be, a release of hazardous waste, hazardous substances, or hazardous materials in the environment.

B. Background/History

Prior to AB 276, DTSC could request enforcement-related information from a limited number of parties; and the kind of information that could be requested was also limited. For example, financial information regarding a party’s ability to perform or pay for a response action at a hazardous substances release site could only be obtained if the party voluntarily complied. However, PRPs often refuse or are reluctant to provide this information. The inability to access financial information, combined with the other limitations on DTSC’s information request and enforcement authority significantly hindered the ability to make informed decisions related to enforcement actions and cost recovery.

DTSC’s mission is to protect California’s people and environment from the harmful effects of hazardous substances; in part, through the restoration of contaminated properties and other environmental resources. In fulfilling its mission, the Department incurs cleanup and oversight costs (collectively “response costs”) in investigating and remediating contaminated properties, and is authorized by law to recover its costs from PRPs.

In 2013, the DTSC identified that its cost recovery efforts had been impeded by various factors, including gaps in the Department’s authority and resources to perform necessary cost recovery activities. As of April 24, 2013, DTSC identified unrecovered response costs of approximately $184.4 million for the period July 1987 through December 2012. As a result, the California Legislature requested the California State Auditor to review the DTSC’s cost recovery program and make appropriate recommendations. Recognizing DTSC’s need for expanded authority in the Department’s information request authority, the California State Auditor recommended that the Legislature give DTSC the authority to require financial information from PRPs. (2014 Auditor Report, at 31.)

Lack of or incomplete information about a PRP’s ability to pay for cleanup hinders DTSC’s ability to make an informed decision whether to pursue a PRP for response costs, impacting DTSC’s ability to ultimately recover its response costs. Although DTSC can request that PRPs voluntarily submit their financial information for review, DTSC lacks the authority to require or compel PRPs to do so. A PRP’s financial information could impact DTSC’s decision-making about whether to file a cost recovery action. DTSC may not know the PRP’s ability to satisfy a judgment for the amount of its claim for cleanup costs, or to pay a substantial portion of its claim, and therefore may not be able to evaluate the practical results of pursuing a PRP for costs. Having access to such information would strengthen DTSC’s efforts to address its financial risk in pursuing cost recovery litigation.

AB 276 makes DTSC’s information request authority consistent with the United States Environmental Protection Agency’s (EPA’s) existing authority pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). (42 U.S.C. § 9604(e).)

C. State Level Considerations

Cost recovery constitutes one of the most important administrative activities performed by DTSC. It is significant because it helps fund cleanup efforts. It also serves to hold responsible parties accountable for the damage they have caused to the environment. These collection efforts, along with various taxes and fees, support DTSC’s mission.

In January 2014, the California State Auditor’s Office began a review of DTSC’s cost recovery program, as directed by the Joint Legislative Audit Committee. The Auditor’s findings report was released on August 7, 2014. The auditor made 11 recommendations – nine for Department action and two that required Legislative
Analysis of Problem

action. Relevant to this request, the Auditor recommended that the Legislature give DTSC the authority to require financial information from PRPs. (2014 Auditor Report at 31.) AB 276 was specifically introduced to implement this recommendation.

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

D. Justification

Prior to the adoption of AB 276, and unlike the United States Environmental Protection Agency (U.S. EPA), DTSC did not have the authority to require a PRP to provide any financial information when trying to determine the ability of the party to perform or pay for cleanup costs. DTSC could only request such information to be voluntarily provided, or sue the PRP to obtain the information.

With the passage of AB 276, DTSC has the authority to compel parties to provide financial information regarding a PRPs’ ability to pay for a response action. This authority will increase the number of cases subject to review of financial documentation for companies and individuals owing money to the State. Without additional staffing, the number of cases left unresolved will increase and potentially cost the State money as the unbill/overdue accounts receivable amounts will increase and could become uncollectable after a period of time. In addition, a delay in the timely completion of ability to pay assignments has the potential to allow a company or individual to divert/divest their available resources.

As a result of AB 276, DTSC expects the number of ability to pay cases to increase by 25 annually. Based on established workload standards, DTSC is requesting two (2.0) Accounting Administrator I (Specialist) positions to complete ability to pay reviews which includes an analysis of income tax returns, financial statements, bank and/or investment statements, credit cards, loan documents, lease agreements, property records, and trust agreements. This will enable DTSC to maximize the recovery of its past, and present costs, and to continue maximizing collection of costs into the future.

Ability to pay cases often result in settlement negotiations with PRPs to settle liability based on a PRP’s inability to pay DTSC’s response costs. Settlement negotiations can result in administrative settlements or require the filing of a cost recovery complaint for approval of a judicial settlement. Other ability to pay cases may be appropriate for referral to the Attorney General’s Office (AGO) for further cost recovery efforts, and to determine additional cost recovery efforts (i.e., liens and settlement negotiations).

In addition these positions will develop new policies and procedures for responsible parties to provide ability to pay information.

Failure to thoroughly evaluate the financial condition of PRPs who should take or perform response actions may result in an unfair shift of the financial burden to those not responsible for contamination (polluter pays).

E. Outcomes and Accountability

With the additional resources for ability to pay determinations, DTSC will complete the new policy and procedures based on this new authority and will measure improvements based on the number of ability to pay cases that are completed.

To ensure accountability and transparency, DTSC utilizes the Microsoft Office Sharepoint application to track existing ability to pay cases. Continued use of this resource will allow staff and management to track the progress of work being performed and account for workload progress being made. In addition, existing cost recovery policies stipulate that completed ability to pay reviews include a memorandum of findings to Department staff and management. These findings will be delivered on a flow-basis as completed.

F. Analysis of All Feasible Alternatives

3960-112-3CP-BR-2016-GB
Analysis of Problem

Alternative 1: Approve as requested to implement the development of policies and procedures for requesting responsible parties to provide ability to pay information, along with executing the requesting, collecting and processing of this information.

Pro:
• Allows the Department to use this new authority while also sustaining needed resources in other areas.
• Enhances the Department's ability to recover costs from potentially responsible parties.

Con:
• Increased costs to the state, which may be recovered in increased cost recovery.

Alternative 2: Redirection of existing staff and resources.

Pro:
• No additional cost to the state.

Con:
• Staff redirection will impact other priority work conducted by the Department, and critical projects may be delayed.
• Work performed requires financial expertise and a skill-set not typically performed by others within State service.
• This specialized knowledge requires a lengthy period of training.

Alternative 3: No action.

Pro:
• No additional cost to the state.

Con:
• Would cause a backlog in ability to pay determinations delaying potential cost recovery.

G. Implementation Plan

July – August
• Upon approval, the Department would recruit for the necessary positions and begin developing and updating the policies and procedures.

Sept -
• Upon filling the positions, the Department will develop and implement new policies, procedures, and forms necessary to request, collect, and process financial information on PRPs, as well as to safeguard personal and confidential information received on PRPs.
• The Department will work with the AGO to develop procedures for taking appropriate enforcement action when parties fail or refuse to provide information that they are legally required to provide to the Department.

H. Supplemental Information

None.

I. Recommendation

The Department recommends implementing Alternative 1: This alternative ensures DTSC has the resources to implement the development of policies and procedures for requesting responsible parties to provide ability to pay information, along with implementing the requesting, collecting and processing of this information as authorized by AB 276.