The Department of Toxic Substances Control (DTSC) requests an augmentation of $1,167,000 from the Hazardous Waste Control Account and the conversion of 8.0 limited-term positions to permanent status, to continue work completing the backlog of continued permits, support timely permitting actions, and continue supporting the effort to improve the clarity, consistency, protectiveness, and enforceability of the permits issued.
A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation of $1,167,000 from the Hazardous Waste Control Account and the conversion of 8.0 limited-term positions to permanent status to continue work completing the backlog of continued permits, support timely permitting actions, and support the effort to improve the clarity, consistency, protectiveness, and enforceability of the permits issued.

B. Background/History

DTSC is responsible for regulating hazardous waste pursuant to California’s Hazardous Waste Control Law (HWCL). DTSC is the federally delegated agency for the Resource Conservation and Recovery Act (RCRA), Subtitle C, and implements the HWCL permitting and enforcement program in lieu of the United States Environmental Protection Agency (U.S. EPA).

DTSC issues hazardous waste facility permits to establish operation controls at facilities that manage waste that is toxic, corrosive, reactive, and ignitable. A hazardous waste permit is a set of detailed site-specific requirements that is the result of evaluation of all aspects of a facility such as the physical plant, personnel, types of waste, chemical processes employed, health and safety measures, the facility’s compliance history, and its financial assurance.

When it issues a permit, DTSC establishes conditions that a facility must meet in addition to the applicable laws and regulations for the management of hazardous waste. If the facility fails to meet the requirements or the conditions, DTSC can take criminal, civil, and administrative enforcement actions that can include assessing fines and penalties, suspension of operations, or permit revocation.

There are 119 facilities permitted to manage hazardous waste in California, with a total of 132 permits. Of the 119 facilities, 91 are operating facilities that primarily handle newly generated hazardous waste. The other 28 are considered post-closure facilities. These facilities primarily have monitoring and activities that ensure previously disposed wastes are not migrating from the hazardous waste unit.

Hazardous waste permits are issued for a defined term of 10 years. The facility is required to apply for a renewal of its permit six months before the permit expires. If the application is submitted on time, the law allows the facility to continue operation under its expired permit; these permits are referred to as "continued" permits. Facilities operating under continued permits are held to the standards in the original permit and current regulations and statutes, but they do not have the advantage of the most recent technologies, practices, and safeguards to prevent releases of hazardous waste into the environment that have been developed since the permit was previously reviewed. DTSC has undertaken a sustained effort to better manage the number of "continued" hazardous waste facility permits by performing a more timely review of permit applications and making a permitting decision (renewal or denial).

In 2014 DTSC received 8.0 two-year limited-term positions to complete 17 of 24 backlogged permits. The Department made decisions on 5 of the backlogged permits in FY 2014-15, will complete 12 decisions in FY2015-16, and plans to complete 7 decisions for FY 2016-17 with these resources.

DTSC currently has 37 permitted facilities operating under “continued permits” with pending permit renewal applications. The Department expects to receive 57 applications for renewals for expiring permits in the four-year period beginning with the current fiscal year. This includes 10 applications in FY 2015-16, 15 in FY 2016-17, 16 in FY 2017-18, and 16 in FY 2018-19. The Department’s efforts to reduce the backlog of continued permits, as well as improve and enhance permitting process, have been supported by the Legislature in recent years with 8 positions referenced in this request; approval of 5 positions and $699,000 HWCA in 2014-15 to improve and enhance permitting processes; and 16 positions and $1.6 million HWCA in 2015-16 in various support programs (e.g., enforcement, legal, CEQA) for permitting coordination and backlog support that contribute to processing permits, but that are not permit writers.

As a first step to address the permitting backlog and improve the permitting process, DTSC developed and is implementing the Permitting Enhancement Work Plan to create and update processes, guidance, and tools to support consistent processing of permit applications and more timely and protective permit decisions. Development of guidance and tools is only the start, however; in order to maintain needed improvements, staff must be trained to use the guidance and tools, and those guidance and tools must be
continually updated to match developments in law, regulation, technologies, and waste streams. Additional steps are needed to support future permit decisions that are consistent, high-quality, and timely.

C. State Level Considerations

This proposal is consistent with the following elements of DTSC’s 2014-18 Strategic Plan:

Goal 2: Effectively, efficiently and fairly administer and enforce the California hazardous waste management laws.

Objective 2.1: Identify and implement policies and procedures to ensure hazardous waste permits are protective, timely, legally defensible, and enforceable, and to improve transparency and public confidence in permit decisions.

Objective 2.2: Identify and implement a process to ensure that all permitted hazardous waste facilities have accurate estimates for the costs of facility closure and post-closure work, and develop and apply criteria for prioritizing closure cost reviews.

Objective 2.3: Improve effectiveness, efficiency, and consistency in enforcing California’s hazardous waste laws; and make DTSC’s enforcement program’s information and processes more accessible to the public.

Objective 2.4: Improve public confidence in DTSC’s enforcement decisions by establishing clear guidelines for decision points that ensure enforcement actions result in timely resolution with appropriate penalties and corrective actions.

Objective 2.5: Develop and apply criteria and processes to prioritize work within the hazardous waste enforcement and permitting programs, including the use of tools such as new environmental screening methods and Geographic Information System (GIS) technology.

This proposal also directly relates to several of the goals established in DTSC’s Fixing the Foundation Fundamentals Work Plan, including the following elements:

(4.a) Improve the efficiency and consistency in enforcing state hazardous waste laws and make the enforcement program’s information and processes more accessible to the public.

(4.b) Improve efforts to ensure hazardous waste permits are protective, timely, legally defensible and enforceable.

(4.d) Improve public confidence in permit decisions.

(4.h) Ensure groundwater monitoring at local disposal facilities is protective of human health and the environment.

(4.i) Maintain a strong Financial Assurance program at all permitted facilities that reflect the actual cost of closure and post-closure work, and update the estimates every five years.

(4.j) Fully integrate the new Hazardous Waste Management Program.

The Legislature has shown specific interest in DTSC’s permitting actions, as demonstrated by Legislative Oversight hearings and during confirmation hearing for DTSC Director Barbara Lee.

D. Justification

Permits issued by DTSC expire 10 years from the date they are issued. The permit term is finite specifically to cause a re-evaluation of the facilities and processes to incorporate the most current and protective
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technologies and practices. Over the 10-year life of a permit, technological advances may have occurred that could improve treatment and storage procedures, and safer equipment may have become available. Chemical treatment processes and release prevention technologies are constantly changing and improving. Environmental monitoring techniques also improve as new laboratory and sample collection methods are developed and implemented. More sensitive environmental measurements can allow DTSC to improve assessment of potential offsite migration of hazardous waste constituents and to reduce the risks they might pose. In addition, the periodic comprehensive analysis ensures that any deterioration in the existing facility is evaluated and addressed. When expiring permits are delayed, these improvements in performance standards are also delayed.

The permit renewal process also includes a thorough investigation of the facility for evidence of releases of hazardous waste or hazardous waste constituents. A delay in the renewal process could allow releases to migrate further, causing increased environmental damage. It also delays the periodic review of the financial assurance provided by the facility to cover the costs of future activities to address any contamination the facility has caused, which increases the risk that cleanup costs will be borne by the State.

In addition to changes that impact the facility and its operations, changes may have also occurred in the area around the facility. New residences may have been built near the facility or other changes made to nearby land uses. Demographics of the surrounding community may also have changed. The permit renewal process considers the effect of these changes and allows the surrounding community to interact and voice its concerns about the facility. Public feedback improves the quality and responsiveness of a permit. A continued permit will not have had the benefit of more recent community input and feedback.

In order to reduce the number of continued permits and the length of time permits continue post-expiration, the Permit Enhancement Work Plan established a goal of reducing the permit application review time to an average of two years for 90% of permit renewal applications received.

In addition to processing new and renewal permit applications to result in permit decisions, the permitting staff performs additional activities that include:

- Class 1 and 2 Permit Modifications – Technical reviews, drafting of modifications, public participation, response to public comments, finalization of modifications, dealing with permit modification appeals, modification tracking and other procedural items.
- Closure oversight projects – Review of closure plan and report submittals and related data; site visits to observe closure activities; related meetings; and review/approval of closure certification report.
- Assist in preparation of regulatory development packages – Development of State rules by coordinating internal legal review, obtaining approval by Department of Finance for the fiscal estimate, and following the Administrative Procedure Act process.
- Assist in development of RCRA Authorization packages – Completions of federal rule checklists, negotiations with U.S. EPA, and provide technical support to assigned attorneys from the Attorney General’s Office and DTSC’s Office of Legal Affairs staff to develop AG’s Statement.
- Development of guidance documents – Review and update existing guidance, and develop new guidance documents as needed (for example, guidance on landfill geomembrane design, Notice of Deficiency guidance, applicant guidance materials, and model applications).
- Other support activities such as:
  - Permit Oversight and Maintenance Activities: Addressing questions posed by agency management, responding to citizen/media calls, compliance inquiries, facility management planning, data management, responding to internal inquiries, file review requests, permit billing (cost recovery) activities, review of routine facility reports (e.g., non-corrective action progress/monitoring reports), meetings, phone calls and site visits.
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- U.S. EPA Grant/Annual Work Plan Activities: Includes Grant/Work Plan development, negotiations with U.S. EPA, quarterly meetings with U.S. EPA, quarterly, semi-annual and annual report development, and program reviews.
- State Outreach/Guidance/Policy Development/Implementation Activities: Includes public notices, public meetings/hearings, presentations to State environmental boards, development of guidance, development of policies, development of outreach and training materials, compliance assistance activities, training sessions, and ongoing rule interpretation.
- State Legislative Activities: Analysis of legislative bills, development of legislative concepts, analysis of impacts to State hazardous waste program, and identification of needed State rule changes
- Training: Includes health and safety training and recertification, personal protection and medical monitoring, and other training.

Together with existing resources, the positions requested in this BCP will support approximately 7-8 permits annually.

DTSC requests converting 8.0 limited-term positions to permanent status as follows:
- 5.0 Hazardous Substances Engineer (HSE) positions.
- 1.0 supervisory HSE position to oversee the new HSE positions
- 1.0 Senior Environmental Planner in the Office of Planning and Environmental Analysis
- 1.0 Attorney III in the Office of Legal Counsel to provide support

E. Outcomes and Accountability

Outcomes – Together with existing resources, the proposed staffing in this BCP anticipates completing 7-8 permits annually.

Accountability – The following will ensure accountability of the resources resulting from this request:

- Operation Plans - a document revised annually that clearly identifies the Office of Permitting's permit issuance record for the prior year and the projected goals for the upcoming year.
- Government Performance and Result Act (GPRA) - The U.S. EPA closely monitors permits issued by DTSC. DTSC continues to meet with U.S. EPA on a quarterly basis to discuss progress. Results are posted on U.S.EPA's database.
- Work Plan – DTSC reports regularly to the Legislature its progress in meeting its commitments to improve aspects of its permitting processes.

F. Analysis of All Feasible Alternatives

Alternative 1: Convert 8.0 limited-term positions permanent status to process continued permit applications.

Pros:
- Provides additional support for reducing the current number of facilities operating with expired permits.
- Ensures that hazardous waste permitting decisions are completed in a more timely manner, meet all standards, reflect best management practices and address compliance concerns for each facility.
- Demonstrates DTSC's commitment to protecting vulnerable communities and other communities around hazardous waste facilities.
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- Reduces the risk to public health and safety and the environment, particularly in areas impacted by multiple environmental exposures.
- Provides for the collection of workload data to allow DTSC to implement further improvements to the permitting and enforcement processes.

Cons:
- Creates additional cost.

Alternative 2: Redirect staff.

Pros:
- Requires no additional funding.
- Ensures that hazardous waste facility permit determinations are completed in a more timely manner, meet all standards, reflect best management practices, and address compliance concerns for each facility.
- Demonstrates DTSC's commitment to protecting vulnerable communities and other communities around hazardous waste facilities.
- Reduces the risk to public health and safety and the environment, particularly in areas impacted by multiple environmental exposures.
- Provides for the collection of workload data to allow DTSC to implement further improvements to the permitting process.

Cons:
- Would limit the ability of impacted division and program staff to meet DTSC's other mission-critical mandates and commitments such as cleaning up contaminated properties and recovering its response costs.
- Would create a backlog in other mission critical areas of work within DTSC.

Alternative 3: Maintain status quo/do nothing

Pros:
- Requires no additional position authority or funding.

Cons:
- Fails to mitigate the anticipated growth in expired permits.
- Permit decisions will be delayed significantly.
- Impairs ability to meet the critical environmental review and public noticing requirements of CEQA and may increase DTSC's vulnerability to legal challenges on its permit determinations.

G. Implementation Plan

July 2016

Continue work completing decisions on continued permits. Provide technical training classes, including hazardous waste laws and regulations, inspection and enforcement processes, permitting process, and required health and safety training, including 40-hour HAZWOPER and medical monitoring to new staff. Continue on-the-job training with experienced staff. Assign further independent permit work and related support activities.
H. Supplemental Information

None

I. Recommendation

Adopt Alternative I – This option would accomplish the following:

- Provide additional support for reducing the current number of facilities operating with expired permits.
- Ensure that hazardous waste facility permit determinations are completed in a more timely manner, meet all standards, reflect best management practices and address compliance concerns for each facility.
- Demonstrate DTSC’s commitment to protecting vulnerable communities and other communities around hazardous waste facilities.
- Reduce the risk to public health and safety and the environment, particularly in areas impacted by multiple environmental exposures.
- Provide for the collection of workload data to allow DTSC to implement further improvements to the permitting and enforcement processes.