

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/16)

Fiscal Year 2017-18	Business Unit 3960	Department Toxic Substances Control	Priority No. 1
Budget Request Name 3960-001-BCP-2017-MR		Program 3620 SITE MITIGATION AND BROWNFIELDS REUSE	Subprogram

Budget Request Description
 Augmentation for National Priorities List and State Orphan Sites

Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation of \$3.7 million penalty revenues from various funds (\$0.5 million from the Department of Pesticide Regulation Fund, \$2.7 million from the Air Pollution Control Fund, and \$0.5 million from the Waste Discharge Permit Fund) to fund Fiscal Year (FY) 2017-18 direct site remediation at National Priorities List and state orphan sites, as specified.

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 No	Code Section(s) to be Added/Amended/Repealed	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 project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No. Project Approval Document: Approval 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 Thuong Pham	Date 5/11/17	Reviewed By Sara Murillo	Date 5/11/17
Department Director Francesca Negri	Date 5/11/17	Agency Secretary ERIC JARVIS	Date 5/11/17

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 Original Signed by
Ellen Moratti PPBA Date submitted to the Legislature
MAY 11 2017

A. Budget Request Summary

The Department of Toxic Substances Control (DTSC) requests an augmentation of \$3.7 million penalty revenues from various funds (\$0.5 million from the Department of Pesticide Regulation Fund, \$2.7 million from the Air Pollution Control Fund, and \$0.5 million from the Waste Discharge Permit Fund) to fund Fiscal Year (FY) 2017-18 direct site remediation at National Priorities List and state orphan sites. DTSC requests to use penalty revenue from these various funds, and requests Provisional Language be included in the Budget Bill to allow this. This proposal includes the report required by AB 2891 (Alejo, Chapter 704, Statutes of 2016), which requires DTSC to submit an estimate of the funding needed for the SRA to meet its obligations.

B. Background/History

National Priority List (NPL) Sites

In 1980, the federal government created the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly referred to as the "Superfund" law, to help address cleanup needs at the nation's most heavily contaminated toxic waste sites. CERCLA provides broad response authorities for the United States Environmental Protection Agency (U.S. EPA) to protect people and the environment from the risks posed by releases of hazardous substances, pollutants, and contaminants. Under CERCLA, the Superfund program identifies, investigates, and cleans up America's most contaminated hazardous waste sites, which are also known as National Priority List (NPL) sites.

Congress amended CERCLA with the Superfund Amendments and Reauthorization Act (SARA) in 1985. Among other things, these amendments required Superfund cleanups to consider state standards and requirements, increased state involvement in every phase of a Superfund cleanup, and provided new enforcement authorities and settlement tools. Congress again amended CERCLA by passing the Small Business Liability Relief and Brownfields Revitalization Act in 2002. This law created a federal program to aid state brownfield cleanup programs, clarified and modified liability issues at CERCLA sites to help reduce litigation and speed cleanups, and increased states' authority to impact whether U.S. EPA lists a site for cleanup under the NPL, among other changes to the law.

U.S. EPA identifies and lists sites on the NPL following criteria in CERCLA. Of the 1,328 sites nationwide listed on the NPL, 124 sites are located in California. According to the U.S. EPA, in the last few years, about one site per year in California has been added to the NPL. The majority of NPL listed sites have responsible parties who are funding the cleanup. Responsible parties are funding the cleanup for 102 sites.

The remaining 22 sites listed are considered fund-lead NPL sites, which means the U.S. EPA has determined that there are no viable responsible parties to fund the cleanup, and therefore, the U.S. EPA is funding the cleanup with federal Superfund money. The listing of an NPL site that uses federal funds to pay for the cleanup is a regulatory action that obligates the state where the NPL site is located to pay 10 percent of the cost of constructing the cleanup remedy, and 100 percent of the cost of operating and maintaining the remedy after it is built (42 U.S.C. § 9604(c)). CERCLA requires the state to assure all future maintenance of a remedial action provided for the expected life of such action. CERCLA further defines when U.S. EPA remedial action ends and the state Operation and Maintenance (O&M) begins.

Once a site remedy becomes "operational and functional," the U.S. EPA and the state enter into a Site Transfer Agreement to affect an orderly transfer of O&M activities and funding responsibilities. "Operational and Functional" is either one year after remedy construction is complete, or when it is

determined, concurrently by U.S. EPA and the state, to be functioning properly and is performing as designed, whichever is earlier.

NPL sites are highly contaminated and pose substantial threats to human health and the environment. They are often in densely populated urban areas with a legacy of earlier industrial use. The remediation of these sites returns blighted land to beneficial and productive use.

Each year, U.S. EPA provides DTSC with its best estimates of the State's upcoming funding obligations for NPL sites. The listing of new sites, coupled with the transition of older sites from construction to O&M is increasing the State's funding obligations.

Site Remediation Account

Under the authority of Chapter 6.8 of the Health and Safety Code, DTSC investigates hazardous substance releases and constructs and operates remedies at NPL and state orphan sites where there exists an imminent or substantial endangerment, and either the responsible party fails to comply with an order or there are no viable responsible parties.

The SRA funds contracts for direct site remediation services for the investigation and cleanup of contaminated sites. The funding may be used for such activities as investigating complaints or discovery projects (i.e., identifying sources of contamination); potentially responsible party searches including property title, database, and investigative searches; and site investigations to characterize the extent of contamination and the risk to the public. Funds may also be used to provide interim supply of bottled water and the construction, operation and maintenance of protective systems such as indoor air treatment systems, systems to treat contaminated groundwater used for drinking water, removal of soil contamination by excavation or by soil vapor extraction systems, alternative drinking water supplies such as providing activated carbon on supply wells, consolidating and capping wastes, and imposing land use controls. The SRA can only be utilized for contracted costs. It cannot be utilized to cover staffing costs. DTSC staff costs for management of NPL and state orphan sites are funded by DTSC's operating budget.

Funding History

Over the past several years, DTSC has received an annual appropriation of approximately \$10 million for the SRA. DTSC has fully expended each year's appropriation to pay for the investigation and cleanup work on NPL and state orphan sites as funding allowed. However, the funds allocated have not met historic demand. For example, in FY 2016-17, DTSC project managers identified a funding need that was more than twice the current SRA appropriation. Underfunding this work has created a backlog, and DTSC can only perform the most critical work.

New Legislative Mandate

In 2016, AB 2891 (Alejo, Chapter 704, Statutes of 2016) amended the Health and Safety Code to indicate the intent of the Legislature "that funds deposited in the Toxic Substances Control Account shall be appropriated in the annual Budget Act each year in the following manner:

- (1) An amount sufficient to pay for the estimated costs identified by the department in the report submitted pursuant to subdivision (c) to the Site Remediation Account"

AB 2891 also adds: "Notwithstanding paragraph (1), the department may, upon the approval of the Legislature in a statute or the annual Budget Act, take either of the following actions:

- (A) Reduce the amounts specified in paragraphs (1) to (5), inclusive, of subdivision (a), if there are insufficient funds in the Toxic Substances Control Account."

Given financial constraints, this Budget Change Proposal requests an augmentation from various special fund penalty revenues, to cover direct site remediation costs at NPL sites, as well as

Priority 1A, 1B, and Priority 2 state orphan sites where work has already begun. The Resource History table shows historical expenditures.

Resource History
(Dollars in thousands)

Program Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Authorized Expenditures	\$9,531	\$10,734	\$9,724	\$10,200	\$11,047
Actual Expenditures ¹	\$8,934	\$12,918	\$12,036	\$10,871	\$11,047
Authorized Positions	N/A	N/A	N/A	N/A	N/A
Filled Positions	N/A	N/A	N/A	N/A	N/A
Vacancies	N/A	N/A	N/A	N/A	N/A

¹ Actual expenditures are greater than authorized expenditures since the term to liquidate the appropriation is six years.

Workload History

Workload Measure	PY - 4	PY - 3	PY - 2	PY - 1	PY	CY
Characterization Reports	16	12	16	13	20	19
Remedy Selection	7	3	2	4	1	7
Orders & Agreements	1	0	0	3	4	0
Remedy Implementation	6	2	3	1	1	1
Sites Completed	4	1	5	5	0	0

C. State Level Considerations

The Health and Safety Code provides DTSC with funding and authority to investigate and respond to imminent or substantial threats to the public and the environment from hazardous substances. Using this authority and funding, DTSC periodically receives referrals from local governments and from Regional Water Boards for investigation and response.

This proposal aligns with DTSC's 2014-2018 Strategic Plan Objective 1.3 - Seek adequate funding to cover cleanup efforts at federal NPL and orphan sites.

AB 2891 codifies the Legislature's intent that funds deposited into TSCA and transferred into the SRA be appropriated through the annual Budget Act sufficient to pay for the estimated costs for direct site remediation work.

D. Justification

In partnership with the US EPA, DTSC acts on behalf of the State of California to remediate sites listed on the NPL. NPL sites are among the most heavily contaminated and difficult to clean up toxic waste sites in the nation. When no viable potentially responsible party can pay for the work at these sites, the federal CERCLA authorizes investigation of the site to be paid for with federal funds and for response actions to be paid for with a mix of federal and state funds.

The US EPA has emphasized to DTSC the state's obligation under federal law as well as US EPA's legal authority to enforce those financial obligations. Under CERCLA, at sites where no viable potentially responsible party exists, DTSC, acting on behalf of the state, is legally obligated

to pay a 10 percent state-match for federal response action costs while federal funds pay for the remaining 90 percent.

CERCLA also legally obligates DTSC to pay for 100 percent of O&M costs at these NPL sites and prohibits US EPA from funding the operation and maintenance of constructed response actions at NPL sites.

DTSC's efforts to meet its NPL obligations by allocating funds to a site from the SRA is based on several factors. Federal NPL and state orphan sites are scored and prioritized on a quantitative weighting of exposure (meaning the number and proximity of humans or resources such as drinking water) and threat (meaning risk of damage or harm when exposed) to human health and environmental impacts.

The following provides high-level definitions of each priority:

Priority 1A: Immediate and acute conditions requiring a "time critical" response.

Priority 1 B: Ongoing O&M of a state or federally funded site remediation treatment system necessary to prevent exposure to human or environmental receptors. Priority 1B includes state-match NPL.

Priority 2: Actual human exposure or resource impacts under current conditions.

Priority 3 Potential exposure under current conditions; and could allow the contamination to spread, impacting additional people and resources and increasing future costs.

Priority 4: Potential exposure under future conditions

DTSC assigns the highest funding priority to those sites that have federally-mandated costs, those that have immediate acute health threats, and those that have existing systems that require ongoing contracted costs to operate and maintain the remedy. DTSC's annual cost to fund the highest priority (priority 1A and 1B) sites is approximately \$9 million,

Under this proposal, DTSC seeks to fully fund the state's NPL obligations for FY 2017-18 as well as Priority 1A, 1B, and Priority 2 state orphan sites where work has already begun. Based on the cost associated with these priority sites, DTSC anticipates incurring expenditures of approximately \$14 million in FY 2017-18, which is \$3.7 million more than the \$10 million appropriated to the SRA.

Details concerning the various sites, their priority and their estimated costs are detailed in the attached 2017 report to the Legislature.

E. Outcomes and Accountability

AB 2891 requires DTSC to submit a report to the Legislature with the Governor's Budget that includes an estimate of the annual budgetary need to fund direct site remediation costs at state orphan sites and to meet the state's obligation at federal NPL sites. Further, the estimate provided in the report must include projected costs for the current budget year and the two following budget years.

DTSC accounts and tracks NPL and state orphan site expenditures. Major milestones based on project phase are tracked in DTSC's project management data base. The attached AB 2891 reports shows DTSC's work plan for 2017-18 and the subsequent two fiscal years. However,

factors beyond DTSC's control can result in changes. For example, if a project is delayed, funding is shifted to the next highest priority on the list contingent on project readiness.

F. Analysis of All Feasible Alternatives

Alternative 1: Augment \$3.7 million penalty revenues (\$0.5 million from the Department of Pesticide Regulation Fund, \$2.7 million from the Air Pollution Control Fund, and \$0.5 million from the Waste Discharge Permit Fund) to fund FY 2017-18 estimated NPL obligations and add provisional language authorizing use of penalty revenues.

Pros:

- Ensures State compliance with statute.
- Allows State to maintain compliance with CERCLA.
- Helps State to maintain compliance with State Superfund contracts.
- Allows State to continue to operate existing remedies to maintain their protectiveness and maintain compliance with permits.
- Provides funding for State to construct shovel-ready remedies to remove or contain significant impacts to human health and the environment.
- Allows funding to eliminate the backlog of remedy construction projects and allows for investigation at additional sites.
- Removes or eliminates human exposure to hazardous substance releases at priority sites.
- Allows DTSC to actively assess and investigate currently unidentified releases.
- Builds DTSC's public trust and image.

Cons:

- Requires an increase in spending from the designated special funds.

Alternative 2: Do not approve this proposal.

Pros:

- Delays expenditure of state funds until future years.

Cons:

- Delays critical investigations of toxic vapor intrusion to indoor air causing direct exposure to building occupants.
- Delays implementation of shovel-ready remedies at sites with imminent and substantial health risks.
- Delays investigation of known or suspected releases.
- Creates a backlog of contract work and will result in increased project costs due to changes in contractors and contract rates.
- Prevents DTSC from assessing and investigating currently unidentified releases and human health threats that are occurring throughout the State (discovery sites).
- Subjects DTSC to public distrust and damages the department image.

G. Implementation Plan

July 2017 – DTSC prepares a statewide annual Expenditure Plan Site to allocate the additional funding for the NPL sites.

July 2017 to June 2018 – Develop contracts and amend existing contracts for each NPL site.

September 2017 to June 2018 – Begin issuing start work orders based on the additional funding allocated for each site. Monitor and oversee contractors. Review workplans and reports.

September 2017 – DTSC coordinates with U.S. EPA to develop costs estimates of direct site remediation for NPL sites to determine the funding needs for FY 2018, FY 2019 and FY 2020.

January 2018 – DTSC submits the annual report to the Legislature that incorporates the funding needs for the next three fiscal years. It also provides a status of the SRA and outlines expenditures by site as well as the remediation status of each NPL site.

H. Supplemental Information

AB 2891 requires DTSC to report to the Legislature the activities associated with the NPL and orphan sites as well as the estimate of funding needed for each fiscal year. A copy of this report is attached.

As previously noted, this proposal will require the transfer of penalty revenue from various accounts to the SRA to fund this request and associated provisional language.

I. Recommendation

DTSC recommends approval of Alternative 1. Augment \$3.7 million penalty revenues (\$0.5 million from the Department of Pesticide Regulation Fund, \$2.7 million from the Air Pollution Control Fund, and \$0.5 million from the Waste Discharge Permit Fund) to fund FY 2017-18 estimated obligations for direct site remediation at NPL sites as well as Priority 1A, 1B, and Priority 2 state orphan sites where work has already begun.

BCP Fiscal Detail Sheet

BCP Title: National Priorities List/Superfund Sites

BR Name: 3960-087-BCP-2017-MR

Budget Request Summary

	CY	BY	BY+1	FY17 BY+2	BY+3	BY+4
Operating Expenses and Equipment						
5340 - Consulting and Professional Services - External	0	3,700	0	0	0	0
Total Operating Expenses and Equipment	\$0	\$3,700	\$0	\$0	\$0	\$0
Total Budget Request	\$0	\$3,700	\$0	\$0	\$0	\$0
Fund Summary						
Fund Source - State Operations						
0106 - Department of Pesticide Regulation Fund	0	500	0	0	0	0
0115 - Air Pollution Control Fund	0	2,700	0	0	0	0
0193 - Waste Discharge Permit Fund	0	500	0	0	0	0
Total State Operations Expenditures	\$0	\$3,700	\$0	\$0	\$0	\$0
Total All Funds	\$0	\$3,700	\$0	\$0	\$0	\$0
Program Summary						
Program Funding						
3620011 - Other Site Mitigation Activities	0	3,700	0	0	0	0
Total All Programs	\$0	\$3,700	\$0	\$0	\$0	\$0