

Department of Toxic Substances Control



INSTRUCTIONS AND APPLICATION FOR FINANCIAL REVIEW BKK Class I Landfill Site

Version dated June 6, 2024

Potentially Responsible Parties (PRPs) that are eligible to enter into a settlement with the Department of Toxic Substances Control (DTSC) for the BKK Class I Landfill Site (Site), but cannot make the full settlement payment without jeopardizing their ability to conduct business or maintain basic living expenses, may ask DTSC to review their financial conditions to determine if they qualify for a reduced settlement amount. If you are an eligible PRP and wish to apply for a financial review, you must follow these instructions, complete the **Application for Financial Review** form (attached as Exhibit A), and supply all of the required financial information specified below.

DTSC'S POLICY

DTSC's approach to settling with parties for whom ability to pay is a significant consideration balances two public interests: ensuring that such parties pay a fair share of the environmental response costs and ensuring that the payment does not cause any party undue financial hardship. DTSC will consider a party's ability to pay if the party: (i) requests a financial review; (ii) submits sufficient information to enable DTSC to determine the party's entire financial position; and (iii) certifies the truth and accuracy of such information.

DTSC determines a party's ability to pay a given settlement amount by evaluating the party's financial information for the past three (3) years. First, DTSC looks at the party's "balance sheet" – assets and liabilities – to calculate the amount of money available from excess cash, the sale of assets that are not ordinary and necessary, and the ability to borrow against assets or owners' equity. Second, DTSC looks at the party's "operating cash flow" – income and expenses – to estimate the amount of money available from three (3) years of projected revenue in excess of projected ordinary and necessary expenses. If these sources are insufficient to fund payment of the full settlement amount, DTSC may offer the party a reduced settlement amount. Revised settlement terms offered to a party based on demonstrated financial hardship apply to that party only.

Due to the nature of this settlement process, where the public policy goal is to minimize administrative costs and maximize recovery against a large number of responsible parties in order to fund an ultimate remedy at the Site, DTSC will only accept lump sum settlement payments and will not allow parties to pay settlement amounts in installments. Additionally, DTSC will only conduct an ability to pay review in response to an initial settlement offer that exceeds Ten Thousand Dollars (\$10,000.00).

CRITERIA

DTSC will consider a reduced settlement payment where a party demonstrates that payment of the full settlement amount would create undue financial hardship. Undue financial hardship occurs if payment of the full settlement amount would deprive a party of ordinary and necessary assets or cause the party to be unable to pay for ordinary and necessary business and/or living expenses.

For a business, an asset is ordinary and necessary if it is currently used for the primary business purpose. This would include, for example, manufacturing equipment integral to the business. It would not include investment property owned by the business.

For an individual, an asset is ordinary and necessary if it provides for a need of the individual or his/her dependents. Examples of such assets include the personal residence (to the extent there is not sufficient equity to borrow against), primary vehicles, and personal possessions needed by the individual or his/her dependents. Property that does not provide for such needs or generate necessary income is not ordinary and necessary.

SUBMISSION OF INFORMATION

To request a financial review, you must complete the **Application for Financial Review** form, attached to these instructions as Exhibit A, and submit the following information to DTSC within thirty (30) days of receiving the initial settlement offer letter. Please note that if you fail to provide all of the information requested, your application will be denied as incomplete.

Business Entities (e.g., Corporations, Partnerships, Multi-Member Limited Liability Companies)

If you are applying on behalf of a business entity other than a sole proprietorship or a single-member limited liability company, please submit the following:

1. Copies of the business entity's federal and state income tax returns for the last three (3) years, including all schedules, exhibits, and attachments.
2. Copies of the business entity's financial statements (including a Balance Sheet and Income Statement) for each of the last three (3) years. Please see the example financial statements and blank forms for your completion, attached to these instructions as Exhibit B1.
3. A copy of the current period financial statement.
4. Bank statements from the most recent 12 months for any and all checking accounts, savings accounts, lines of credit, credit cards, and investment accounts attributable to the business entity.
5. Copies of any and all insurance policies effective between 1960 and 1990 for which You were an insured, additional insured, beneficiary, or successor, that provides or potentially provides coverage for liability related to environmental claims, damages, releases, or other incidents.

Individuals (e.g., Sole Proprietorships, Single-Member Limited Liability Companies)

If you are requesting a financial review as an individual, please submit:

1. Copies of your federal and state income tax returns for the last three (3) years, including all schedules, exhibits, and attachments.
2. A current financial statement (which includes both a Statement of Assets and Liabilities and a Statement of Estimated Monthly Income and Expenses). Please see the example financial statement and blank form for your completion, attached to these instructions as Exhibit B2.

3. Bank statements from the most recent 12 months for any and all of your checking accounts, savings accounts, credit cards, loans, lines of credit, retirement accounts, and investment accounts.
4. Copies of any and all insurance policies effective between 1960 and 1990 for which You were an insured, additional insured, beneficiary, or successor, that provides or potentially provides coverage for liability related to environmental claims, damages, releases, or other incidents.

Confidentiality of Information

You should utilize best practices in order to protect the confidentiality of your financial information and documentation from public disclosure. This includes clearly marking each document in your submission as “confidential.” Be sure to redact all Social Security Numbers from your documentation. In order to protect the security of your financial accounts, you should also redact all but the last four digits of each financial account number.

Submit the Application by Mail to DTSC

Your application and supporting documents must be submitted to DTSC by mail ONLY. Please note that your documents may contain Social Security Numbers, financial account numbers and other Personal Information protected by the Information Practices Act. If you send the information by e-mail, the security of the financial information and/or Personal Information could be compromised. In order to protect this information, please submit your application and documentation by mail to the following address:

BKK Facility PRP Financial Review
Attn: Sara Murillo
Collections & Resolution Unit
Department of Toxic Substances Control
P.O. Box 806, MS 21B
Sacramento, CA 95812-0806

Please send confirmation that you submitted your application by e-mail to BKKAbilitytoPayApp@dtsc.ca.gov. Please do NOT attach any documents related to the application in your confirmation email.

Please submit any questions regarding your application or DTSC’s financial review process by e-mail to BKKAbilitytoPayApp@dtsc.ca.gov. PLEASE DO NOT TRANSMIT ANY FINANCIAL INFORMATION VIA E-MAIL.

A party’s failure to submit a complete application and all of the required supporting documentation, as well as any additional information and/or documents that DTSC may subsequently request, will result in denial of the party’s ability-to-pay claim.

FINANCIAL REVIEW PROCESS

Following DTSC’s receipt of your application and supporting documentation, DTSC will conduct an initial screening to determine whether all of the required information has been submitted. DTSC will either accept your claim as complete or reject it as incomplete, resulting in the denial of your claim. If your claim is accepted as complete, DTSC will conduct a two-part analysis of the information submitted as follows:

- **Balance Sheet Analysis** - DTSC considers assets, liabilities, and owners’ equity, in order to calculate the amount of money available for paying the total settlement amount from: 1) available cash or other

liquid assets; 2) the sale of assets that are not ordinary and necessary; and/or 3) borrowing against assets and owners' equity.

- **Income and Cash Flow Analysis** – DTSC considers past annual income and expenses and, based on that information, projects future annual “available income.” In general, DTSC considers it feasible for each party to contribute three (3) years of projected available income toward the party’s share of the Site cleanup costs.

DTSC’S DETERMINATION

After analyzing your or your company’s financial condition, DTSC will notify you of its determination regarding your or your company’s ability to pay the full settlement amount. Only those parties that submit complete and timely applications and supporting documentation may participate in the settlement for a reduced settlement payment. If you or your company do not qualify for a reduced settlement amount, you will have the opportunity to participate in the settlement by paying the full settlement amount.

You or your company will have thirty (30) days after you receive notification of DTSC’s ability to pay determination to: 1) agree to pay the reduced settlement amount if one is offered; 2) agree to pay the full settlement amount if you do not qualify for a reduction; or 3) decline to participate in the settlement.

All parties seeking to participate in the settlement must submit a signed **Consent and Authorization for Agreement to Settle with DTSC and the BWG** form.

PERSONAL INFORMATION - PRIVACY NOTICE

Pursuant to the Information Practices Act of 1977 (Civ. Code, § 1798 et seq.), whenever the Department of Toxic Substances Control (DTSC) asks an individual for documentation containing “Personal Information,” DTSC is required to provide the following information.

“Personal Information,” as defined by the Act, includes any information maintained by an agency that identifies an individual and includes, but is not limited to, the individual’s name, Social Security Number, home address, home telephone number, and financial matters. (Civ. Code, § 1798.3(a).) A completed **Application for Financial Review** and the supporting documentation may contain Personal Information. Such information is being requested by DTSC’s Legacy Landfills Office in DTSC’s Site Mitigation and Restoration Program and/or DTSC’s Collections & Resolution Unit of the Financial Planning & Contracting Services Program in DTSC’s Administrative Services Division.

An individual has a right to access records that are maintained by DTSC and that contain the individual’s Personal Information. DTSC’s Information Security Officer, whose business address is 1001 I Street, Mail Station OEIM/MS-11A, Sacramento, CA, 95814, telephone number (916) 324-5780, is the official responsible for maintaining the information. The Information Security Officer shall, upon request, provide an individual with information regarding the location of the individual’s records, as well as the categories of any persons who use the information in those records.

DTSC’s purpose for requesting Social Security Numbers and documentation of financial matters is to conduct a financial review of an individual or business entity’s ability to pay for response costs as a party liable for a

release of hazardous waste or constituents into the environment, pursuant to Health and Safety Code sections 25187(b)(1)(B) and 25360.6. The submission of this information to DTSC is voluntary.

The consequence of not providing the requested Personal Information is that a party will not have their financial information reviewed by DTSC in order to determine if the party qualifies for a reduced settlement payment. However, the party will still have the opportunity to participate in the settlement by paying the offered settlement amount.

DTSC may disclose information furnished on a party's **Application for Financial Review**, as well as all supporting documentation, only to the extent permitted by Civil Code section 1798.24. This includes disclosure to authorized representatives of DTSC (including staff and contractors) and staff at the California Attorney General's Office representing DTSC for purposes of DTSC's response actions at the BKK Class I Landfill Site. The information may also be made available to the authorized representatives of DTSC for any of the following reasons: to assist with document handling, inventory, indexing and collection; to assist with document review and analysis for verification of completeness; and to provide expert technical review and analysis of the information provided in support of the **Application for Financial Review**.

EXHIBIT A

APPLICATION FOR FINANCIAL REVIEW

Settlements for the BKK Class I Landfill Site

Please Print or Type the Following Information:

(Company or Individual Name as it appears on the Manifest Summary Report)

Please provide the following information for ONE person who will be the point of contact for questions relating to your or your company's Financial Review Application.

Name of Contact Person: _____

Title of Contact Person: _____

Company Name (if different from above): _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

Statement of the Maximum Amount that the Company or Individual Believes
It is Able to Pay to Resolve its Liability:

\$ _____

The company or individual identified above submits this application and all supporting documentation in support of DTSC's financial review to determine the company or individual's eligibility for participation in the settlement for the BKK Class I Landfill Site as a Potentially Responsible Party with a reduced settlement amount. I certify under penalty of perjury under the laws of the State of California that, to the best of my knowledge and belief, the enclosed documentation submitted in support of this application is true, correct, and complete.

Dated: _____ Signature: _____
Individual or Duly Authorized Company Representative

Print Name and Title of Signatory: _____