

Memorandum

To : Mr. Ramon J. Hirsig
Executive Director

Date : September 28, 2006



From : Karen Johnson, Deputy Director
Administration Department

Subject: APPROVAL OF CONTRACT OVER \$1 MILLION

Your approval is requested to place an Administrative Agenda item before the Board at the October 11, 2006, Board Meeting.

Routine renewal of an interagency agreement that expires September 30, 2006.

- Toxics Substances Control, Department of (reimbursement)

Because this Agreement exceeds \$1 million, Board Member approval is required. Attached is a short description of the services to be provided under the Agreement.

Also attached is a copy of the final Fiscal Year 2006-07 Agreement with the Department of Toxic Substances Control.

With your approval, the Board Proceedings Division will place this item on the Public Agenda Notice and provide a copy of the attachments to each Board Member.

If you have any questions or wish to discuss the Board's contracts further, please call Barbara Gilbertson at 445-2068.

KJ:ic
Attachments

cc: Ms. Charlene Yount
Ms. Barbara Gilbertson

Approved



Ramon J. Hirsig

reports/million/06/milmem06(5)Toxics

ITEM P3
10/11/06

Board of Equalization
Proposed Contract
Over \$1 Million

Contractor	Start Date	Expire Date	Estimated Total Cost	Purpose
Toxics Substances Control, Department of	10/1/2006	06/30/2007	\$2,844,000	<p>Services provided by BOE. The BOE administers the Hazardous Substances Tax Program for the Department of Toxics Substances Control. (Routine Renewal)</p> <p>Register taxpayers (hazardous waste generators, transporters and facilities); mail returns, deposit tax payments, follow up to obtain returns not filed; review filed returns, perform audits, assess fees, penalties and interest, collect amounts due; provide periodic reports to Department of Toxic Substances Control.</p> <p>A copy of the final Fiscal Year 06-07 Agreement is attached for your review and approval. Once approved, staff will execute the Agreement.</p>

AGREEMENT NUMBER 06-T3090	AMENDMENT NUMBER
REGISTRATION NUMBER	

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

Department of Toxic Substances Control

CONTRACTOR'S NAME

State Board of Equalization

2. The term of this Agreement is:

October 01, 2006 through June 30, 2007

3. The maximum amount of this Agreement is:

\$2,844,000.00
 Two Million Eight Hundred Forty-Four Thousand Dollars and No Cents

4. The parties agree to comply with the terms and conditions on the following exhibits which are by reference made a part of the Agreement:

Exhibit A - Scope of Work	4	Page(s)
Exhibit B - Budget Detail and Payment Provision	6	Page(s)
* Exhibit C - General Terms and Conditions	GIA 101 (Number)	1/01 (Dated)
Exhibit D - Special Terms and Conditions	1	Page(s)
Exhibit E - Additional Provisions	11	Page(s)

* View at <http://www.ots.dgs.ca.gov> - Standard Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CALIFORNIA
Department of General Services
 Use Only

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

State Board of Equalization

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Barbara Gilbertson Contract Manager

ADDRESS

P. O. Box 942879
 Sacramento, CA 94279-0024

STATE OF CALIFORNIA

AGENCY NAME

Department of Toxic Substances Control

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Sandra Poindexter Chief, Contracts and Business Management Branch

ADDRESS

P.O. Box 806
 Sacramento, CA 95812-0806

Exempt Per _____

EXHIBIT A

SCOPE OF WORK

1. As permitted under section 25174(c) of the Health and Safety Code, this Interagency Agreement (Agreement) is entered into between the Department of Toxic Substances Control, hereafter referred to as DTSC, and the State Board of Equalization, hereafter referred to as BOE.
2. The purpose of this Agreement is to provide for the BOE's collection of fees pursuant to the provisions of Chapter 6.5 of Division 20 of the Health and Safety Code (H&SC), pertaining to hazardous waste control and related fees.
3. The BOE agrees to continue collection of certain fees designated for deposit in the Hazardous Waste Control Account (HWCA). The BOE also agrees to continue collection of certain other fees designated for deposit in the Toxic Substances Control Account (TSCA). The BOE's collection of these fees shall be in accordance with the Hazardous Substances Tax Law (Law), Part 22 of Division 2 of the Revenue and Taxation Code (R&TC), beginning with Section 43001.
4. The DTSC agrees to reimburse the BOE for costs associated with collection of these fees, pursuant to this Agreement and H&SC sections 25173.6(b) and 25174(c).
5. The DTSC agrees to perform all the duties set forth in Exhibit A, Paragraph 9, and the BOE agrees to perform all the duties set forth in Exhibit A, Paragraph 8.
6. The Contract Managers during the term of this Interagency Agreement will be:

Department of Toxic Substances Control	Board of Equalization
Kyle Gardner, Chief, Fees Unit	Lynn Bartolo, Chief Excise Taxes and Fees Division
916-322-2448	916-322-9550
916- 445-9549 (FAX)	916-323-3204 (FAX)

Direct all inquires to the respective Contract Manager:

Department of Toxic Substances Control	Board of Equalization
Fees Unit	Excise Taxes & Fees Division
Kyle Gardner, Chief	Lynn Bartolo, Chief
P. O. Box 806 Sacramento CA 95812-0806	P.O. Box 942879, MIC: 56 Sacramento CA 94279-0056

Contract Managers may be changed upon written notification to the respective agency.

7. The DTSC and the BOE agree to cooperate fully, within the limits of the funding provided in the contract, in the exchange of information available to each of them individually that may be of use to the other in the administration of the aforementioned accounts. Each agency further agrees to meet at least quarterly, and to communicate by phone or email to share information that may be of use to each of them in effectively administering the program.

BOE RESPONSIBILITIES

8. The BOE agrees, within the limits of the funding provided, to perform all duties necessary to collect the fees, including, but not limited to:
 - a. Registration of feepayers:
 - 1) Register hazardous waste generators, sites accepting waste for disposal, facilities, and corporations or organizations identified by standard industry codes to be subject to the environmental fee.
 - 2) Assign an account number to each feepayer that identifies the appropriate fee program.
 - 3) Record the identity of each feepayer in a registration file, using the feepayer's name, address, account number, and EPA number or EDD number, as appropriate.
 - 4) Update the registration file to maintain current information.
 - b. Design, print, mail, and receive returns, and conduct follow-up measures to obtain returns not filed.
 - c. Deposit money received to the appropriate account for the appropriate period and fund.
 - d. Store and/or electronically scan returns and related documents.
 - e. Examination of returns:
 - 1) Review returns for errors and late payments.
 - 2) Assess applicable penalty and interest on late returns.
 - 3) Assess applicable fee, penalty, and interest on partial remittance and non-remittance returns.
 - 4) Contact feepayers regarding errors on returns.
 - 5) Collect any fee, penalty, and interest not paid.

- 6) Perform field or desk audits when deemed necessary by the BOE.
- f. Issue notices of determination when appropriate.
- g. Monitor, control, analyze, and process Petitions for Redetermination and Claims for Refund through the appeals process, as set forth in Exhibit E.
- h. Issue Notices of Redetermination or Notices of Refund.
- i. Provide individual feepayer collection or refund information upon request.
- j. Provide monthly reports for all HWCA and TSCA fees collected under this Agreement, to include original billings, amount collected, refunded, petitioned/appealed, offsets, account receivable balances, and other reports as may be available without additional programming costs.
- k. Provide quarterly reports stating the number of petitions filed, resolved, and pending for each fee, including the respective dollar amounts.
- l. Provide quarterly reports stating the total number of hours spent by appeals attorney staff handling Petitions for Redetermination and Claims for Refund challenging fees assessed by the BOE under the Law.
- m. Provide advisory services to the public.
- n. Provide one annual revenue estimate and one revised estimate as needed for the annual budget cycle. Provide revenue estimates on the impact of proposed legislation.
- o. Cooperate fully with the DTSC, or its designated representatives, to provide information on BOE's revenue collection activities pursuant to this Agreement. Upon written request from the DTSC, such information will include, but is not limited to, the processes used and the type and amount of resources used to perform each task or subtask.
- p. Compare the DTSC facility billing list with the BOE return data and provide a report identifying any discrepancies.

DTSC RESPONSIBILITIES

9. The DTSC, in support of the BOE's registration, return processing, audit, and collection responsibilities, shall provide the following information to the BOE:
 - a. A data file of all generators that manifested waste for 2005, stating the total number of tons by EPA ID number, treatment, storage, or disposal facility, waste classification, and disposal method. The data file shall be accessible for download through DTSC's online manifest system (HWTS).

- b. A corresponding data file with the name, location, mailing address, and contact information applicable to each EPA ID number. Alternatively, these data files may be provided on CD-ROM, tape cartridges, or e-mail.
- c. Access to HWTS, which is critical to the proper administration of the Hazardous Waste Fee program. If, at any time, the DTSC is aware that HWTS's data is not accurate or the manifest images are not available, the DTSC shall immediately advise the BOE of the problem and how long it will take to resolve the problem.
- d. A report, following the DTSC's completion of the Administrative Completeness Review, listing all activity fees, within 45 days of the application date, to assure timely billing of the fee payers.
- e. Written notification at the end of each calendar quarter of any DTSC-approved PBR and TTU permit changes and new permits.
- f. Immediate written notification of payments received with any BOE billing document to permit prompt crediting of the payment and to prevent issuance of unnecessary delinquency billings or other collection action.
- g. A report listing all new EPA numbers issued to generators for California sites for each quarter, including the EPA number, name, physical location and mailing address, and phone number of each applicant, within sixty days from the end of each quarter.

MUTUAL COOPERATION REQUIREMENTS

- 10. The DTSC and the BOE agree to work cooperatively in implementing H&SC section 25189.3, which requires the DTSC to suspend the facility permit for non-payment of activity and/or annual facility fees when specified criteria have been met.
- 11. The DTSC and the BOE agree to implement the guidelines for their timely exchange of information, as set forth in Section I, paragraph D of Exhibit E.
- 12. The BOE agrees to continue to enhance its data systems at the Department of Technology Services. The DTSC and the BOE agree that development of new program applications or reports not currently produced for the DTSC must be negotiated and amended into this Agreement, with the written approval of both parties.
- 13. This Agreement requires an exchange of operational information. The DTSC agrees to provide written notification to BOE of unsatisfactory information within thirty (30) days of receipt from BOE. If the BOE does not receive such notification, it shall assume that the information provided was acceptable.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

Invoicing and Payment

1. The BOE shall bill the DTSC no more frequently than quarterly, for the costs BOE has incurred in collecting and administering the fees. Invoices shall include DTSC's name, time period covered, list of charges and hours billed, itemized in accordance with the Budget Detail Sheets (Exhibit B, including Exhibits I, II and III), which is incorporated into this agreement and made a part hereof, and the total amount owed. Invoices shall be mailed in duplicate (original plus one copy) to:

Department of Toxic Substances Control
Chief, Contracts and Office Services
1001 "I" Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

2. An invoice from the BOE to the DTSC will be deemed appropriate and approved if the DTSC does not notify the BOE otherwise within thirty (30) days from the date the invoice is received by the DTSC. In the event the DTSC disputes an invoice, the DTSC contract manager shall notify the BOE contract manager in writing of the following:
 - a. The BOE invoice number;
 - b. The amount disputed and/or requested credit; and
 - c. The basis of dispute.

If the BOE agrees with any part of DTSC's claim, it shall issue a "credit invoice" or other suitable notification identifying the dollar amount to be credited. If the BOE does not agree with DTSC's claim, it shall notify the DTSC in writing of the reason for denial of the claim. Either party may request resolution of an invoice dispute under the terms of this agreement. The DTSC and BOE Contract Managers, as identified in Exhibit A, shall use their best efforts to resolve any invoice disputes that arise.

3. **Budget Contingency Clause:** It is mutually agreed that if the Budget Act of the year covered by this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the DTSC shall have no liability to pay any funds whatsoever to the BOE or to furnish any other considerations under this Agreement, and the BOE shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for this program, the DTSC shall have the option to either cancel this Agreement with no liability occurring to the DTSC or offer an Agreement amendment to the BOE to reflect the reduced amount.

**State Board of Equalization
 Hazardous Substances Program
 Hazardous Substances Control Account**

OCT 2006 - JUNE 2007

2006-07 FY
Fiscal Year e/ f/
 (1)

1.	Personal Services <u>a/</u>	
	Salary & Wages	\$ 1,595,000
	Salary Savings	-119,000
	Net Total, Salaries & Wages	<u>1,476,000</u>
	Staff Benefits	539,000
	Subtotal, Personal Services	<u>2,015,000</u>
2.	Operating Expense & Equipment <u>a/</u>	
	General Expense	69,000
	Communications	20,000
	Travel In-State	13,000
	Facilities Operations	257,000
	Subtotal, Operating Expense & Equipment	<u>359,000</u>
3.	Administrative Support <u>b/</u>	
	Mail Room	37,000
	Cashiers	32,000
	CATS	
	Data Entry & Verification	21,000
	Legal	19,000
	Technology Services	46,000
	Subtotal, Administrative Services	<u>155,000 <u>d/</u></u>
4.	Overhead <u>c/</u>	<u>315,000</u>
	TOTAL	<u><u>\$ 2,844,000</u></u>

a/ Special Taxes Department

b/ Administrative Support includes both Personal Services and Operating Expense & Equipment.

c/ Pro rata share of overhead costs.

d/ The budgeted base within the category of Administrative Support has been adjusted based on actual costs incurred during the 2005-06 fiscal year.

e/ The cost of each budget cost category (Items 1 through 4) may vary up to 10% without DTSC approval so long as the total budgeted for that program budget is not exceeded. The BOE Contract Manager shall request, via a memorandum, the DTSC Contract Manager's approval for any budget cost category Transfer of Budget Allotments (TBAs) exceeding 10%. Upon signed approval by both parties, the memorandum will be attached to and made part of this Interagency agreement.

f/ A contract amendment may be necessary depending on agreements reached with collective bargaining units.

	BILLING BREAKDOWN				
	2006-07 Contract	2nd Qtr. Billing	3rd Qtr. Billing	4th Qtr. Billing	Total Billing
1. Personal Services: <u>a/</u>					
Salaries and Wages	\$1,595,000				\$0
Salary Savings	-119,000	0			0
Subtotal	1,476,000				0
Staff Benefits	539,000				0
Total Personal Services	2,015,000	0	0	0	0
2. Operating Expense & Equipment: <u>b/</u>					
General Expense	69,000				0
Communications	20,000				0
Travel In-State	13,000				0
Facilities Operations <u>c/</u>	257,000				0
Total OE & E	359,000	0	0	0	0
3. Administrative Support:					
Mail Services <u>c/</u>	37,000				0
Cashier <u>c/</u>	32,000				0
Data Entry & Verification <u>c/</u>	21,000				0
Legal <u>d/</u>	19,000				0
Technology Services <u>c/</u>	46,000				0
Subtotal Adm. Support	155,000	0	0	0	0
4. Overhead <u>c/</u>	315,000	0	0	0	0
TOTAL	\$2,844,000	\$0	\$0	\$0	\$0

a/ See Exhibit II for additional detail in support of quarterly billing.
b/ Actual amounts by quarter.
c/ One-quarter of contract amount for the first three quarters, adjustment made in the fourth quarter for actual.
d/ See Exhibit III for additional detail in support of quarterly billing.

HAZARDOUS SUBSTANCES CONTROL ACCOUNT - TIME REPORTING DETAIL

Quarter of Fiscal Year 2006-07

EXHIBIT II

Page 1 of 2

AUDIT ACTIVITY - HOURS BY FUNCTION b/

Classification Group a/	Petitions and Refunds							TOTAL HOURS c/
	Supervision	Review	Direct Field	Selection	Worksheet	Direct Support	Indirect Support	
	5301	5302	5303	5304	5305	5308	5318	3001
CLERICAL								0.0
AUDIT								0.0
COMPLIANCE								0.0
ADMINISTRATIVE								0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

COMPLIANCE ACTIVITY - HOURS BY FUNCTION b/

Classification Group a/	COMPLIANCE ACTIVITY - HOURS BY FUNCTION b/							TOTAL HOURS
	Supervision	Registration	Close Out	Collections	Returns	Direct Support	Advisory Service	
	5401	5402	5403	5404	5405	5408	5418	3002
CLERICAL								0.0
AUDIT								0.0
COMPLIANCE								0.0
ADMINISTRATIVE								0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

a/ CLERICAL - Office Assistants, Office Technicians, Tax Technicians and Supervising Tax Technicians.

AUDIT - Tax Auditors, Associate Tax Auditors, Staff Tax Auditors, BT Specialists and Supervising Tax Auditors.

COMPLIANCE - BT Representatives, BT Compliance Specialists, BT Specialists and BT Compliance Supervisors.

ADMINISTRATIVE - CEAs, BT Administrators, Staff Services Managers, Associate Governmental

Program Analysts, and Associate Information Systems Analysts.

b/ See time reporting attachment for description of time reporting codes.

c/ See Exhibit II page 2 of 2 for estimated 2006-07 hours to be expended and a summary of actual hours

expended by quarter.

HAZARDOUS SUBSTANCES CONTROL ACCOUNT - TIME REPORTING DETAIL

EXHIBIT II
 Page 2 of 2

Quarter of Fiscal Year 2006-07

AUDIT ACTIVITY - SUMMARY OF ACTUAL HOURS

Classification Group a/	ESTIMATED b/	"Info Only"				YEAR-TO DATE TOTAL
		1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	
CLERICAL	2,771.5	0.0	0.0	0.0	0.0	0.0
AUDIT	13,030.6	0.0	0.0	0.0	0.0	0.0
COMPLIANCE	473.9	0.0	0.0	0.0	0.0	0.0
ADMINISTRATIVE	150.4	0.0	0.0	0.0	0.0	0.0
TOTAL	16,426.4	0.0	0.0	0.0	0.0	0.0

COMPLIANCE ACTIVITY - SUMMARY OF ACTUAL HOURS

Classification Group a/	ESTIMATED b/	COMPLIANCE ACTIVITY - SUMMARY OF ACTUAL HOURS				YEAR-TO DATE TOTAL
		1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	
CLERICAL	21,512.6	0.0	0.0	0.0	0.0	0.0
AUDIT	572.3	0.0	0.0	0.0	0.0	0.0
COMPLIANCE	19,463.4	0.0	0.0	0.0	0.0	0.0
ADMINISTRATIVE	452.6	0.0	0.0	0.0	0.0	0.0
TOTAL	42,000.9	0.0	0.0	0.0	0.0	0.0

a/ CLERICAL - Office Assistants, Office Technicians, Tax Technicians and Supervising Tax Technicians.
 AUDIT - Tax Auditors, Associate Tax Auditors, Staff Tax Auditors, BT Specialists and Supervising Tax Auditors.
 COMPLIANCE - BT Representatives, BT Compliance Specialists, BT Specialists and BT Compliance Supervisors.
 ADMINISTRATIVE - CEAs, BT Administrators, Staff Services Managers, Associate Governmental Program Analysts, and Associate Information Systems Analysts.

b/ Based on prior year experience.

STATE BOARD OF EQUALIZATION
LEGAL DIVISION

DETAIL OF DIRECT HOURS EXPENDED ON HAZARDOUS WASTE PROGRAM

OCTOBER 2006 - JUNE 2007
FISCAL YEAR 2006-07

FUNCTION CODES	<i>"Info Only"</i>				TOTAL
	1ST QTR	2ND QTR	3RD QTR	4TH QTR	
19 SUPERVISION					0.0
20/21 APPEALS					0.0
11 HEARINGS					0.0
12 COLLECTIONS					0.0
13 LEGISLATION					0.0
14 LITIGATION					0.0
15 OPINIONS					0.0
16 PUBLICATIONS					0.0
17 REGULATIONS					0.0
18 GENERAL					0.0
22 ENFORCEMENT					0.0
TOTAL HOURS	0.0	0.0	0.0	0.0	0.0

FINANCIAL MANAGEMENT DIVISION
BUDGET SECTION

EXHIBIT D

Page 1 of 1

SPECIAL TERMS AND CONDITIONS:

Amendment/Cancellation

Notwithstanding the Amendment Clause in Exhibit C (GIA 101), above:

This agreement may be amended only upon written mutual consent. Either party may cancel this Agreement upon ninety (90) days written notice to the other party.

Entire Agreement

This Agreement constitutes the complete and final agreement between the parties and supersedes all prior agreements, oral or written, concerning to the services provided herein.

Settlement of Disputes

Disagreements between DTSC and BOE over provisions of this Agreement shall be subject to discussion to achieve resolution. The discussion shall be held between the DTSC Executive Director and the BOE Chief, Administrative Support Division, and the BOE Contract Manager, or their designees.

Confidentiality of Data

All financial, statistical, personal, technical, and other data and information relating to the BOE's operations, which are designated confidential by the BOE and made available to DTSC in order to carry out this Agreement, or which becomes available to DTSC in carrying out this Agreement, shall be protected by DTSC from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the BOE. The identification of all such confidential data and information, as well as the BOE's procedural requirements for protection of such data and information from unauthorized use and disclosure, shall be provided in writing to DTSC by the BOE. DTSC shall not, however, be required to keep confidential any data or information which is or becomes publicly available, is already rightfully in DTSC's possession, is independently developed by DTSC outside the scope of this Agreement, or is rightfully obtained from third parties.

Force Majeure

Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used here, "Force Majeure" is defined as follows: Acts of war and acts of God, such as earthquakes, floods, and other natural disasters such that performance is impossible.

EXHIBIT E

Page 1 of 11

ADDITIONAL PROVISIONS

I. GENERAL PROVISIONS AND DEFINITIONS

A. Definitions

The terms used in this Agreement are defined as follows:

- 1) "Fee" means a hazardous waste fee or tax imposed under Chapter 6.5 of Division 20 of the H&SC, and collected pursuant to Part 22 of Division 2 of the R&TC.
- 2) "Board" or "BOE" means the State Board of Equalization.
- 3) "Board staff" means the staff of the State Board of Equalization.
- 4) "Board of Equalization" means the five-member State Board of Equalization.
- 5) "Department" or "DTSC" means the Department of Toxic Substances Control.
- 6) "Department staff" means the staff of the Department of Toxic Substances Control.
- 7) "Appeals conference" means an informal meeting conducted by a representative of the Board's Appeals Division to discuss a petition for redetermination or claim for refund.
- 8) "Hearing" means an adjudicatory hearing conducted by the Board of Equalization at one of its regularly-scheduled meetings.
- 9) "Law" means the Hazardous Substances Tax Law, Part 22 (commencing with section 43001) of Division 2 of the R&TC.
- 10) "Parties" means the BOE or the Board and the DTSC or the Department.

B. Statement of Intent

This Agreement is intended to structure and promote communication and cooperation between Board staff and Department staff. The parties agree that each agency shall contact the other whenever significant issues arise concerning the interpretation or application of the Hazardous Waste Fee Law.

C. Disagreements Over Interpretation

Disagreements between Board staff and Department staff over interpretation of one or more provisions of the hazardous waste fee law shall be resolved on a case by case basis according to the appeals process set forth below.

D. Guidelines for Timely Exchange of Information

1) Settlement cases:

- a. Upon the request of any feepayer disputing any fee,
 - (i) The DTSC may settle the dispute, as permitted under H&SC section 25205.23.
 - (ii) The DTSC agrees to provide written notification to the BOE within fourteen (14) calendar days of accepting a case for settlement review.
- b. The BOE, upon notification by the DTSC or referral of a case by Board staff, agrees to provide the DTSC with a summary of the case, any related file data, and any pertinent correspondence that may facilitate the DTSC's review of the settlement request. Board staff shall refer feepayers' requests for settlement to DTSC whenever requested by a feepayer during the administrative process.
- c. The Department staff agrees to notify the BOE within fourteen (14) calendar days of their decision to accept or reject a case for settlement, or when settlement is subsequently rejected by either party.
- d. The DTSC agrees to provide a copy of all executed settlement agreements to BOE by no later than fourteen (14) days after the execution date indicated in the agreements to facilitate timely implementation.
- e. The BOE agrees to provide a quarterly report to DTSC listing all cases that are more than 6 months old, by no later than thirty (30) days after the end of each calendar quarter. The DTSC agrees to report on the status of each case and advise the BOE of any discrepancies by no later than thirty (30) days from receipt of this report. The six-month aging process begins as of the date that the DTSC receives the feepayer's written settlement request.

2) **Appeals cases:** The party receiving a request to provide information or an opinion relating to correspondence or issues in appeals cases shall have 60 days to respond, with an extension of an additional thirty (30) days available for good cause, as needed.

3) **Inquiries:** Department staff and Board staff shall respond to each other concerning routine correspondence or general inquiries that do not require extensive legal interpretation by no later than thirty (30) days from receipt of the inquiry, unless some urgency is indicated by the requesting agency. Such

requests generally concern the status of a permit or a request for factual information about a feepayer. Extensions of time may be requested and granted, as needed. The party requesting the extension shall include, as part of the request, specific information on the progress made in preparing the response and the reason(s) for requesting the extension. Department or Board staff shall respond, as appropriate, to inquiries requiring extensive legal interpretation or involving hazardous waste classification, by no later than sixty (60) days from receipt of the inquiry, unless an extension of time is requested and granted.

4) Environmental Fee Newsletter

Board staff shall provide a draft of each edition of BOE's Environmental Fees Newsletter to Department staff at least fourteen (14) calendar days prior to publication to allow comment by Department staff on the content of the newsletter.

5) Fee Bulletins and Other Notices, Publications, and Web Site Postings

Department staff shall provide a draft of each edition of DTSC's Fee Bulletin and of all notices, publications, and Web site postings to Board staff at least fourteen (14) calendar days prior to distribution to allow comment by Board staff on the content.

6) Enforcement Actions

Department staff shall promptly notify Board staff regarding any enforcement actions or other activities undertaken by, or on behalf of, the DTSC that may affect fee collections.

II. ACTIVITIES PRIOR TO ISSUANCE OF A NOTICE OF DETERMINATION BY THE BOE

A. Conduct of Audits and Investigations by the BOE and Decisions Based Thereon

Board staff shall have complete discretion concerning the level of audit or investigation of any individual feepayer prior to the issuance of a notice of determination. The Board staff decision concerning the fee shall be based on the audit or investigation findings and consistent with existing precedent and the relevant statutes, except as otherwise set forth below. Board staff may provide to DTSC any information discovered through the audit or investigation that is relevant to the fee liability.

B. Billings or Changes in Billings That May Affect DTSC's Regulatory Program

Board staff may conclude, after an audit or investigation, that it is appropriate to issue a determination for one or more of the hazardous waste fees based on an interpretation of the hazardous waste fee law that may be new or novel or that

otherwise may differ from the Department's interpretation. In such circumstances, Board staff shall follow the procedure set forth below. An interpretation that may affect the Department's regulatory program includes, but is not limited to, a factual situation requiring an interpretation or definition of the terms "responsible party," "closure," or "disposal." Issues that would not affect the regulatory program include, but are not limited to, a determination of the correct application of the statute of limitations, whether an entity is a corporation or an organization, or whether a fee may be returned when an application is withdrawn.

C. Notice to Department Staff of Billing or Change in Billing

Board staff shall provide written notification to Department staff when issuance of a determination requires an interpretation by Board staff of the hazardous waste fee law that may affect the Department's regulatory program, as described above. Such written notification shall be provided to Department staff at least fourteen (14) calendar days before Board staff is scheduled to meet with the feepayer to discuss the results of the audit or fourteen (14) calendar days before the notice of determination is sent, whichever is earlier. If Department staff responds in writing before the scheduled meeting or before the determination issues, Board staff shall issue the determination consistent with the Department's position concerning imposition of the fee.

If Department staff does not respond in writing before the scheduled meeting or before the notice of determination is sent, Board staff may proceed in accordance with its recommended interpretation.

Board staff shall, upon request, advise Department staff of the basis for the issuance of the determination in matters that do not present new or novel factual situations or require an interpretation of the hazardous waste fee law that may affect the Department's regulatory program.

D. Decisions Concerning Whether a Substance is a Hazardous or Extremely Hazardous Waste

R&TC section 43301 provides that: "No petition for redetermination of taxes determined under this part shall be accepted or considered by the [Board] if the petition is founded upon the grounds that the [DTSC] has improperly or erroneously determined that any substance is a hazardous or extremely hazardous waste." This provision also requires that: "Any appeal of a determination that a substance is a hazardous or extremely hazardous waste shall be made to the [DTSC]."

R&TC section 43452(d) provides that: "No claim for refund of taxes paid under this part shall be accepted, considered, or approved by the [Board] if the claim is founded upon the grounds that the [DTSC] has improperly or erroneously determined that any substance is a hazardous or extremely hazardous waste." Section 43452(d) also requires that: "Any appeal of a determination that a

substance is a hazardous or extremely hazardous waste [that is the basis for a refund claim] shall be made to the [DTSC].”

Such appeals shall be handled in conformance with the provisions of Section IV, Appeals Process, below.

The DTSC shall implement a procedure for resolving, or otherwise settling, feepayer disputes concerning the classification of substances as hazardous or extremely hazardous waste that provides the feepayer an opportunity to present evidence and argument concerning such classification to a DTSC representative authorized to resolve or settle the dispute. The DTSC shall notify Board staff of the outcome of the resolution or settlement process, as set forth in Section I, subsection D.1), above, and Board staff shall process the case as appropriate, as set forth in the provisions of Section IV, Appeals Process, below.

III. Notices of Determination and Other Assessments

A. Board staff shall issue a Notice of Determination to a feepayer:

- 1) As a result of an audit that generates additional fee liability;
- 2) If the BOE is dissatisfied with the return or report filed by the feepayer;
- 3) If the feepayer has not filed a return or report; or
- 4) If the feepayer has made no payment or payments of the fees to the State.

B. Board staff shall assess and bill the feepayer for fees due, as provided in the Law.

IV. Appeals Process

A. Petition for Redetermination

- 1) A feepayer may file a Petition for Redetermination to challenge the imposition of a fee or the fee amount due established through a Board determination or assessment, whether or not the feepayer is required to file a timely return, or the Board bills the fee based on information supplied by DTSC.
- 2) All Petitions for Redetermination shall be filed with the BOE.

B. Claim for Refund

- 1) A feepayer may file a Claim for Refund for fees paid, if the feepayer disputes the imposition of the fee or the fee amount, whether based on a return, BOE assessment, or determination.
- 2) All Claims for Refund shall be submitted to the BOE.

C. Petition and Claim Process

- 1) Excise Taxes and Fees Division staff shall send a letter to the feepayer acknowledging receipt of the Petition for Redetermination and/or Claim for Refund.
- 2) Excise Taxes and Fees Division staff shall also assign a Case ID number.
- 3) Excise Taxes and Fees Division staff shall review the petition or claim to determine the nature of the issues presented for appeal – BOE-only issues; DTSC-only issues; or mixed DTSC and BOE issues.
- 4) Excise Taxes and Fees Division staff shall assign the case to a BOE auditor.

D. The BOE auditor shall:

- 1) With respect to petitions or claims that present only BOE issues (e.g., hazardous waste weights incorrect, wrong entity billed),
 - a. Request additional information or documentation from the feepayer, as required, to clarify or support the feepayer's position;
 - b. Make a decision on the issue(s), based on the auditor's analysis of the information available.
 - c. Advise the feepayer of the auditor's decision(s) and
 - d. If the decision(s) are that the feepayer should prevail on all or any of the issues, or if the feepayer concurs with the decision(s),
 - Issue an adjusted billing or Notice of Redetermination reflecting appropriate changes in the amount of the fee due, or
 - Direct a refund to be issued in the appropriate amount; or
 - e. If the decision(s) are that the BOE should prevail on any or all of the issues and the feepayer does not concur with the decision(s), advise the feepayer of all appeal options, including settlement directly with the DTSC.
- 2) With respect to petitions or claims that present only the DTSC issue as to whether the substance at issue is a hazardous or extremely hazardous waste,
 - a. Advise the feepayer that the BOE may acknowledge receipt of, but may not accept or consider any petition for redetermination (RTC § 43301) or claim for refund (RTC § 43452(d)) founded upon the grounds that the DTSC has improperly or erroneously determined that any substance is a hazardous or extremely hazardous waste;
 - b. Advise the feepayer that the petition or claim will be forwarded to the DTSC for review and decision;
 - c. Advise the feepayer that the petition or claim will be held in abeyance pending the outcome of DTSC's decision;
 - d. Forward the petition or claim to the DTSC within five (5) business days.

- 3) With respect to petitions or claims that present both the DTSC and BOE issues,
 - a. Advise the feepayer, as provided in paragraph 2, above, regarding the DTSC issue;
 - b. Request additional information and documentation regarding the BOE issue(s), as provided in paragraph 1)a., above;
 - c. Advise the feepayer that the petition or claim will be held in abeyance pending the outcome of DTSC's review and decision;
 - d. Forward the petition or claim to the DTSC within five (5) business days;
 - e. Make a decision, as provided in paragraph 1)b., above; and
 - f. Delay issuance of any decision until DTSC has completed its review and decision, as provided below.

E. The DTSC shall, with respect to whether the substance at issue is a hazardous or extremely hazardous waste:

- 1) Review and make a decision regarding this issue for all Petitions for Redetermination and Claims for Refund received from the BOE. The DTSC review process shall include:
 - a. Requesting additional information and documentation from the feepayer, as needed, relevant to whether the substance is a hazardous or extremely hazardous waste; and
 - b. Conducting further investigation, as needed, relevant to whether the substance is a hazardous or extremely hazardous waste.
- 2) Provide written notification, signed by the Director of Toxic Substances Control or his or her designee, to the BOE of its findings and decision concerning whether the substance is a hazardous or extremely hazardous waste.
- 3) By the last day of each calendar quarter, report to the BOE in writing on the status of each appeals case that was forwarded to DTSC for review and decision more than sixty (60) days prior to the date of the report.

F. Upon receipt of DTSC's findings and decision, the BOE auditor shall:

- 1) Advise the feepayer of both DTSC's and the auditor's decisions; and
- 2) If the findings and decisions are that the feepayer should prevail on the DTSC issue or the BOE issues or both, or if the feepayer concurs with the auditor's and/or DTSC's decision(s),
 - a. Issue an adjusted billing or Notice of Redetermination reflecting appropriate changes in the amount of the fee due, or
 - b. Direct a refund to be issued in the appropriate amount.

- 3) If the findings and decision(s) are that the BOE and/or the DTSC should prevail on any of the issues and the feepayer does not concur with the findings and decision(s), advise the feepayer of all appeal options, including settlement directly with the DTSC.

G. If the feepayer requests settlement directly with the DTSC:

- 1) The BOE auditor may direct the feepayer to correspond directly with the DTSC concerning the feepayer's request for settlement of the DTSC issue. The BOE auditor may also refer the case to the DTSC for settlement.
- 2) The DTSC may adjust the fee amount or liability for fees owed, when necessary to achieve settlement as to whether the substance is a hazardous or extremely hazardous waste.
- 3) The DTSC shall notify the BOE auditor that the feepayer has requested settlement with the DTSC. See paragraph D.1) of Section I, above.
- 4) The BOE auditor shall again hold the petition or claim in abeyance pending completion of the settlement negotiations.
- 5) The DTSC shall notify the BOE auditor if a settlement agreement has been reached, including the terms of the agreement, or that settlement was not achieved. See paragraph D.1) of Section I, above.
- 6) If a settlement agreement has been reached, the BOE auditor shall:
 - a. Upon payment of the settlement amount agreed, issue an adjusted billing or Notice of Redetermination reflecting appropriate changes in the amount of the fee due, or
 - b. Direct a refund to be issued in the appropriate amount.
- 7) If the DTSC notifies the BOE auditor that it declines to accept the case into settlement or that settlement is subsequently rejected, the BOE auditor shall proceed as if the substance is a hazardous or extremely hazardous waste. If such should occur, the BOE auditor shall either (i) issue a final Notice of Redetermination, that terminates the appeals process, if the feepayer's only issue is whether the substance at issue is a hazardous or extremely hazardous waste, or (ii) issue a final Notice of Redetermination and complete the appeals process for BOE issues.
- 8) The feepayer may seek judicial review in a court of competent jurisdiction if the feepayer is not satisfied with the outcome of the settlement or resolution process with the DTSC.

H. If the feepayer requests an appeals conference and/or a hearing before the Board of Equalization concerning BOE issues only:

- 1) BOE Appeals staff shall schedule an appeals conference and notify the feepayer, the DTSC, and appropriate Board staff of the date, time, and place that the appeals conference will be conducted.
- 2) All parties may submit, at the direction of BOE Appeals staff, written statements or briefs and documentary evidence in support of their positions and responses to the other parties' written submissions, either before or after the appeals conference.
- 3) BOE Appeals staff shall conduct the appeals conference, consider information and arguments presented by the feepayer, Department staff, and Board staff, and issue a Decision and Recommendation (D&R) on the issues presented by the feepayer.
- 4) If the feepayer, the DTSC, and the BOE concur with the findings and conclusions set forth in the D&R, the case shall be referred back to the BOE auditor for adjusted billing or redetermination, and/or to direct a refund to be issued.
- 5) If the feepayer, the DTSC, or the BOE disagrees with any of the findings and conclusions set forth in the D&R, any one or more of the parties may request that BOE Appeals staff reconsider his or her findings and conclusions.
- 6) If the feepayer, the DTSC, or the BOE disagrees with any of the findings and conclusions set forth in the D&R or with the results of the reconsideration of the D&R, any one or more of the parties may request a hearing before the Board of Equalization to contest some or all of the findings and conclusions set forth in the D&R.
- 7) If the feepayer seeks to introduce the DTSC issue as to whether the substance at issue is a hazardous or extremely hazardous waste during the appeals conference:
 - a. If DTSC staff does not agree with the feepayer and resolve the issue during the course of the appeals conference, BOE Appeals staff shall forward the case and information provided by the feepayer regarding the issue to DTSC for review and decision and/or for settlement or other resolution.
 - b. BOE Appeals staff shall advise the feepayer and Department and Board staff that issuance of the D&R shall be pended awaiting DTSC's determination of the issue and/or the result of any settlement or other resolution efforts.
 - c. The DTSC shall review the issue as presented by the feepayer, pursuant to Subsection E, above, and endeavor to settle or otherwise resolve the issue, pursuant to Subsection G, above.

- d. The DTSC shall notify BOE Appeals staff in writing, signed by the Director of Toxic Substances Control or his or her designee, of its determination and/or the outcome of any settlement or resolution efforts. The DTSC shall report to the BOE on the status of each such case as set forth in Paragraph E.3), above.
 - e. BOE Appeals staff shall issue the D&R regarding the BOE issues and incorporate the DTSC determination, and/or settlement, or other resolution.
 - f. The feepayer may seek judicial review in a court of competent jurisdiction, if the feepayer disagrees with the D&R with regard to DTSC's determination and/or is not satisfied with the outcome of any settlement or other resolution efforts pertaining to the DTSC issue. See paragraphs 5) and 6) above with respect to other disagreement(s) with the D&R.
- I. If one or more of the parties requests a hearing before the Board of Equalization with respect to BOE issues only:
- 1) BOE Board Proceedings staff shall schedule the case for oral hearing before the Board of Equalization.
 - 2) All parties may submit, at the direction of BOE Board Proceedings staff, written statements or briefs and documentary evidence in support of their positions and responses to the other parties' written submissions.
 - 3) All parties may present oral argument at the hearing; however, BOE Legal staff may present the Department's position at the hearing if there is no disagreement between the BOE and the DTSC on any of the issues. If there is disagreement, both the BOE and the DTSC may present oral argument.
 - 4) The Board of Equalization shall decide and issue an order to grant or deny the feepayer's Petition for Redetermination or Claim for Refund, and that order shall become final thirty (30) days after the notice of the order has been served on the feepayer.
- J. If one or more of the parties requests a hearing before the Board of Equalization on BOE issues, pursuant to Section I, above, and the feepayer seeks to introduce the DTSC issue at the hearing as to whether the substance at issue is a hazardous or extremely hazardous waste:
- 1) If the feepayer has not previously presented the issue to DTSC for consideration, the Board of Equalization shall postpone the hearing and remand the case to DTSC for review, determination, and/or settlement or other resolution as to whether the substance at issue is a hazardous or extremely hazardous waste.
 - 2) The Board of Equalization shall advise the feepayer at the hearing that the petition or claim for refund will be held in abeyance pending the outcome of DTSC's review and/or any settlement or other resolution process.

- 3) Board staff shall forward the petition or claim for refund to the DTSC within five (5) business days.
- 4) The DTSC shall review the evidence presented by the feepayer, as set forth in Subsection E, above, and endeavor to settle or otherwise resolve the issue, pursuant to Subsection G, above.
- 5) The DTSC shall notify the Board of Equalization in writing, signed by the Director of Toxic Substances Control and his or her designee, concerning the outcome of its review, settlement, or resolution efforts. The DTSC shall report to the BOE on the status of each such case as set forth in Paragraph E.3), above.
- 6) If the feepayer has previously presented the issue to DTSC for review and DTSC has notified the BOE of its determination in the matter, pursuant to Paragraphs E.2) and H.7)d., the Board of Equalization shall incorporate DTSC's previous determination in its order.
- 7) The Board of Equalization shall issue an order granting or denying the feepayer's Petition(s) for Redetermination and/or Claim(s) for Refund. The order shall set forth the Board of Equalization's own determination of the BOE issues. The order shall also incorporate DTSC's determination of the DTSC issue, based on the outcome of DTSC's review and/or settlement or resolution efforts. The order shall become final thirty (30) days after the notice of the order has been served on the feepayer.

V. Litigation Process

- A. A feepayer may file suit in any court of competent jurisdiction seeking refund of a hazardous waste fee. BOE's Legal Department shall, upon service of the complaint, make the initial referral to the Attorney General's Office and shall forward a copy of the complaint and related documents to DTSC's Chief Counsel. Both the BOE and the DTSC shall provide technical assistance and expertise to the Attorney General's Office in the prosecution of the case.
- B. The DTSC may file suit challenging a decision and order made by the Board of Equalization. The DTSC and the BOE shall follow accepted civil litigation practices.