

# Memorandum

To : Ramon J. Hirsig,  
Executive Director

Date : May 22, 2009

From *Yor* *Charlene Yount*  
Liz Houser, 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 June 9, 2009, Board Meeting.

Routine renewal of Interagency Agreement that expires June 30, 2009:

- Interagency Agreement #09-019 – Dept. of Toxic Substance Control

Because this Agreement exceeds \$1 million, Board Member approval is required. Attached is a short description of the services to be provided by this Agreement. Also attached is the final 2008-09 Agreement with the Department of Toxic Substance 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 Suzan Bills at 327-9517.

LH:kw

Attachments

Approved   
Ramon J. Hirsig  
Executive Director

BOARD APPROVED  
At the \_\_\_\_\_ Board Meeting

\_\_\_\_\_  
Diane Olson, Chief  
Board Proceedings Division

Board of Equalization  
 Proposed Contracts  
 Over \$1 Million

Contractor	Start Date	Expire Date	Estimated Total Cost	Purpose
Toxics Substances Control, Department of	7/1/2009	6/30/2010	\$4,379,000	<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>

## STANDARD AGREEMENT

STD 213 (Rev 06/03)

DTSC# 09-T9006

AGREEMENT NUMBER 09-019
REGISTRATION NUMBER

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

STATE AGENCY'S NAME

Department of Toxic Substance Control

CONTRACTOR'S NAME

Board of Equalization

2. The term of this Agreement is:

July 1, 2009 through June 30, 2010

3. The maximum amount of this Agreement is: \$ 4,379,000.00

Four Million Three Hundred Seventy-Nine Thousand Dollars and No Cents

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

Exhibit A – Scope of Work	4 pages
Exhibit B – Budget Detail and Payment Provisions	1 page
Attachment 1 Quarterly Invoice	1 page
Attachment 2 Hazardous Waste Program	1 page
Attachment 3 Time Reporting Detail	2 pages
Attachment 4 Detail of Direct Hours	1 page
Exhibit C* - General Interagency Terms and Conditions	GIA 101
Exhibit D – Special Terms and Conditions	1 page
Exhibit E – Additional Provisions	6 pages
Exhibit F – Internal Revenue Code	4 pages

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at [www.ols.dgs.ca.gov/Standard+Language](http://www.ols.dgs.ca.gov/Standard+Language)

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

<b>CONTRACTOR</b>		CALIFORNIA <b>Department of General Services</b> Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) Board of Equalization		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Suzan Bills, Contract Manager		
ADDRESS 450 N Street, MIC: 24 Sacramento, CA 95814		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME Department of Toxic Substances Control		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	<input type="checkbox"/> Exempt per
PRINTED NAME AND TITLE OF PERSON SIGNING Sandra Poindexter, Chief, Contracts and Business Management Branch		
ADDRESS P.O. Box 806; Sacramento, CA 95812-0806		

**EXHIBIT A**  
Page 1 of 4

**SCOPE OF WORK**

1. As permitted under section 25174(c) of the Health and Safety Code (H&SC), this Interagency Agreement (Agreement) is entered into between the Department of Toxic Substances Control, hereafter referred to as DTSC, and the 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 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, item 9, and the BOE agrees to perform all the duties set forth in Exhibit A, item 8.
6. The Contract Managers during the term of this Interagency Agreement will be:

<b>Department of Toxic Substances Control</b>	<b>Board of Equalization</b>
Adrienne Howze, Chief Fees Unit	Steven Macken Environmental Fees Division
916-322-2448	916-323-9399
916- 445-9549 (FAX)	916-327-0859 (FAX)

Direct all inquires to the respective Contract Manager:

<b>Department of Toxic Substances Control</b>	<b>Board of Equalization</b>
Fees Unit	Environmental Fees Division
Adrienne Howze, Chief	Steven Macken
P. O. Box 806 MS 21-B Sacramento CA 95812-0806	P.O. Box 942879, MIC: 48 Sacramento CA 94279-0057

Either contract manager may be changed without a formal amendment to this agreement. The changing party will notify the other party with a ten-day prior written notice, by either fax, mail or e-mail, which will contain the new contract manager's name, mailing address, phone and fax numbers, and e-mail address.

7. The DTSC and the BOE agree to cooperate fully, within the limits of the funding provided in the agreement, 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 e-mail to share information that may be of use to each of them in effectively administering the program.

EXHIBIT A  
Page 2 of 4

SCOPE OF WORK (continued)

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 business organizations as defined in H&SC section 25205.6, 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 that are 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 no-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.

**EXHIBIT A**  
Page 3 of 4

**SCOPE OF WORK (continued)**

- 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 the BOE's revenue collection activities pursuant to this Agreement. The BOE shall respond by no later than thirty (30) calendar days from receipt of a 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 prior calendar year, 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 data file for all generators/handlers for treated wood waste (TWW) for the prior calendar year stating the EPA ID number, date and weight of each TWW handler/generator shipment for disposal, and date range of reporting period and weight total for the reporting period. The data file shall be accessible for download through DTSC's online treated wood waste tracking system (TWWTS).
  - c. 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, e-mail or other electronic format that is agreed upon between the BOE and the DTSC.
  - d. Access to HWTS and the TWWTS, which is critical to the proper administration of the Hazardous Waste Fee program. If, at any time, the DTSC is aware that HWTS's and TWWTS 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.

**EXHIBIT A**  
Page 4 of 4

**SCOPE OF WORK (continued)**

- e. Documentation listing all activity fees to assure timely billing of the fee payers.
- f. Written notification at the end of each calendar quarter of any DTSC-approved PBR and TTU permit changes and new permits.
- g. 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.
- h. 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.
- i. Work with BOE staff to provide education outreach to current and potential fee payers.

**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  
Page 1 of 1

**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 (Attachments 1, 2, 3, and 4 to Exhibit B), which are 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 Business Management Branch  
1001 "I" Street, 21<sup>st</sup> 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. Both the BOE and DTSC contract numbers;
  - b. The BOE invoice number;
  - c. The amount disputed and/or requested credit; and
  - d. 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.

4. Payment

- a. Costs for this Agreement shall be computed in accordance with State Administrative Manual Sections 8752 and 8752.1.
- b. Nothing herein contained shall preclude advance payments pursuant to Article 1, Chapter 3, Part 1, Division 3, Title 2 of the Government Code of the State of California.

Board of Equalization  
 Hazardous Waste Program  
 Quarterly Invoice

	2009-10 FY Fiscal Year <u>d/ e/</u>
	(1)
<b>1. Personal Services <u>a/</u></b>	
Salary & Wages	\$ 2,490,000
Salary Savings	-177,000
Net Total, Salaries & Wages	2,313,000
Staff Benefits	830,000
Subtotal, Personal Services	3,143,000
<b>2. Operating Expense &amp; Equipment <u>a/</u></b>	
General Expense	145,000
Communications	32,000
Travel In-State	18,000
Facilities Operations	342,000
Subtotal, Operating Expense & Equipment	537,000
<b>3. Administrative Support <u>b/</u></b>	
Mail Room	57,000
Cashiers	14,000
CATS	0
Data Entry & Verification	38,000
Legal	25,000
Technology Services	88,000
Subtotal, Administrative Services	222,000
<b>4. Overhead <u>c/</u></b>	477,000
<b>TOTAL</b>	<b>\$ 4,379,000</b>

a/ Special Taxes Department

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

c/ Pro rata share of overhead costs.

d/ 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 budget category 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 mutual agreement of both parties, the contract may be amended to reflect an increase of more than 10% in the dollar of a budget cost category.

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

**Hazardous Waste Program**

	2009-10 <u>Contract</u>	1st & 2nd Qtr. Billing	3rd Qtr. Billing	4th Qtr. Billing	Total Billing
1. Personal Services: <u>a/</u>	\$2,490,000	\$0			\$0
	<u>-177,000</u>				
	2,313,000	0	0	0	0
	<u>830,000</u>	0			0
	3,143,000	0	0	0	0
2. Operating Expense & Equipment: <u>b/</u>	145,000	0			0
	<u>32,000</u>	0			0
	18,000	0			0
	<u>342,000</u>	0			0
	537,000	0	0	0	0
3. Administrative Support:	57,000	0			0
	<u>14,000</u>	0			0
	38,000	0			0
	<u>25,000</u>	0			0
	88,000	0			0
	<u>222,000</u>	0	0	0	0
4. Overhead <u>c/</u>	<u>477,000</u>	0			0
	<u>\$4,379,000</u>	\$0	\$0	\$0	\$0

CURRENT BILLING <i>e/ f/</i>	
TSCA	HWCA
\$0	\$0
0	0
0	0
0	0
0	0
0	0
0	0
0	0
0	0
0	0
0	0
0	0
0	0
0	0
0	0
\$0	\$0

a/ See Exhibit B-Attachment 3 for additional detail in support of quarterly billing.

b/ Actual amounts by quarter.

c/ Year to Date expenditures

d/ See Exhibit B-Attachment 1 for additional detail in support of quarterly billing.

e/ Pursuant to the imposition of SB 85 separate billings to the Toxic Substances Control Account (TSCA) and the Hazardous Waste Control Account (HWCA) are required to appropriately account for expenditures associated with the Environmental Fee Program.

f/ The allocation between the TSCA and the Hazardous Waste Control Account (HWCA) is based on the number of accounts associated each of the Hazardous Substances Programs administered for the Department of Toxic Substances Control (DTSC).

HAZARDOUS WASTE PROGRAM - TIME REPORTING DETAIL  
1st and 2nd Quarter of Fiscal Year 2009-10

AUDIT ACTIVITY - HOURS BY FUNCTION b/

Classification Group a/	Supervision	Review	Direct		Worksheet	Petitions and Refunds		Direct	Indirect	TOTAL HOURS c/
			Field	Selection		Refunds	Training	Support	Support	
	<u>5301</u>	<u>5302</u>	<u>5303</u>	<u>5304</u>	<u>5305</u>	<u>5306</u>	<u>5307</u>	<u>5308</u>	<u>5318</u>	
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	0.0

COMPLIANCE ACTIVITY - HOURS BY FUNCTION b/

Classification Group a/	Supervision	Registration	Close Out	Collections	Returns	Direct		Advisory	Indirect	TOTAL HOURS
						Support	Training	Service	Support	
	<u>5401</u>	<u>5402</u>	<u>5403</u>	<u>5404</u>	<u>5405</u>	<u>5406</u>	<u>5407</u>	<u>5408</u>	<u>5416</u>	
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	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 - CEA's, BT Administrators, Staff Services Managers, Associate Governmental Program Analysts, and Associate Information Systems Analysts.

b/ See time reporting attachment Exhibit B - Attachment 4 for description of time reporting codes.

c/ See Exhibit B-Attachment 3, page 2 of 2 for 2009-10 actual hours and a summary of 2009-10 actual hours expended by quarter.

**HAZARDOUS WASTE PROGRAM - TIME REPORTING DETAIL**  
1st and 2nd Quarter of Fiscal Year 2009-10

**AUDIT ACTIVITY - SUMMARY OF ACTUAL HOURS**

Classification Group a/	Prior Year b/	"Info Only"	2ND	3RD	4TH	YEAR-TO DATE
		1ST	QUARTER	QUARTER	QUARTER	TOTAL
CLERICAL	0.0	0.0		0.0	0.0	0.0
AUDIT	0.0	0.0		0.0	0.0	0.0
COMPLIANCE	0.0	0.0		0.0	0.0	0.0
ADMINISTRATIVE	0.0	0.0		0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**COMPLIANCE ACTIVITY - SUMMARY OF ACTUAL HOURS**

Classification Group a/	Prior Year b/	1ST	2ND	3RD	4TH	YEAR-TO DATE
		QUARTER	QUARTER	QUARTER	QUARTER	TOTAL
CLERICAL	0.0	0.0		0.0	0.0	0.0
AUDIT	0.0	0.0		0.0	0.0	0.0
COMPLIANCE	0.0	0.0		0.0	0.0	0.0
ADMINISTRATIVE	0.0	0.0		0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 - CEA's, BT Administrators, Staff Services Managers, Associate Governmental  
 Program Analysts, and Associate Information Systems Analysts.

Financial Management  
Division  
Budget Section

BOARD OF EQUALIZATION  
 LEGAL DIVISION

DETAIL OF DIRECT HOURS EXPENDED ON HAZARDOUS WASTE  
 PROGRAM

FISCAL YEAR 2009-10

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
23 SETTLEMENTS					0.0
24 CONFERENCE					0.0
27 BANKRUPTCY					0.0
<b>TOTAL HOURS</b>	0.0	0.0	0.0	0.0	0.0

**EXHIBIT C**  
Page 1 of 1

<http://www.ols.dgs.ca.gov/Standard+Language/GIA101.htm>

**EXHIBIT D**  
Page 1 of 1.

**SPECIAL TERMS AND CONDITIONS:**

**1. 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.

**2. 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.

**3. 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 Deputy Director, Administrative Services Program, and the BOE Chief, Administrative Support Division, and the BOE Contract Manager, or their designees.

**4. 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.

**5. 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 6

**ADDITIONAL PROVISIONS**

**I. GENERAL PROVISIONS AND DEFINITIONS**

**A. Definitions**

The terms used in this Agreement are defined as follows:

- 1) "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.
- 2) "Board" or "BOE" means the Board of Equalization.
- 3) "Board of Equalization" means the five-member Board of Equalization.
- 4) "Board staff" means the staff of the 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) "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.
- 8) "Hazardous waste fee law" means, for purposes of this Agreement, those provisions of chapters 6.5 through 6.11 (commencing with section 25100) of Division 20 of the H&SC that relate to the Hazardous Substances Tax Law.
- 9) "Hearing" means an adjudicatory hearing conducted by the Board of Equalization at one of its regularly-scheduled meetings.
- 10) "Law" means the Hazardous Substances Tax Law, Part 22 (commencing with section 43001) of Division 2 of the R&TC.
- 11) "Parties" means the BOE or the Board and the DTSC or the Department.
- 12) "Rules for Tax Appeals" means, for purposes of this Agreement, the BOE regulations governing petition and hearing procedures, California Code of Regulations, title 18, (new) division 2.1 (commencing with section 5000 chapters 1, 2, and 5, effective February 6, 2008).

**EXHIBIT E**  
Page 2 of 6

**ADDITIONAL PROVISIONS (continued)**

**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 law and 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 Rules for Tax Appeals and the administrative process set forth below in Section IV.

**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 its 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. Upon receipt of a notice that settlement has been rejected or a copy of the settlement agreement from DTSC, Board staff shall continue to process the feepayer's petition for redetermination and/or claim for refund, according to the terms of the settlement agreement if applicable, pursuant to the Rules for Tax Appeals and standard Board procedures, as appropriate.

**EXHIBIT E**  
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**ADDITIONAL PROVISIONS (continued)**

- f. 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 respond pursuant to the Rules for Tax Appeals and direction from BOE Appeals staff.
- 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 or involve hazardous waste classification 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) Notices, Publications, and Web Site Postings  
  
Department staff shall provide a draft 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.

**EXHIBIT E**  
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**ADDITIONAL PROVISIONS (continued)**

**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 other organization that may be subject to the fee 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.

**EXHIBIT E**  
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**ADDITIONAL PROVISIONS (continued)**

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

DTSC has jurisdiction to determine 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, as authorized by H&SC section 25205.23. The DTSC procedure shall provide 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. The BOE appeals process shall be conducted pursuant to the Rules for Tax Appeals, which are incorporated by reference herein.

**EXHIBIT E**

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**ADDITIONAL PROVISIONS (continued)**

- B. With respect to DTSC decisions concerning whether a substance is a hazardous or extremely hazardous waste (paragraph D of Section II, above), section 5215(a) of the Rules for Tax Appeals applies when the feepayer has filed a petition for redetermination. Section 5230 (c) (1) & (2) of the Rules for Tax Appeals applies when the feepayer has submitted a claim for refund.
- C. Department staff shall notify Board staff within fourteen (14) calendar days of its determination, made pursuant to section 5215(a) or section 5230(c)(1) & (2) of the Rules for Tax Appeals, as to whether the substance at issue is a hazardous or extremely hazardous waste.
- D. Upon receipt of DTSC's determination, Board staff shall continue to process the petition for redetermination or claim for refund pursuant to the Rules for Tax Appeals and standard Board procedures, as appropriate.
- E. Department staff shall provide a written report to the BOE by the last day of each calendar quarter on the status of all appeals cases forwarded to DTSC more than ninety (90) days prior to the date of the report for a determination on a hazardous or extremely hazardous waste issue raised in a petition for redetermination and/or claim for refund.

**Exhibit F**  
**Page 1 of 4**

In performing the duties of this contract, all parties shall abide by the following requirements of the Internal Revenue Code below.

**INTERNAL REVENUE CODE**

**Section 7213 (2005). Unauthorized disclosure of information.**

**Section 7431 (2005). Civil damages for unauthorized inspection or disclosure of returns and return information.**

**IRC Sec. 7213. Unauthorized disclosure of information.**

(a) Returns and return information.

(1) Federal employees and other persons. It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) [26 USCS § 6103(n)] (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b) [26 USCS § 6103(b)]). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$ 5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees. It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b) [26 USCS § 6103(b)]) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (l)(6), (7), (8), (9), (10), (12), (15), (16), (19), or (20) or (m)(2), (4), (5), (6), or (7) of section 6103 [26 USCS § 6103]. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$ 5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) Other persons. It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b) [26 USCS § 6103(b)]) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$ 5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) Solicitation. It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b) [26 USCS § 6103(b)]) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$ 5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) Shareholders. It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b) [26 USCS § 6103(b)]) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) [26 USCS § 6103(e)(1)(D)(iii)] willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed \$ 5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(b) Disclosure of operations of manufacturer or producer. Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$ 1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

**Exhibit F**  
**Page 2 of 4**

(c) Disclosures by certain delegates of Secretary. All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B) [26 USCS § 7701(a)(12)(B)].

**IRC Section 7213 continued from previous page**

(d) Disclosure of software. Any person who willfully divulges or makes known software (as defined in section 7612(d)(1) [26 USCS § 7612(d)(1)]) to any person in violation of section 7612 [26 USCS § 7612] shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$ 5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(e) Cross references.

(1) Penalties for disclosure of information by preparers of returns. For penalty for disclosure or use of information by preparers of returns, see section 7216 [26 USCS § 7216].

(2) Penalties for disclosure of confidential information. For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

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**IRC Section 7431 (2005)**

**Section 7431. Civil damages for unauthorized inspection or disclosure of returns and return information.**

(a) In general.

(1) Inspection or disclosure by employee of United States. If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103 [26 USCS § 6103], such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) Inspection or disclosure by a person who is not an employee of United States. If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103 [26 USCS § 6103], such taxpayer may bring a civil action for damages against such person in a district court of the United States.

(b) Exceptions. No liability shall arise under this section with respect to any inspection or disclosure--

- (1) which results from a good faith, but erroneous, interpretation of section 6103 [26 USCS § 6103], or
- (2) which is requested by the taxpayer.

(c) Damages. In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of--

(1) the greater of--

(A) \$ 1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of--

(i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

(ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

(2) the costs of the action, plus

(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii) [26 USCS § 7430(c)(4)(A)(ii)], reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4) [26 USCS § 7430(c)(4)]).

(d) Period for bringing action. Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

(e) Notification of unlawful inspection and disclosure. If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of--

(1) paragraph (1) or (2) of section 7213(a) [26 USCS § 7213(a)],

(2) section 7213A(a) [26 USCS § 7213A(a)], or

(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code, the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

(f) Definitions. For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section 6103(b) [26 USCS § 6103(b)].

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**IRC Section 7431 continued from previous page**

(g) Extension to information obtained under section 3406. For purposes of this section--

(1) any information obtained under section 3406 [26 USCS § 3406] (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any inspection or use of such information other than for purposes of meeting any requirement under section 3406 [26 USCS § 3406] or (subject to the safeguards set forth in section 6103 [26 USCS § 6103]) for purposes permitted under section 6103 [26 USCS § 6103] shall be treated as a violation of section 6103 [26 USCS § 6103].

For purposes of subsection (b), the reference to section 6103 [26 USCS § 6103] shall be treated as including a reference to section 3406 [26 USCS § 3406].

(h) Special rule for information obtained under section 6103(k)(9). For purposes of this section, any reference to section 6103 [26 USCS § 6103] shall be treated as including a reference to section 6311(e) [26 USC