

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
JUNE 7, 2016**

ITEM 8

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION DELEGATING AUTHORITY TO THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE (DIVISION) TO APPROVE THE EXPENDITURE OF FUNDS FROM THE SITE CLEANUP ACCOUNT (SCA), TO APPROVE SCA PROJECTS AND GRANTS, TO EXECUTE SCA GRANT AGREEMENTS, CONTRACTS, AND AMENDMENTS FOR THE EXPENDITURE OF SCA FUNDS, TO REFER ACTIONS TO THE ATTORNEY GENERAL TO RECOVER MONEYS DUE TO THE SCA, AND TO PERFORM OTHER ACTIONS NECESSARY TO ADMINISTER THE SCA

DISCUSSION

Senate Bill No. (SB) 445 (Stats. 2014, ch. 547) added section 25299.50.6 to the Health and Safety Code and created the Site Cleanup Subaccount (SCA) in the State Treasury. Section 25299.50.6 of the Health and Safety Code (hereafter, Section 25299.50.6) authorizes a portion of the storage fees deposited into the Underground Storage Tank (UST) Cleanup Fund to be transferred to the SCA annually and provides that the State Water Resources Control Board (State Water Board) may expend SCA funds for projects that remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination.

The State Water Board is authorized to expend SCA funds for the following purposes:

1. To pay for reasonable and necessary expenditures by the State Water Board, Regional Water Quality Control Boards (Regional Water Boards), or certified local oversight agencies to identify the source of surface or groundwater contamination;
2. To pay for reasonable and necessary expenditures by the State Water Board, Regional Water Boards, or certified local oversight agencies to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination; and
3. To issue grants for the reasonable and necessary costs of actions to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination at locations for which the responsible parties have been required to undertake or contract for investigation or cleanup pursuant to specified authorities, but where the responsible parties lack sufficient resources to comply with the required actions.

Section 25299.50.6 requires the State Water Board to consider the following factors when evaluating locations for which the State Water Board or a Regional Water Board, certified local oversight agency, or grant applicant seeks SCA remediation funds:

1. The degree to which human health, safety, and the environment are threatened by surface water or groundwater contamination;
2. Whether the location is in a small or financially disadvantaged community;
3. The cost and potential environmental benefit of the investigation or cleanup;
4. Whether there are other potential sources of funding for the investigation or cleanup; and

5. Other information the State Water Board identifies as necessary for consideration. Other considerations used to evaluate applications include, but are not necessarily limited to the following:
 - a. Whether the available SCA funding is sufficient to complete site remediation;
 - b. Whether the project is a priority for the applicable regulatory agency;
 - c. Whether the project can be initiated and completed within a reasonable time frame;
 - d. Whether the project is within the regulatory framework of the State and Regional Water Boards;
 - e. Whether the project is in a location where drought conditions have exacerbated an existing threat to surface or groundwater;
 - f. Whether the project is in a location where the past release of contaminants has not been previously addressed; and
 - g. Whether the project is located in an area where environmental justice is a concern.

For efficient administration of the SCA, this resolution delegates authority to Deputy Director of the Division to approve the expenditure of funds from the SCA, to approve SCA projects and grants, to execute SCA grant agreements, contracts, and amendments, to refer actions to the Attorney General to recover moneys due to the SCA, and to perform other actions necessary to administer the SCA.

Applications are received on an ongoing basis for projects proposed to be funded by the SCA Program. Projects are reviewed to determine whether they are eligible and appropriate for SCA funding. For grants, Division staff determine whether the eligibility requirement for responsible parties to have received a specified order or directive has been satisfied. The Division is authorized to waive the eligibility requirement if the State Water Board finds it is infeasible for the order or directive to have been issued before the initiation of remediation. Division staff also reviews financial information of the responsible party to evaluate if they have the financial resources to pay for response actions. Review also includes details of the proposed project scope of work and cost estimate provided in the applicant's Project Execution Plan. Similar to other Division funding programs, Division staff recommend projects to the Deputy Director for funding. Projects approved by the Deputy Director are added to the list of funded projects posted on the State Water Board's web site. The funding agreements would then be negotiated and then executed by Deputy Director for each approved project.

POLICY ISSUE

Should the State Water Board:

1. Authorize the Deputy Director of the Division to approve expenditures from the SCA, consistent with section 25299.50.6 and this resolution, in amounts that do not exceed the respective amount of the SCA appropriation for each fiscal year;
2. Authorize the Deputy Director of the Division to approve SCA projects and grants, including, when appropriate, approvals that require waiving the eligibility requirement for responsible parties to have received a specified order or directive if the Deputy Director finds it is infeasible for the order or directive to have been issued before the initiation of remediation;
3. Authorize the Deputy Director of the Division, or designee, to execute, for and on behalf of the State Water Board, grant agreements, contracts, and amendments to disburse SCA funds;

4. Authorize the Deputy Director of the Division, or designee, to request the California Department of General Services to enter into contracts on behalf of the State Water Board and to act as the agent of the State Water Board or a Regional Water Board for the expenditure of SCA funds;
5. Authorize the Deputy Director of the Division, with the concurrence of the Chief Counsel, to initiate processes to recover SCA expenditures in appropriate cases, including, but not limited to, referring cost recovery requests to the Attorney General; and
6. Authorize the Deputy Director of the Division, or designee, to perform other actions necessary to administer the SCA.

FISCAL IMPACT

Funding is available in annual appropriations as provided by statute. Adoption of the resolution does not impose any additional fiscal impacts.

REGIONAL BOARD IMPACT

Yes. Because of SCA funding of projects: Regional Water Boards are conducting outreach and assistance with prospective new applicants; Regional Water Boards will be able to propose scopes of work for source identification, investigation, and cleanup for Regional Water Board-sponsored projects, working closely with State Water Board staff; some stagnant Regional Water Board cases are expected to proceed toward resolution. SCA funding of projects is expected to lead to identification of more responsible parties, more site cleanups, a reduction in the number of inactive cleanup cases, and more sites ready for case closure.

STAFF RECOMMENDATION

That the State Water Board adopt the resolution delegating authority to the Deputy Director of the Division to approve the expenditure of funds from the SCA, to approve SCA projects and grants, to execute SCA grant agreements, contracts, and amendments, to refer actions to the Attorney General to recover moneys due to the SCA, and to perform other actions necessary to administer the SCA.

State Water Board action on this item will assist the State Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012, to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes. It will also assist the Water Boards in reaching Goal 5 of the Strategic Plan Update: 2008-2012, to improve transparency and accountability by ensuring that Water Board goals and actions are clear and accessible, by demonstrating and explaining results achieved with respect to the goals and resources available, by enhancing and improving accessibility of data and information, and by encouraging the creation of organizations or cooperative agreements that advance this goal, such as establishment of a statewide water data institute. Finally, action on this item will assist the Water Boards in reaching Goal 7 of the Strategic Plan Update: 2008-2012, to ensure that the Water Boards have access to information and expertise, including employees with appropriate knowledge and skills, needed to effectively and efficiently carry out the Water Boards' mission.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

DELEGATING AUTHORITY TO THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE (DIVISION) TO APPROVE THE EXPENDITURE OF FUNDS FROM THE SITE CLEANUP SUBACCOUNT (SCA), TO APPROVE SCA PROJECTS AND GRANTS, TO EXECUTE SCA GRANT AGREEMENTS, CONTRACTS, AND AMENDMENTS, TO REFER ACTIONS TO THE ATTORNEY GENERAL TO RECOVER MONEYS DUE TO THE SCA, AND TO PERFORM OTHER ACTIONS NECESSARY TO ADMINISTER THE SCA

WHEREAS:

1. Senate Bill No. 445 (Stats. 2014, ch. 547) added section 25299.50.6 to the Health and Safety Code and created the SCA in the State Treasury.
2. Section 25299.50.6 of the Health and Safety Code (hereafter, section 25299.50.6) authorizes a portion of the storage fees deposited into the Underground Storage Tank (UST) Cleanup Fund to be transferred to the SCA annually and provides that the State Water Resources Control Board (State Water Board) may expend SCA funds for projects that remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination;
3. The State Water Board is authorized to expend SCA funds for the following purposes:
 - a. To pay for reasonable and necessary expenditures by the State Water Board, Regional Water Quality Control Boards (Regional Water Boards), or certified local oversight program agencies to identify the source of surface or groundwater contamination;
 - b. To pay for reasonable and necessary expenditures by the State Water Board, Regional Water Boards, or certified local oversight program agencies to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination; and
 - c. To issue grants for the reasonable and necessary costs of actions to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination at locations for which the responsible parties have been required to undertake or contract for investigation or cleanup pursuant to specified authorities, but where the responsible parties lack sufficient resources to comply with the required actions.
4. Section 25299.50.6 requires the State Water Board to consider the following factors when evaluating locations for which the State Water Board or a Regional Water Board, certified local oversight program agency, or grant applicant seeks SCA remediation funds:
 - a. The degree to which human health, safety, and the environment are threatened by surface water or groundwater contamination;
 - b. Whether the location is in a small or financially disadvantaged community;
 - c. The cost and potential environmental benefit of the investigation or cleanup;
 - d. Whether there are other potential sources of funding for the investigation or cleanup; and

DRAFT

- e. Other information the State Water Board identifies as necessary for consideration. Other considerations include, but are not limited to, the following:
 - i. Whether the available SCA funding is sufficient to complete site remediation;
 - ii. Whether the project is a priority for the applicable regulatory agency;
 - iii. Whether the project can be initiated and completed within a reasonable time frame;
 - iv. Whether the project is within the regulatory framework of the State and Regional Water Boards;
 - v. Whether the project is in a location where drought conditions have exacerbated an existing threat to surface or groundwater;
 - vi. Whether the project is in a location where the past release of contaminants has not been previously addressed; and
 - vii. Whether the project is located in an area where environmental justice is a concern.
5. Section 25299.50.6 requires the State Water Board to at least annually review SCA grant applications and adopt a list of applicants to be awarded grants. When awarding grants, the State Water Board is authorized to waive the eligibility requirement for responsible parties to have received a specified order or directive if the Board finds it is infeasible for the order or directive to have been issued before the initiation of remediation.
6. To promote efficiency, it is desirable to delegate authority to the Deputy Director of DFA to authorize expenditures from the SCA, consistent with section 25299.50.6, and to perform other actions necessary to administer the SCA. This includes authority to approve or deny SCA grants, including, when appropriate, approvals that require waiving the eligibility requirement for responsible parties to have received a specified order or directive if the Deputy Director finds it is infeasible for the order or directive to have been issued before the initiation of remediation. It is also desirable to delegate to the Deputy Director of the Division, or designee, the authority to execute grant agreements, contracts, and amendments for the expenditure of SCA funds.
7. The State Water Board is authorized to recover SCA grant moneys paid, but to which the grantee is not entitled, by various means, including, but not limited to, referring such matters to the California Attorney General. The State Water Board also may request the California Attorney General to recover the actual, reasonable costs of investigation or cleanup undertaken with SCA funds from a responsible party in appropriate cases. It is desirable to delegate to designated staff the authority to refer appropriate cost recovery matters to the California Attorney General.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Deputy Director of the Division to approve expenditures from the SCA, consistent with section 25299.50.6 and this resolution, in amounts that do not exceed the respective amount of the SCA appropriation for each fiscal year;

D R A F T

2. Authorizes the Deputy Director of the Division to approve SCA projects and grants, including, when appropriate, approvals that require waiving the eligibility requirement for responsible parties to have received a specified order or directive if the Deputy Director finds it is infeasible for the order or directive to have been issued before the initiation of remediation;
3. Authorizes the Deputy Director of the Division, or designee, to execute, for and on behalf of the State Water Board, grant agreements, contracts, and amendments to disburse SCA funds;
4. Authorizes the Deputy Director of the Division, or designee, to request the California Department of General Services to enter into contracts on behalf of the State Water Board and to act as the agent of the State Water Board or a Regional Water Board for the expenditure of SCA funds.
5. Authorizes the Deputy Director of the Division, with the concurrence of the Chief Counsel, to initiate processes to recover SCA expenditures in appropriate cases, including, but not limited to, referring cost recovery requests to the Attorney General.
6. Authorizes the Deputy Director of the Division, or designee, to perform other actions necessary to administer the SCA.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 7, 2016.

Jeanine Townsend
Clerk to the Board