

STATE WATER RESOURCES CONTROL BOARD

**POLICY FOR USE OF THE
STATE WATER POLLUTION
CLEANUP AND ABATEMENT ACCOUNT
FOR
REGIONAL WATER QUALITY
IMPROVEMENT PROJECTS**

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CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

POLICY FOR USE OF THE STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT FOR REGIONAL WATER QUALITY IMPROVEMENT PROJECTS

Sections 13440-13443 of the California Water Code establish a State Water Pollution Cleanup and Abatement Account (CAA)¹ that is administered by the State Water Resources Control Board (State Water Board).

There are desirable water quality improvement projects within each of the nine regions that are unfunded or under-funded. These regional projects, as identified by the California Regional Water Quality Control Boards (Regional Water Boards), address problems requiring cleanup and abatement actions and other significant unforeseen water pollution problems that may not be undertaken in the absence of financial assistance (e.g., wastewater treatment facility projects in disadvantaged communities). These projects are referred to as "regional water quality improvement projects." The CAA receives monies from court judgments, administrative civil liabilities (ACLs), and other specified sources. With certain statutorily-defined exceptions, funds obtained by Regional Water Boards from ACL assessments and other enforcement actions are deposited in the CAA. Water Code section 13441, subdivision (d), governs the process for depositing into and expending funds from the CAA. The State Water Board has discretion to approve the expenditure of CAA funds if the requirements in Water Code section 13442 or 13443 are met, subject to the limitations in Water Code section 13441.

This policy creates a means for the Regional Water Boards to address water quality protection needs of interest to them, other than through the use of a supplemental environmental project (SEP), by allocating funds from the CAA for regional water quality improvement projects. This policy does not affect a Regional Water Board's discretionary authority to approve a SEP, consistent with the SEP Enforcement Policy. This will ensure some portion of civil liabilities collected is used for projects that benefit water quality within the Regional Water Board jurisdictional area where the violation occurred.

Subject to the specified conditions and excluding the amount of funds for reimbursement of staff costs for investigation and enforcement, fifty percent (50 percent) of funds deposited into the CAA from administrative or civil enforcement actions brought by or on behalf of a Regional Water Board will be reserved for regional water quality improvement projects. Each Regional Water Board's share of the reserved funds will be generally proportionate to the amount of administrative or civil liability money that a region contributes to the CAA. The relative contributions by each Regional Water Board shall be calculated on a quarterly basis. Funds available for regional water quality improvement projects will be based on deposits to the CAA through the quarter immediately preceding the quarter in which the project application is submitted for approval to the State Water Board.

Projects that qualify for emergency CAA funding are not covered by this policy.

¹ The State Water Board Administrative Procedures Manual, Chapter 4.4, 1992 (subject to amendment), explains the process and responsibilities for the management of the CAA.

Conditions for Reservation and Disbursement of Funds

The reservation of funds deposited into the CAA from Regional Water Board enforcement actions is subject to the following conditions:

- a. The restrictions contained in Water Code section 13441 apply and the State Water Board, at its discretion, may refuse to allocate or may limit the allocation, in the event of a water quality emergency or other significant need for funding anywhere in California.
- b. For each ACL or other assessment, if a Regional Water Board accepts a supplemental environmental project (SEP) as part of a settlement, the SEP value will be deducted from the amount of that assessment reserved in the CAA for that Regional Water Board's Water Quality Improvement Project up to 50 percent of the total adjusted monetary assessment. The total adjusted monetary assessment is the total monetary assessment less a Water Board's investigation and enforcement costs. Therefore, the difference between 50 percent of the total adjusted monetary assessment and the SEP value (as identified in the settlement agreement) will be reserved for that Regional Water Board's projects in the CAA (total liability x .5 less the value of the SEP). For example, assume a Regional Water Board accepts a settlement with a total monetary liability of \$100,000, exclusive of the amount for staff costs for investigation and enforcement, and it includes a SEP valued at \$40,000. The difference between the total liability and the SEP value would be the total amount placed in the CAA or \$60,000 (\$100,000 - \$40,000). However, the amount reserved for that Regional Water Board's water quality improvement projects in the CAA would be \$10,000 (\$100,000 x .50 - \$40,000) and the remainder, \$50,000 (\$60,000 - \$10,000), would be available for any other project within California. If a settlement results in a SEP with a value equal to 50 percent (or higher consistent with the SEP Enforcement Policy) of the total adjusted monetary assessment, no money would be reserved for a regional water quality improvement project from that settlement.
- c. Any CAA funds that are reserved for a Regional Water Board's regional water quality improvement projects must be encumbered within three years from the date when those funds were first deposited in the CAA. If a Regional Water Board does not encumber such funds within 3 years, those funds will be available for other purposes authorized by the State Water Board.
- d. Any funds that are placed in the reserve that are unencumbered may be used for emergencies, as determined by the State Water Board if there are no other available funds in the non-reserve portion of the CAA.

Within three months of the effective date of this policy, each Regional Water Board should establish a list of desired regional water quality improvement projects, including wastewater treatment projects in disadvantaged communities, and update the list at least annually. Regional Water Boards should submit these lists, and subsequent updates, to the State Water Board, Division of Financial Assistance (DFA), by January 1 of each year. These lists are intended to advise the State Water Board of the priorities within each region for water quality improvement projects but are not intended to prevent a Regional Water Board from applying for funding for a project that is not listed.

An applicant requesting CAA funds for a regional water quality improvement project must provide the DFA with the following minimum information:

- a. a work plan for implementation,
- b. a budget as defined in the CAA agreement,
- c. a scope of work, and
- d. a letter from the Executive Officer of the Regional Water Board confirming that project is one of that regions' water quality improvement projects and requesting funding it.

The DFA may require additional information. The DFA will develop appropriate forms and application materials consistent with these information requirements.

After the State Water Board authorizes CAA funding for a regional water quality improvement project, CAA funds from the Regional Water Board's reserve for that project shall be set aside. The DFA staff will track and oversee accounting and implementation of all regional water quality improvement projects.

Reporting on CAA Fund Disbursement to Regional Accounts

The State Water Board's Division of Administrative Services and the DFA will report to the State Water Board's Executive Director and Regional Water Board Executive Officers on the status of all projects funded from the CAA, as well as Regional Water Board fund balances, at least quarterly.

The DFA shall post on the Internet, by March 1 of each year, a summary of the CAA funds distributed to each Regional Water Board, a listing of the regional water quality improvement projects, a listing of projects approved and the amounts allocated to them, and information on the status of regional water quality improvement projects that are in progress during that period.