

STATE WATER RESOURCES CONTROL BOARD

ADMINISTRATIVE PROCEDURE MANUAL

ADMINISTRATIVE SERVICES

CHAPTER 4.4

STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT

This chapter describes how Regional Water Quality Control Boards (Regional Water Boards), the State Water Resources Control Board (State Water Board) and other public agencies can access the Cleanup and Abatement Account for funding to clean up or abate a condition of pollution affecting water quality. It also explains how Regional Water Boards can receive reimbursement and offsets from court-ordered fines and Administrative Civil Liabilities (ACLs).

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ATTACHMENTS

- [Attachment I](#) – Progress Report
- [Attachment II](#) – Request for Payment
- [Attachment III](#) – Time Extension Request
- [Attachment IV](#) – Final Report Template
- [Attachment V](#) – Application for ACL Reimbursement/Offset

AUTHORITY

The Cleanup and Abatement Account (CAA or Account) was created by Water Code Sections 13440-13443. The account is funded by monies: (a) appropriated by the Legislature; (b) contributed to the CAA by any person and accepted by the State Water Board; (c) collected as part of criminal penalties and all moneys collected civilly under any proceeding brought pursuant to any provision of Division 7 of the California Water Code; and (d) recovered pursuant to Water Code section 13304. The State Water Board, the Regional Water Boards, and any public agency with the authority to clean up waste or abate the effects of a waste on waters of the state may utilize the account. "Waters of the state" includes both surface water and groundwater.

Generally, CAA funds are provided for the emergency cleanup or abatement of a condition of pollution where there are no viable responsible parties (RP) available to undertake the work. In certain cases, if a person is identified as an RP for the discharge of waste or threatened discharge of waste that results in expenditure of funds from the CAA, the State Water Board may seek to recover the funds from the discharger, along with interest and applicable legal fees, as specified in Water Code Section 13304(c).

USE OF THE ACCOUNT

The use of the account is limited to:

- Performing and/or contracting for services to cleanup a waste, abate the effects of a waste, or take other necessary remedial action.
- Remediating a significant unforeseen water pollution problem.
- Paying the appropriate administrative, legal, technical, and oversight costs associated with a cleanup effort.
- Covering appropriate costs associated with administration of the account.
- Covering appropriate costs associated with overseeing or tracking the implementation of a supplemental environmental project (SEP) required as a condition of an order, imposing ACL.

The following may request CAA funds:

- The Regional Water Boards
- The State Water Board
- Other public agencies authorized to cleanup a waste or abate the effects of a waste

PROGRAM PREFERENCES

The Program Preferences are based upon the State Water Board's Strategic Goals and other statewide priorities for the State Water Board and Regional Water Boards. The Program Preferences are provided below in order of priority:

1. Emergency Cleanup Projects – Public Safety (Strategic Goals 1, 2, 3, and 4)
2. Projects that address Disadvantaged Communities Environmental Justice infrastructure needs (Strategic Goal 6)
3. Cleanup and/or abatement of 2006-listed water bodies that will help to implement a Total Maximum Daily Load (TMDL). (Strategic Goal 1)

4. Cleanup and/or abatement of non-point source legacy pollutants (i.e. Stormwater) when the source(s) of the pollution have been mitigated. (Strategic Goals 1, 2, 3, and 4)
5. Cleanup and/or abatement of pollution in high-use groundwater basins. (Strategic Goal 2)*
6. Cleanup and/or abatement of contaminated site when the viable responsible party has not been identified (Strategic Goals 1, 2, 3, and 4)*
7. Projects that promote habitat restoration through non-profit organizations that collaborate with the Regional Water Boards and encourage public outreach and education. (Strategic Goals 1, 2, 3, and 4)
8. Completion of a study/plan and/or monitoring addressing significant Statewide water quality problems.

*This does not include sites that are contaminated by leaking petroleum underground storage tanks. In those cases, please refer to the Orphan Site Cleanup Fund's website for further information (http://www.waterboards.ca.gov/water_issues/programs/ustcf/oscf.shtml).

MANAGEMENT OF THE ACCOUNT

Management of the CAA is the responsibility of the State Water Board's Division of Financial Assistance (DFA).

DFA RESPONSIBILITIES:

- Process all requests for cleanup and abatement funds.
- Analyze all requests for eligibility and identify program preference category.
- Approve or deny requests for up to \$100,000.
- Make recommendations on requests exceeding \$100,000 to the Executive Director for submission to the State Water Board for review and approval.
- Process funding agreements/contracts and amendments.
- Provide the Grant/Contract Managers support for project tracking via project support tools and training.
- Provide administrative assistance to applicants for use of the fund.
- Receive and review invoices for funded projects.
- Receive and review progress reports and final reports for funded projects.
- Regularly report to State Water Board management on status of the projects and the fund balance.
- Annually post SEP status to the State Water Board's website.
- Make recommendations for policies and procedures and update Administrative Procedure Manual as necessary.
- Maintain project files for audits.*

** Grant/Contract Managers must also maintain a project file for audits and track project expenditures and deliverables.*

REGIONAL WATER BOARD RESPONSIBILITIES:

- Determine funding needs, cost of project and alternative fund sources.
- Submit request for CAA funds to DFA.

- Ensure that the funds are being used in accordance with Water Code Sections 13340-13443.
- Maintain a project tracking sheet and/or database.
- Ensure approved project funds are not over-expended.
- Prepare and submit the Request for Payment and the accompanying invoice to the DFA.
- Submit CAA Progress Report ([Attachment I](#)) monthly, quarterly, or annually along with the CAA Request for Payment ([Attachment II](#)) to the DFA for documenting progress of the project and use of funds.
- Submit a CAA Time Extension Request ([Attachment III](#)) to the DFA to extend the project end date if additional time is needed for completion.
- Upon completion of the project, submit a Final Report ([Attachment IV](#)) to the DFA describing the work accomplished.
- Notify the DFA of any new SEPs with title and description.
- Submit annual status report of SEPs to the DFA upon request.
- Maintain project files for audits. *

*Grant/Contract Managers must also maintain a project file for audits and track project expenditures and deliverables.

REGIONAL WATER BOARD RESPONSIBILITIES FOR REQUESTS FROM PUBLIC AGENCIES:

- Consider the request's priority and review the project's worthiness.
- Provide a recommendation to the DFA Assistant Deputy Director.
- Ensure that the funds are being used in accordance with Water Code Section 13442.

PUBLIC AGENCY RESPONSIBILITIES:

- Contact the appropriate Regional Water Board or the DFA, as applicable, for an evaluation of the project's worthiness.
- Provide an application, including all required forms and supporting documentation to the State Water Board to request CAA funds.
- If applicable, prepare a Resolution allowing your agency to enter into a Grant Agreement or Contract with the Regional Water Board or State Water Board. The DFA Program Analyst (PA) or Grant Manager (GM) will provide a sample resolution with the minimum information required.
- Submit comments and/or edits to the draft agreement to the GM.
- As needed, participate in conference calls with the GM and PA to discuss the draft grant agreement.
- Provide quick resolution(s) to issues, questions, and necessary changes to the grant agreement.
- Return signed agreements and all required paperwork to the DFA.
- Keep the project on task per negotiated timelines.
- Keep lines of communication open with the GM. Notify the GM of any expected delays or other issues with the project.
- Notify the GM immediately if any change from the approved scope of work and budget may be required. DFA must approve any change prior to the implementation of the revised scope of work and budget.
- Maintain a project tracking sheet and/or database.
- Ensure approved project funds are not over-expended.
- Prepare and submit invoices and required backup documentation to the Regional Water Board or DFA, as applicable.
- Submit Progress Reports ([Attachment I](#)) monthly or quarterly, along with invoices, to DFA for documenting progress of the project and use of funds.

- Upon completion of the project, submit a Final Report ([Attachment IV](#)) to DFA describing the work accomplished.

CAA MANAGEMENT SUPPORT SERVICES

The Office of Chief Counsel (OCC) and the Division of Administrative Services (DAS) will assist DFA in managing the fund. OCC is responsible for inquiries regarding any legal question concerning the eligibility of a specific applicant, the eligibility of a specific project, or legal issues related to the use of the Account. DAS is responsible for the fiscal administration of the Account, including the payments to recipients. DAS will produce periodic reports showing the condition of the fund and all encumbrances. DAS shall also assume responsibility for preparation of any budgetary documents necessary to appropriately expend these funds.

REQUESTS FOR CAA FUNDING

Requestors should first contact the Senior Technical Reviewer at (916) 341-5703 or CAA@waterboards.ca.gov to determine whether a project complies with the purposes stated in the Water Code (http://www.waterboards.ca.gov/water_issues/programs/grants_loans/caa/). Once the eligibility determination is made, and application can be submitted.

The Regional Water Boards, the State Water Board Divisions, and authorized public agencies requesting CAA funds must complete the CAA Funding Request Form in the State Water Board's Financial Assistance Application Submittal Tool (FAAST) website (<https://faast.waterboards.ca.gov/>).

Supporting documentation submitted with the request form shall include:

- Regional Water Board resolution or a letter from the Region's Executive Officer supporting the project and identifying the project category for the program preferences
- Scope of work
- Project budget**

**The amount requested should include any costs for project oversight.

REQUESTS UP TO \$100,000

On March 21, 2002, the State Water Board, in Resolution No. 2002-0060, delegated to the Deputy Director of DFA the authority to approve requests for CAA funds for all projects up to \$100,000. DFA's Deputy Director in consultation with OCC, as appropriate, will review the request to determine if:

1. The project complies with Water Code Sections 13442 or 13443.
2. Sufficient funds are available.
3. It is appropriate to fund the project, given competing projects, and the priorities of the Regional Water Board and State Water Board.

The Deputy Director will approve or deny the request and notify the agency via email.

REQUESTS OVER \$100,000

DFA, in consultation with OCC, will review the request to identify/verify the program preference category(ies) for the project and to determine if:

1. The project complies with Water Code Sections 13442 and 13443.
2. Sufficient funds are available.
3. It is appropriate to fund the project, given competing projects, and the priorities of the Regional Water Board and State Water Board.

The Deputy Director or Assistant Deputy Director will make a recommendation to the State Water Board's Executive Director. The Executive Director may determine to take the project to the State Water Board for its consideration or reject the project. If the project is scheduled for State Water Board consideration, DFA staff will work with the agency contact person to prepare an agenda item for the proposal to be heard at an upcoming State Water Board meeting. The State Water Board, at a public meeting, will approve, deny, or modify the project proposal. The agency contact person will receive the determination via email or telephone. Copies of the resolutions are provided on the State Water Board's website approximately 30 days after adoption of the resolution.

EMERGENCY REQUESTS

The Regional Water Board Executive Officers (or their designees) or public agencies may request funds verbally or via email for amounts up to \$100,000 when there is an urgent need to clean up or abate a condition of pollution. These requests should be directed to DFA's Deputy Director. In the absence of that individual, other designated State Water Board staff should be contacted in the order listed: the Chief Counsel, the Executive Director, one of the Chief Deputy Directors or the DAS Deputy Director. Any of these individuals may review and approve the request. Within one week following the approved oral request, the requesting agency should submit a completed CAA Funding Request Form to the State Water Board. California Public Contract Code section 1102 (<http://law.onecle.com/california/public-contract/1102.html>) defines "emergency" as: "Emergency," as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

INVOICING

When payment is requested:

For projects overseen by the Regional Water Board, an invoice and any supporting documentation must be sent to the responsible Regional Water Board. The Regional Water Board grant/contract manager will review the documentation, complete the Request for Payment form ([Attachment II](#)), and submit the package to the designated CAA Analyst.

For projects overseen by State Water Board Divisions, an invoice and any supporting documentation must be sent to the responsible State Water Board Division. The Division's grant/contract manager will review the documentation, complete the Request for Payment form ([Attachment II](#)), and submit the package to the designated CAA Analyst.

Once the invoice has been approved by the CAA Unit Manager, the invoice package is sent to Accounting for payment.

DE-OBLIGATION OF COMMITMENTS

Any funds not expended by the project end date will be disencumbered by the State Water Board. The agency receiving funds has 90 days after the project end date to submit an invoice.

DFA may grant a time extension ([Attachment III](#)) if no additional funding is required. If additional funding is required, the State Water Board or the DFA Deputy Director must give approval prior to costs being incurred. If the additional funding will cause the total project cost to exceed \$100,000, the request must go to the Board for approval. Disencumbered funds will be available for commitment to other CAA projects.

REIMBURSEMENT OF ADMINISTRATIVE CIVIL LIABILITIES STAFF COSTS

Regional Water Boards may be eligible for reimbursement of expenditures incurred while obtaining court ordered fines or ACLs that are deposited in the CAA.

An annual reimbursement is automatically made by CAA staff to each Region which represents fifteen percent (15%) of their total deposits in the prior fiscal year. Reimbursements to the State Water Board Division are not automatic and are subject to review and approval by the Executive Director. The calculation is conducted at the end of each fiscal year from Accounting deposit reports to assure that each Region receives fifteen (15%) of their total funds deposited. Individual requests will only be considered for an extraordinary event. For these events only, please submit the CAA Application for ACL Reimbursement/Offset (Attachment V).

REQUESTS FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT OVERSIGHT FUNDING

The Regional Water Boards are eligible to receive oversight funding for overseeing and tracking the implementation of SEPs required as a condition of an order imposing an ACL.

Requests for oversight funding should be made in writing and include the following items as appropriate:

- Discharger name and address.
- Basis for imposing the ACL that led to the SEP request.
- Reason for requesting a SEP.
- Impact on the community or surrounding area if oversight funding is not approved from the CAA.
- The steps the discharger will take in carrying out the SEP.
- Substantiation of the agency's agreement to participate in the SEP.

All requests should be addressed to:

State Water Resources Control Board
Attention: CAA Unit Manager
Division of Financial Assistance
1001 I Street, 17th Floor
Sacramento, CA 95814

Or to:

CAA@waterboards.ca.gov

GRANTS AND CONTRACTS

GRANTS:

Often when CAA funds are awarded, the State Water Board receives only an ancillary benefit and the primary benefit accrues to the recipient. If the benefit accrues to the recipient, and a contractor will not be providing a service to the State Water Board or Regional Water Board nor will the State Water Board materially benefit from a service within the contract, the agreement will typically be established as a grant.

Most CAA awards will be disbursed pursuant to formal grant agreements. Grant agreements are utilized when the purpose of the grant is for local assistance aid, i.e. subvention. Subvention agreements include agreements that provide assistance to local governments and aid to the public directly or through an intermediary, such as a nonprofit corporation organized for that purpose. Grant agreements may be issued between the State Board and grantees, or in some instances between the Regional Water Boards and grantees.

A copy of the grant template with standard terms included in the State Water Board CAA grant agreement will be provided to the agency upon request. You may contact the CAA unit at (916) 341-5703 voicemail or at CAA@waterboards.ca.gov to request a copy of the grant template with standard terms.

CONTRACTS:

In some cases, CAA awards will be disbursed pursuant to formal contracts. Contracts may be required in circumstances where subcontracting work is anticipated (for example, a Regional Water Board will contract with a private consultant to complete work authorized by the award) or when the CAA award results in the State Water Board or Regional Water Boards receiving a direct good or service in return for a CAA award (for example, the state is to receive a report, data, or memorandum that will be relied on to perform its official duties).

Unless a specific exemption applies, these contracts are subject to competitive bidding requirements outlined in the Public Contracts Code and State Contracting Manual and are subject to Department of General Services review and approval.

CONTRACT EXEMPTIONS:

Water Code Section 13304 allows Regional Water Boards to enter into both oral and written contracts. Section 13304 applies when a Regional Water Board has issued a cleanup and abatement order, or if after reasonable effort the Regional Water Board cannot identify the person responsible for the discharge of waste or the condition of pollution or nuisance and remedial work is required to respond to the discharge of waste or threatened discharge.

Even if a contract is determined to be exempt pursuant to section 13304, whenever the Regional Water Board agrees to a contract, oral or written, the Regional Water Board must document and submit its terms to DAS Contracts Office and forward a copy to DFA within one week of the effective date of the contract.

Contract documentation, at a minimum, must include:

- Contract Request Form and Attachment (hyperlinks)

1. [Contract Request Form](#) and [Instructions](#)
2. [Contract Request Form Attachment](#) and [Instructions](#)

- Scope of Work
- Budget
- Authorizing Regional Water Board Resolution, or a letter from the Executive Officer.

For additional contract information, additional resources are available:

Contracts Office Intranet page (For Regional Water Boards):
http://waternet/das/html/bm_contracts.htm.

Department of General Services Contract Manual, available at:
<http://www.ols.dgs.ca.gov/Contract%20Manual/default.htm>

State Administrative Manual, available at:
<http://sam.dgs.ca.gov/TOC/default.htm>

DEADLINE FOR AGREEMENT SUBMITTAL

Upon approval of the project by either the Deputy Director of DFA or the State Water Board, the agency must submit a finalized draft of the contract or grant agreement to the CAA Unit Manager no later than 6 months from the date of the email or resolution notifying the agency of the approval. If the draft agreement is not received by the deadline, the funding will be withdrawn and the funds will revert to the account.

PROJECT REPORTING

The agency or Regional Water Board shall submit progress reports to DFA documenting the progress of the project, efforts to recover costs (where appropriate), and projections for future expenditures ([Attachment I](#)). The progress reports should accompany each invoice and Request for Payment.

If DFA determines that funds are not being used for the purposes specified by the State Water Board, an invoice dispute will be issued and further disbursements may be stopped at any time.

The agency, Regional Water Board, or State Water Board Division shall notify DFA upon project completion and submit a final report ([Attachment IV](#)). This report must summarize the project's accomplishments and any efforts to recover CAA expenditures from the responsible party(-ies) (where appropriate), as well as indicate the total CAA money spent. DFA will review the report to verify that the project was completed as stated in the agreement or contract.

CAA MANAGEMENT REPORT

A status report on the CAA will be in the State Water Quality Control Fund Management Report prepared by the Accounting Office. This is an ongoing report, which identifies all outstanding accounts. It includes all relevant Account information outlined on the CAA statement. The report is provided to DFA. DFA and DAS must report to the Executive Office and Regional Water Board management on the status of projects and funding at least semi-annually.

RECOVERING COSTS

The State Water Board may pursue the recovery of expended CAA funds from a discharger for work that was done pursuant to Water Code Section 13304(c)(1).

In addition, the State Water Board may attach a lien to the affected property to recover costs spent responding to an unauthorized discharge of waste or condition of pollution or nuisance. (Water Code Section 13304 (c)(2).

(Note: Water Code section 13442 provides that a public agency is not liable for the repayment of CAA funds, but 13442 is not a defense against an action brought by a regional board pursuant to 13304 subdivision (b) to prevent substantial pollution, nuisance or injury to any waters of the state.)

MAINTAINING THE FUND BALANCE

DFA will not approve or recommend approval of projects that over-commit the CAA beyond a prudent reserve for a significant unforeseen emergency. To determine whether a project will over-commit the Account, DFA will estimate the year-end uncommitted balance and deduct budget-year obligations effective July 1.¹ The uncommitted balance in excess of that amount is considered available for projects.

¹ Annual July obligations include allocations for the site cleanup program (SCP) other agency appropriations and CAA management.