

REMEDIAL ACTION AGREEMENT CRITERIA AND PROCEDURES

I. INTRODUCTION

Assembly Bill No. 304 (Stats. 2021, ch. 698) amended the Health and Safety Code (HSC)¹ to establish new requirements for local agencies using their health officer authority to administer Voluntary Cleanup Programs (VCPs). On and after January 1, 2022, VCPs implemented by city or county environmental health agencies will need to meet enhanced notification and electronic recordkeeping requirements when entering into remedial action agreements (RAAs) with responsible parties (RP). The modified notification criteria call for local agencies to provide additional documentation about staff qualifications and agency capabilities when overseeing cleanup activities at non-petroleum hazardous waste release sites. Consistent with existing requirements, the local agencies should inform the State Water Resources Control Board, Regional Water Quality Control Boards (collectively, Water Board), and the Department of Toxic Substances Control (DTSC) of a local agency's intent to enter into a RAA.

The amended statutes also expand oversight eligibility to local agencies for sites funded through the Water Board's Site Cleanup Subaccount Program (SCAP). SCAP grants support cleanup on underfunded, high-priority sites, such as abandoned sites or sites with insolvent RPs. Access to SCAP funding helps local agencies address cleanup of high-risk non-petroleum hazardous waste sites in vulnerable communities.

This document outlines the procedures and criteria established under the HSC amendments for local agency notifications, recordkeeping, and SCAP oversight eligibility. The following sections summarize local agency roles and responsibilities, local agency notification requirements, enforcement authority, electronic recordkeeping in GeoTracker, SCAP oversight eligibility, and timelines.

¹ Health and Safety Code §§25299.50.6, 101480, 101483, 101485, and 101487.

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II. SUMMARY OF LOCAL AGENCY ROLES AND RESPONSIBILITIES

Local agencies currently assist the state with cleanup of hazardous waste release sites under independent VCPs. Amendments to the HSC broaden local agency roles and responsibilities through expanded notification and electronic recordkeeping requirements associated with a RAA. Local agencies that comply with the notification and recordkeeping requirements are also eligible to oversee SCAP-funded sites.

The following sub-sections summarize local agency roles and responsibilities, as described in the amended HSC.

A. Local Agency Roles

The amended HSC identifies three primary employee positions at local agencies entering into a RAA for cleanup of a hazardous waste release site:

1. Local Officer
2. Licensed Professional
3. Technical Staff

1. *Local Officer*

Existing law allows a RP to request local agency oversight for a hazardous waste cleanup. The Local Officer, as a representative of the city or county, has the authority to enter into a RAA with an RP. The amended HSC establishes additional criteria for the Local Officer when notifying the Water Board and DTSC of an RAA. Details of the additional notification requirements are provided in Section II(B)(1). The amended statutes expand the role of the Local Officer and require the Local Officer demonstrate access to Licensed Professionals and Technical Staff.

A Local Officer is defined in HSC, section 101480(a) as “a county health officer, city health officer, or county director of environmental health who has been granted authority by the city’s or county’s governing body to enter into a remedial action agreement and oversee a remedial investigation or remedial action, or both, at a waste release site.” A Local Officer must have signature authority for issuance of cleanup directives but can delegate VCP regulatory directives to a designee. The Local Officer shall provide staff leadership to ensure compliance with applicable statutes and regulations, and with policies, plans, resolutions, and precedential decisions authorized through the Water Code and HSC.

2. *Licensed Professional*

Licensed Professionals must have current registration in California as a Professional Civil Engineer, or Professional Geologist and should have experience overseeing or performing site investigation and remediation of unauthorized releases of non-petroleum hazardous substances. Only a civil engineer or geologist registered under the provisions set forth in Business and Professions Code, sections 6700 et seq. and 7800 et seq., respectively, may be considered a Licensed Professional for the purpose of the RAA. The Licensed Professional may be a local agency employee or a contract employee.

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3. *Technical Staff*

Technical Staff should possess the technical expertise and capabilities to adequately oversee the remedial investigation or remedial action, or both. Technical Staff may also be Licensed Professionals or may be subordinates, as defined in Business and Professions Code, sections 6705 and 7805. If Technical Staff are Licensed Professionals, as described above, their resumes must be provided to the State pursuant to HSC, section 101480(b)(2)(A). A subordinate is any person who assists a Licensed Professional without assuming the responsible charge of work².

B. Local Agency Responsibilities

The HSC was amended to establish expanded notification requirements for local agencies that enter into a RAA with an RP. It is the responsibility of the Local Officer, or designee, to provide the information described in HSC, sections 101480 and 101487 to the Water Board and DTSC.

In accordance with HSC, section 101480, the Local Officer is responsible for ensuring the following information is submitted, or is available to, the Water Board and DTSC, as appropriate in the “Remedial Action Agreement Notification Form” and “Local Agency Self-Certification”:

1. Notification of the intent to enter into a RAA,
2. Appropriate staff expertise and availability of licensed professionals,
3. Acknowledgement that Water Code requirements will be fully addressed,
4. Assistance with enforcement will be requested (as needed),
5. Accurate recordkeeping in GeoTracker, and
6. Content of a RAA.

The following subsections describe the requirements for each item above.

1. *Notification of the Intent to Enter into a Remedial Action Agreement*

In accordance with HSC, sections 101480 and 101487, the Local Officer shall provide written notification to the Water Board and DTSC of the local agency’s intention to enter into a RAA with an RP. HSC, section 101487 requires the written notification include the information described below.

a) *Administrative Information*

The following administrative information should be included in the notification submitted to the Water Board and DTSC to be consistent with the requirements of HSC, section 101487(a):

² The term “responsible charge of work” means the independent control and direction by the use of initiative, skill, and independent judgement of geological or engineering work or the supervision of such work.

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- The name and address of the RP;
- The name and address of the current property owner of the hazardous waste release site (if different from the RP);
- The address and location of the hazardous waste release site;
- A description of any historical, current, or planned local, state, or federal regulatory agency involvement at the hazardous waste release site;
- The name, phone number, and email address of the Local Officer's technical staff assigned to oversee cleanup activities.

b) Site-Specific Information

Per HSC, section 101487(a)(5), a preliminary description of the waste release and, if known, the anticipated investigation or remediation to be performed under the RAA shall be included in the notification. This description may include the following, as applicable:

- A description of the operational and/or land use history of the hazardous waste release site;
- The type and extent of contamination caused by the hazardous waste release;
- The anticipated investigation to assess the lateral and vertical extent of soil, soil vapor, and groundwater contamination;
- The anticipated remediation for the affected media;
- The scope and frequency of the monitoring program consistent with the objectives of the investigation or remedial action;
- Cleanup goals established for the hazardous waste release site that comply with applicable statutes and regulations.

c) Timelines

A **30 day** period for determining oversight authority begins when the Water Board and DTSC receives notification from a Local Officer regarding the intent to enter into a RAA. One of two actions will occur during this **30 day** period:

1. The state will retain oversight authority for the hazardous waste release site and must inform the Local Officer, in writing, **within 30 days** of receiving notification, consistent with HSC, section 101480 (e)(1).
2. The state will not retain oversight authority and will notify the Local Officer through either a) written statement or b) by not responding **within 30 days** of receiving notification pursuant to HSC, section 101480 (f)(2).

2. *Appropriate Staff Expertise and Availability of Licensed Professionals*

The Local Officer should maintain adequate technical expertise to review and approve hydrogeologic and technical interpretations, ensure appropriate investigation and remediation activities are conducted, and to verify RP compliance with applicable statutes, regulations, State Water Board precedential decisions, policies, plans, resolutions, and VCP procedures.

The local agency staff resources should be sufficient to permit the performance of tasks necessary to implement the RAA, per the requirements set forth in the amended HSC. These tasks may include, but are not limited to:

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- Routine correspondence with the RP and their representatives;
- Preparation of responses to work plans and reports associated with investigation and remediation in accordance with statutory deadlines (see Section II(B)(3));
- Updates and maintenance of the GeoTracker electronic data management system with complete and accurate records in a timely manner (see Section II(B)(5)); and
- Administrative and project management tasks, as needed.

Local Officers are responsible for verifying the Water Board and DTSC have received, within the last 12 months, resumes of the Licensed Professionals and a list of names of Technical Staff that will be supporting the RAA. Resumes of Licensed Professionals should include education, experience, and state and professional licensing information. Local agencies should provide periodic updates on VCP staffing changes, as applicable. If there are any changes to staff resources, a Local Officer must inform the Water Board and DTSC **within 30 days** of the changes per HSC, section 101480(b)(2)(A).

3. Acknowledgement That Water Code Requirements Will Be Fully Addressed

Under Water Code, sections 13165, 13225, and 13304, the state may allow local agencies to investigate and report on water quality factors, including working collaboratively with the state to investigate existing or threatened groundwater pollution. Under the amended HSC, the Local Officer certifies that the VCP will comply with the applicable sections of the California Water Code (Water Code)³ and amended HSC⁴. Adherence to the HSC and Water Code ensures the cleanup at hazardous waste release sites is conducted in a consistent manner across the state.

The Local Officer, or designee, should consider the cost and potential environmental benefit of the investigation and/or remediation when providing cleanup oversight, as described in Water Code, section 13267(b). The Local Officer, or designee, should consider the following factors to meet the requirements of the Water Code:

- The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports;
- The need for the technical and/or monitoring report(s); and
- The evidence that supports requiring that person to provide the report

Written correspondence, in the form of an email or formal letter, should be provided to the RP and uploaded to the Water Board's GeoTracker electronic data management system to document the Local Officer's directives for the VCP. Additional information regarding electronic record keeping requirements is provided in Section II(B)(5).

The Local Officer should confirm the VCP operates in accordance with applicable statutes and regulations, including Water Code, sections 13267 and 13304.^{5,6} The Local Officer should also ensure compliance with Water Board and DTSC policies, plans, resolutions, and precedential decisions authorized through the Water Code and HSC, such as [Resolutions No. 68-16](#), [No. 88-63](#), and [No. 92-49](#).

³ Porter Cologne Water Quality Control Act, commencing with section 13000 of the Water Code.

⁴ HSC §§25299.60.5, 101480, 101483, 101485, 101487.

⁵ HSC §25299.50.6(b)(3)(A)

⁶ Water Code §§ 13140, 13142

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4. Request Assistance With Enforcement (As Needed)

The Local Officer should identify whether it has enforcement authority. Per HSC, section 101480, the Local Officer, or designee, should maintain current records and provide routine updates on case status in GeoTracker. The GeoTracker record will be used to ensure compliance and support any potential enforcement actions by the local agency. If the local agency does not have the enforcement authority, then the Water Boards or DTSC may pursue enforcement upon request of the local agency.⁷

If the Local Officer lacks the necessary enforcement authority, the local agency should request assistance with enforcement if cleanup activities are deficient. The Local Officer should notify the Water Board and DTSC regarding the need for enforcement assistance, pursuant to Health and Safety Code, section 101485.

The RP should proactively conduct investigation and remediation in accordance with the RAA and the Local Officer should ensure the cleanup is progressing. Enforcement under Water Code, sections 13268 and 13304 may be needed if one or more of the following occurs:

1. The RP is unresponsive;
2. The RP is noncompliant with state or local agency directives;
3. The RP has failed to submit technical and/or monitoring reports; or
4. The RP has failed to submit electronic submittal of information (ESI) in GeoTracker.

5. Accurate Recordkeeping in GeoTracker

In accordance with HSC, section 101480(b)(2)(C) and 101480(i), the Local Officer will ensure that a global identification number (Global ID) and public record is established in the Water Board's GeoTracker electronic data management system. The Local Officer must require that applicable case records, agency correspondence, and ESI data are uploaded and maintained in GeoTracker. The Local Officer, or designee, shall direct the RP to submit all remedial action documents to GeoTracker under the global identification number (Global ID) established for the waste release site. These documents will be made publicly available.

Upon completion of remedial actions, the Local Officer, or designee, shall evaluate whether the cleanup activities comply with the RAA and whether a permanent remedy for the release of waste has been achieved. If the remedial actions are sufficient, the Local Officer, or designee, must conduct the following in accordance with HSC, section 101480(j):

1. Provide a document to the RP that describes: 1) the waste release, 2) the remedial action taken, and 3) whether the cleanup goals established in the RAA were achieved;
2. Conduct a public notification process that includes the following parties:
 - Water Board, DTSC, and local agencies with authority to issue building permits,
 - Owners and occupants of the property impacted by the waste release, and

⁷ HSC §101480(g)(3)

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- Owners and occupants of all parcels adjacent to the waste release site; and
3. Post the public notice on GeoTracker under the Global ID for the waste release site.

The above activities must be completed **at least 30 days** before certifying that the cleanup goals were achieved and applies to any new (on or after January 1, 2022) or existing (before January 1, 2022) RAAs.⁸

6. Remedial Action Agreement

A Local Officer can enter into a RAA with a RP for cleanup of a hazardous waste release site. The content of the RAA is defined in Health and Safety Code, sections 101480 (c)(1) and 101487. A RAA is an agreement between a Local Officer and a RP where the investigation and remediation at a hazardous waste release site is reviewed and monitored by a local agency. The Local Officer and the RP may amend the RAA as additional information about the hazardous waste release site becomes available. Pursuant to HSC, section 101487, the Local Officer shall notify the Water Board and DTSC of the contents of the RAA. The RAA must include the following, consistent with HSC, section 101480(c)(1):

- A. The proposed remedial investigation to define the type and extent of contamination (if known);
- B. The proposed remedial actions to address the contamination (if known);
- C. The reporting and public notification requirements;
- D. The cleanup goals needed to comply with applicable statutes and regulations; and
- E. The potential enforcement actions that may be taken as a result of noncompliance by the RP.

A Local Officer may withdraw from a RAA after giving the RP **at least 30 days'** notice for one of the following:

- The RP is noncompliant with the RAA
- The local agency lacks adequate staff resources for cleanup oversight.

The state may assume oversight of the hazardous waste cleanup after a RAA has been entered into by a Local Officer. The Water Board and DTSC must provide a **minimum of 30 days'** written notice to the Local Officer to assume oversight, which invalidates the RAA, consistent with HSC, section 101480 (h)(2). The State may not assume oversight unless the Water Boards or DTSC determine one or more of the following has occurred:⁹

1. The proposed remedial action will not properly address the site contamination.
2. Staff resources, technical expertise, or technical capabilities are no longer available to the Local Officer.
3. The Local Officer does not have the necessary enforcement authority and the RP is not in compliance with the RAA.
4. The hazardous waste release site is of a complex nature or is a significant potential hazard to human health, safety, or the environment.

⁸ HSC §101480(j)(3)

⁹ HSC §101480(g)(1) through (4)

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III. SITE CLEANUP SUBACCOUNT PROGRAM CRITERIA

Existing law authorizes the Water Board to expend SCAP funds for sites contaminated by hazardous waste releases. The amended statutes in HSC, section 25299.50.6 improves access to SCAP funding for contaminated sites. The SCAP reimburses RPs for reasonable and necessary expenditures incurred by agencies that provide oversight of hazardous waste cleanups. RPs that lack the financial resources to respond to and implement corrective actions that address regulatory directives are the primary targets for SCAP grants.

The amended statutes require the Water Board consider specific factors when approving expenditures for the investigation and/or remediation of contamination at hazardous waste release sites. These factors are also considered when the Water Board reviews annual lists of RP applications for grant funding from the SCAP. These factors, as identified in section 25299.50.6(b) and (c) include, but are not limited to the following:

- The degree to which human health, safety, and the environment are threatened by contamination at the site,
- Whether the site is in a small or disadvantaged community,
- The cost and potential environmental benefit of the investigation or cleanup, and
- Whether there are other potential sources of funding for the investigation or cleanup.

The notification, recordkeeping, and staffing resources specified in section 101480 of the HSC, and described in Section II, must be addressed for a local agency to receive reimbursement from the SCAP. A sworn statement regarding the veracity of the information included in the grant application must be provided by the RP. Procedures for SCAP grant applications are summarized on the Water Board's [website](#):

https://www.waterboards.ca.gov/water_issues/programs/grants_loans/scap/.

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IV. STATUTORY TIMELINES

The amended HSC establishes several **30-day** timelines associated with regulatory activities related to cleanup at hazardous waste release sites. These timelines come into effect when a Local Officer enters into a RAA with an RP. The following table summarizes these timelines.

30 Day Timeline Triggers

Description	Document Section	30 Day Maximum	30 Day Minimum	HSC Section
The Local Officer needs to submit information regarding substantial changes to staff resources to the Water Board and DTSC.	II(B)(2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	101480(b)(2)(A)
The Local Officer must give notice to the RP to withdraw from a RAA.	II(B)(6)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	101480(d)
The state <u>will</u> retain oversight and must inform the Local Officer, in writing.	II(B)(2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	101480(e)(1)
The state <u>will not</u> retain oversight and will notify the Local Officer by 1) a written statement or 2) not responding.	II(B)(2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	101480(f)(2)
The state can assume oversight and nullify the RAA with a written notification to the Local Officer.	II(B)(6)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	101480(h)(2)
A public notification must be issued and posted to GeoTracker prior to certifying cleanup goals were achieved.	II(B)(5)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	101480(j)(1)