

DEPARTMENT OF TOXIC SUBSTANCES CONTROL
GROUNDWATER REMEDIATION LOAN PROGRAM REGULATIONS
INITIAL STATEMENT OF REASONS

Assembly Bill 1584 (Chapter 725, statutes of 2000) established the Clean Water Program which transferred thirty million five hundred thousand dollars (\$30,500,000) to the State Revolving Fund Loan subaccount for the purposes of providing loans pursuant to the Clean Water Act, to aid in the construction or implementation of eligible projects, and for the purposes described in Water Code section 79124. Of the \$30,500,000, section 79133 states in part that the sum of seven million dollars (\$7,000,000) shall be used by the Department of Toxic Substances Control (DTSC) for allocation to local agencies for groundwater remediation projects. The section goes on further to say that DTSC shall adopt regulations to carry out this subdivision.

DTSC has adopted emergency regulations to allow DTSC to begin to implement the Groundwater Remediation Loan Program and specify procedures that establish loan criteria and a process for applying, awarding, and repaying any loans. DTSC is now in the process of finalizing these regulations.

DTSC will be scheduling a public hearing to solicit comments on the proposed regulations. This is a rulemaking activity that includes posting the proposed draft regulations on DTSC's web page along with a 45-day notice announcing the date, time, and place of the public hearing. Public notice and draft regulations will also be mailed to interested parties on DTSC's regulation mailing list, as well as the interested parties that have indicated an interest in the regulations.

The Water Bond Act of 1999, section 79133 of the Water Code, requires DTSC to adopt regulations in order to implement a new loan program for groundwater remediation projects. The proposed regulations would establish loan criteria in order to provide loan funds of seven million dollars (\$7,000,000), less administration and bond costs, to local agencies that may not otherwise be able to address local groundwater contamination problems. DTSC has received several public inquiries regarding the development of the proposed regulations, and the Department recognizes the need to provide timely access to this funding.

Effort to Avoid Duplication or Conflicts with Federal Regulations

These proposed regulations only impact a state program; consequently, there is no conflict with Federal regulations.

Studies Relied On

DTSC did not rely on formal empirical studies or reports in developing the framework for these regulations except as noted below. However, DTSC did consult with the State Water Resources Control Board (SWRCB) that is the agency responsible for administering the Clean Water Act. Since this new loan program is part of the Clean Water Act, the proposed regulations are quite similar to the loan process that has been in effect for several years. In addition, DTSC also prepared a Notice of Exemption, as allowed by Title 14, California Code of Regulations, Section 15061(b)(3). Development of these regulations does not have the possibility of a significant effect to the environment because the standards proposed are common sense criteria that are designed to assure the success of selected projects, and are tied to the intent of the legislation. A copy of the Notice of Exemption is available for public review.

Alternatives Considered

DTSC is required by statute to develop these regulations, so no other alternatives were considered. Prior to initiating the formal rulemaking process, DTSC posted the draft text of the emergency regulations and a notice for a public workshop on DTSC's internet web page. DTSC also did a mass mailing announcing the public workshop and the draft emergency regulations. The informal workshop was held to solicit any input and concerns from interested entities. DTSC will also hold a formal 45-day hearing to obtain additional input. Since this is a voluntary loan program, these regulations are not imposed on local agencies.

Section 68300. Definitions.

This section establishes the definition of terms, as they pertain to this new loan program, which may not otherwise be clear to the reader.

Subsection (a) defines the type of local agencies that would qualify to participate in this new loan program.

Subsection (b) defines "EPA" as the United States Environmental Protection Agency.

Subsection (c) defines "Department" as the Department of Toxic Substances Control.

Subsection (d) defines "Groundwater Remediation Project" for the purpose of submitting a loan application package to the Department.

Subsection (e) defines "Loan" for the purpose of this new loan program.

Subsection (f) defines "Loan Agreement" for the purpose of this new loan program.

Subsection (g) defines the qualifications of a "site coordinator" for the purpose of this new loan program.

Section 68301. Loan Eligibility.

This section requires the applicant (through the loan application process) to demonstrate that the groundwater in the area of the proposed groundwater remediation project poses a risk or potential risk to public health and the environment due to the release of hazardous substances. This requirement is necessary to provide the framework under which an application package may be considered. Additionally, the applicant is required to provide copies of documents which substantiate the ability of the applicant to repay the loan. This is necessary to verify that the applicant can repay the loan.

Section 68302. Priority Ranking Criteria.

This section establishes the criteria that will be used to determine the priority of application packages, and the timeframe for receipt of the application packages. Establishing priority ranking criteria is necessary because multiple requests for loan funding may exceed available funds and DTSC will need to prioritize projects in order to determine which projects may be eligible to receive funding.

Section 68303. Application Content.

This section delineates the information and documentation that an applicant must provide when applying for groundwater remediation loan funds pursuant to this program.

Subsection (a) requests information related to the applicant and the site coordinator. This information is needed to determine if the applicant's local agency has staff that possess the necessary skills to manage groundwater remediation projects or has a qualified professional contractor or consultant with the skills/knowledge to manage such work or projects on behalf of the applicant.

Subsection (b) requests specific information regarding the location of the project, and physical attributes of the site. This information is necessary in order for DTSC to determine whether the proposed project is reasonable given the previous site use and proposed new site use. In addition, it requests information regarding the impact the project's site conditions or the response actions (cleanup actions) may have on the environment. It also requires the applicant to provide a project time line for the various phases of work.

Subsection (c) requests information concerning financial aspects of the project. This encompasses the financial status of the applicant up to and including the estimated project costs and the applicant's other types of debt such as loans. It also requires the applicant to provide documentation such as an ordinance or resolution that commits the applicant (a local agency) in dedicating a source of fund(s) for repayment of the loan. The applicant may be required to submit further documentation that DTSC or SWRCB

determines is necessary to show that the applicant has the capability of repaying the loan.

Section 68304. Application Process.

This section outlines the primary considerations and steps to be followed in submitting an application package for obtaining groundwater remediation loan funds under this program. An application process is necessary so that all potential applicants have the same information and ability to apply for a loan. It specifies time frames for making an application and explains how DTSC will respond to the applicant if the application package is incomplete or if DTSC determines that the applicant or the applicant's project is ineligible.

Section 68305. Loan Agreement.

This section specifies the requirement that DTSC and the applicant must enter into a loan agreement upon approval of the loan and before funds can be loaned. This section also highlights the minimum terms and conditions of such an agreement, and is consistent with SWRCB's loan agreement process for the Clean Water Act. This section is necessary so applicants fully understand the type of legal commitment they will be making in accepting the terms of a loan provided by this program.

Section 68306. Loan Administration.

This section specifies that the overall fiscal administration of the loans will be overseen by SWRCB that has responsibility for the Clean Water Program under section 13480(b), of the Water Code.

Section 68307. Interest Rate.

This section provides the applicant with information regarding how the interest rate is to be set for loans provided under this program. This information provides financial details that the applicant needs to know prior to applying for a loan under this program.

Section 68308. Loan Repayment.

This section clearly specifies the maximum length of time that can be taken for loan repayment and provides other pertinent repayment conditions. This information is necessary so that the applicant fully understands its legal and financial obligations.

Section 68309. Auditing Expenditures of Loan Proceeds.

This section explains to the applicants that the state reserves the right to perform audits at any time. This information is necessary so that the applicants clearly understand that an audit could be conducted at anytime after the loan agreement has been signed.