

TEXT OF PROPOSED REGULATIONS
(Add to Title 22, California Code of Regulations (CCR))
Division 4.5, Chapter 47, Article 2)

Chapter 47. Loan Programs

Article 2. Groundwater Remediation Loan Program

68300. Definitions.

Unless the context indicates otherwise and except as provided in this section, the definitions set forth in Chapter 6.8, Division 20, of the Health and Safety Code (commencing with section 25300) govern the interpretation of this Article. For purposes of this Chapter, the following definitions apply:

(a) Applicant means one of the following that has submitted an application package for a loan (1) a city, town, district, county, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or (2) an Indian tribe or authorized Indian tribal organization having jurisdiction over disposal of sewage, industrial wastes, or other waste, or (3) a designated and approved management agency under section 208 of the Federal Clean Water Act applying for a State Revolving Fund (SRF) loan, or (4) a local public agency with specific authority to conduct groundwater remediation projects.

(b) EPA means the United States Environmental Protection Agency.

(c) Department means the Department of Toxic Substances Control.

(d) Groundwater Remediation Project means actions that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of a hazardous substance to groundwater and that, when carried to completion, allows the groundwater to be permanently used for its planned use without any significant risk to human health or significant potential for future environmental damage or for designated beneficial uses.

(e) Loan means a loan from the State Revolving Fund Loan Subaccount for the purposes of providing loans under Article 3, section 79133 of the Water Code.

(f) Loan Agreement means the written agreement between the applicant and the Department made in accordance with Section 68305.

(g) Site Coordinator means the person or persons with demonstrated expertise and experience in planning, designing, constructing, and operating groundwater remediation projects and who have been identified as responsible for managing the groundwater remediation project.

NOTE: Authority cited: Sections 25150 and 25351.5 of the Health and Safety Code and Section 79133, Water Code. Reference: Section 79133, Water Code.

' 68301. Loan Eligibility.

The applicant must demonstrate, through the loan application process, 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.

Additionally, the applicant will need to show repayment ability based on the historical financial statements and/or income tax returns.

NOTE: Authority cited: Sections 25150 and 25351.5 of the Health and Safety Code and Section 79133, Water Code. Reference: Section 79133, Water Code.

' 68302. Priority Ranking Criteria.

The Department shall prioritize projects for each fiscal year using the following criteria:

The Groundwater Remediation Loan Program application package is received by August 30 and deemed complete.

(b) Sites listed pursuant to section 25356 of the Health and Safety Code.

(c) Sites listed on the State Water Resources Control Board's Statewide Project Priority List.

(d) The readiness of the loan applicant to proceed with the groundwater remediation project.

(e) Scope of project including (1) the degree to which the groundwater supply has been impacted, such as being taken out of service, and (2) the extent to which remediation will prevent migration of contaminants.

(f) Number of users affected.

(g) Effectiveness of the groundwater remediation project, including the amount of water to be treated and made available for use.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code and Section 79133, Water Code. Reference: Section 79133, Water Code.

' 68303. Application Content.

Application packages shall contain the following information:

(a) Applicant /Site Coordinator Information:

(1) The applicant's name, address, and phone number.

(2) The site coordinator's name, address, and phone number, if it is different from the applicant's. Also attach resume of the applicant's site coordinator.

(3) A certified copy of a resolution adopted by the governing authority of the applicant agency that authorizes a representative (by title) to act on behalf of the applicant agency to sign documents such as contracts, disbursement requests, as well as assure compliance with applicable state statutory and regulatory requirements.

(4) A certified copy of a resolution adopted by the governing authority of the applicant agency that specifies the authorized loan amount for the applicant agency.

(5) Applicant's relationship to the project site.

(6) Description of local government or agency's activities and responsibilities.

(7) Current property owner's name, addresses and phone number.

(8) List technical support personnel (by classification) who will be working on the project.

(9) A letter requesting consideration for available loan funds with the signature of the applicant/authorized representative.

(b) Project/Site Information:

(1) Proposed location of the remediation work, including a legal description of the property boundaries and assessor's parcel number(s).

(2) Description of current project site use.

(3) Project description of overall areas impacted and Statement of Work. If the treated groundwater is to be returned to aquifers, the application package shall include a list of public water systems that use the affected aquifers as sources of drinking water, and the means by which the applicant shall inform those water systems of the project.

(4) Brief analysis of engineering/project alternatives considered and an explanation of why the proposed project description was chosen.

(5) List of previous uses of the project site.

(6) Applicant's prior experience in implementing similar groundwater remediation projects.

(7) Applicant's ability to obtain the necessary permits if treated groundwater is reused for drinking water supply. (If the treated groundwater is to be directly used for drinking water supply, then the applicant must comply with the requirements of the Department of Health Services and seek the appropriate permits.)

(8) Information regarding the impacts that the project site conditions or the proposed response actions may have on: the geological features of the project site; land use planning; public health and safety; the local population and housing in the vicinity of the project site; water quality; air quality; traffic and transportation; ecological and biological resources; energy and mineral resources; noise levels; public service systems and utilities; local aesthetics; cultural resources; and recreation. The proposed

groundwater remediation project must comply with the California Environmental Quality Act (CEQA) in accordance with section 21000 et seq. of the Public Resources Code and the State CEQA guidelines (14 CCR 15000 et seq.).

(9) A proposed project timeline with dates that show the beginning and ending date for the various phases of work identified in the Statement of Work.

(c) Financial Information/Project Costs:

(1) Supporting documentation concerning source of loan repayment, including but not limited to annual financial operating statements.

(2) Information on existing bank loans and other types of debt, including names of bank officers and officials and contact information as appropriate. Provide documentation indicating the ability of the applicant to repay the loan and to obtain conventional financing absent a loan under this program.

(3) An ordinance or resolution committing a source or sources of funds for repayment. The ordinance or resolution shall contain language equivalent to the following: The (name of agency) hereby dedicates the following source of revenue (list source or sources) for repayment of any and all groundwater remediation loans on the project (identify the project name) to be funded through the Groundwater Remediation Loan Program.

(4) Estimate of project costs.

(d) Any further information or documentation deemed necessary by the Department to determine the credit worthiness of the applicant or the applicant's ability to secure and repay the loan.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code and Section 79133, Water Code. Reference: Section 79133, Water Code.

' 68304. Application Process.

(a) An applicant may apply for a loan for a groundwater remediation project by submitting a completed Groundwater Remediation Loan package to the Department by August 30 of any fiscal year. The Department may disburse loans until the approximately seven million dollars (\$7,000,000) of Water Bond Act funding, less administrative costs, is expended.

(b) The Department will make a determination by August 30 of each fiscal year whether Water Bond Act funds are available under section 79133 of the Water Code. The determination will also include the funding level available.

(c) The Groundwater Remediation Loan package sets forth the information required by the Department to determine if the groundwater remediation project is eligible for funding under section 79133 of the Water Code. The Department will not consider the application complete until all required information is received.

(d) The Groundwater Remediation Loan package shall be signed by a legally authorized representative of the applicant and submitted to the California Environmental Protection Agency, Department of Toxic Substances Control. Application packages may be mailed to the Department at P.O. Box 806, Sacramento, California 95812-0806. The applicant shall provide the Department with three (3) copies of the application package with original signatures and all accompanying support documentation.

(e) Staff will review each application package for completeness and determine whether the applicant and the applicant's project are eligible to receive loan funding under section 79133 of the Water Code, including credit worthiness of the applicant. Within sixty (60) days of receiving an application, Department staff will notify the applicant by letter of one of the following:

(1) The applicant or the applicant's project is ineligible for a loan. If the applicant or the applicant's project is determined to be ineligible, the reasons for the Department's determination will be provided in writing to the applicant. The applicant will have 10 days to submit additional information needed, if such information may make the project eligible; or

(2) The application package is incomplete. If the package is determined to be incomplete, the Department will specify the steps in writing, if any, that the applicant may take to correct identified deficiencies. The applicant will have 10 days to submit additional information needed to complete the application package, or

(3) The applicant and applicant's project are eligible for a loan.

(f) Upon the Department's determination that the loan application package is complete, the package will be considered for prioritization with other eligible projects.

The eligible loan application packages will be ranked each fiscal year based on criteria established in Section 68302, Priority Ranking Criteria.

(g) Applicants will be notified in writing when their projects are approved for loan funding.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code and Section 79133, Water Code. Reference: Section 79133, Water Code.

' 68305. Loan Agreement.

The Department and the applicant shall enter into a loan agreement after approval of the loan. Each loan agreement shall include at a minimum the following terms and conditions:

- (a) The interest rate of the loan as specified in Section 68307.
- (b) The term of repayment for a loan as specified in Section 68308.
- (c) The legal description of the property(ies) where the groundwater remediation project is to occur.
- (d) Agreement that the applicant shall complete all activities outlined in the applicant's Statement of Work, as determined to be appropriate by the Department.
- (e) Time frames for complying with the conditions of loan closing:
 - (1) Any special conditions that must be satisfied prior to closing, and
 - (2) Any covenants that must be complied with after the disbursement of funds.
- (f) Identification of what is considered an event of default, including the provisions in subsections (1) and (2) below. A default will result in any remaining unpaid amount of the loan, with accrued interest, to be immediately due and payable, upon determination by the Department that:
 - (1) The applicant has failed to comply with the loan agreement.
 - (2) Any information provided by the applicant is untrue.
- (g) A provision that the applicant agrees to waive any claims against, and hold harmless, the State of California, including the Department and the State Water Resources Control Board, from and against any and all claims, costs, and expenses stemming from operation, maintenance, or environmental degradation at the site.
- (h) Proof of insurance for the applicant, naming the Department and the State Water Resources Control Board as loss payee, up to the amount of the loan.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code and Section 79133, Water Code. Reference: Section 79133, Water Code.

' **68306. Loan Administration.**

Condition of the loan, loan processes, repayment, and loan closing functions shall be governed and administered by the Department or the State Water Resources Control Board through a memorandum of understanding.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code and Section 79133, Water Code. Reference: Section 79133, Water Code.

' **68307. Interest Rate.**

To the extent permitted by federal law, the interest rate shall be set at a rate equal to 50 percent of the interest rate paid by the State on the most recent sale of State general obligation bonds and the interest rate shall be computed according to the true interest cost method.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code and Section 79133, Water Code. Reference: Sections 13480 and 79133, Water Code.

68308. Loan Repayment.

The Department's Groundwater Remediation Loan Program will provide loans for groundwater remediation projects that meet the priority ranking criteria in Section 68302 of these regulations until all funds in the account have been loaned or otherwise expended. All loan repayments shall require annual payments of principal and any interest, with repayment commencing not later than one year after completion of the project for which the loan is made and full amortization not later than 20 years after project completion in accordance with Water Code section 13480(b)(1)(B), and payments will be deposited in the State Revolving Fund Loan Subaccount, Clean Water Program, as administered by the State Water Resources Control Board. Loan repayments may be used by the State Water Resources Control Board to fund other projects or activities as specified by the Clean Water Program.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code and Section 79133, Water Code. Reference: Section 13480(b)(1)(B) and 79133, Water Code.

' 68309. Auditing Expenditures of Loan Proceeds.

The Department or the Department of Finance may audit the expenditures of the proceeds of any loan disbursed under this Article. Specific audit requirements shall be part of the loan agreement. The State reserves the right to call for a program audit or a financial audit at any time between the execution of the loan agreement and the completion or termination of the project.

NOTE: Authority cited: Sections 25150 and 25351.5, Health and Safety Code and Section 79133, Water Code. Reference: Section 79133, Water Code.