

AMENDED IN SENATE JANUARY 26, 2004
AMENDED IN SENATE JANUARY 22, 2004
AMENDED IN SENATE JANUARY 5, 2004
AMENDED IN SENATE MAY 15, 2003
AMENDED IN SENATE MAY 6, 2003
AMENDED IN SENATE MARCH 24, 2003

SENATE BILL

No. 493

Introduced by Senator Cedillo

February 20, 2003

An act to add and repeal Chapter 6.82 (commencing with Section 25395.60) of, and to add Chapter 6.83 (commencing with Section 25395.91) to, Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 493, as amended, Cedillo. Hazardous materials: liability.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substances removal or remedial actions.

Existing law, including the Porter-Cologne Water Quality Control Act and the provisions regulating hazardous waste and releases from underground storage tanks, impose various requirements with regard to corrective action and cleanup and abatement, upon persons subject to those acts.

This bill would enact the California Land Reuse and Revitalization Act of 2004, which would provide that an innocent landowner, a bona

bona fide prospective purchaser, or a contiguous property owner, as defined, is not liable for response cost or damage claims under specified state laws that impose liability upon an owner or occupant of property, for pollution conditions caused by a release of a hazardous material on, under, or adjacent to that property, if the innocent purchaser, bona fide prospective purchaser, or contiguous property owner meets specified conditions. The bill would prohibit an agency, as defined, from requiring an innocent landowner, bona fide prospective purchaser, or contiguous property owner to take certain response actions under those state laws, except as specified. The bill would, if there are unrecovered response costs incurred by an agency, at a site for which an owner of the site is not liable as a bona fide prospective purchaser, require the agency to have a lien on the site, or authorize the agency to obtain from the owner a lien on other property or other assurance of payment for the unrecovered response costs, as specified.

This bill would authorize a court, in an action for contribution or recovery of response costs at a site, to award reasonable attorneys' fees to an innocent landowner, bona fide prospective purchaser, or contiguous landowner, as specified.

The bill would require an innocent landowner, bona fide prospective purchaser, or contiguous landowner to reimburse an agency for its reasonable oversight costs incurred while reviewing a response plan or overseeing the implementation of a response plan.

The bill would require the California Environmental Protection Agency, by January 1, 2005, to develop a form containing specified information that a ~~bona~~ bona fide prospective purchaser, innocent landowner, or contiguous property owner who is subject to immunity would be required to complete and submit to the agency. The bill would require the agency, by July 1, 2005, and annually thereafter, to submit a report to the Legislature compiling this data and comparing brownfield response ~~action~~ actions completed by agencies under the act with other similar response actions.

The bill would repeal the act on January 1, 2010, but would provide that a person who is subject to immunity pursuant to the act before January 1, 2010, would continue after that date to have that immunity, if the person continues to be in compliance with the requirements of the act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.82 (commencing with Section
2 25395.60) is added to Division 20 of the Health and Safety Code,
3 to read:

4

5 CHAPTER 6.82. CALIFORNIA LAND REUSE AND REVITALIZATION
6 ACT OF 2004

7

8 Article 1. Legislative Findings and Intent

9

10 25395.60. The Legislature finds and declares all of the
11 following:

12 (a) There are thousands of properties in the state where
13 redevelopment has been stymied due to real or perceived
14 hazardous materials contamination. Cleaning up these sites and
15 returning them to productive use will benefit the communities in
16 which they are located and the state as a whole.

17 (b) Contamination of property in the state has hampered
18 redevelopment, which in turn has limited job creation, economic
19 revitalization, and the full and productive use of the land.

20 (c) Private developers, local governments, and schools are
21 reluctant to acquire or redevelop these properties due, at least in
22 part, to concerns regarding liability associated with historic
23 contamination. Instead, they focus new development on clean
24 areas that present less complications and liability.

25 (d) This has resulted in a multitude of problems, including
26 urban sprawl, decaying inner-city neighborhoods and schools,
27 public health and environmental risks stemming from
28 contaminated properties, lack of development at former
29 manufacturing sites and rural areas in need of economic
30 investment, and reduced tax bases.

31 25395.61. It is the intent of the Legislature, in enacting this
32 chapter, to do all of the following:

33 (a) Establish the cleanup and reuse of these sites in a manner
34 protective of public health and the environment as a priority of the
35 state.

36 (b) Relieve innocent owners, bona fide prospective purchasers,
37 and owners of property adjacent to contaminated sites of liabilities



1 and responsibilities that should be borne by those who caused or
2 contributed to the contamination.

3 (c) Encourage process efficiencies that continue to ensure
4 cleanups are protective of public health.

5 (d) Encourage the development and redevelopment of unused
6 or underused properties.

7 25395.62. This chapter shall be known, and may be cited as,
8 the “California Land Reuse and Revitalization Act of 2004.”

9

10 Article 2. Definitions

11

12 25395.63. The definitions set forth in this article shall govern
13 the interpretation of this chapter. If a term is not otherwise defined
14 in this chapter, the definition contained in Chapter 6.8
15 (commencing with Section 25300) shall apply to that term.

16 25395.64. “Agency” means the department, a regional
17 board, or a state or local agency that has been delegated authority
18 to oversee a response action by the department or the board.

19 25395.65. “All appropriate inquiries” has the following
20 meanings:

21 (a) Except as provided in subdivision (c), until the standards
22 and practices established by the Administrator of the United States
23 Environmental Protection Agency pursuant to Section
24 101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii))
25 are adopted and take effect, “all appropriate inquiries” means
26 compliance with the procedures of the American Society for
27 Testing and Materials, including the document known as
28 “Standard E1527-001,” entitled “Standard Practice for
29 Environmental Site Assessment: Phase I Environmental Site
30 Assessment Process,” as that document existed on January 1,
31 2004.

32 (b) Except as provided in subdivision (c), after the standards
33 and practices established by the Administrator of the United States
34 Environmental Protection Agency pursuant to Section
35 101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii))
36 are adopted and take effect, “all appropriate inquiries” means
37 compliance with those standards.

38 (c) If the property is in residential use at the time of purchase
39 by a nongovernmental or noncommercial entity, “all appropriate



1 inquiries” means that a site inspection and title search does not
2 reveal a basis for further investigation.

3 25395.66. “Applicable statute” means all of the following
4 state laws, but includes only those provisions in each state law that
5 impose liability on an owner or occupant of property for pollution
6 conditions caused by a release of hazardous material on, under, or
7 adjacent to the property:

8 (a) Title 1 (commencing with Section 3479) of, Title 2
9 (commencing with Section 3490) of, and Title 3 (commencing
10 with Section 3501) of, Part 3 of Division 4 of the Civil Code.

11 (b) Chapter 3 (commencing with Section 731) of Title 10 of
12 Part 2 of the Code of Civil Procedure.

13 (c) Section 5650 of the Fish and Game Code.

14 (d) Chapter 6.7 (commencing with Section 25280), Chapter
15 6.75 (commencing with Section 25299.10), Chapter 6.8
16 (commencing with Section 25300), and Chapter 6.10
17 (commencing with Section 25401) of this division.

18 (e) Division 7 (commencing with Section 13000) of the Water
19 Code.

20 25395.67. (a) “Appropriate care” means the performance of
21 a response action, with respect to hazardous materials found at a
22 site, that meets all of the following conditions:

23 (1) The response action is determined by an agency to be
24 necessary to prevent an unreasonable risk to human health or the
25 environment.

26 (2) The response action is performed in accordance with a
27 written plan approved by the agency.

28 (3) The approved plan includes a provision for oversight and
29 verification of the response action by the agency.

30 (b) On or before 60 days after the date an agency receives a
31 written request by a bona fide prospective purchaser, innocent
32 landowner, or contiguous landowner, the agency shall determine
33 in writing whether proper completion of the approved plan
34 specified in paragraph (2) of subdivision (a) constitutes
35 “appropriate care” within the meaning of this chapter.

36 25395.68. “Board” means the State Water Resources Control
37 Board.

38 25395.69. “Bona fide prospective purchaser” means a
39 person, or a tenant of a person, who acquires ownership of a site



1 on or after January 1, 2005, and who establishes all of the
2 following by a preponderance of the evidence:

3 (a) All discharges or releases of the hazardous materials at issue
4 at the site occurred before the person acquired the site.

5 (b) The person made all appropriate inquiries into the previous
6 ownership and uses of the site.

7 (c) The person provides all legally required notices with
8 respect to the discovery or release of hazardous materials at the
9 site.

10 (d) The person exercises appropriate care with respect to the
11 release of the hazardous materials at the site.

12 (e) The person provides full cooperation, assistance, and access
13 to persons who are authorized to conduct response actions or
14 natural resource restoration at the site, including the cooperation,
15 and any access necessary for the installation, integrity, operation,
16 and maintenance of complete or partial response actions or natural
17 resource restoration at the site.

18 (f) The person is in compliance with land use controls
19 established or relied on in connection with an approved response
20 action at the site and does not impede the effectiveness or integrity
21 of any aspect of any remedy employed at the site in connection
22 with a response action.

23 (g) The person complies with all requests for information or
24 administrative subpoena concerning the release of hazardous
25 materials by any agency with jurisdiction under any applicable
26 statute.

27 (h) The person is not potentially liable, or affiliated with any
28 other person who is potentially liable, for the release at issue
29 through any of the following circumstances:

30 (1) Any direct or indirect familial relationship.

31 (2) Any contractual, corporate, or financial relationship, unless
32 the contractual, corporate, or financial relationship is created by
33 the instrument by which title or possession to the site is conveyed
34 or financed or a contract for the sale of goods or services.

35 (3) The result of a reorganization of a business entity that was
36 potentially liable for the hazardous materials at issue.

37 25395.71. (a) "Site" means real property for which the
38 expansion, redevelopment, or reuse may be complicated by the
39 presence or perceived presence of hazardous materials.

40 (b) "Site" does not include either of the following:



1 (1) A facility that is listed or proposed for listing on the
2 National Priorities List established under Section 105 of the
3 Comprehensive Environmental Response, Compensation and
4 Liability Act of 1980, as amended (42 U.S.C. Sec. 9605).

5 (2) A site on the list maintained by the department pursuant to
6 Section 25356.

7 25395.72. “Contiguous property owner” means a person
8 who owns a site that is contiguous to another site that is, or may
9 be, contaminated by a release or threatened release of a hazardous
10 material and that is not owned by that person, and who
11 demonstrates, by a preponderance of the evidence, all of the
12 following:

13 (a) The person did not cause, contribute, or consent to the
14 release or threatened release.

15 (b) The person is not potentially liable, or affiliated with any
16 other person who is potentially liable, for the release at issue
17 through any of the following circumstances:

18 (1) Any direct or indirect familial relationship.

19 (2) Any contractual, corporate, or financial relationship, unless
20 the contractual, corporate, or financial relationship is created by
21 the instruments by which title or possession to the site is conveyed
22 or financed or a contract for the sale of goods or services.

23 (3) The result of a reorganization of a business entity that was
24 potentially liable for the hazardous materials at issue.

25 (c) Except as provided in subdivision (i), the person exercises
26 appropriate care with respect to the release of any hazardous
27 materials at the site.

28 (d) The person provides full cooperation, assistance, and
29 access to persons who are authorized to conduct response actions
30 or natural resource restoration at the site from which there has been
31 a release or threatened release, including the cooperation and
32 access necessary for the installation, integrity, operation, and
33 maintenance of a complete or partial response action or natural
34 resource restoration at the site.

35 (e) The person complies with any land use controls established
36 or relied on in connection with the response action at the site, and
37 does not impede the effectiveness or integrity of any aspect of any
38 remedy employed in connection with a response action at the site.



1 (f) The person complies with any request for information or
2 administrative subpoena issued by an agency with jurisdiction
3 under an applicable statute.

4 (g) The person provides all legally required notices with
5 respect to the discovery or release of hazardous materials at the
6 site.

7 (h) The person has conducted all appropriate inquiry into the
8 previous uses and ownership of the site and, at the time of
9 acquisition not know or have reason to know that the site was or
10 could be contaminated by the release of hazardous materials from
11 other real property not owned or operated by the person.

12 (i) Subdivision (c) does not require a contiguous property
13 owner to conduct groundwater investigations or to install
14 groundwater remediation systems with respect to hazardous
15 materials from a source that is not on the property of the
16 contiguous property owner and that enters groundwater beneath
17 the property of the contiguous property owner solely as a result of
18 subsurface migration.

19 25395.73. “Department” means the Department of Toxic
20 Substances Control.

21 25395.74. “Hazardous material” has the same meaning as
22 defined in subdivision (d) of Section 25260.

23 25395.75. (a) “Innocent landowner” means a person who
24 owns a site, who did not cause or contribute to a release at the site,
25 takes the actions specified in subdivision (b), and who meets both
26 of the following conditions:

27 (1) The person is any one of the following:

28 (A) A person who made all appropriate inquiries into the
29 previous ownership and uses of the site and, at the time the person
30 acquired the property did not know and had no reason to know of
31 the release at issue.

32 (B) A government entity that acquired property by escheat, or
33 through any other involuntary transfer acquisition, or through the
34 exercise of eminent domain authority by purchase or
35 condemnation.

36 (C) A person who acquired the property by inheritance or
37 bequest.

38 (2) The person is not potentially liable, or affiliated with any
39 other person who is potentially liable, for the release at issue
40 through any of the following circumstances:



- 1 (A) Any direct or indirect familial relationship.
2 (B) Any contractual, corporate, or financial relationship,
3 unless the contractual, corporate, or financial relationship is
4 created by the instrument by which title or possession to the site
5 is conveyed or financed or a contract for the sale of goods or
6 services.
7 (C) The result of a reorganization of a business entity that was
8 potentially liable for the hazardous materials at issue.
9 (b) The person takes all of the following actions:
10 (1) Exercises appropriate care with respect to the release of the
11 hazardous materials at the site.
12 (2) Provides full cooperation, assistance, and access to a person
13 who is authorized to conduct response actions or natural resource
14 restoration at the site, including the cooperation and any access
15 necessary for the installation, integrity, operation, and
16 maintenance of complete or partial response actions or natural
17 resource restoration at the site.
18 (3) Complies with land use controls established or relied on, in
19 connection with an approved response action at the site, and does
20 not impede the effectiveness or integrity of any aspect of any
21 remedy employed at the site in connection with a response action.
22 (4) Complies with all requests for information or
23 administrative subpoena concerning the release of hazardous
24 materials by any agency with jurisdiction under an applicable
25 statute.
26 (5) Provides all notices required by state or federal law with
27 respect to the discovery or release of hazardous materials at the
28 site.
29 25395.76. “Land use control” means a recorded instrument
30 executed pursuant to Section 1471 of the Civil Code that restricts
31 or imposes obligations on the present and future uses or activities
32 on a site, including but not limited to, recorded easements,
33 covenants, restrictions or servitudes, or any combination thereof.
34 25395.77. “Regional board” means a California regional
35 water quality control board.
36 25395.78. “Release” has the same meaning as defined in
37 Section 25320.
38 25395.79. (a) “Response,” “respond,” or “response
39 action” have the same meaning as defined in Section 25323.3,
40 except that “response,” “respond,” and “response action” under



1 this chapter apply to hazardous material, as defined in Section
2 25395.74.

3 (b) “Response plan” means the written plan described in
4 paragraph (2) of subdivision (a) of Section 25395.67.

5 25395.79.1. (a) “Unreasonable risk” means conditions at a
6 site pose a significant risk to human health or the environment.

7 (b) When adequate land use controls exist to prevent other uses
8 of a site without any further reviews or determinations by the
9 agency that approved the response action, an agency may
10 determine if there is unreasonable risk at the site based on the
11 intended land use.

12
13 Article 3. Liability
14

15 25395.80. (a) Except as provided in Section 25395.85, and
16 except as otherwise provided under this section, an innocent
17 landowner who did not cause or contribute to the release at issue,
18 is subject to the following immunities:

19 (1) The innocent landowner is not liable under any applicable
20 statute for a claim made by any party that is not a government
21 agency for response costs or other damages associated with a
22 release or threatened release of a hazardous material at the site.

23 (2) Except as provided in subdivision (b), an agency may not
24 take any action under any applicable statute to require the innocent
25 landowner to conduct any response action with respect to a
26 hazardous materials release at the site owned by the innocent
27 landowner unless both of the following conditions apply:

28 (A) The agency does either of the following:

29 (i) Makes all reasonable attempts to compel any necessary
30 response action from all other potentially responsible parties, and
31 those efforts have been unsuccessful.

32 (ii) Reasonably determines that no viable potentially
33 responsible party exists to perform the required response action at
34 the site.

35 (B) The conditions on the property pose an endangerment.

36 (b) This section does not modify or limit the existing authority
37 of a state or local agency to impose a condition on the issuance of
38 a discretionary permit relating to the development, use, or
39 occupancy of any site.



1 (c) (1) The immunities described in this section shall attach
2 upon approval of the written plan described in paragraph (2) of
3 subdivision (a) of Section 25395.67 and shall remain in effect
4 unless the innocent landowner receives a written notice of
5 noncompliance from the agency.

6 (2) An agency may issue a written notice of noncompliance
7 upon making both of the following findings:

8 (A) There is an unapproved failure to comply with the
9 approved written plan or any response action undertaken pursuant
10 to a response plan.

11 (B) The unapproved failure is a material deviation from the
12 response plan or any response action undertaken pursuant to a
13 response plan.

14 (d) Any person that is found to have committed fraud,
15 intentional nondisclosure, or misrepresentation to any state or
16 local agency with authority over cleanup or remediation at a site,
17 is not an innocent landowner and is not entitled to immunity
18 against costs of response imposed by the agency or for any claim
19 brought by a party other than the agency under an applicable
20 statute.

21 25395.81. (a) Except as provided in Section 25395.85, and
22 except as otherwise provided under this section, a bona fide
23 prospective purchaser who did not cause or contribute to the
24 release at issue is subject to the following immunities:

25 (1) The bona fide prospective purchaser is not liable under any
26 applicable statute for a claim made by any party that is not a
27 government agency for response costs or other damages associated
28 with a release or threatened release of a hazardous material at the
29 site.

30 (2) Except as provided in subdivision (b), an agency may not
31 take any action under any applicable statute to require the bona
32 fide prospective purchaser or a subsequent property owner to
33 conduct any additional response action with respect to a hazardous
34 materials release at a site unless both of the following conditions
35 are met:

36 (A) The agency does one of the following:

37 (i) Makes all reasonable attempts to compel any necessary
38 response action from all other potentially responsible parties, and
39 those efforts have been unsuccessful.



1 (ii) Reasonably determines that no viable potentially
2 responsible party exists to perform the required response action at
3 the site.

4 (B) The conditions on the property pose an endangerment.

5 (b) (1) The immunities described in this section shall attach
6 upon approval of the written plan described in paragraph (2) of
7 subdivision (a) of Section 25395.67 and shall remain in effect
8 unless the bona fide prospective purchaser receives a written
9 notice of noncompliance from the agency.

10 (2) An agency may issue a written notice of noncompliance
11 upon making both of the following findings:

12 (A) There is an unapproved failure to comply with the response
13 plan or any response action undertaken pursuant to a response
14 plan.

15 (B) The unapproved failure is a material deviation from the
16 response plan or any response action undertaken pursuant to a
17 response plan.

18 (c) Any person that is found to have committed fraud,
19 intentional nondisclosure, or misrepresentation to any state or
20 local agency with authority over cleanup or remediation at a site,
21 is not a bona fide prospective purchaser and is not entitled to
22 immunity against costs of response imposed by the agency or for
23 any claim brought by a party other than the agency under an
24 applicable statute.

25 (d) This section does not modify or limit the existing authority
26 of a state or local agency to impose a condition on the issuance of
27 a discretionary permit relating to the development, use, or
28 occupancy of any site.

29 25395.82. (a) Except as provided in Section 25395.85, and
30 except as otherwise provided in this section, a contiguous property
31 owner who did not cause or contribute to a release at a site is
32 subject to the following immunities:

33 (1) The contiguous property owner is not liable under any
34 applicable statute for a claim made by a party that is not a
35 government agency for response costs or other damages associated
36 with a release or threatened release of a hazardous material at the
37 site.

38 (2) Except as provided in subdivision (b), an agency may not
39 take an action under any applicable statute to require a contiguous
40 landowner to conduct a response action with respect to a hazardous



1 materials release at a site owned by that contiguous landowner
2 unless both of the following conditions apply:

3 (A) The agency does either of the following:

4 (i) Makes all reasonable attempts to compel any necessary
5 response action from all other potentially responsible parties and
6 those efforts has been unsuccessful.

7 (ii) Reasonably determines that no viable potentially
8 responsible party exists to perform the required response action at
9 the site.

10 (B) The conditions on the property pose an endangerment.

11 (b) (1) The immunities described in this section shall attach
12 upon approval of the written plan described in paragraph (2) of
13 subdivision (a) of Section 25395.67 and shall remain in effect
14 unless the person receives written notice of noncompliance from
15 the agency.

16 (2) The agency may issue a written notice for noncompliance
17 upon making both of the following findings:

18 (A) There is an unapproved failure to comply with the response
19 plan or any response action undertaken pursuant to a response
20 plan.

21 (B) The unapproved failure is a material deviation from the
22 response plan or any response action undertaken pursuant to a
23 response plan.

24 (c) An owner of contiguous property who is found to have
25 committed fraud, intentional nondisclosure, or misrepresentation
26 to any state or local agency with authority over cleanup or
27 remediation at a site, is not entitled to immunity against costs of
28 response imposed by the agency or for any claim brought by a
29 party other than the agency under an applicable statute.

30 (d) This section does not modify or limit the existing authority
31 of a state or local agency to impose a condition on the issuance of
32 a discretionary permit relating to the development, use, or
33 occupancy of a site.

34 25395.84. If there are unrecovered costs incurred by an
35 agency at a site for which an owner of the site is not liable as a bona
36 fide prospective purchaser, an agency shall have a lien on the site,
37 or may, by agreement with the owner, obtain from the owner a lien
38 on other property or other assurance of payment for the
39 unrecovered response costs, subject to all of the following
40 requirements:



- 1 (a) A response action for which there are unrecovered costs of
2 the agency is carried out at the site.
 - 3 (b) The response action increases the fair market value of the
4 site above the fair market value of the site that existed before the
5 response action was initiated.
 - 6 (c) The lien arises at the time at which costs are first incurred
7 by the agency with respect to a response action at the site.
 - 8 (d) The lien amount may not exceed the increase in fair market
9 value of the property attributable to the response action at the time
10 of a sale or other disposition of the property.
 - 11 (e) The lien shall continue until the earlier of satisfaction of the
12 lien by sale or other means, or recovery of all response costs
13 incurred by the agency at the site.
 - 14 (f) (1) The lien shall be subject to the rights of a purchaser,
15 holder of a security interest, or judgment lien creditor whose
16 interest is perfected under applicable state law before notice of the
17 lien has been filed in the appropriate office within the state or
18 county or other governmental subdivision, as designated by state
19 law.
 - 20 (2) The purchaser, holder of a security interest, or judgment
21 lien creditor has the same protections against the lien as the
22 protection provided by state law against a judgment lien that arises
23 out of an unsecured obligation and that arises as of the time of the
24 filing of the notice of the lien.
 - 25 (3) The notice of the lien shall be recorded in the official
26 records of the county recorder’s office for the county in which the
27 real property is located.
 - 28 (4) For purposes of this subdivision, the “purchaser” and
29 “security interest” have the same meaning as defined in
30 subsection (h) of Section 6323 of Title 26 of the United States
31 Code.
- 32 25395.85. This chapter does not exempt any of the following:
- 33 (a) A person from liability for bodily injury or wrongful death.
 - 34 (b) A person from any requirement imposed under Chapter 6.5
35 (commencing with Section 25100), including, but not limited to,
36 corrective action and closure and postclosure requirements.
- 37 25395.86. A court of competent jurisdiction may award
38 reasonable attorneys’ fees to a person who initiates an action under
39 an applicable statute for contribution for, or recovery of, response



1 costs incurred for a response action, or for any other response costs
2 incurred at a site, if the person meets all of the following criteria:

3 (a) The person is a bona fide prospective purchaser, an innocent
4 landowner, or a contiguous property owner and is subject to
5 immunity pursuant to this chapter.

6 (b) The person has completed a response plan for a site, or is in
7 compliance with an approved response plan and any approved
8 response actions undertaken pursuant to a response plan for a site.

9 (c) The person is the prevailing party.

10 25395.87. This chapter does not limit the authority of an
11 agency to conduct any response action it determines is necessary
12 to contain or eliminate an unreasonable risk that requires action to
13 protect public health and safety or the environment pursuant to an
14 applicable statute.

15 25395.88. (a) On or before January 1, 2005, the California
16 Environmental Protection Agency shall develop a form that shall
17 be completed and submitted to the agency by a bona fide
18 prospective purchaser, innocent landowner, or contiguous
19 property owner who is subject to immunity pursuant to this
20 chapter. The form shall include, but not be limited to, all of the
21 following information:

22 (1) A description of the site, including its address and location.

23 (2) A description of the type and extent of hazardous materials
24 contaminants and discharges identified for response action plan at
25 the site pursuant to a response action plan.

26 (3) An estimate of the cost of the response action to be
27 undertaken pursuant to a response action.

28 (4) A description of the present and proposed use of the site.

29 (5) A description of any land use restrictions, covenants, deed
30 restrictions or other conditions imposed on the site owned by a
31 party who is subject to immunity pursuant to this chapter.

32 (6) A description and the amounts of those contaminants or
33 discharges specified in paragraph (2) that will not be remediated
34 pursuant to the response action.

35 (b) On or before July 1, 2005, and annually thereafter, the
36 California Environmental Protection Agency shall submit to the
37 Legislature a report compiling the data collected pursuant to
38 subdivision (a) and compare that data, where feasible, to similar
39 data collected from January 1, 2001, to January 1, 2005.



1 (c) The report submitted pursuant to subdivision (b) shall
2 compare the number and quality of brownfield response actions
3 completed by agencies pursuant to this chapter with similar
4 response actions completed prior to its enactment, and shall
5 evaluate the impact of granting this chapter’s immunities to
6 developers of brownfield properties.

7 25395.89. *An innocent landowner, bona fide prospective
8 purchaser, or contiguous landowner shall reimburse an agency for
9 its reasonable oversight costs incurred while reviewing a response
10 plan or overseeing the implementation of a response plan by the
11 innocent landowner, bona fide prospective purchaser, or
12 contiguous landowner pursuant to this chapter.*

13 25395.90. (a) This chapter shall remain in effect only until
14 January 1, 2010, and as of that date is repealed, unless a later
15 enacted statute, that is enacted before January 1, 2010, deletes or
16 extends that date.

17 SEC. 2. Chapter 6.83 (commencing with Section 25395.91)
18 is added to Division 20 of the Health and Safety Code, to read:

19
20
21

CHAPTER 6.83. IMMUNITY CONTINUATION

22 25395.91. (a) A person who, before January 1, 2010, is
23 subject to an immunity pursuant to Chapter 6.82 (commencing
24 with Section 25395.60), as that chapter read on December 31,
25 2009, shall continue to have that immunity on and after January 1,
26 2010, if the person continues to be in compliance with the
27 requirements of former Chapter, 6.82 (commencing with Section
28 25395.60) including, but not limited to, compliance with any
29 approved response action subject to that chapter, and ~~of~~ *with* any
30 other applicable law.

31 (b) This chapter shall become operative January 1, 2010.

