

Assembly Bill No. 871

Passed the Assembly August 18, 1998

Chief Clerk of the Assembly

Passed the Senate August 6, 1998

Secretary of the Senate

This bill was received by the Governor this ___ day
of _____, 1998, at ___ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Section 53321.5 of the Government Code, and to amend Sections 25220, 25355, 33459.1, 33459.2, 33459.3, 33459.4, and 33459.7 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 871, Wayne. Redevelopment: hazardous substances cleanup: removal and remedial actions.

(1) Existing law requires the Department of Toxic Substances Control to notify the planning and building department of each city, county, or regional council of governments of certain land use restrictions imposed upon property designated as hazardous waste property or border zone property or sites listed for remedial or removal action, and requires the planning department of those local agencies to file those restrictions and take specified actions.

This bill would additionally include certain remedial action land use controls within those notification requirements, thereby creating a state-mandated local program by imposing new duties upon local governments. The bill would require the department to maintain this list of land use restrictions in a specified manner. The bill would require the list to be made available electronically, as specified.

(2) Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, makes a statement of legislative intent, imposes liability for hazardous substance removal or remedial actions, and requires the department to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for removal or remedial actions under the act. The act requires the department, or, if appropriate, the California regional water quality control board, to prepare or approve remedial action plans for each listed site. For purposes of the act, "hazardous substance" is defined as excluding petroleum.



This bill would allow any person to voluntarily enter into an enforceable agreement with the department that allows the department to conduct removal or remedial actions at a site with a release of petroleum to be conducted under the oversight of the department.

(3) Existing law authorizes a redevelopment agency, until January 1, 1999, to take any action that the agency determines is necessary, consistent with other state and federal laws, to remedy or remove a release of hazardous substances on, under, or from a project area subject to specified conditions relating to the identity of, notice to, and actions by, the party responsible for the release of hazardous substances. Existing law requires a redevelopment agency to request cleanup guidelines from the department and to provide the department and local health and building departments with notification of any cleanup activity pursuant to those provisions at least 30 days before the commencement of the activity. Existing law authorizes an agency to designate a local agency in lieu of the department or a regional board to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site in accordance with prescribed procedures and requirements.

This bill would extend the January 1, 1999, repeal date specified above, to January 1, 2004, thereby extending the operation of those provisions, and would allow an agency taking action to remove or remedy a release of hazardous substances to do so whether the agency owns the property or not. The bill would require the department or regional board to provide cleanup guidelines within a reasonable period of time. The bill would require the agency to submit for approval a cleanup or remedial action plan to the department or the California regional water quality control board before taking action to remedy or remove a release.

(4) Existing law immunizes an agency that remedies or removes a hazardous substance release, pursuant to the above provisions, from liability under specified state laws.



This bill would additionally immunize an agency that causes another person to undertake and complete an action. The bill would specify related matters. The bill would require the department, regional board, or local agency to notify the redevelopment agency that this immunity is in effect within 60 days of the date that the remedial action is completed, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

The bill would additionally immunize an agency that undertakes and completes a remedial action from liability based on its ownership of property after a release occurred, for any costs that a responsible party incurs, or to compensate others for the effect of that release, except as specified.

(5) Existing law, operative January 1, 1999, requires a redevelopment agency to obtain the written approval of the department or a California regional water quality control board before removing or remedying hazardous waste from property within a redevelopment project area.

The bill would provide that these removal and remedial action provisions will become operative January 1, 2004, and would make conforming changes.

(6) Under existing law, the legislative body of a local agency, at the time of the adoption of the resolution of intention to establish a community services district, where a removal or remedial action for the cleanup of any hazardous substance in the proposed district is proposed, is required to prepare, or cause to be prepared, a remedial action plan, based on prescribed factors.

This bill would add to those factors or determinations upon which the remedial action plan would be based, the alternative of conditioning financing the removal or remedial action upon the approval of the remedial action plan pursuant to specified provisions of law.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 53321.5 of the Government Code is amended to read:

53321.5. At the time of the adoption of the resolution of intention to establish a community facilities district, the legislative body shall direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services to be financed by the district, if it is established, to study the proposed district and, at or before the time of the hearing, file a report with the legislative body containing a brief description of the public facilities and services by type which will in his or her opinion be required to adequately meet the needs of the district and his or her estimate of the cost of providing those public facilities and services. If the purchase of completed public facilities or the payment of incidental expenses is proposed, the legislative body shall direct its appropriate officer to estimate the fair and reasonable cost of those facilities or incidental expenses. If removal or remedial action for the cleanup of any hazardous substance is proposed, the legislative body shall (a) direct its responsible officer to prepare or cause to be prepared, a remedial action plan based upon factors comparable to those described in subdivision (c) of Section 25356.1 of the Health and Safety Code or (b) determine, on the basis of the particular facts and circumstances, which shall be comparable to those described in subdivision (g) of Section 25356.1 of the Health and Safety Code, that the remedial action plan is not required or (c) condition financing of the removal or remedial action upon approval of a remedial action plan pursuant to Section 25356.1 of the Health and Safety Code. All of those reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.



SEC. 2. Section 25220 of the Health and Safety Code is amended to read:

25220. (a) For purposes of this article, unless the context clearly requires a different meaning:

(1) “Determination” means a decision by the department as to whether land should be designated as hazardous waste property or border zone property and which is reached after an analysis and an evaluation of the information obtained by the department.

(2) “Designation” means imposition of the requirements specified in Section 25230 after a determination, a public hearing, and a decision by the director has occurred pursuant to Section 25229.

(b) Whenever there is reasonable cause for the department to believe that any land may be a hazardous waste property or border zone property, the department may, by certified mail, request any person who owns, leases, or occupies the land, or any other person who has information relating to the land, to provide any or all of the following information:

(1) A description of the present use of the land.

(2) The types and volumes of hazardous waste or extremely hazardous waste contained therein or thereon.

(3) The date or dates the hazardous waste or extremely hazardous waste was deposited into or onto the land.

(4) A map or maps of the property which they own and which contains or overlies hazardous waste or extremely hazardous waste, drawn to a scale of not more than 200 feet to the inch, which shows the area or areas where the hazardous waste or extremely hazardous waste is contained or was deposited. The provision of a map pursuant to this subdivision shall not be required if the respondent to the request asserts in writing that the respondent has no knowledge or insufficient knowledge of the existence or location of the wastes to comply with this subdivision.

(5) Any other information which relates to the disposal of hazardous waste on or within 2,000 feet of the property or the potential for the migration of those wastes.



(c) Any person who is requested to provide information pursuant to subdivision (b) shall submit the information to the department within 90 calendar days of receipt of the request.

(d) The department shall notify the planning and building department of each city, county, or regional council of governments of any recorded land use restriction imposed pursuant to Section 25202.5, 25222.1, 25229, 25230, 25355.5, or 25398.7 within the jurisdiction of the local agency. Upon receiving this notification, the planning and building department shall do both of the following:

(1) File all recorded land use restrictions in the property files of the city, county, or regional council of government.

(2) Require that any person requesting a land use which differs from those filed land use restrictions on the property apply to the department for a variance or a removal of the land use restrictions pursuant to Section 25233 or 25234.

(e) A planning and building department of a city, county, or regional council of governments may assess a property owner a reasonable fee to cover the costs of taking the actions required by subdivision (d). For purposes of this subdivision, “property owner” does not include a person who holds evidence of ownership solely to protect a security interest in the property, unless the person participates, or has a legal right to participate, in the management of the property.

(f) The department shall maintain a list of all recorded land use restrictions, including deed restrictions, recorded pursuant to Sections 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, and 25398.7. The list shall, at a minimum, provide the street address, or, if a street address is not available, an equivalent description of location for a rural location or the latitude and longitude, of each property. The department shall update the list as new deed restrictions are recorded. The department shall make the list available to the public, upon request, and shall make the list available on the department’s Internet



website. The list shall also be incorporated into the list of sites compiled pursuant to Section 65962.5 of the Government Code.

SEC. 3. Section 25355 of the Health and Safety Code is amended to read:

25355. (a) The Governor shall be responsible for the coordination of all state response actions for sites identified in Section 25356 in order to assure the maximum use of available federal funds.

(b) The director may initiate removal or remedial action pursuant to this chapter unless these actions have been taken, or are being taken properly and in a timely fashion, by any responsible party.

(c) (1) At least 30 days before initiating removal or remedial actions, the department shall make a reasonable effort to notify the persons identified by the department as potentially responsible parties and shall also publish a notification of this action in a newspaper of general circulation pursuant to the method specified in Section 6061 of the Government Code. This subdivision does not apply to actions taken pursuant to subdivision (b) of Section 25358.3 or immediate corrective actions taken pursuant to Section 25354. A responsible party may be held liable pursuant to this chapter whether or not the person was given the notice specified in this subdivision.

(2) Notwithstanding subdivision (a) of Section 25317, any person may voluntarily enter into an enforceable agreement with the department pursuant to this subdivision that allows removal or remedial actions to be conducted under the oversight of the department at sites with petroleum releases from sources other than underground storage tanks, as defined in Section 25299.24. Agreements entered into pursuant to this subdivision shall provide that the party will reimburse the department for all costs incurred including, but not limited to, oversight costs pursuant to the enforceable agreement associated with the performance of the removal or remedial actions and Chapter 6.66 (commencing with Section 25269).



(d) The department shall notify the owner of the real property of the site of a hazardous substance release within 30 days after listing a site pursuant to Section 25356, and at least 30 days before initiating a removal or remedial action pursuant to this chapter, by sending the notification by certified mail to the person to whom the real property is assessed, as shown upon the last equalized assessment roll of the county, at the address shown on the assessment roll. The requirements of this subdivision do not apply to actions taken pursuant to subdivision (b) of Section 25358.3 or to immediate corrective actions taken pursuant to Section 25354.

SEC. 4. Section 33459.1 of the Health and Safety Code is amended to read:

33459.1. (a) (1) An agency may take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area, whether the agency owns that property or not, subject to the conditions specified in subdivision (b). Unless an administering agency has been designated under Section 25262, the agency shall request cleanup guidelines from the department or the California regional water quality control board before taking action to remedy or remove a release. The department or the California regional water quality control board shall respond to the agency's request to provide cleanup guidelines within a reasonable period of time. The agency shall thereafter submit for approval a cleanup or remedial action plan to the department or the California regional water quality control board before taking action to remedy or remove a release. The department or the California regional water quality control board shall respond to the agency's request for approval of a cleanup or remedial action plan within a reasonable period of time.

(2) The agency shall provide the department and local health and building departments, the California regional water quality control board, with notification of any cleanup activity pursuant to this section at least 30 days



before the commencement of the activity. If an action taken by an agency or a responsible party to remedy or remove a release of a hazardous substance does not meet, or is not consistent with, a remedial action plan or cleanup plan approved by the department or the California regional water quality control board, the department or the California regional water quality control board that approved the cleanup or remedial action plan may require the agency to take, or cause the taking of, additional action to remedy or remove the release, as provided by applicable law. If an administering agency for the site has been designated under Section 25262, any requirement for additional action may be imposed only as provided in Sections 25263 and 25265. If methane or landfill gas is present, the agency shall obtain written approval from the California Integrated Waste Management Board prior to taking that action.

(b) Except as provided in subdivision (c), an agency may take the actions specified in subdivision (a) only under one of the following conditions:

(1) There is no responsible party for the release identified by the agency.

(2) A party determined by the agency to be responsible for the release has been notified by the agency or has received adequate notice from the department, a California regional water quality control board, the Environmental Protection Agency, or other governmental agency with relevant authority and has been given 60 days to respond and to propose a remedial action plan and schedule, and the responsible party has not agreed within an additional 60 days to implement a plan and schedule to remedy or remove the release that is acceptable to the agency and that has been found by the agency to be consistent, to the maximum extent possible, with the priorities, guidelines, criteria, and regulations contained in the National Contingency Plan and published pursuant to Section 9605 of Title 42 of the United States Code for similar releases, situations, or events.



(3) The party determined by the agency to be responsible for the hazardous substance release entered into an agreement with the agency to prepare a remedial action plan for approval by the department, the California regional water quality control board, or the appropriate local agency and to implement the remedial action plan in accordance with an agreed schedule, but failed to prepare the remedial action plan, failed to implement the remedial action plan in accordance with the agreed schedule, or otherwise failed to carry out the remedial action in an appropriate and timely manner. Any action taken by the agency pursuant to this paragraph shall be consistent with any agreement between the agency and the responsible party and with the requirements of the state or local agency that approved or will approve the remedial action plan and is overseeing or will oversee the preparation and implementation of the remedial action plan.

(c) Subdivision (b) does not apply to either of the following agencies:

(1) An agency taking actions to investigate or conduct feasibility studies concerning a release.

(2) An agency taking the actions specified in subdivision (a) if the agency determines that conditions require immediate action.

(d) An agency may designate a local agency in lieu of the department or the California regional water quality control board to review and approve a cleanup or remedial action plan and to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site in accordance with all of the following conditions:

(1) The local agency may be so designated if it is designated as the administering agency under Section 25262. In that event, the local agency, as the administering agency, shall conduct the oversight of the remedial action in accordance with Chapter 6.65 (commencing with Section 25260) and all provisions of that chapter shall apply to the remedial action.



(2) The local agency may be so designated if cleanup guidelines were requested from a California regional water quality control board, and the site is an underground storage tank site subject to Chapter 6.7 (commencing with Section 25280) of Division 20, the local agency has been certified as a certified unified program agency pursuant to Section 25404.1, the State Water Resources Control Board has entered into an agreement with the local agency for oversight of those sites pursuant to Section 25297.1, the local agency determines that the site is within the guidelines and protocols established in, and pursuant to, that agreement, and the local agency consents to the designation.

(3) A local agency may not consent to the designation by an agency unless the local agency determines that it has adequate staff resources and the requisite technical expertise and capabilities available to adequately supervise the remedial action.

(4) (A) Where a local agency has been designated pursuant to paragraph (2), the department or a California regional water quality control board may require that a local agency withdraw from the designation, after providing the agency with adequate notice, if both of the following conditions are met:

(i) The department or a California regional water quality control board determines that an agency's designation of a local agency was not consistent with paragraph (2), or makes one of the findings specified in subdivision (d) of Section 512.

(ii) The department or a California regional water quality control board determines that it has adequate staff resources and capabilities available to adequately supervise the remedial action, and assumes that responsibility.

(B) Nothing in this paragraph prevents a California regional water quality control board from taking any action pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(5) Where a local agency has been designated pursuant to paragraph (2), the local agency may, after



providing the agency with adequate notice, withdraw from its designation after making one of the findings specified in subdivision (d) of Section 512.

(e) To facilitate redevelopment planning, the agency may require the owner or operator of any site within a project area to provide the agency with all existing environmental information pertaining to the site, including the results of any Phase I or subsequent environmental assessment, as defined in Section 25200.14, any assessment conducted pursuant to an order from, or agreement with, any federal, state or local agency, and any other environmental assessment information, except that which is determined to be privileged. The person requested to furnish the information shall be required only to furnish that information as may be within their possession or control, including actual knowledge of information within the possession or control of any other party. If environmental assessment information is not available, the agency may require the owner of the property to conduct an assessment in accordance with standard real estate practices for conducting Phase I or Phase II environmental assessments.

(f) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

SEC. 5. Section 33459.2 of the Health and Safety Code is amended to read:

33459.2. (a) Within a project area, an agency may take any actions which the agency determines are necessary and which are consistent with other state and federal laws to remedy or remove hazardous substances from property if the agency obtains written approval from the department or a California regional water quality control board, as appropriate, prior to taking that action. In addition, if methane or landfill gas is present, the agency shall also obtain written approval from the California Integrated Waste Management Board prior to taking that action.



(b) An agency may designate a local agency in lieu of the department or the California regional water quality control board to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site in accordance with all of the following conditions:

(1) The local agency may be designated in lieu of the department or the California regional water quality control board if the local agency is designated as the administering agency under Section 25262. In such a case, the local agency, as the administering agency, shall conduct the oversight of the remedial action in accordance with Chapter 6.65 (commencing with Section 25260) and all provisions of that chapter shall apply to the remedial action.

(2) The local agency may be designated in lieu of the department or the California regional water quality control board if the site is an underground storage tank site subject to Chapter 6.7 (commencing with Section 25280) of Division 20, the local agency has been certified as a certified unified program agency pursuant to Section 25404.1, the State Water Resources Control Board has entered into an agreement with the local agency for oversight of such sites pursuant to Section 25297.1, the local agency determines that the site is within the guidelines and protocols established in, and pursuant to, that agreement, and the local agency consents to the designation.

(3) A local agency may not consent to the designation by an agency unless the local agency determines that it has adequate staff resources and the requisite technical expertise and capabilities available to adequately supervise the remedial action.

(4) (A) Where a local agency has been designated pursuant to paragraph (2), the department or a California regional water quality control board may require that a local agency withdraw from the designation, after providing the agency with adequate notice, if both of the following conditions are met:



(i) The department or a California regional water quality control board determines that an agency's designation of a local agency was not consistent with paragraph (2), or makes one of the findings specified in subdivision (d) of Section 512.

(ii) The department or a California regional water quality control board determines that it has adequate staff resources and capabilities available to adequately supervise the remedial action, and assumes that responsibility.

(B) Nothing in this paragraph prevents a California regional water quality control board from taking any action pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(5) Where a local agency has been designated pursuant to paragraph (2), the local agency may, after providing the agency with adequate notice, withdraw from its designation after making one of the findings specified in subdivision (d) of Section 512.

(c) This section shall become operative on January 1, 2004.

SEC. 6. Section 33459.3 of the Health and Safety Code is amended to read:

33459.3. (a) Notwithstanding any other provision of law, except as provided in Section 33459.7, an agency that undertakes and completes an action, or causes another person to undertake and complete an action, pursuant to Section 33459.1, as specified in subdivision (c), to remedy or remove a hazardous substance release on, under, or from property within a redevelopment project, in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the department or a California regional water quality control board or the local agency, as appropriate, pursuant to subdivision (b), is not liable, with respect to that release only, under Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8



(commencing with Section 25300), of Division 20 of this code, or any other state or local law providing liability for remedial or removal actions for releases of hazardous substances. If the remedial action was also performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and a certificate of completion is issued pursuant to subdivision (b) of Section 25264, the immunity from agency action provided by the certificate of completion, as specified in subdivision (c) of Section 25264, shall apply to the agency, in addition to the immunity conferred by this section. In the case of a remedial action performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and for which the administering agency is a local agency, the limitations on the certificate of completion set forth in paragraphs (1) to (6), inclusive, of subdivision (c) of Section 25264 are limits on any immunity provided for by this section and subdivision (c) of Section 25264.

(b) Upon approval of any cleanup or remedial action plan, pursuant to applicable statutes and regulations, the director or the California regional water quality control board or the local agency, as appropriate, shall acknowledge, in writing, within 60 days of the date of approval, that upon proper completion of the remedial or removal action in accordance with the plan, the immunity provided by this section shall apply to the agency.

(c) Notwithstanding any provision of law or policy providing for certification by a person conducting a remedial or removal action that the action has been properly completed, a determination that a remedial or removal action has been properly completed pursuant to this section shall be made only upon the affirmative approval of the director or the California regional water quality control board or the local agency, as appropriate. The department, California regional water quality control board, or local agency, as appropriate, shall, within 60 days of the date it finds that a remedial action has been completed, notify the agency in writing that the immunity provided by this section is in effect.



(d) The approval of a cleanup or remedial action plan under this section by a local agency shall also be subject to the concurrent approval of the department or a California regional water quality control board when the agency receiving the approval was formed by the same entity of which the local agency is a part.

(e) Upon proper completion of a remedial or removal action, as specified in subdivision (c), the immunity from agency action provided by the certificate of completion provided pursuant to subdivision (c) of Section 25264 and the immunity provided by this section extends to all of the following, but only for the release or releases specifically identified in the approved cleanup or remedial action plan and not for any subsequent release or any release not specifically identified in the approved cleanup or remedial action plan:

(1) Any employee or agent of the agency, including an instrumentality of the agency authorized to exercise some, or all, of the powers of an agency within, or for the benefit of, a redevelopment project and any employee or agent of the instrumentality.

(2) Any person who enters into an agreement with an agency for the redevelopment of property, if the agreement requires the person to acquire property affected by a hazardous substance release or to remove or remedy a hazardous substance release with respect to that property.

(3) Any person who acquires the property after a person has entered into an agreement with an agency for redevelopment of the property as described in paragraph (2).

(4) Any person who provided financing to a person specified in paragraph (2) or (3).

(f) Notwithstanding any other provision of law, the immunity provided by this section does not extend to any of the following:

(1) Any person who was a responsible party for the release before entering into an agreement, acquiring property, or providing financing, as specified in subdivision (e).



(2) Any person specified in subdivision (a) or (e) for any subsequent release of a hazardous substance or any release of a hazardous substance not specifically identified in the approved cleanup or remedial action plan.

(3) Any contractor who prepares the cleanup or remedial action plan, or conducts the removal or remedial action.

(4) Any person who obtains an approval, as specified in subdivision (b), or a determination, as specified in subdivision (c), by fraud, negligent or intentional nondisclosure, or misrepresentation, and any person who knows before the approval or determination is obtained or before the person enters into an agreement, acquires the property or provides financing, as specified in subdivision (e), that the approval or determination was obtained by these means.

(g) The immunity provided by this section is in addition to any other immunity of an agency provided by law.

(h) This section does not impair any cause of action by an agency or any other party against the person, firm, or entity responsible for the hazardous substance release which is the subject of the removal or remedial action taken by the agency or other person immune from liability pursuant to this section.

(i) This section does not apply to, or limit, alter, or restrict, any action for personal injury, property damage, or wrongful death.

(j) This section does not limit liability of a person described in paragraph (3) or (4) of subdivision (e) for damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(k) This section does not establish, limit, or affect the liability of an agency for any release of a hazardous substance that is not investigated or remediated pursuant to this section or Chapter 6.65 (commencing with Section 25260) of Division 20.



(l) The immunity provided for by this section is only conferred if both of the following apply:

(1) The action is in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the department or a California regional water quality control board or the local agency, as appropriate, pursuant to subdivision (b).

(2) The remedial or removal action is undertaken and properly completed as specified in subdivision (c).

(m) The agency shall reimburse the department, the California regional water quality control board, and the local agency for costs incurred in reviewing or approving cleanup or remedial action plans pursuant to this section.

SEC. 7. Section 33459.4 of the Health and Safety Code is amended to read:

33459.4. (a) Except as provided in Section 33459.7, if a redevelopment agency undertakes action to remedy or remove, or to require others to remedy or remove, including, compelling a responsible party through a civil action, to remedy or remove, a release of hazardous substance, any responsible party or parties shall be liable to the redevelopment agency for the costs incurred in the action. An agency may not recover the costs of goods and services that were not procured in accordance with applicable procurement procedures. The amount of the costs shall include the interest on the costs accrued from the date of expenditure and reasonable attorney's fees and shall be recoverable in a civil action. Interest shall be calculated based on the average annual rate of return on an agency's investment of surplus funds for the fiscal year in which costs were incurred.

(b) The only defenses available to a responsible party shall be the defenses specified in subdivision (b) of Section 25323.5.

(c) An agency may recover any costs incurred to develop and to implement a cleanup or removal action plan approved pursuant to Sections 33459.1 and 33459.3, to the same extent the department is authorized to recover those costs. The scope and standard of liability for



any costs recoverable pursuant to this section shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to the department; provided, however, that any reference to hazardous substance therein shall be deemed to refer to hazardous substance as defined in subdivision (c) of Section 33459.

(d) An action for recovery of costs of a remedy or removal undertaken by a redevelopment agency under this section shall be commenced within three years after completion of the remedy or removal.

(e) The action to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a redevelopment agency.

(f) Except as provided in subdivision (m) of Section 33459.3, notwithstanding any other provision of state law or policy, an agency that undertakes and completes a remedial action, or otherwise causes a remedial action to be undertaken and completed pursuant to Sections 33459.1 and 33459.3, shall not be liable based on its ownership of property after a release occurred, for any costs that any responsible party for that release incurs to investigate or remediate the release or to compensate others for the effects of that release.

SEC. 8. Section 33459.7 of the Health and Safety Code is amended to read:

33459.7. Sections 33459.3 and 33459.4 apply only to remedial or removal actions commenced by an agency before January 1, 2004. For purposes of this section, an agency that adopts a resolution to undertake a removal or remedial action shall be deemed to have commenced the removal or remedial action on the date the resolution is adopted.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service



mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved _____, 1998

Governor

