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AMENDED IN SENATE MARCH 24, 2003

**SENATE BILL**

**No. 493**

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**Introduced by Senator Cedillo**

~~(Coauthors: Assembly Members Calderon and Firebaugh)~~

**(Coauthors: Senators Alpert and Ducheny)**

*(Coauthors: Assembly Members Bermudez, Calderon, Diaz, Dutra,  
and Firebaugh)*

February 20, 2003

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An act to add Chapter 6.83 (commencing with Section 25395.91) and Chapter 6.84 (commencing with Section 25395.92) to, and to add and repeal Chapter 6.82 (commencing with Section 25395.60) of, 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 fide purchaser, or a contiguous property owner, as defined, qualifies for immunity from liability for response cost or damage claims under specified state statutory and common laws that impose liability upon an owner or occupant of property, for pollution conditions caused by a release or threatened 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 purchaser, or contiguous property owner to take a response actions under those state laws, other than a response action; required in an approved response plan. 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 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 incurred at a site, to award reasonable attorneys' fees and experts' fees to an innocent landowner, bona fide purchaser, or contiguous landowner, as specified.

The bill would require the California Environmental Protection Agency, by January 1, 2005, to develop a form containing specified information that a bona fide 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 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.

The bill would require a bona fide purchaser, innocent landowner, or contiguous property owner who seeks to qualify for the immunity provided by the act to enter into an agreement with an agency that includes the performance of a site assessment, and if the agency determines that a response plan is necessary, the preparation and implementation of a response plan. The bill would require a person who enters into an agreement to reimburse the agency that enters into the agreement for all agency costs.

The bill would require a person who enters into an agreement with an agency for oversight of a site assessment to submit a site assessment plan to the agency. The bill would require the agency to evaluate the adequacy of the site assessment plan to ensure that it contains all necessary information and, after evaluating the site assessment plan, if the agency finds that the plan is adequate, the agency would be required to approve the plan and provide notification to appropriate persons.

The bill would require a person, after implementing the site assessment plan, to submit a report of its findings to the agency. The bill would require the agency, based upon a review of this information, to determine whether a response action is necessary to address any unreasonable risk from hazardous materials at the site. If the agency determines that a response action is necessary to prevent, control, or eliminate an unreasonable risk, the bill would require the bona fide purchaser, innocent landowner, or contiguous property owner to submit a response plan to the agency to conduct a response action at the site. The bill would require the agency to evaluate the adequacy of the response plan and to approve the plan if the agency makes specified findings.

The bill would authorize a response plan to require the use of a land use control that imposes appropriate conditions, restrictions, and obligations on land use or activities if, after completion of the removal and remedial actions specified in the response plan, hazardous substances materials remain at the site at a level that is not suitable for the unrestricted use of the site, pursuant to a specified procedure. The bill would authorize the Department of Toxic Substances Control to



exclude any portion of a response action conducted entirely onsite from certain hazardous waste facilities permit requirements.

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 hindered 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 fewer complications and lower risk of 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:



1 (a) Establish the cleanup and reuse of these sites in a manner  
2 protective of public health and safety and the environment as a  
3 priority of the state.

4 (b) Relieve innocent owners, bona fide prospective purchasers,  
5 and owners of property adjacent to contaminated sites of liabilities  
6 and responsibilities that should be borne by those who caused or,  
7 contributed to the contamination.

8 (c) Encourage process efficiencies that continue to ensure that  
9 cleanups are protective of public health and safety and the  
10 environment.

11 (d) Encourage the development and redevelopment of unused  
12 or underused properties in urban areas.

13 (e) Establish a voluntary process for bona fide purchasers,  
14 innocent landowners and contiguous property owners to make  
15 certain the extent of their liability, if any, under state law for  
16 hazardous materials contamination caused by other persons,  
17 without otherwise altering existing state law regarding liability for  
18 hazardous materials releases.

19 25395.62. This chapter shall be known, and may be cited as,  
20 the “California Land Reuse and Revitalization Act of 2004.”

21

22

Article 2. Definitions

23

24 25395.63. The definitions set forth in this article shall govern  
25 the interpretation of this chapter. If a term is not otherwise defined  
26 in this chapter, the definition contained in Chapter 6.8  
27 (commencing with Section 25300) shall apply to that term.

28 25395.64. “Agency” means the department, the board, or a  
29 regional board.

30 25395.65. “All appropriate inquiries” has the following  
31 meanings:

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

38 (1) For property acquired before December 1, 2000,  
39 compliance with American Society for Testing and Materials  
40 Standard E1 527-97 entitled “Standard Practice for Environmental



1 Site Assessment”: Phase 1 Environmental Site Assessment  
2 Process.

3 (2) For property acquired after December 1, 2000, compliance  
4 with American Society for Testing and Materials Standard  
5 ~~E1527-00~~ *El 527-00*.

6 (b) Except as provided in subdivision (c), on and after the date  
7 when the standards and practices established by the Administrator  
8 of the United States Environmental Protection Agency pursuant to  
9 Section ~~401(35)(B)(ii)~~ *101(35)(B)(ii)* of the federal act (42  
10 U.S.C. Sec. 9601(35)(B)(ii)) are adopted and take effect, “all  
11 appropriate inquiries” means compliance with those standards,  
12 except that any portion of the inquiry that includes the practice of  
13 engineering shall be carried out in conformance with applicable  
14 state law.

15 (c) If the property is used solely for residential use and has four  
16 or fewer units at the time of acquisition by a nongovernmental or  
17 noncommercial entity, “all appropriate inquiries” means that a  
18 site inspection and title search does not reveal a basis for further  
19 investigation.

20 25395.66. “Applicable law” means all of the provisions of  
21 the following state statutory and common laws that impose  
22 liability on an owner or occupant of property for pollution  
23 conditions caused by a release or threatened release of hazardous  
24 material on, under, or adjacent to the property:

25 (a) Title 1 (commencing with Section 3479) of, Title 2  
26 (commencing with Section 3490) of, and Title 3 (commencing  
27 with Section 3501) of, Part 3 of Division 4 of the Civil Code.

28 (b) Chapter 2 (commencing with Section 731) of Title 10 of  
29 Part 2 of the Code of Civil Procedure, but not including Section  
30 736 of the Code of Civil Procedure.

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

32 (d) Chapter 6.7 (commencing with Section, 25280), Chapter  
33 6.75 (commencing with Section 25299.10), and Chapter 6.8  
34 (commencing with Section 25300), of this division.

35 (e) Chapter 1 (commencing with Section 13000) to Chapter 5  
36 (commencing with Section 13300), inclusive, of Division 7 of the  
37 Water Code.

38 (f) State common law regarding contribution, nuisance,  
39 trespass and equitable indemnity.

40 25395.67. “Appropriate care” means either of the following:



1 (a) The performance of a response action, with respect to  
2 hazardous materials found at a site, for which the agency makes the  
3 determination specified in paragraph (1) of subdivision (c) of  
4 Section 25395.98 and that meets all of the following conditions:

5 (1) The response action is determined by an agency to be  
6 necessary to prevent an unreasonable risk to human health or the  
7 environment.

8 (2) The response action is performed in accordance with a  
9 response plan approved by the agency pursuant to Chapter 6.84  
10 (commencing with Section 25295.92).

11 (3) The approved response plan includes a provision for  
12 oversight and verification of the response action by the agency  
13 pursuant to Chapter 6.84 (commencing with Section 25295.92).

14 (b) A determination that no further action is required pursuant  
15 to Section 25395.97.

16 25395.68. “Board” means the State Water Resources Control  
17 Board.

18 25395.69. (a) “Bona fide purchaser” means a person, or a  
19 tenant of a person, who acquires ownership of a site on or after  
20 January 1, 2005, and who establishes all of the following by a  
21 preponderance of the evidence:

22 (1) All releases of the hazardous materials at issue at the site  
23 occurred before the person acquired the site, except as described  
24 in paragraph (2).

25 (2) A person shall remain eligible to qualify as a bona fide  
26 purchaser, notwithstanding a release of hazardous materials at the  
27 site following acquisition of the site by that person, if the release  
28 is either of the following:

29 (A) Of a type, nature or amount that does not require reporting  
30 pursuant to applicable statutory and regulatory reporting  
31 requirements.

32 (B) Has been appropriately resolved to the satisfaction of the  
33 agency.

34 (3) All of the conditions of Section 25395.79.1 to qualify as a  
35 bona fide purchaser have been met.

36 (4) The person is not potentially liable, or affiliated with any  
37 other person who is potentially liable, for the release or threatened  
38 release at the site through any of the following circumstances:

39 (A) Any direct or indirect familial relationship.



1 (B) Any contractual, corporate, or financial relationship,  
2 unless the contractual, corporate, or financial relationship is  
3 created by the instrument by which title or possession to the site  
4 is conveyed or financed or a contract for the sale of goods or  
5 services.

6 (C) The result of a reorganization of a business entity that was  
7 potentially liable for the release or threatened release of hazardous  
8 materials at the site.

9 (b) For purposes of this section, “release” does not include  
10 passive migration.

11 25395.69.5. (a) “Contiguous property owner” means a  
12 person who owns a site that is adjacent to or otherwise similarly  
13 situated with respect to another site that is, or may be,  
14 contaminated by a release or threatened release of a hazardous  
15 material and that is not owned by that person, and who  
16 demonstrates, by a preponderance of the evidence, all of the  
17 following:

18 (1) The person did not cause, contribute, or consent to the  
19 release or threatened release.

20 (2) At the time the person acquired the property, the person  
21 made all appropriate inquiries and did not know and had no reason  
22 to know of the release or threatened release at the site.

23 (3) All of the conditions of Section 25395.79.1 to qualify as a  
24 contiguous property owner have been met.

25 (4) A person shall remain eligible to qualify as a contiguous  
26 landowner notwithstanding a release of hazardous materials at the  
27 site following acquisition by that person, if the release is either of  
28 the following:

29 (A) Of a type, nature or amount that does not require reporting  
30 pursuant to applicable statutory and regulatory reporting  
31 requirements.

32 (B) Has been appropriately resolved to the satisfaction of the  
33 agency.

34 (5) The person is not potentially liable, or affiliated with any  
35 other person who is potentially liable, for the release at issue  
36 through any of the following circumstances:

37 (A) Any direct or indirect familial relationship.

38 (B) Any contractual, corporate, or financial relationship,  
39 unless the contractual, corporate, or financial relationship is  
40 created by the instruments by which title or possession to the site



1 is conveyed or financed or a contract for the sale of goods or  
2 services.

3 (C) The result of a reorganization of a business entity that was  
4 potentially liable for the hazardous materials.

5 (b) For purposes of this section, “release” does not include  
6 passive migration.

7 25395.70. ~~“Department means”~~ *Department* means the  
8 Department of Toxic Substances Control.

9 25395.71. “Endangerment” means a condition that poses an  
10 actual and unreasonable risk to human health and safety arising  
11 from actual or threatened exposure to hazardous materials.

12 25395.72. “Fair market value” means the price a seller is  
13 willing to accept and a buyer willing to pay on the open market and  
14 in an arm’s length transaction.

15 25395.73. “Hazardous material” has the same meaning as  
16 defined in subdivision (d) of Section 25260.

17 25395.74. (a) “Innocent landowner” means a person who  
18 owns a site, did not cause or contribute to a release or threatened  
19 release at the site, meets the conditions to qualify as an “innocent  
20 landowner” specified in Section 25395.79.1, and is any one of the  
21 following:

22 (1) A person who, at the time the person acquired the property,  
23 made all appropriate inquiries and did not know and had no reason  
24 to know of the release or threatened release at the site.

25 (2) A government entity that acquired property by escheat, or  
26 through any another involuntary transfer acquisition, or through  
27 the exercise of eminent domain authority by purchase or  
28 condemnation, *or by means of a lien arising from delinquent taxes,*  
29 *assessments, or charges.*

30 (3) A person who acquired the property by inheritance or  
31 bequest.

32 (4) A person who qualifies for the defense from liability under  
33 Section 107(b) of the federal act (42 U.S.C. Sec. 9607(b)).

34 (b) A person shall remain eligible to qualify as an innocent  
35 landowner notwithstanding a release of hazardous materials at the  
36 site following acquisition by that person if the release is either of  
37 the following:

38 (1) Of a type, nature or amount that does not require reporting  
39 pursuant to applicable statutory and regulatory reporting  
40 requirements.



1 (2) Has been appropriately resolved to the satisfaction of the  
2 agency.

3 (c) For purposes of this section, “release” does not include  
4 passive migration.

5 25395.75. “Land use control” means a recorded instrument  
6 executed pursuant to Section 1471 of the Civil Code that restricts  
7 or imposes obligations on the present or future uses or activities on  
8 a site, including but not limited to, recorded easements, covenants,  
9 restrictions or servitudes, or any combination thereof.

10 25395.76. “Passive migration” means the leaking, leaching  
11 or movement of a hazardous material into or through the  
12 environment, for which no human activity by the bona fide  
13 purchaser, innocent landowner, or contiguous property owner  
14 preceded the initial entry of that substance into the environment.

15 25395.77. “Regional board” means a California regional  
16 water quality control board.

17 25395.78. “Release” has the same meaning as defined in  
18 Section 25320.

19 25395.78.1. “Response plan” means a written plan submitted  
20 to an agency pursuant to Section 25395.98.

21 25395.79. (a) “Site” means real property located in an urban  
22 infill area for which the expansion, redevelopment, or reuse may  
23 be complicated by the presence or perceived presence of  
24 hazardous materials.

25 (b) “Site” does not include any of the following:

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

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

32 (3) A site that is solely impacted by a petroleum release from  
33 an underground storage tank eligible for reimbursement from the  
34 California Underground Storage Tank Cleanup Fund.

35 (c) For purposes of this section, the following definitions shall  
36 apply:

37 (1) “Infill area” means a vacant or underutilized lot of land  
38 within an urban area served by existing physical installations,  
39 including, but not limited to, roads, powerlines, and other  
40 infrastructure that is zoned for commercial, industrial, or mixed



1 use and has not been zoned exclusively for open space agricultural  
2 use, or residential use within the five years prior to the date an  
3 agreement is entered into pursuant to Chapter 6.84 (commencing  
4 with Section 25395.60).

5 (2) “Urban area” means either of the following:

6 (A) An incorporated city.

7 (B) An unincorporated area that is completely surrounded by  
8 one or more incorporated cities that meets both of the following  
9 criteria:

10 (i) The population of the unincorporated area and the  
11 population of the surrounding incorporated cities is equal to a  
12 population of 100,000 or more.

13 (ii) The population density of the unincorporated area is equal  
14 to, or greater than, the population density of the surrounding cities.

15

16 Article 3. Liability

17

18 25395.79.1. For purposes of this chapter, to qualify as a bona  
19 fide purchaser, innocent landowner, or contiguous property owner  
20 a person shall establish, by a preponderance of the evidence, all of  
21 the following conditions:

22 (a) On or before the date on which the person acquired the site,  
23 the person made all appropriate inquiries into the previous  
24 ownership and uses of the site.

25 (b) The person exercises appropriate care with respect to the  
26 release or threatened release of hazardous materials at the site.

27 (c) The person provides full cooperation, assistance, and access  
28 to a person who is authorized to conduct response actions or  
29 natural resource restoration at the site, including the cooperation  
30 and any access necessary for the installation, integrity, operation,  
31 and maintenance of complete or partial response actions or natural  
32 resource restoration at the site.

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

38 (e) The person complies with all requests for information or *an*  
39 administrative subpoena concerning the release or threatened



1 release of hazardous substances by any agency with jurisdiction  
2 under an applicable statute.

3 (f) The person provides all notices and satisfies reporting  
4 requirements required by state or federal law with respect to the  
5 discovery or release of hazardous substances at the site.

6 25395.80. (a) Except as provided in Section 25395.84, and  
7 except as otherwise provided under this section, a bona fide  
8 purchaser, innocent landowner, or contiguous property owner who  
9 did not cause or contribute to the release at the site, qualifies for  
10 the following immunities:

11 (1) The bona fide purchaser, innocent landowner, or  
12 contiguous property owner is not liable under any applicable  
13 statute for a claim made by any person, other than an agency, for  
14 response costs or other damages associated with a release or  
15 threatened release of a hazardous material at the site characterized  
16 in the site assessment conducted pursuant to, or a response plan  
17 approved pursuant to, Chapter 6.84 (commencing with Section  
18 25395.92).

19 (2) An agency shall not take an action under an applicable  
20 statute to require a bona fide purchaser, innocent landowner, or  
21 contiguous property owner to take a response action, other than a  
22 response action required in an approved response plan, with  
23 respect to a hazardous material release at a site that is characterized  
24 in the site assessment conducted pursuant to, or a response plan  
25 approved pursuant to Chapter 6.84 (commencing with Section  
26 25395.92), unless both of the following conditions apply:

27 (A) The conditions on the property pose an endangerment.

28 (B) The agency does one of the following:

29 (i) Makes all reasonable efforts, including taking appropriate  
30 administrative enforcement actions, to compel any necessary  
31 response action from other potentially responsible parties, and  
32 those efforts have been unsuccessful.

33 (ii) Reasonably determines, after the exercise of reasonable  
34 inquiry, that no potentially responsible party exists with sufficient  
35 financial resources to perform the required response action at the  
36 site.

37 (b) A person shall remain eligible to qualify as an innocent  
38 landowner, contiguous landowner, or bona fide purchaser,  
39 notwithstanding a release of hazardous materials at the site



1 following acquisition by that person, if the release is either of the  
2 following:

3 (1) Of a type, nature, or amount that does not require reporting  
4 pursuant to applicable statutory and regulatory reporting  
5 requirements.

6 (2) Has been appropriately resolved to the satisfaction of the  
7 agency.

8 (c) This section does not modify or limit the existing authority  
9 of a state or local agency to impose a condition on the issuance of  
10 a discretionary permit relating to the development, use, or  
11 occupancy of any site.

12 (d) The immunities described in this section shall attach when  
13 the bona fide purchaser, innocent landowner, or contiguous  
14 property owner enters into an agreement with an agency pursuant  
15 to Section 25395.94 and shall remain in effect unless one of the  
16 following ~~occur~~ occurs:

17 (1) The bona fide purchaser, innocent landowner, or  
18 contiguous property owner receives a written notice of an  
19 unapproved, material deviation from the agreement from the  
20 agency.

21 (2) The bona fide purchaser, innocent landowner, or  
22 contiguous property owner terminates the agreement before  
23 obtaining a no further action determination pursuant to Section  
24 25395.97 or a certificate of completion pursuant to Section  
25 25395.99.

26 (e) A person who otherwise qualifies for immunity under this  
27 chapter and who commits fraud, intentional nondisclosure, or  
28 misrepresentation to an agency with respect to disclosures  
29 required under this chapter does not qualify as a bona fide  
30 purchaser, innocent landowner, or contiguous property owner.

31 (f) For purposes of this section, “release” does not include  
32 passive migration.

33 25395.81. (a) If there are unrecovered costs incurred by an  
34 agency at a site for which an owner of the site is not liable as an  
35 innocent landowner, bona fide purchaser, or contiguous property  
36 owner, an agency shall have a lien on the site, or may, by agreement  
37 with the owner, obtain from the owner a lien on other property or  
38 other assurance of payment for the unrecovered response costs,  
39 subject to all of the following requirements:



1 (1) A response action for which there are unrecovered costs of  
2 the agency is carried out at the site.

3 (2) The response action increased 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 (b) The lien shall arise at the time at which costs are first  
7 incurred by the agency with respect to a response action at the site.

8 (c) The lien amount shall 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, and shall not exceed  
11 the unrecovered response costs actually incurred by the agency.

12 (d) The lien shall continue until the earlier of satisfaction of the  
13 lien by sale or other means, or recovery of all response costs  
14 incurred by the agency at the site.

15 (e) (1) The lien shall be subject to the rights of a purchaser,  
16 holder of a security interest, or judgment lien creditor whose  
17 interest is perfected under applicable state law before notice of the  
18 lien has been filed in the appropriate office within the state or  
19 county or other governmental subdivision, as designated by state  
20 law.

21 (2) For purposes of paragraph (1), “purchaser” and “security  
22 interest” have the same meaning as defined in subsection (h) of  
23 Section 6323 of Title 26 of the United States Code.

24 (f) The notice of the lien shall be recorded in the official records  
25 of the county recorder’s office for the county in which the real  
26 property is located.

27 (g) A lien imposed under this section shall have the force and  
28 effect of, and the priority of, a judgment lien upon its recordation  
29 in the county in which the property subject to the lien is located.

30 25395.82. (a) A court of competent jurisdiction may award  
31 reasonable attorneys’ fees and experts’ fees to a person who  
32 initiates a claim under an applicable statute for contribution for, or  
33 recovery of, response costs incurred for a response action, or for  
34 any other response costs incurred at a site, if the person meets all  
35 of the following criteria:

36 (1) The person is a bona fide purchaser, an innocent landowner,  
37 or a contiguous property owner and qualifies for immunity  
38 pursuant to this chapter.

39 (2) The person is a prevailing party.



1 (3) On or before 20 calendar days prior to the date of the trial  
2 on issues relating to the response costs at issue, the person serves  
3 on the defendant both of the following:

4 (A) If a response plan has been approved for that site pursuant  
5 to Chapter 6.84 (commencing with Section 25395.92), a copy of  
6 the approved response plan.

7 (B) A written demand for compensation setting forth the  
8 specific sum demanded from the defendant, including a statement  
9 of the reasoning supporting the demand. The amount of written  
10 demand shall include all response costs sought from the defendant  
11 at issue, including all interest, but shall not include litigation  
12 expenses, attorneys' fees, and experts' fees. The amount of the  
13 demand may include any alleged consequential damages.

14 (b) In determining whether to award reasonable attorneys' fees  
15 and experts' fees pursuant to this section, a court shall consider the  
16 relationship of the amount of the written demand described in  
17 subparagraph (B) of paragraph (3) of subdivision (a) to the total  
18 sum of the response costs and, if appropriate and included in the  
19 demand, the consequential damages in the written demand, to the  
20 final determination of the costs and damages by the trier of fact.

21 (c) A court may award reasonable attorneys' fees and experts'  
22 fees to an agency that is the prevailing party in an action arising out  
23 of this chapter.

24 25395.83. An innocent landowner, bona fide purchaser, or  
25 contiguous landowner may seek contribution from any person  
26 who is responsible for a discharge or release of hazardous  
27 materials for which the innocent landowner, bona fide purchaser,  
28 or contiguous landowner incurs agency oversight costs for the  
29 review of a response plan or oversight of the implementation of a  
30 response plan subject to this chapter.

31 25395.84. (a) This chapter does not provide immunity from  
32 any of the following:

- 33 (1) Liability for bodily injury or wrongful death.
- 34 (2) Any requirement imposed under Chapter 6.5 (commencing  
35 with Section 25100), including, but not limited to, corrective  
36 action and closure and post closure requirements.
- 37 (3) Criminal acts.
- 38 (4) Permit violations.
- 39 (5) Contractual indemnity agreements between purchasers and  
40 sellers of real property.



1 (b) This chapter shall not apply as a defense or immunity to any  
2 action taken by a redevelopment agency pursuant to Article 12.5  
3 (commencing with Section 33459) of Chapter 4 of Part 1 of  
4 Division 24.

5 (c) This chapter does not limit the authority of an agency to  
6 conduct a response action it determines is necessary to protect  
7 public health and safety or the environment pursuant to an  
8 applicable statute.

9 (d) This chapter does not preclude a state or local agency that  
10 is taking property by eminent domain, negotiating to acquire  
11 property in lieu of taking it by eminent domain, or considering the  
12 taking of property through the exercise of eminent domain  
13 authority, from evaluating the impact on the value of the property  
14 resulting from a release or threatened release of any hazardous  
15 material, from incorporating that evaluation into any offer of  
16 compensation for that property, or from presenting that evaluation  
17 at a trial or other proceeding to establish the value of the property.

18 (e) This chapter does not do either of the following:

19 (1) Limit a defense to liability that may be available to a person  
20 under any other provision of law.

21 (2) Impose any new obligation on an owner of real property  
22 other than those specifically assumed by the owner under an  
23 agreement entered into pursuant to Chapter 6.84 (commencing  
24 with Section 25395.92).

25 25395.85. (a) On or before January 1, 2005, the California  
26 Environmental Protection Agency shall develop a form that, upon  
27 approval of a response plan, shall be completed and submitted to  
28 the agency by a bona fide purchaser or innocent landowner who  
29 qualifies for immunity pursuant to this chapter. The form shall  
30 include, but is not required to be limited to, all of the following  
31 information:

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

33 (2) A description of the type and extent of hazardous materials  
34 releases and threatened releases identified for response at the site  
35 pursuant to a response plan.

36 (3) An estimate of the cost of the response action to be  
37 undertaken pursuant to a response plan.

38 (4) A description of the present and proposed use of the site,  
39 including current and potential future zoning and land use  
40 designations.



1 (5) A description of any land use restrictions, covenants, deed  
2 restrictions or other conditions imposed on the site owned by a  
3 party who qualifies for immunity pursuant to this chapter.

4 (6) A description and the concentrations of those hazardous  
5 materials or discharges specified in paragraph (2) that will not be  
6 remediated pursuant to the response plan.

7 (b) On or before January 1, 2006, and annually thereafter, the  
8 California Environmental Protection Agency shall, to the extent  
9 that resources are available, compile the information submitted  
10 pursuant to this section and post a report of its findings on its Web  
11 site. The posted report shall compare the data collected pursuant  
12 to this section with information collected prior to January 1, 2005,  
13 to the extent that this information is available.

14 (c) The report posted pursuant to subdivision (b) shall, to the  
15 extent practicable, compare the number and quality of response  
16 actions completed pursuant to this chapter with similar response  
17 actions completed prior to its enactment, and shall evaluate the  
18 impact of the benefit of this chapter's immunities on the  
19 acquisition and development of properties.

20 25395.86. This chapter shall remain in effect only until  
21 January 1, 2010, and as of that date is repealed, unless a later  
22 enacted statute, that is enacted before January 1, 2010, deletes or  
23 extends that date.

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

26  
27 CHAPTER 6.83. IMMUNITY CONTINUATION  
28

29 25395.91. (a) A person who, before January 1, 2010,  
30 qualifies for immunity pursuant to Chapter 6.82 (commencing  
31 with Section 25395.60), as that chapter read on December 31,  
32 2009, shall continue to have that immunity on and after January 1,  
33 2010, if the person continues to be in compliance with the  
34 requirements of former Chapter, 6.82 (commencing with Section  
35 25395.60) including, but not limited to, compliance with all  
36 response plans approved pursuant to Chapter 6.84 (commencing  
37 with Section 25395.92), and compliance with all other applicable  
38 laws.

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

1 SEC. 3. Chapter 6.84 (commencing with Section 25395.92)  
2 is added to Division 20 of the Health and Safety Code, to read:

3  
4 CHAPTER 6.84. STREAMLINED SITE INVESTIGATION AND PROCESS

5  
6 Article 1. Definitions

7  
8 25395.92. (a) Except as otherwise provided in this chapter,  
9 the definitions in Chapter 6.82 (commencing with Section  
10 25395.60) apply to the terms used in this chapter.

11 (b) “Action level” has the same meaning as defined in  
12 paragraph (1) of subdivision (c) of Section 116455.

13 (c) “Host jurisdiction” means the city or county in which the  
14 site is located and which has the authority to take action regarding  
15 the site pursuant to Title 7 (commencing with Section 65000) of  
16 the Government Code.

17 (d) (1) “Significant threat to the environment” means that an  
18 existing source of hazardous materials at a site is causing any of  
19 the following:

20 (A) A significant release of hazardous materials to a hydrologic  
21 unit or groundwater basin that has been designated by a regional  
22 board as having a beneficial use of municipal or domestic use.

23 (B) Imminent harm to exposed, biologic, nonhuman receptors.

24 (C) A discharge into surface water that is above the applicable  
25 *public health goal, maximum contaminant level, or* action level.

26 (2) The existence of a significant threat to human health shall  
27 be determined pursuant to the methods specified in subdivisions  
28 (b), (c), and (d) of Section 25356.1.5.

29 (e) “Unreasonable risk” at a site means that a condition at a site  
30 poses a significant threat to human health or a significant threat to  
31 the environment.

32  
33 Article 2. Site Assessment and Response Plan Agreements

34  
35 25395.93. (a) Only a bona fide purchaser, innocent  
36 landowner, or contiguous property owner who meets the  
37 requirements specified in Section 25395.79.1 is eligible to enter  
38 into an agreement pursuant to this chapter.

39 (b) An agreement entered under this chapter is not subject to  
40 Chapter 2 (commencing with Section 10290) of Part 2 of Division



1 2 of the Public Contract Code, including, but not limited to,  
2 Section 10295 of the Public Contract Code.

3 25395.94. (a) A bona fide purchaser, innocent landowner, or  
4 contiguous property owner who seeks to qualify for the immunity  
5 provided by Chapter 6.82 (commencing with Section 25395.60)  
6 shall enter into an agreement with an agency pursuant to this  
7 chapter that includes the performance of a site assessment, and, if  
8 the agency determines that a response plan is necessary pursuant  
9 to Section 25395.98, the preparation and implementation of a  
10 response plan.

11 (b) Before finalizing the agreement, the requested agency shall  
12 notify other appropriate agencies, including the host jurisdiction.

13 (c) A person who enters into an agreement with an agency  
14 pursuant to this section shall submit sufficient information to the  
15 agency for the agency to determine whether the site is an eligible  
16 site, whether the person meets the conditions to qualify as a bona  
17 fide purchaser, innocent landowner, or contiguous property owner  
18 pursuant to Chapter 6.82 (commencing with Section 25395.60),  
19 and to prepare an agreement pursuant to this section.

20 (d) (1) A person who enters into an agreement pursuant to this  
21 section shall agree to take all actions that are necessary to prevent  
22 or eliminate an unreasonable risk at the site. These actions may  
23 include actions necessary to prevent an unreasonable risk before  
24 the approval of a response plan.

25 (2) In determining whether there is unreasonable risk at a site  
26 for purposes of this subdivision, the agency shall take into account  
27 the intended use of the property, in accordance with any changed  
28 use of the property, as specified in subdivision (d) of Section  
29 25395.98.

30 25395.95. (a) A person may withdraw from an agreement  
31 entered into pursuant to this chapter by providing a 30-day written  
32 notice to the agency and doing both of the following:

33 (1) Reimbursing the agency for all costs incurred by the agency  
34 pursuant to the agreement.

35 (2) Demonstrating to the satisfaction of the agency, that  
36 conditions at the site to which the agreement applies do not pose  
37 an endangerment to public health and safety or the environment.  
38 If the agency determines that conditions at the site pose an  
39 endangerment to public health, safety or the environment, this  
40 chapter does not prevent the agency from exercising its authority



1 to take appropriate response actions or to cause the person or  
2 persons responsible for the endangerment to take appropriate  
3 response actions.

4 (b) A person who enters into an agreement with an agency  
5 pursuant to this chapter shall reimburse the agency for all agency  
6 costs, including, but not limited to, costs incurred while reviewing  
7 a site assessment plan or a response plan or overseeing the  
8 implementation of a site assessment or response plan by the person  
9 pursuant to this chapter, except that the department's costs shall be  
10 reimbursed pursuant to Chapter 6.66 (commencing with Section  
11 25269) and shall be recoverable pursuant to Section 25360.

12 (c) The entry into an agreement pursuant to this chapter shall  
13 not constitute an admission of fact or liability or conclusion of law  
14 for any purpose or proceeding and no person who enters into an  
15 agreement under this chapter shall be deemed liable under any  
16 other provision of law solely by reason of entering into that  
17 agreement.

18 25395.96. (a) (1) A person who enters into an agreement  
19 pursuant to this chapter with an agency for the oversight of a site  
20 assessment shall submit a site assessment plan to the agency to  
21 conduct a site assessment of the site in accordance with the  
22 requirements of this section.

23 (2) If the agency requires a health risk assessment as part of that  
24 agreement, the health assessment shall be prepared in accordance  
25 with subdivisions (b), (c), and (d) of Section 25356.1.5.

26 (b) The site assessment plan shall provide for the evaluation of  
27 all of the following:

28 (1) Whether a release of hazardous materials has occurred at  
29 the site, a threat of a release of hazardous materials exists at the site,  
30 or there is a threat of a release of hazardous materials from the site.

31 (2) If a release or threatened release of hazardous materials  
32 exists at the site or there is a release or a threatened release from  
33 the site, whether the release or threatened release poses an  
34 unreasonable risk to public health and safety or the environment.

35 (c) The site assessment plan shall also include all of the  
36 following:

37 (1) Adequate characterization of the hazardous materials  
38 released or threatened to be released at, or from, the site and  
39 documentation of the findings.



1 (2) Reasonably available information about the site, including,  
2 where appropriate, a risk assessment that evaluates the risk posed  
3 by any hazardous materials released or threatened to be released  
4 at, or from, the site, and information regarding reasonably  
5 anticipated foreseeable uses of the site based on current and  
6 projected land use and zoning designations.

7 (3) If the release has impacted groundwater, reasonable  
8 characterization of underlying groundwater, including present and  
9 anticipated beneficial uses of that water.

10 (d) A person shall submit the site assessment plan to the agency  
11 for review and approval.

12 (e) The agency shall evaluate the adequacy of the site  
13 assessment plan to ensure that it contains all necessary  
14 information.

15 (f) After evaluating the site assessment plan, if the agency finds  
16 that the site assessment plan is adequate, the agency shall approve  
17 the site assessment plan and provide notification to appropriate  
18 persons, *including notification of any public water system that*  
19 *relies on impacted groundwater for public drinking water*  
20 *purposes.*

21 25395.97. (a) After implementation of the site assessment  
22 plan, the person shall submit a report of the findings made pursuant  
23 to the plan to the agency. Based upon a review of this information,  
24 the agency shall determine whether a response action is necessary  
25 to address any unreasonable risk from hazardous materials at the  
26 site.

27 (b) If the agency determines, that there is no unreasonable risk  
28 at the site and that there are no hazardous materials at the site at  
29 levels that are not suitable for unrestricted use of the site, the  
30 agency shall make a finding that no further action is necessary at  
31 the site. On or before 15 days after the date when the agency  
32 determines that no further action is necessary, the agency shall  
33 state in writing that this determination constitutes “appropriate  
34 care” for purposes of Section 25395.67. The agency shall provide  
35 the host jurisdiction with this determination.

36 (c) If the agency determines that there are hazardous materials  
37 at the site at levels that are not suitable for unrestricted use, but that  
38 are suitable for the reasonably anticipated foreseeable use of the  
39 site based on current and projected land use and zoning  
40 designations, the agency shall find that no further action is



1 necessary at the site except, that a land use control that imposes  
2 appropriate restrictions pursuant to Section 25395.100 shall be  
3 executed and recorded. On or before 15 days after the date when  
4 the agency determines that no further action is necessary, the  
5 agency shall state in writing that this determination constitutes  
6 “appropriate care” for purposes of Section 25395.67. The agency  
7 shall provide the host jurisdiction with this determination.

8 25395.98. (a) If, upon review of the site assessment prepared  
9 pursuant to this chapter, the agency determines that a response  
10 action is necessary to prevent, control, or eliminate an  
11 unreasonable risk, the bona fide purchaser, innocent landowner, or  
12 contiguous property owner shall submit a response plan to the  
13 agency to conduct a response action at the site, in conformance  
14 with the agreement entered into pursuant to Section 25395.94. The  
15 response plan shall include all of the following:

16 (1) (A) An opportunity for the public, other agencies, and the  
17 host jurisdiction to participate in decisions regarding the response  
18 action, taking into consideration of the nature of the community  
19 interest.

20 (B) The methods for public participation proposed in the  
21 response plan may include, but are not limited to, the use of  
22 factsheets, public notices, direct notification of interested parties,  
23 public meetings, and an opportunity to comment on the proposed  
24 response plan prior to agency approval.

25 (C) To the extent possible, the agency shall coordinate its  
26 public participation activities with those undertaken by the host  
27 jurisdiction and other agencies associated with the development of  
28 the property, to avoid duplication to the extent feasible.

29 (2) Identification of the release or threatened release that is the  
30 subject of the response plan and documentation that the plan is  
31 based on an adequate characterization of the site.

32 (3) An identification of the response plan objectives and the  
33 proposed remedy, and an identification of the reasonably  
34 anticipated future land uses of the site and of the current and  
35 projected land use and zoning designations. This identification  
36 shall include confirmation by the host jurisdiction that the  
37 anticipated future land uses and current and projected land uses  
38 and zoning designations are accurate.



1 (4) A description of activities that will be implemented to  
2 control any endangerment that may occur during the response  
3 action at the site.

4 (5) A description of any land use control that is part of the  
5 response action.

6 (6) A description of wastes other than hazardous materials at  
7 the site and how they will be managed in conjunction with the  
8 response action.

9 (7) Provisions for the removal of containment or storage  
10 vessels and other sources of contamination, including soils and  
11 free product, that cause an unreasonable risk.

12 (8) Any other information that the agency determines is  
13 necessary.

14 (b) The agency shall evaluate the adequacy of the plan  
15 submitted pursuant to subdivision (a) and shall approve the plan  
16 if the agency makes all of the following findings:

17 (1) The plan contains the information required by subdivision  
18 (a).

19 (2) When implemented, the plan will place the site in condition  
20 that allows it to be used for its reasonably anticipated future land  
21 use without unreasonable risk to human health and safety and the  
22 environment.

23 (3) The plan addresses any public comments.

24 (4) If applicable, the plan provides for long-term operation and  
25 maintenance, including land use and engineering controls, that are  
26 part of the remedy contained in the response plan.

27 (c) (1) On or before 60 days after the date an agency receives  
28 a response plan, the agency shall make a written determination that  
29 proper completion of the response plan constitutes “appropriate  
30 care” for purposes of subdivision (a) of Section 25395.67.

31 (2) Upon approval of the response plan by the agency, the  
32 agency shall notify all appropriate persons, including the host  
33 jurisdiction.

34 (d) If the use of the property changes, after a response plan is  
35 approved, to a use that requires a higher level of protection, the  
36 agency may require the preparation and implementation of a new  
37 response plan pursuant to this chapter.

38 (e) Before the owner of a site makes any change in use of a site  
39 inconsistent with any land use control recorded for the site, the



1 owner shall notify the agency in accordance with the land use  
2 control.

3 25395.99. (a) Except as provided in Section 25395.100, the  
4 agency shall issue a certificate of completion upon determining  
5 that all response actions have been satisfactorily completed in  
6 accordance with an approved response plan.

7 (b) Notwithstanding subdivision (a), the agency shall issue a  
8 certificate of completion when a response action plan includes  
9 long-term obligations that have not been completed, including  
10 operation and maintenance requirements or monitoring, only if the  
11 agency makes all of the following determinations:

12 (1) All response actions, other than long-term operation and  
13 maintenance at the site, have been completed.

14 (2) The person has submitted an adequate long-term operation  
15 and maintenance plan and has demonstrated initial compliance.

16 (c) If the agency determines that long-term operation and  
17 maintenance is required at a site, the agency may, as a condition  
18 of issuing a certificate of completion, enter into an operation and  
19 maintenance agreement with the person that governs the long-term  
20 operation and maintenance activities and that provides for  
21 adequate financial assurance.

22 25395.99.1. A person who acquires a property from an  
23 innocent landowner, bona fide purchaser, or contiguous property  
24 owner, and the property was previously issued a certificate of  
25 completion or no further action determination, may qualify as a  
26 bona fide prospective purchaser or contiguous property owner by  
27 demonstrating to the agency that the person meets all of the  
28 qualifying conditions of Section 25395.79.1.

29 25395.100. (a) A response plan may require the use of a land  
30 use control that imposes appropriate conditions, restrictions, and  
31 obligations on land use or activities, if, after completion of the  
32 removal and remedial actions specified in the response plan,  
33 hazardous materials remain at the site at a level that is not suitable  
34 for the unrestricted use of the site.

35 (b) Except as provided in subdivision (c), if the agency  
36 approves a response plan that requires the use of a land use control,  
37 the land use control shall be executed by the landowner and  
38 recorded by the landowner in the office of the county recorder in  
39 each county in which all, or a portion of, the land is located within  
40 10 days of the date of execution.



1 (c) An agency shall not issue a certificate of completion to a  
2 person who submits a response plan that is approved by the agency  
3 and that requires the use of a land use control, until the agency  
4 receives a certified copy of the recorded land use control. If the site  
5 that requires the land use control does not have an owner, or the  
6 agency determines the owner is incapable of executing a land use  
7 control in accordance with this section, the agency may record in  
8 the county records a “Notice of Land Use Restriction” that has the  
9 same effect as any other land use control executed pursuant to this  
10 section, and that is subject to the variance and termination  
11 procedures specified in subdivision (f).

12 (d) Notwithstanding any other provision of law, a land use  
13 control that is executed pursuant to this section and that is recorded  
14 so as to provide constructive notice shall run with the land from the  
15 date of recordation, is binding upon all of the owners of the land,  
16 and their heirs, successors and assignees and the agents,  
17 employees, or lessees of the owners, heirs, successors and  
18 assignees, and is enforceable pursuant to to Article 8 (commencing  
19 with Section 25180) of Chapter 6.5.

20 (e) Notwithstanding ~~an~~ any other provision of law, a land use  
21 control executed pursuant to this section is subject to Section  
22 57012.

23 (f) A land use control imposed pursuant to this section is  
24 subject to the variance and removal procedures specified in  
25 Sections 25233 and 25234.

26 25395.101. ~~(a)~~—To the extent consistent with the Resource  
27 Conservation and Recovery Act of 1976, as amended, (42 U.S.C.  
28 Sec. 6901 et seq.), the department may exclude any portion of a  
29 response action conducted entirely onsite from the hazardous  
30 waste facilities permit requirements of Sections 25200.3, 25201,  
31 and 25201.6, if both of the following apply:

32 ~~(1)~~

33 (a) The response action is carried out pursuant to an approved  
34 response plan.

35 ~~(2)~~

36 (b) The response plan specifies that the response action will be  
37 conducted in compliance with the standards, requirements,  
38 criteria, or limitations applicable to the construction, operation,  
39 and closure of the type of facility at the site and with any other



1 condition imposed by the department, as necessary to prevent an  
2 unreasonable risk to public health and safety or the environment.

3 25395.102. (a) Except as expressly provided in this chapter,  
4 this chapter does not affect the authority of an agency to issue an  
5 order or take any other action under any provision of law to protect  
6 public health and safety or the environment.

7 (b) Except as otherwise expressly provided in this chapter, this  
8 chapter does not affect the authority of the agency or any other  
9 public agency to pursue any existing legal, equitable, or  
10 administrative remedies pursuant to state or federal law.

11 (c) Except as otherwise expressly provided in this chapter,  
12 Chapter 6.8 (commencing with Section 25300) does not apply to  
13 this chapter.

