

AB 389 (Montanez)
California Land Reuse and
Revitalization Act of 2004

Lisa Babcock, State Water Resources Control Board
Dorothy Rice, Department of Toxic Substances Control
November 18, 2004

The Ca Land Reuse & Revitalization Act of 2004

- Many of the provisions initially contained in versions of SB 493, Senator Cedillo.
- Substantially amended into AB 389, Assembly Member Montanez, principal co-author Senator Cedillo, co-author Senator Sher.
- Governor Schwarzenegger signed the bill into law on September 23
- New Health & Safety Code Chapters 6.82 and Chapter 6.83



Focus of Bill

- Provides immunity from liability to qualifying property owners or purchasers of brownfields
- Incorporates process relief provisions
- Requires oversight by DTSC or RWQCB for immunities to take effect
- Explicitly addresses urban infill sites
- CA cleanup agencies to provide information (on the web) on brownfield sites

Exclusions

- The bill's site definition does not include:
 - NPL sites
 - State 'listed' sites
 - A site where the only issue is a petroleum release from an underground storage tank eligible for reimbursement from the Underground Storage Tank Cleanup Fund

Why address brownfields?

- Limit job creation, economic revitalization, and full productive use of the land
- Blight, public health & environmental impacts
- Reluctance to acquire properties due to liability
- Results in urban sprawl, decaying inner city neighborhoods
- Cleaning up sites for reuse benefits communities

Scope of Immunity

- Applicable Laws
 - Water Code
 - Health & Safety Code
 - Fish & Game Code
 - Common Law

Exceptions to Applicable Laws

- Polanco Act
- Personal Injury/Wrongful Death

How to Qualify for Liability Relief

- Conduct all appropriate inquiries on or before the date of acquisition
- Exercise appropriate care
- Cooperation, assistance and access to conduct response actions, including installation and operation and maintenance
- Complies with
 - **land use controls,**
 - **request for information and**
 - **notices and reporting requirements**

Streamlined Site Investigation and Response Plan Agreements

- Process to be followed whether DTSC or RWQCB is the oversight agency
- Response action is required if site investigation shows 'unreasonable risk'

Public Participation

- PP activities for response actions include:
 - Opportunities for community, other agencies and the host jurisdiction participation in decisions
 - For RWQCB, access to documents, public hearing, action at public board meeting
 - For DTSC, public notice (in appropriate languages), access to documents, opportunity to comment, public meeting if requested.
 - Intent is for full and robust participation of affected communities

Who are Qualifying Property Owners (QPOs)?

- Bona fide purchaser
 - Acquires site after January 1, 2005
 - Releases occurred before acquisition
 - Not potentially liable or affiliated with PRP
- Innocent landowner
 - Did not cause or contribute
 - Made AAI and did not know of release
 - Government entity: eminent domain, lien
 - Inheritance or bequest

Qualifying Property Owners (QPOs) - cont'd

- Contiguous Property Owner
 - Adjacent to contaminated site, doesn't own contaminated site and demonstrates:
 - Didn't cause, contribute or consent
 - Made AAI at time of purchase and didn't know and had no reason to know
 - Not potentially liable, and no affiliation with family, no contractual, or financial relationship

Immunity Protection

- Attaches at the time of entering into an agreement with the cleanup agency (DTSC/RWQCB)
- QPO not liable under any applicable statute for a claim made by any person for response costs or other damages associated with a release
- except:
 - actions required by agency
 - pursuant to the site assessment or response plan approved by Article 6

Restricts Agency Action

- From requiring QPO to take response actions except as required in approved response plan
 - Unless there is an endangerment AND
 - Agency first compels other PRPs or no viable PRP exist

Re-openers

- No immunity protection if
 - Material unapproved deviation from agreement
 - Termination of the agreement before NFA or certificate of completion
 - Commit fraud, intentional non-disclosure or misrepresentation to an agency

Ongoing Immunity Protection After Agreement

- Discovery of unreasonable risk before NFA or Site Certification
 - Resolve with agency as part of response action
- Discovery of unreasonable risk after NFA or Site Certification
 - Protected party did not cause or contribute
 - Resolve with agency as part of subsequent response plan

Other

- Response action for petroleum caused by UST use UST funds as appropriate
- Endangerment to public health or safety - person entering into agreement pays or takes on response action

Timeframes

- Effective January 1, 2005
- March 31, 2005 - Cal/EPA to develop information form for owners to submit
- July 1, 2005 – annual report to legislature that compares brownfield response action programs
- January 1, 2006 – agencies to expand web sites *AND* upgrade DTSC's database system
- January 1, 2010 – Legislation sunsets

Cal/EPA Ombudsperson

- Requires Cal/EPA Secretary to designate a brownfields ombudsperson to:
 - Coordinate state brownfields activities
 - Work with other local, state and federal agencies
 - Represent Cal/EPA on brownfields issues
 - Investigate complaints; resolve disputes
 - Advocate consideration of environmental justice issues at brownfields

Next Steps

- Statute effective January 1, 2005
- Agencies will seek input of stakeholders on program implementation
- Agencies developing model agreements & implementation plans to promote use
- Will provide guidance and training workshops in the new year