

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

April 5, 2005

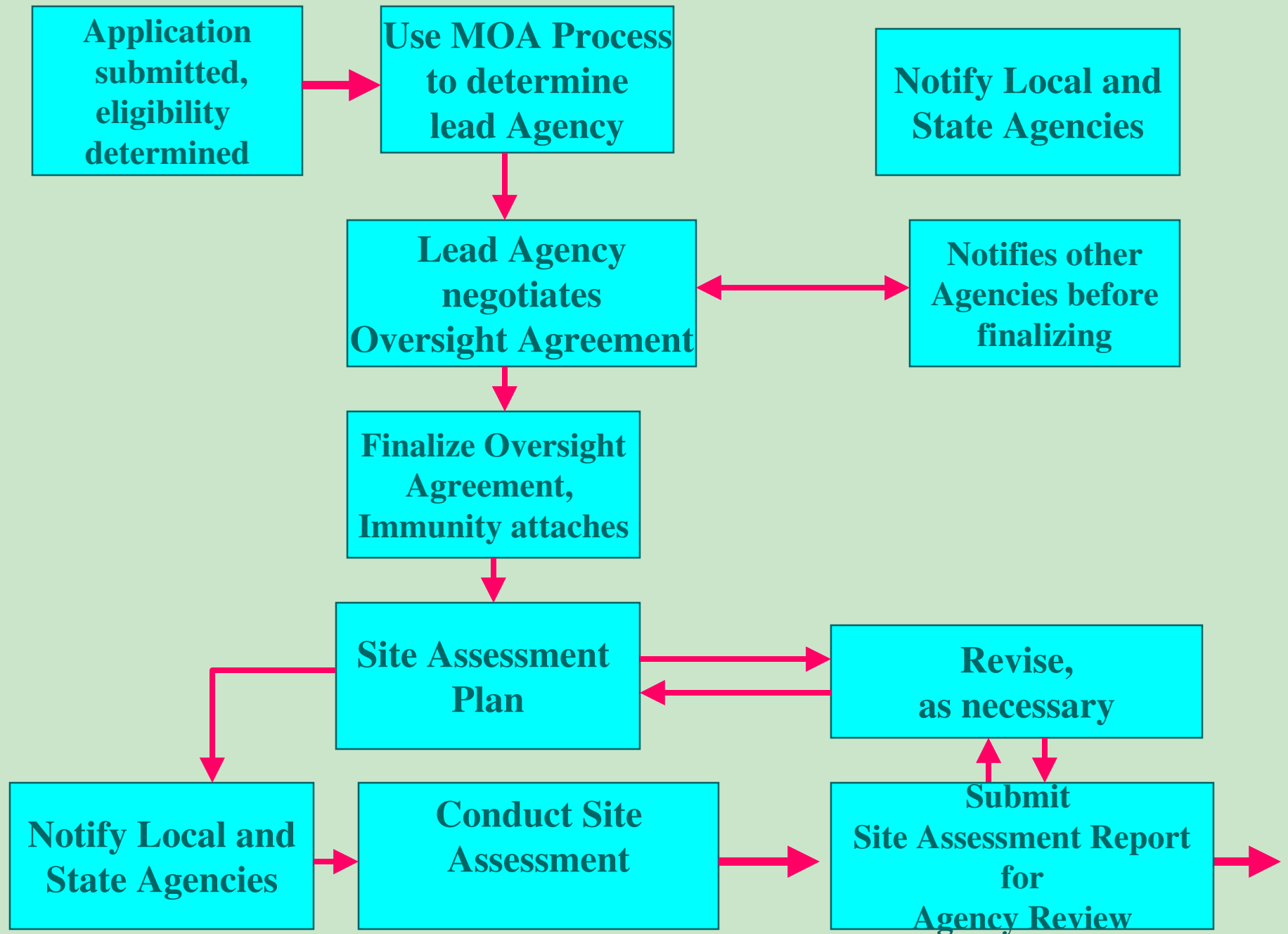
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Today's Presentation - Outline

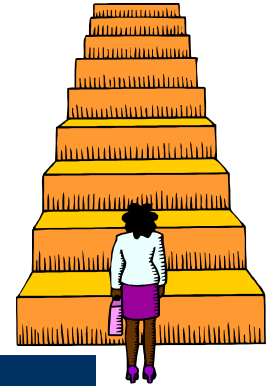
CLRRRA 101 – An overview of the new law, its benefits, the process for obtaining immunity

- Initial application (eligibility thresholds/lead agency determination process)
- Entering into an agreement (scope of immunity)
 - Conducting site assessments and response actions
 - No Further Action Determinations, Site Certification
 - Reopeners/long-term obligations
 - Miscellaneous provisions
 - Questions (*at the end & along the way!*)





The first step! An application



- Submit an application to DTSC/ Water Board
- Application used to determine eligibility and to select lead state oversight agency
- Oversight agency based on MOA criteria
- Documents available at www.CalEPA.ca.gov

Where to apply?

- Cal/EPA, DTSC, Water Board MOA will be used for CLRRRA lead oversight agency determinations
- Contact any DTSC or Water Board office
- Contacts for each region on fact sheet



The fact sheet is a vertical document with a teal header and footer. It contains logos for the Department of Toxic Substances Control and the State Water Boards. The main text is in black on a white background, detailing the act's purpose, eligibility criteria, and highlights.

California Land Reuse and Revitalization Act of 2004

The major component of this act provides qualified innocent landowners, bona fide purchasers or contiguous property owners with immunity from liability for certain hazardous materials response costs or other damages.

Eligibility Criteria:

In order to participate, the property and owner must meet all the following criteria:

- The owner can not be responsible for the contamination;
- The property is located in an *urban infill* area - a vacant or underutilized property in a populated area;
- The property is not a state or federal listed superfund site; and
- The property is not an underground storage tank (UST) site impacted by petroleum.

Some of the highlights of this act are:

- Participants agree to assess and cleanup the property as necessary.
- Participants seeking to qualify for immunity must enter an agreement with an oversight agency.
- Immunities begin at the time an agreement is signed.
- Response actions must be as protective of public health, safety, and the environment as actions required under Health and Safety Code, Division 20, Chapter 6.8 and Division 7 of the Water Code.
- There are specific public participation requirements.
- Future property owners may also qualify for immunity provided they meet all the qualifying conditions and they comply with the terms of the Agreement.
- Chapter 6.82 will be repealed on January 1, 2010, but any immunities will continue after that date.
- A bona fide purchaser may consult with an oversight agency to facilitate the purchaser's decision to apply to the program.

Statutory Authority:
CA Health and Safety Code, Division 20, Chapter 6.82 (Sections 25395.00-25395.109) and Chapter 6.83 (Sections 25395.110-25395.119)

California Land Reuse and Revitalization Act effective January 1, 2005

Contacts:
See Next Page

What properties are eligible?

*'...**urban infill area** for which expansion, reuse or redevelopment may be complicated by real or perceived hazardous substances'*

Infill area – vacant or underutilized, in an urban area that has been previously developed

Urban area – incorporated city, or an unincorporated area surrounded by cities, with a population of 100,000







What properties are not eligible?

- State 'listed' sites (CalSites) – about 450 sites statewide
- NPL sites (about 100 sites in CA)
- A site where the sole issue is a petroleum release from an underground storage tank eligible for reimbursement from the Underground Storage Tank Cleanup Fund
- Sites that are not in an 'urban infill area'



Who Can Apply?

- Bona fide purchaser
- Innocent landowner
- Contiguous Property Owner

Bona Fide Purchasers

- Acquires ownership of site after January 1, 2005
- Releases occurred before acquisition

Innocent Land Owners

- Owns a site and did not cause or contribute to any release
- Inquired about the site at time of purchase and didn't know and had no reason to know of any release

Contiguous Property Owners

- Owns a site that is adjacent to a contaminated site
- Doesn't own the contaminated site
- **Didn't know the site was contaminated at time of purchase**

Conditions all parties must meet:

- Conducted “all appropriate inquiry”
- Did not cause or contribute to release
- Not potentially liable or affiliated with any liable party
- Must conduct “appropriate care”
- Cooperation & access
- Comply with land use controls

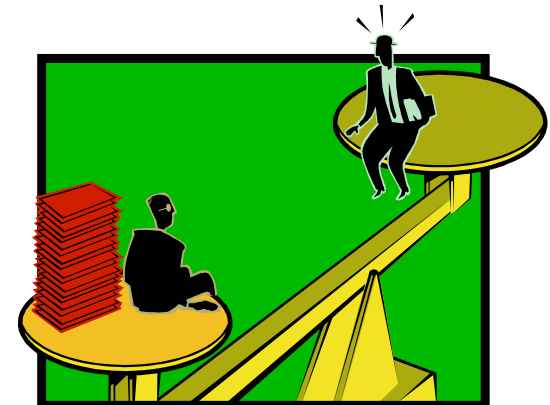
All Appropriate Inquiry



- Information submitted with application to demonstrate satisfaction with this requirement
- Required at the time of property acquisition
- Compliance with ASTM requirements until USEPA adopts specific standards and practices

Lead Oversight Agency

- Agency will be DTSC if primary concern at property is risk to public health
- Agency will be a Water Board if primary concern at the property is threat to waters of the state (groundwater and surface water)
- Many other factors to weigh in the selection



Entering into an Agreement

- Only with eligible parties for eligible sites
- Party agrees to do a site assessment, and a response action, if one is needed
- Either party can withdraw

More on the Agreement

- Cleanup will meet cleanup standards of Chapter 6.8 and the Water Code
- Party agrees to pay all state oversight cost



Scope of Immunity



- Immunity from liability for claims made by any person for response costs or other damages associated with a release
- Immunity extends to a number of state statutory laws and potentially to common laws that impose liability for hazardous materials releases

Laws Covered by Immunity

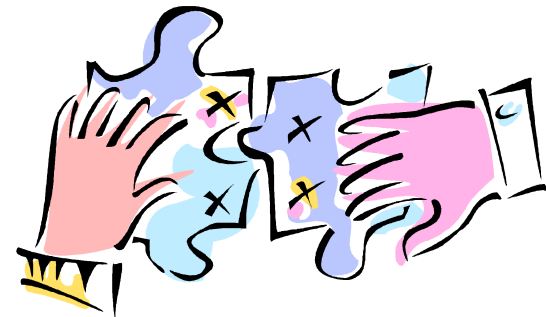
- Specified state statutory provisions within:
 - Water Code
 - Health and Safety Code
 - Fish and Game Code
 - Civil Code; Code of Civil Procedure
- Potentially state common laws regarding contribution, nuisance, trespass and equitable indemnity

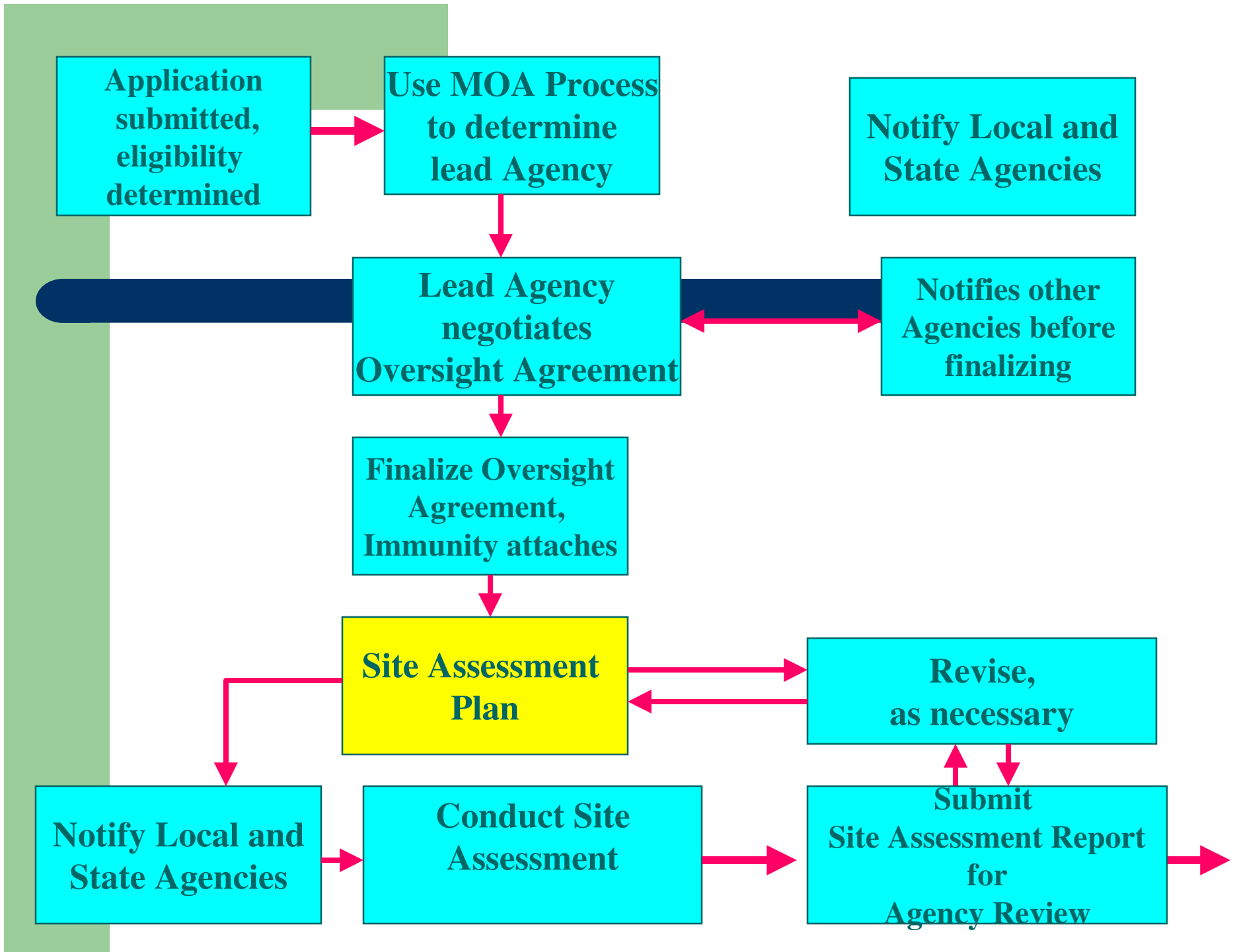
Laws Not Covered By Immunity

- Chapter 6.5, Health & Safety Code
- Polanco Act
- Liability for Personal Injury or Wrongful Death

Immunity from Liability

Immunity attaches when you enter into an agreement with the oversight agency





Site Assessment Plan

- Site Assessment Plan:
 - Evaluates hazardous materials releases
 - Evaluates whether response action required
- Agency may require a risk assessment
- Agency approves plan and notifies host jurisdiction, public water system, etc.

Site Assessment Implementation

- Implement the Site Assessment Plan
- Prepare a Site Assessment Report

Site Assessment Report

- Submit Site Assessment Report
- Identify reasonably anticipated land use
- Assess whether a response action is needed to address hazardous materials at the site

“Unreasonable Risk”

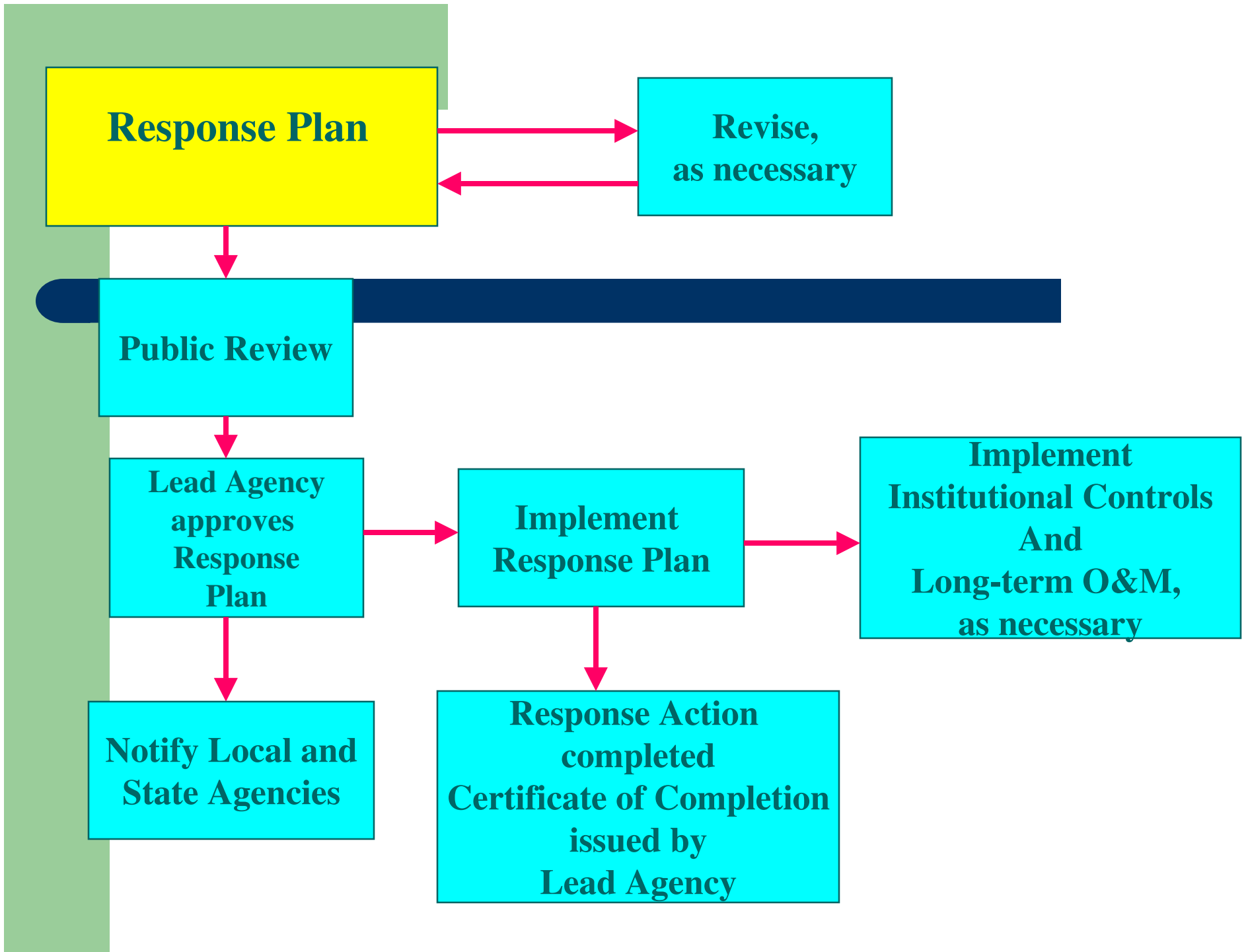
The threshold for cleanup action is a condition that requires a response action pursuant to:

Chapter 6.8, Health & Safety Code, or
Division 7 of the Water Code

Possible Lead Agency Findings

The Site Assessment Report can result in:

- Agency finding of No Further Action
- Agency finding of No Further Action with land use controls
- Response action required to address 'unreasonable risk' at site



Response Plan Requirements

- Documents adequate site characterization
- Identifies response plan objectives & the proposed remedy
- Public participation
- Actions to control “*endangerment*” during cleanup
- Cleanup must be as protective as actions required under Chapter 6.8 and Division 7 of the Water Code

Approval and Implementation of Response Plan

- Response Plan approved if:
 - Contains all required information
 - Will safely allow anticipated future land use
 - Addresses all public comments
 - Provides for long term O&M or Land Use Controls as necessary
- Agency approves Plan and notifies appropriate persons
- Party implements approved Response Plan

Certificate of Completion

- Implementation of an approved Response Plan with Agency oversight and approval
- Full Response Plan implementation constitutes “appropriate care”
- Certificate of Completion
- Long-term O&M Agreement as necessary

Public Participation Requirements

Opportunities for the community, other agencies and host jurisdiction to participate in decisions regarding the Response Plan include:

- Access to documents/opportunity to comment
- Public meetings
- Public Notice and Fact sheets

What about changes in planned use of property?

- Additional action may be required if proposed use changes
- Can retain immunity if there is continued compliance with all Agency requirements for appropriate care at the site

What about new discoveries?

- New release *during* Response Plan implementation:
 - can retain immunity if didn't cause the release *and* addresses it to agency satisfaction
- New release discovered *after* site Certification:
 - can obtain immunity if didn't cause *and* address to agency satisfaction

How can immunity be lost?

- Non-compliance with the Agreement or an approved plan
- An agreement is terminated before an NFA or certificate of completion is issued
- Fraud, intentional non-disclosure, or misrepresentation to an agency
- New discovery of unreasonable risk, **UNLESS** resolved to the satisfaction of the agency
- Failure to provide Appropriate Care

Sunset Clause



- The CLRRRA provisions sunset on January 1, 2010
- Any immunities granted prior to that date will continue

Other Tools for Liability Relief

A number of state and federal laws may provide liability relief:

- Site Designation Statute
- Polanco Act
- Federal Brownfields Act 2002
- Prospective Purchaser Agreements

Differences

These tools are different with respect to:

- Eligible persons or properties
- Scope of liability exclusion/immunity
- Response Actions
- Re-openers

Questions ??

