

USC Law School Institute
LACBA Benjamin S. Crocker Symposium on
Real Estate Law and Business 2004

**Los Angeles Regional Water Board
on Brownfields Activities
April 22, 2004**

Definition - Brownfields sites

- **Abandoned, idled or underused industrial and commercial facilities or properties where expansion or redevelopment is complicated by real or perceived environmental contamination**

Implementation of Brownfield Programs

– Goals:

- Cleanup contaminated sites as quickly as possible
- Protection of groundwater resources, safeguard public health, and promote environmental justice,
- Streamline the site assessment, cleanup, monitoring, and closure requirements/procedures,
- Revitalize the economy, job creation, and tax revenue generated.

Water Board Responsibilities

- **Water Boards make decisions regarding cleanup and abatement goals and objectives for the protection of water quality and the beneficial uses of waters of the state within each Region.**
- **Factor in Environmental Justice**
 - “fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies.”
 - Public policies are based on mutual respect and justice for all people,
 - Making sure that there is equal protection from the exposure of toxic substances,
 - Require polluters to be held responsible, and
 - Access by the community in the planning and development stages of projects.

Decision Criteria

- **The basis for Regional Water Board decisions regarding investigation, and cleanup and abatement includes:**
 - (1) site-specific characteristics,
 - (2) applicable state and federal statutes and regulations,
 - (3) applicable water quality control plans adopted by the State Water Board and Regional Water Boards, including beneficial uses, water quality objectives, and implementation plans,
 - (4) State Water Board and Regional Water Board policies, and
 - (5) relevant standards, criteria, and advisories adopted by federal and other state agencies.

Cleanups must conform to well established policies

- **Porter - Cologne Water Quality Control Act (California Water Code)**
- **Los Angeles Region -Water Quality Control Plan (Basin Plan)**
- **Environmental Protection:**
 - **Resolution No. 68-16 Anti-degradation Policy**
 - **Resolution No. 88-63 Sources of Drinking Water Policy**
 - **Resolution No. 92-49 Policies and Procedures for Investigation and Cleanup and Abatement of discharges Under CWC 13304**

Relevant Existing Legislation

- **AB 3193 (Polanco) - Redevelopment Act**
 - Enacted in 1990
 - provides redevelopment agencies and other eligible parties with immunity from state and local enforcement actions if certain conditions are met
 - promotes cleanups where responsible party is reluctant or cannot pursue cleanup
 - being used effectively
- **AB 2436 (Frommer) - Deed Restrictions**
 - if property not cleaned up for unrestricted land use (residential) then a deed restriction is required

California Land Environmental Restoration and Reuse Act SB 32

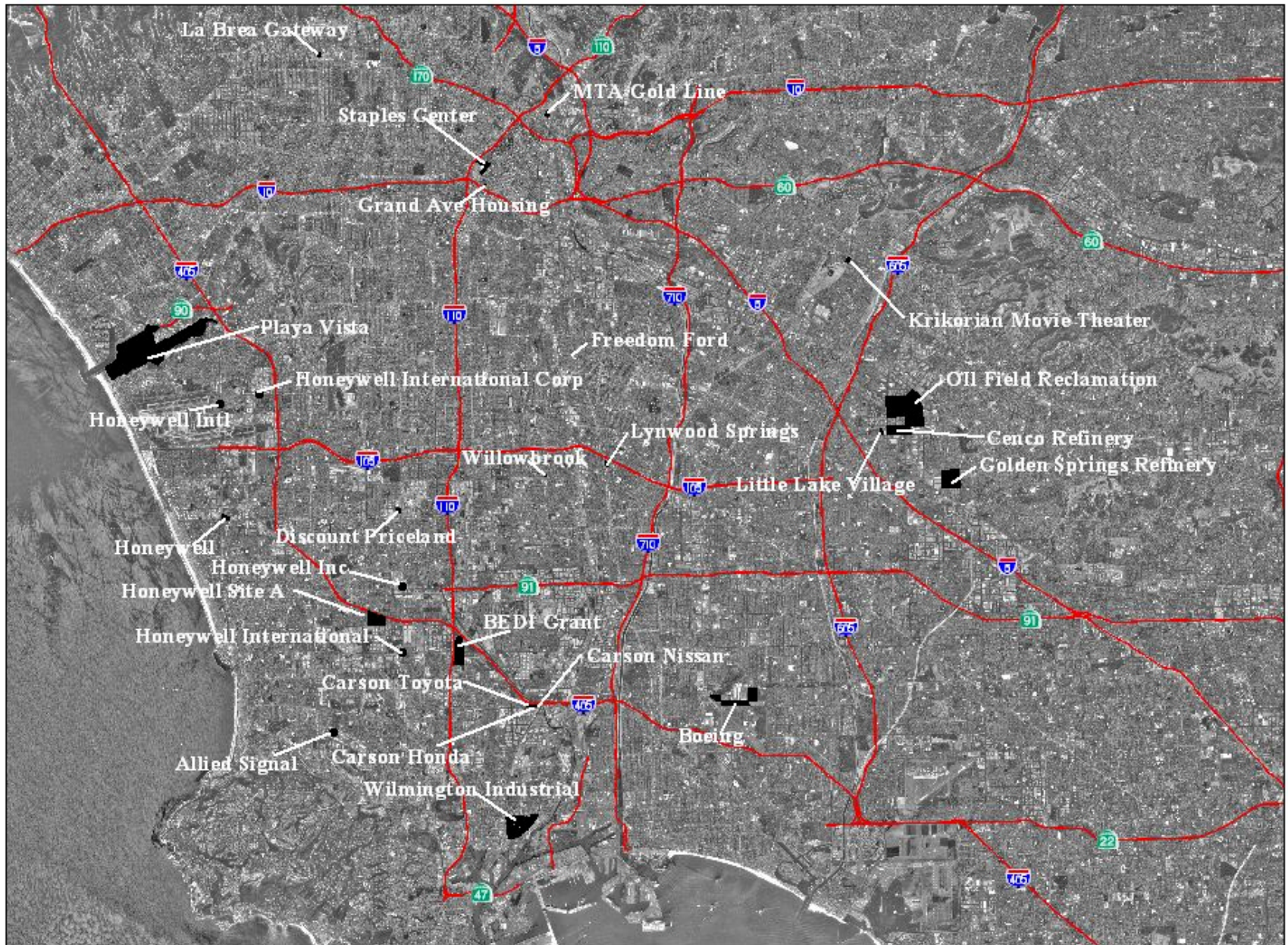
- SB 32 requires “screening numbers” for specific contaminants, such as, volatile organics and metals
 - Screening number is the concentration of a contaminant used for protection of public health and safety
 - Established by OEHHA as an advisory number, or reference value, and has no regulatory effect
 - Final cleanup numbers may be lower than screening numbers
 - Draft screening numbers under review/comment
- Assess differences between Regional Board and DTSC processes
 - underway
- Criteria for selection of appropriate agency
 - underway

Brownfield Health Risk Criteria

- **Public Health Protection:**

- Required as part of our review and final closure process
- OEHHA/DTSC review and approval of human health risk assessment
 - required anytime end use is residential or if residual contamination exceeds PRGs
- Risk-based Screening Levels
 - used to determine if a site specific health risk assessment is necessary
 - USEPA Preliminary Remediation Goals (October 2002)
 - SB 32 Screening values will factored into these

Map of Current Priority LACRWQCB Brownfields Projects (May 2003)



Brownfield Summary:

- **Brownfields Projects currently handled by the Los Angeles Regional Board, Remediation Section:**
 - Estimated Total acreage that has been and/or is being remediated and redeveloped: 2,467 acres
 - Estimated Total Job Creation: 43,923
 - Estimated Total Tax Revenue Increases upon projects completion: \$34 million/year
- **Achievements:**
 - Enhanced environmental and public health protection
 - Returned sites to productive use
 - Developments benefit the revitalization of economy of the community and state

LARWQCB Remediation Section - Total Number of Cases & Staffing

<u>Program</u>	<u>No. of Cases</u>	<u>Staff</u>
● WIP	883	4
● SLIC Program	579	11
● Brownfields	77	4
● <u>DoD</u>	<u>22</u>	<u>1</u>
● Total	1,561	20

LARWQCB Remediation Section - Priority Cases

<u>Program</u>	<u>High</u>	<u>Med \ Low</u>
● Well Investigation	98	785
● SLIC	260	319
● Brownfields	56	21
● <u>DoD</u>	<u>16</u>	<u>6</u>
● Total	430	1,131

LARWQCB Remediation Section - Options for Working on Non-High Priority Cases

- Reassign priority
- Transfer Soil cases to CUPAs, LA Co. HAZMAT Unit
 - authorized by legislation to oversee soil cleanups
 - they can issue closures for soil only
- Transfer to DTSC for active oversight
- Consider for Self-Directed Approach
 - (In process review)

Program Improvements

- **A few examples**

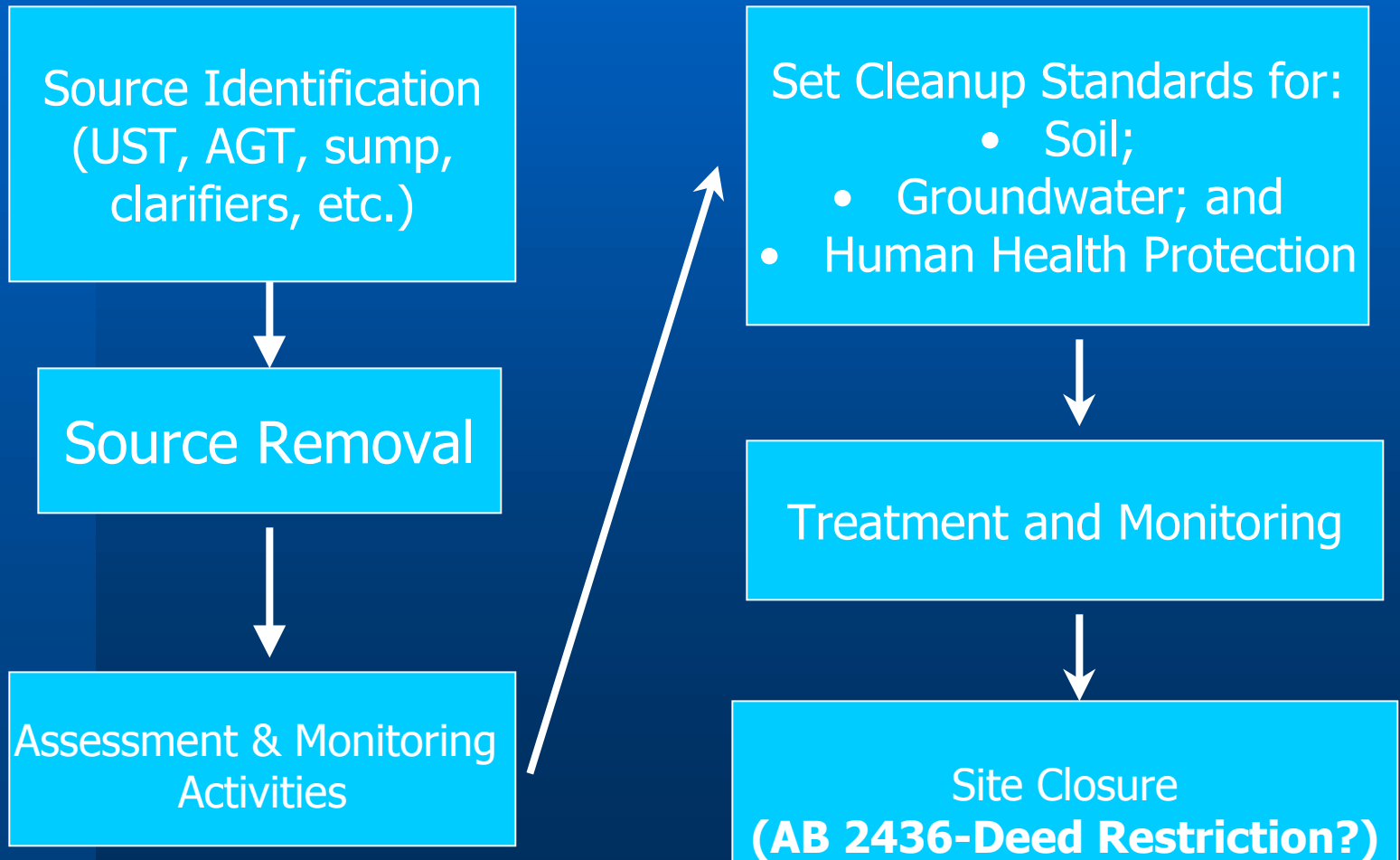
- Streamline review and approval process for corrective action and closure
- Improve cost recovery oversight and find additional resources
- Enhance customer services and outreach effort
- Use of third party toxicologists on limited basis
 - must follow OEHHA/DTSC procedures
 - no outside peer review
 - must be certified to OEHHA expectations
 - concept used at other Regional Boards

Brownfields Program Challenges

● Challenges

- Staffing
 - Qualifications, Professional certifications and licenses
- Resources
 - Fixed Oversight Cost Recovery Program Funds
- Increasing Case Load
 - New requests received each month for oversight
- Health Risk Assessment Review and Approval
- Legal Reviews
 - Required for PPA's and Deed and Land Use Restrictions
- Project Planning and Local Agency Coordination
 - Tight Brownfields Cleanup and Development schedules

Cleanup Process



Prospective Purchaser Agreements (PPAs)

- PPAs

- Releases new property purchasers from liability associated with existing contamination
- Purchaser agrees to undertake some degree of assessment and/or clean up of property
- Does not constitute an admission of any liability by the purchaser
- Site always covered by Cleanup and Abatement Order (CAO)
- PPAs are complicated and take time
- Only a few have been issued given lack of interest by many buyers to front cleanup costs

Self-Directed Process

- Concept
 - Site prioritized on basis of groundwater protection and threat
 - Low and medium priority cases would independently act to remediate site
 - Brownfield sites are a high priority (less applicable)
- RP continues with required actions without direct Regional Board oversight
- RP requests for no further action when assessment, monitoring and cleanup are completed
- RP assumes substantial risk that process is done properly