

**ASSEMBLY BILL**

**No. 1114**

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**Introduced by Assembly Member Pescetti**

February 23, 2001

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An act to add Chapter 6.15 (commencing with Section 25405) to Division 20 of the Health and Safety Code, and to amend Section 17279.4 of the Revenue and Taxation Code, relating to hazardous materials, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1114, as introduced, Pescetti. Brownfields redevelopment.

(1) Existing law, the Carpenter-Presley-Tanner Hazardous Substances Account Act, authorizes the Attorney General to recover from the liable person, as defined, the costs incurred and payable from the Hazardous Waste Control Account, the Site Remediation Account, or the Hazardous Substance Cleanup Fund for a removal or remedial action to a hazardous substances release. Existing law makes a person who fails to properly provide a removal or remedial action liable for damages in an amount equal to 3 times the amount of any costs incurred.

This bill would define terms and, among other things, would define the term "liability" as the liability of a person under any state or local statute, regulation, or ordinance that requires the person to take a removal or remedial action, pay a penalty, fine, imposition, damages, or assessment, or to forfeit property, and that liability arises from the release or threatened release of hazardous materials. The bill would provide that any person who resolves that liability in an administrative or judicially approved settlement is not liable for any claim for contribution, cost recovery, or equitable share, regarding matters

addressed in the settlement, if specified notice of the settlement is provided.

This bill would authorize the Department of Toxic Substances Control and a California regional water quality control board to enter into a brownfields covenant not to sue agreement with a current or prospective owner or operator of a hazardous materials release site, under specified conditions. The bill would immunize a public agency, charitable corporation, or trust from liability if the public agency, charitable corporation, or trust meets specified requirements.

The bill would also immunize an eligible person from liability at a hazardous materials release site or portion of a site owned or operated by the eligible person, if a remedial action plan for the site is approved by the department or regional board and the eligible person meets specified conditions. The bill would also immunize an eligible person who transfers ownership or operation of a site, or who owns or operates a site after a “no further action” determination is obtained.

The bill would immunize a person from liability, if the person did not cause or contribute to a release, and the release of hazardous materials migrated in or on groundwater from a known source, pursuant to specified requirements.

The bill would require the California Environmental Protection Agency to develop a protocol for applying risk assessment methodologies and risk management practices at hazardous materials release sites.

The bill would authorize the agency to enter into a contract to insure a borrower against unanticipated environmental costs and defaults. The bill would allow the proceeds of the insurance to be used to pay for unanticipated environmental costs, as defined, or to pay for specified loan losses.

The bill would establish the Financial Assurance and Insurance for Redevelopment Fund within the State Treasury, and would authorize the agency to expend the money in that fund for the administration and implementation of these insurance provisions, upon appropriation by the Legislature in the annual Budget Act or in another measure. The bill would authorize the agency to expend moneys from the fund to purchase insurance policies and pay deductibles for these insurance policies.

The bill would require any financial institution desiring to become a participating financial institution under these insurance provisions to execute an agreement in the form prescribed by the agency.



The bill would require the agency, by January 1, 2003, in consultation with the Attorney General and the Secretary of Trade and Commerce, to adopt regulations to implement the bill.

(2) Under the Personal Income Tax Law and the Bank and Corporation Tax Law, various provisions of the federal Internal Revenue Code as enacted as of a specified date, are referenced in various sections of the Revenue and Taxation Code. Existing law provides that with regard to the expensing of environmental remediation costs, if a taxpayer has, at any time, made an election for federal purposes to have the federal provisions apply to a qualified environmental remediation expenditure, those provisions also apply to that qualified environmental remediation expenditure for state purposes. The federal provisions define the term “qualified environmental remediation expenditure” with regard to a qualified contaminated site.

This bill would include, as a qualified environmental remediation expenditure that a taxpayer may elect to treat as an expense not chargeable to a capital account, an expenditure paid or incurred in connection with the abatement or control of a hazardous material at an eligible property, as defined.

(3) The would transfer \$40,000,000 from the General Fund to the Financial Assurance and Insurance Redevelopment Fund and would appropriate that amount from the fund to the agency to implement the insurance provisions of the bill.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) There are thousands of brownfields and underutilized  
4 properties in California where redevelopment has been stymied  
5 due to real or perceived hazardous materials contamination.

6 (2) Because private developers, local governments, and  
7 schools are reluctant to redevelop these urban properties, the  
8 location of new development tends to be at the edges of urban  
9 areas, as those areas are generally perceived to entail lesser  
10 potential for contamination and liability for cleanup costs.



1 (3) This development at the edge of urban areas has resulted in  
2 a multitude of problems, including decaying inner-city  
3 neighborhoods and schools, public health and environmental risks  
4 stemming from contaminated properties, reduced inner-city tax  
5 bases, and an increased need for major infrastructure  
6 improvements, such as streets, highways, and sewer systems to  
7 service the urban fringe areas, while the inner-city infrastructure  
8 deteriorates.

9 (4) Redeveloping brownfields and underutilized properties  
10 will not only bring tax revenue, but will result in job creation and  
11 foster urban redevelopment while utilizing existing utilities and  
12 infrastructure, which is in the economic interest of the state  
13 because the properties can be reused for commercial, residential  
14 or other productive purposes.

15 (5) Potential developers are eager to redevelop these properties  
16 but obstacles have slowed their development, including a fear of  
17 liability after cleanup, and cleanup standards that are unreasonable  
18 and too costly for the intended use of the property.

19 (6) Potential developers are hesitant to expend funds to  
20 determine whether a property is contaminated, and if so, how  
21 much it would cost to remediate the site. Some potential  
22 developers are also unable to secure conventional financing to  
23 remediate contaminated properties.

24 (7) To address some of the financial concerns, the Legislature  
25 enacted the Cleanup Loans and Environmental Assistance to  
26 Neighborhoods (CLEAN) program of 2000 to stimulate the  
27 redevelopment of brownfields and underutilized properties.

28 (8) The goal of the CLEAN program is to clean up brownfield  
29 properties so redevelopment will result in the overall improvement  
30 of the community where the property is located and where there  
31 is a reasonable economic or social return on these investments, by  
32 providing low-interest loans to qualified applicants for the purpose  
33 of funding site investigations, and other response actions at  
34 brownfields and underutilized properties.

35 (9) Environmental insurance is another valuable financial tool  
36 private developers and lending institutions have used to reduce  
37 concerns over environmental liability and cleanup costs.  
38 However, the price of premiums is not always cost-effective,  
39 especially for smaller redevelopment projects. Affordable



1 environmental insurance could make many smaller  
2 redevelopment projects economically feasible.

3 (10) The federal government has recognized the importance of  
4 financial incentives as a means to encourage development of  
5 brownfields. The federal Internal Revenue Code permits a  
6 taxpayer to expense the cost of remediation of eligible projects.  
7 Aligning the state Revenue and Taxation Code to the federal  
8 Internal Revenue Code will provide significant incentive for  
9 remediation of brownfields sites.

10 (11) The cost of restoring contaminated properties to pristine  
11 or background conditions can be a significant barrier to  
12 redevelopment projects.

13 (12) Developing, adopting, and implementing a protocol for  
14 statewide application of risk assessment methodologies and risk  
15 management practices at contaminated properties will greatly  
16 enhance California's existing redevelopment programs.

17 (b) The Legislature also hereby recognizes that it is in the best  
18 interest of the people of California that state funds be made  
19 available to make environmental insurance more affordable by  
20 negotiating a group policy and by subsidizing premiums for  
21 certain projects. This insurance would be available to stimulate the  
22 redevelopment of underutilized urban properties, resulting in the  
23 overall improvement of the community where the property is  
24 located and in the generation of a reasonable economic or social  
25 return on those investments.

26 (c) The Legislature therefore finds that developing, adopting,  
27 and implementing a protocol for statewide application of risk  
28 assessment methodologies and risk management practices at  
29 contaminated properties will greatly enhance California's existing  
30 redevelopment programs.

31 SEC. 2. Chapter 6.15 (commencing with Section 25405) is  
32 added to Division 20 of the Health and Safety Code, to read:

33

34 CHAPTER 6.15. BROWNFIELDS REDEVELOPMENT ACT OF 2001

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36

37

Article 1. Definitions

38

39 25405. The definitions provided in Article 2 (commencing  
40 with Section 25310) of Chapter 6.8 shall apply to the terms used



1 in this chapter, except that, for purposes of this chapter, the  
2 following definitions shall also apply:

3 (a) “Activity and use limitation” means a land use control, as  
4 defined in subdivision (l) of Section 25396, that is imposed upon  
5 real property by a property owner, the department, or a regional  
6 board.

7 (b) “Agency” means the California Environmental Protection  
8 Agency.

9 (c) “Borrower” means any business or state or local  
10 governmental agency that receives a loan pursuant to Section  
11 25405.18.

12 (d) “Brownfield” means a property that meets the definition  
13 specified in paragraph (2) of subdivision (a) of Section 25395.20.

14 (e) “Brownfields covenant not to sue agreement” or  
15 “agreement” means an agreement entered into by the department  
16 or regional board and a current or prospective owner or operator  
17 of a hazardous materials release site pursuant to Section 25405.2.

18 (f) “Eligible property” means a property that meets the  
19 definition specified in paragraph (5) subdivision (a) of Section  
20 25395.20.

21 (g) “Eligible person” means an owner or operator of a  
22 hazardous materials release site or a portion thereof who meets  
23 both of the following requirements:

24 (1) The person is potentially subject to the liability specified in  
25 subdivision (m).

26 (2) The person did not cause or contribute to the release of  
27 hazardous material from or at the site and did not own or operate  
28 the site at the time of the release.

29 (h) “Eligible tenant” means a person who acquires occupancy,  
30 possession, or control of a hazardous materials release site, or a  
31 portion thereof, after a release of hazardous material from, or at,  
32 the site has been reported to the department, who did not cause or  
33 contribute to the release, and, except for acquiring the site, is not  
34 otherwise liable, as defined in subdivision (m).

35 (i) “Financial institution” means any bank or any national  
36 banking association, federal savings and loan association, federal  
37 savings bank or any other financial institution authorized to make  
38 loans in the state and approved by the agency for the purposes of  
39 this chapter.



1 (j) “Fund” means the California Financial Assurance and  
2 Insurance for Redevelopment Fund (FAIR) administered by the  
3 agency or its agent for the implementation and administration of  
4 Article 8 (commencing with Section 25405.17), and established  
5 pursuant to Section 25405.17.

6 (k) “Hazardous material” has the same definition as in  
7 paragraph (6) of subdivision (a) of Section 25395.20.

8 (l) “Hazardous materials release site” or “site” means any  
9 area, location, or facility where a hazardous material has been  
10 released or threatens to be released into the environment.

11 (m) “Liable” or “liability” means the liability of a person  
12 under any state or local statute, regulation, or ordinance, excluding  
13 a contract, to the extent of either of the following:

14 (1) To the extent that the statute, regulation, or ordinance  
15 requires the person to take a removal or remedial action, pay a  
16 penalty, fine, imposition, or assessment, or to forfeit property, and  
17 that liability arises from the release or threatened release of  
18 hazardous materials at, from, or in connection with, the site.

19 (2) To the extent that the statute, regulation, or ordinance  
20 authorizes damages arising from the release or threatened release  
21 of hazardous materials at, from, or in connection with, the site.

22 (n) “No further action” determination means a certificate of  
23 completion issued pursuant to subdivision (c) of Section 25264.

24 (o) “Owner” or “operator” has the same meaning as defined  
25 in Section 9601 of the federal act, except that operator does not  
26 include an eligible tenant who acquires occupancy, possession, or  
27 control of a hazardous materials release site or portion of a site, if  
28 all of the following requirements are met on the site, or portion of  
29 the site, occupied, possessed, or controlled by the eligible tenant:

30 (1) No act or failure of duty of the tenant or of its employee or  
31 agent causes or contributes to the release, causes the release to  
32 become worse than it otherwise would have been, or causes a new  
33 exposure to the release.

34 (2) The tenant notifies the department or regional board, in  
35 compliance with the regulations adopted pursuant to this chapter,  
36 upon obtaining knowledge of a release or threat of release on, or  
37 from, the site, or portion of the site, under its occupancy,  
38 possession, or control.

39 (3) The tenant provides reasonable access to the site or portion  
40 of the site under its occupancy, possession, or control to



1 employees, agents, and contractors of the department or regional  
2 board for all purposes authorized by this chapter, and to other  
3 persons for the purpose of conducting response actions pursuant  
4 to Chapter 6.8 (commencing with Section 25300).

5 (4) If the tenant uses hazardous material similar to those that  
6 have been released, the tenant demonstrates by a preponderance of  
7 the evidence that it has not contributed to the release.

8 (5) The tenant takes reasonable steps do all of the following:

9 (A) Prevent the exposure of people to hazardous material by  
10 fencing or otherwise preventing access to the portion of the site  
11 under its control.

12 (B) Contain any further release or threat of release of hazardous  
13 material from a structure or container under its control.

14 (C) If there is an imminent hazard at or from the site or a portion  
15 thereof under its control, the tenant controls the potential risk to  
16 public health, safety, welfare, or the environment by taking  
17 immediate response actions at the site or portion thereof under the  
18 control of the tenant.

19 (6) The tenant takes response action, voluntarily or as required  
20 by Chapter 6.8 (commencing with Section 25300), in compliance  
21 with that chapter.

22 (p) “Participating financial institution” means any financial  
23 institution participating in the program established by Article 8  
24 (commencing with Section 25405.17).

25 (q) “Program” means the California Financial Assurance and  
26 Insurance for Redevelopment (FAIR) program established  
27 pursuant to this chapter.

28 (r) “Remedy operation status” means a response action that  
29 eliminates a condition of any substantial hazard to public health,  
30 safety, welfare, or the environment and relies upon active  
31 operation and maintenance for the purpose of achieving a  
32 permanent solution.

33 (s) “Response,” “respond,” or “response action” have the  
34 same meanings as defined in Section 9601(25) of the federal act  
35 (42 U.S.C. Sec. 9601(25)), except that “response,” “respond,” or  
36 “response action” also includes the enforcement and oversight  
37 activities of the department and regional board pursuant to Chapter  
38 6.8 (commencing with Section 25300).

39 (t) “Unanticipated environmental costs” means  
40 environmental costs that were not known or anticipated at the time



1 of originating a loan to a borrower pursuant to Article 8  
2 (commencing with Section 25405.17), including, but not limited  
3 to, environmental response action costs or costs that result from a  
4 change in state or federal rules or regulations.

5  
6 Article 2. Settlements  
7

8 25405.1. (a) Notwithstanding any other provision of law, any  
9 person who resolves their liability in an administrative or  
10 judicially approved settlement is not liable for any claim for  
11 contribution, cost recovery, or equitable share regarding matters  
12 addressed in the settlement, to any person to whom the settling  
13 party has provided notice of the settlement pursuant to this section,  
14 or who has otherwise received notice and who has had an  
15 opportunity to comment on the settlement to the settling parties.

16 (b) Any matter addressed in a settlement shall be defined in  
17 each settlement.

18 (c) For purposes of subdivision (a), “an opportunity to  
19 comment” means an opportunity for a person to submit written  
20 comments to the settling parties during a period of 90 calendar  
21 days, commencing with that person’s receipt of notice or the date  
22 of publication of notice. The department or regional board may  
23 extend the 90-day comment period upon a request made prior to  
24 the expiration of the comment period.

25 (d) For purposes of subdivision (c), the notice shall include, but  
26 is not limited to, a notice of how, when, and to whom to make  
27 comments. The notice shall be either an actual notice or notice  
28 provided by registered mail, return receipt requested, to all owners  
29 of record in the county for the preceding 50 years for all property  
30 within the site, and all parties who have otherwise requested to  
31 receive notice from the department or regional board. The  
32 department or regional board shall provide notice to all other  
33 persons who are not owners of record by publication of the  
34 settlement in a newspaper of general circulation in the city or  
35 county where the site is located pursuant to Section 6063 of the  
36 Government Code.

37 (e) A settlement subject to this section shall not be effective  
38 prior to the closing of the comment period.

39 (f) A settlement subject to this section does not discharge the  
40 liability of any other person unless its terms so provide, but shall

1 reduce the potential liability of all other liable persons by the  
2 amount of the settlement.

3

4 Article 3. Brownfields Covenant Not To Sue Agreements

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6 25405.2. (a) Notwithstanding any other provision of law,  
7 except as otherwise provided in this chapter, the department or a  
8 regional board may enter into a brownfields covenant not to sue  
9 agreement with a current or prospective owner or operator of a  
10 hazardous materials release site.

11 (b) The department or a regional board may enter into an  
12 agreement only under all of the following conditions:

13 (1) The department or regional board finds that the proposed  
14 redevelopment or reuse of the property will contribute to the  
15 economic or physical revitalization of the community in which it  
16 is located, and provides one or more of the following public  
17 benefits:

18 (A) New, permanent jobs.

19 (B) Affordable housing benefits.

20 (C) Historic preservation.

21 (D) Creates or revitalizes open space.

22 (E) Any other public benefit to the community.

23 (2) A remedial action plan has been approved by the  
24 department or regional board that is overseeing the response action  
25 for the site that is the subject of the agreement, in accordance with  
26 Section 25356.1.

27 (3) A development plan describing the proposed use or reuse  
28 of the site and the proposed public benefits is submitted in  
29 accordance with the regulations adopted pursuant to this chapter.

30 25405.3. (a) Except as provided in subdivisions (b) and (c),  
31 a person who has entered into an agreement pursuant to this  
32 chapter is not liable to the state or to any other person who has  
33 received notice of an opportunity to join the agreement.

34 (b) An agreement does not relieve a person from any liability  
35 with respect to any matter or property that is not addressed by the  
36 agreement.

37 (c) An agreement does not relieve a potentially liable person of  
38 any liability for a release or threat of release of hazardous material  
39 that meets any of the following criteria:



1 (1) The release first began to occur the date after the agreement  
2 became operative.

3 (2) The release is a new exposure that results from any action  
4 or failure to act during that person's ownership or operation of the  
5 site.

6 (3) The release violates, or is inconsistent with, an activity and  
7 use limitation established pursuant to this chapter and the  
8 regulations adopted pursuant to this chapter.

9

10 Article 4. Public Agency Liability

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12 25405.6. Notwithstanding any other provision of law, a public  
13 agency, charitable corporation, or trust is not liable if all of the  
14 following requirements are met:

15 (a) No act or failure of duty of the public agency, charitable  
16 corporation, or trust, or of its employee or agent, caused or  
17 contributed to the release or threat of release or caused the release  
18 or threat of release to become worse than it otherwise would have  
19 been.

20 (b) The public agency, charitable corporation, or trust did not  
21 control activities at the hazardous materials release site.

22 (c) The public agency, charitable corporation, or trust is not the  
23 owner or operator of any building, structure, equipment, storage  
24 container, motor vehicle, rolling stock or aircraft from, or at  
25 which, the release or threat of release occurred.

26 (d) The public agency, charitable corporation, or trust notified  
27 the department, in compliance with the regulations adopted  
28 pursuant to this chapter, upon obtaining knowledge of a release or  
29 threat of release.

30 (e) If the public agency, charitable corporation, or trust  
31 undertakes a response action at the site, the public agency,  
32 charitable corporation, or trust conducts the response action in  
33 compliance with the requirements of Chapter 6.8 (commencing  
34 with Section 25300).

35

36 Article 5. Immunity for Eligible Persons and Migrating  
37 Materials

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39 25405.7. (a) Notwithstanding any other provision of law, an  
40 eligible person is exempt from liability at a hazardous materials



1 release site or portion of a site owned or operated by the eligible  
2 person, if a remedial action plan with respect to the hazardous  
3 materials site is approved by the department or regional board  
4 pursuant to Section 25356.1 and the eligible person complies with  
5 the conditions specified in subdivisions (c) and (d).

6 (b) The immunity from liability provided by this section shall  
7 take effect only upon effective date of the approval of a remedial  
8 action plan by the department or regional board.

9 (c) The immunity from liability provided by this section shall  
10 apply if any of the following conditions are met:

11 (1) The eligible person owns or operates a site or portion of a  
12 site at or from which there has been a release of hazardous material  
13 that has affected only soil and has not affected groundwater or  
14 surface water, and achieves and maintains the cleanup goals set  
15 forth in the approved remedial action plan for the release on the  
16 property owned or operated by the eligible person.

17 (2) The eligible person owns or operates a site or portion of a  
18 site that is the source of a release of hazardous material to  
19 groundwater or surface water and achieves and maintains the  
20 cleanup goals set forth in the approved remedial action plan for the  
21 entire site.

22 (d) The eligible person does not own or operate, and did not  
23 previously own or operate, any portion of the site from, or at  
24 which, the source of the release originated.

25 (d) To qualify for the liability exemption provided by this  
26 section, an eligible person shall do all of the following:

27 (1) Comply with the notice requirements of the regulations  
28 adopted pursuant to this chapter.

29 (2) Provide reasonable access to the portion of the site owned  
30 or operated by the eligible person to employees, agents, and  
31 contractors of the department or regional board for all purposes  
32 authorized by Chapter 6.8 (commencing with Section 25300) and  
33 to other persons intending to conduct response actions pursuant to  
34 Chapter 6.8 (commencing with Section 25300).

35 (3) Respond in a reasonably timely manner to any request made  
36 by the department, a regional board, or the Attorney General to  
37 produce information as required pursuant to Chapter 6.8  
38 (commencing with Section 25300).



1 (4) Ensure that response actions at the site, or portion of the site,  
2 owned or operated by the eligible person are conducted in  
3 accordance with Chapter 6.8 (commencing with Section 25300).

4 (5) Settle response action costs that are incurred by the  
5 department or regional board and for which the eligible person is  
6 potentially liable.

7 (e) The settlement of the costs specified in paragraph (5) of  
8 subdivision (d) shall be negotiated between the department, the  
9 regional board, and the eligible person. The department and the  
10 regional board shall consider the future economic benefits, such as  
11 future job gains and the economic revitalization of the community,  
12 in the negotiation of an appropriate settlement of costs incurred by  
13 the department or regional board. The department and regional  
14 board shall also consider the ability of the eligible person to pay  
15 these response action costs in the negotiation of an appropriate  
16 settlement.

17 25405.8. (a) An eligible person who is in compliance with  
18 this chapter and the regulations adopted pursuant to this chapter,  
19 and who subsequently transfers ownership or operation of the site  
20 or portion of the site under the eligible persons' control to another  
21 eligible person before obtaining a "no further action"  
22 determination from the department or regional board, is exempt  
23 from liability with regard to any release of a hazardous material at  
24 the site.

25 (b) The immunity specified in subdivision (a) shall become  
26 operative only if the subsequent owner or operator obtains a "no  
27 further action" determination from the department or regional  
28 board for the site or portion thereof.

29 (c) The immunity specified in subdivision (a) shall apply only  
30 to the extent the eligible person conducts all response actions  
31 pursuant to Chapter 6.8 (commencing with Section 25300) and  
32 otherwise complies with that chapter during the period of time the  
33 eligible person owned or controlled the site or a portion thereof.

34 25405.9. (a) An eligible person who owns or operates a  
35 portion of a site after a "no further action" determination has been  
36 obtained is exempt from liability for any release of a hazardous  
37 material at the site.

38 (b) The immunity specified in subdivision (a) shall apply only  
39 to the extent the eligible person conducts all response actions  
40 pursuant to Chapter 6.8 (commencing with Section 25300) and



1 maintains all conditions imposed in the “no further action”  
2 determination.

3 25405.10. A person asserting that it is an eligible person with  
4 respect to a release, who owns or operates its portion of a site prior  
5 to the date on which the release is reported to the department or  
6 regional board, shall bear the burden of proving by a  
7 preponderance of the evidence that it is an eligible person pursuant  
8 to this chapter.

9 25405.11. (a) A person who is potentially liable, but who did  
10 not cause or contribute to a release, is not liable, if the release of  
11 hazardous material has migrated in, or on, groundwater or surface  
12 water from a known source, if all of the following requirements are  
13 met:

14 (1) The hazardous material was released from an upgradient or  
15 upstream source or sources and has come to be located at the  
16 downgradient or downstream property owned or operated by the  
17 person.

18 (2) The person does not own or operate and did not previously  
19 own or operate any portion of the site from, or at, which the source  
20 of the release originated.

21 (3) The person complies with the notice requirements in the  
22 regulations adopted pursuant to this chapter.

23 (4) The person provides reasonable access to the portion of the  
24 site it owns or operates to employees, agents, and contractors of the  
25 department and regional board for all purposes authorized by  
26 Chapter 6.8 (commencing with Section 25300) and to any other  
27 person for the purpose of conducting a response action pursuant to  
28 Chapter 6.8 (commencing with Section 25300).

29 (5) The person takes reasonable steps to do all of the following:

30 (A) Prevent the exposure of people to hazardous material by  
31 fencing or otherwise preventing access to the portion of the site  
32 under its control.

33 (B) Prevent an imminent hazard at the downgradient or  
34 downstream property owned or operated by that person by taking  
35 immediate response actions at the portion of the site owned or  
36 operated by the person.

37 (6) The person does not unreasonably impede or interfere with  
38 the performance of response actions or the restoration of natural  
39 resources by any person.



1 (7) The person does not exacerbate the release of hazardous  
2 material affecting the downgradient or downstream property  
3 owned or operated by the person.

4 (b) A person who can demonstrate by a preponderance of the  
5 evidence that it otherwise meets all of the criteria in subdivision  
6 (a) is not liable with respect to a release of hazardous material that  
7 has migrated in, or on, groundwater or surface water from an  
8 unknown source.

9 (c) The department shall adopt regulations to specify which  
10 releases are from a known source and an unknown source for  
11 purposes of this section.

12 (d) This section does not relieve any person of any liability for  
13 the following releases or threats of a release of a hazardous  
14 material:

15 (1) A release that is exacerbated, caused, or contributed to, by  
16 an act, or failure to act, pursuant to this chapter, by the  
17 downgradient or downstream owner or operator, its agent, or  
18 employee.

19 (2) A release that originates on the downgradient or  
20 downstream property owned or operated by the person.

21 (3) A release that originates on the downgradient or  
22 downstream property owned or operated by the person and  
23 commingles with the hazardous material migrating from  
24 upgradient or upstream property in groundwater or surface water.

25 (4) A release from which there is a new exposure resulting from  
26 an act or failure to act of a downgradient or downstream owner or  
27 operator or the person's agent or employee.

28 25405.12. Any owner or operator of real property for which  
29 a "no further action" determination has been obtained and an  
30 activity and use limitation has been implemented is not liable for  
31 any claim that arises after the term of the owner or operator's  
32 ownership or possession and that arises from an act, or a failure to  
33 act, of a subsequent property owner, an operator under a  
34 subsequent property owner, or another person, if the act or failure  
35 to act violates, or is inconsistent with, the terms of the activity and  
36 use limitation, if the former property owner or operator meets both  
37 of the following conditions:

38 (a) During its term of ownership or operation of the property,  
39 the former property owner or operator complied with the terms of



1 the activity and use limitations and with Chapter 6.8 (commencing  
2 with Section 25300).

3 (b) The former property owner or operator did not cause, or  
4 contribute to, any act or failure to act by the subsequent property  
5 owner or operator, or other person, which act or failure to act  
6 violated, or was inconsistent with, the terms of the activity and use  
7 limitation.

8

9

Article 6. Exceptions from Immunity

10

11 25405.13. This chapter does not do any of the following:

12

(a) Prohibit an eligible person from voluntarily conducting a  
13 response action in addition to those required to achieve and to  
14 maintain the immunity from liability provided pursuant to this  
15 chapter.

16

(b) Relieve an eligible person of liability for a release or threat  
17 of release of hazardous material that first began to occur at, or  
18 from, the site or portion of the site under the person’s control  
19 during that person’s ownership or operation.

20

(c) Relieve an eligible person of any liability for any of the  
21 following releases or a threat of release of a hazardous material:

22

(1) A release or a threat of a release exacerbated, caused, or  
23 contributed to by the act, or failure to act, of the person or the  
24 person’s agent or employee.

25

(2) A release that is a new exposure resulting from any act or  
26 failure to act during the person’s ownership or operation of the site,  
27 if the act or failure to act violates or is inconsistent with an activity  
28 and use limitation.

29

(d) Relieves an eligible person of any liability for any act or  
30 failure to act that violates or is inconsistent with an activity and use  
31 limitation.

32

25405.14. (a) Except as provided in subdivisions (b) and (c),  
33 this chapter does relieve not a tenant of liability for a release or  
34 threat of release of hazardous material that first begins to occur at  
35 or from the site or portion of the site occupied, possessed, or  
36 controlled by that tenant during the tenant’s occupancy,  
37 possession, or control.

38

(b) An eligible tenant who merely ceases to occupy, possess, or  
39 control a site or portion thereof is not liable for a release or threat



1 of release of hazardous material at or from the site or portion  
2 thereof.

3 (c) An eligible tenant is not liable for property damage  
4 resulting from a release or threat of release at, or from, the portion  
5 of the site not under the eligible's tenant occupancy, possession, or  
6 control for which the eligible tenant would not otherwise be liable.

7

8 Article 7. Risk Assessment Methodologies and Risk  
9 Management Practices

10

11 25405.15. The agency shall, in coordination with its boards,  
12 departments, and offices, develop a protocol for applying risk  
13 assessment methodologies and risk management practices at  
14 hazardous materials release sites. The protocol shall contain all of  
15 the following elements:

16 (a) Procedures for taking interim action, such as source  
17 removal, where necessary to control the spread of soil and  
18 groundwater contamination.

19 (b) Numeric screening levels for contaminants commonly  
20 found in urban and industrial settings. The agency shall, pursuant  
21 to this subdivision, develop at least three categories of screening  
22 levels based on residential, commercial, and industrial land use  
23 scenarios, in the following manner:

24 (1) The screening levels shall be used primarily as tools to  
25 determine the need for further investigation or corrective action,  
26 but may be relied upon as remediation default standards only if the  
27 regulatory oversight agency finds that a site remediated to  
28 screening levels will not pose a significant risk to public health or  
29 the environment.

30 (2) Numeric screening levels shall not be used as default  
31 cleanup standards where, due to the number of contaminants,  
32 complexity of the geology or hydrogeology or other  
33 complications, the use of generic cleanup standards cannot be  
34 effectively and accurately employed to ensure protection of public  
35 health, safety, and the environment.

36 (c) Procedures for conducting site-specific risk assessments  
37 that do all of the following:

38 (1) Accommodate increasingly comprehensive evaluation of  
39 site-specific conditions and site assessment studies, probabilistic



1 evaluations, exposure pathway analysis, and chemical fate and  
2 transport assessment as the complexity of the site increases.

3 (2) Identify the sources of contaminants, exposure pathways,  
4 and receptors and apply appropriate scientific models for chemical  
5 fate and transport analysis and exposure assessment.

6 (3) Require that the remedies selected pursuant to a  
7 site-specific risk assessment take into account the reasonably  
8 anticipated beneficial uses of land at the facility and, to the extent  
9 appropriate, of nearby property, and the proximity of portions of  
10 a commercial or industrial site to more sensitive uses, such as  
11 schools or day care centers.

12 (d) Procedures for establishing engineered controls and  
13 activity and use limitations where residual contamination is  
14 anticipated to remain following corrective action.

15 25405.16. In adopting the protocol pursuant to Section  
16 25405.15, the agency shall ensure all of the following:

17 (a) That the procedures in the protocol developed pursuant to  
18 Section 25405.15 are based on sound scientific information and  
19 are subject to peer review in accordance with the requirements of  
20 Section 57004.

21 (b) That the numeric screening levels, procedures for  
22 site-specific risk assessment, and corrective action remedies  
23 involving engineering and land use controls are based on  
24 reasonable assumptions of exposure scenarios concerning  
25 amounts of contaminants to which humans or other receptors will  
26 be exposed, when and where those exposures will occur, and the  
27 duration of exposure.

28 (c) That all corrective action remedies selected pursuant to the  
29 procedures in the protocol take into account technological  
30 feasibility and economic practicability, to the extent that  
31 consideration of these factors will not result in significant risks to  
32 human health and the environment.

33

34 Article 8. Financial Assurance and Insurance for  
35 Redevelopment Fund  
36

37 25405.17. (a) There is a Financial Assurance and Insurance  
38 for Redevelopment Fund (FAIR) in the State Treasury. The  
39 moneys in the fund may be expended by the agency to implement  
40 this article.



1 (b) Moneys contributed by the state, the borrower, and  
2 participating financial institutions shall be deposited in the fund.  
3 All earnings or interest on the fund shall be added to the principal  
4 of the fund and held as additional funds for the program.

5 (c) The money in the fund may be expended by the agency for  
6 the administration and implementation of this article only upon  
7 appropriation by the Legislature in the annual Budget Act or in  
8 another measure. The agency may expend a portion of the accrued  
9 earnings or interest remaining in the fund to defray the costs of  
10 administering this article.

11 25405.18. (a) The agency may enter into a contract to insure  
12 a borrower against unanticipated environmental costs and  
13 defaults. The proceeds of the insurance may be used to pay for  
14 unanticipated environmental costs or to pay for loan losses  
15 pursuant to subdivision (c), in accordance with the agreement  
16 described in subdivision (e).

17 (b) The agency may expend moneys from the fund to purchase  
18 insurance policies and to pay deductibles for these insurance  
19 policies. The agency may require a participating financial  
20 institution to require a borrower to pay a portion of the unintended  
21 environmental costs, as determined by the agency.

22 (c) Upon obtaining knowledge that a borrower has incurred, or  
23 will incur, unanticipated environmental costs that will result in a  
24 cost overrun, the borrower shall notify the participating financial  
25 institution and the participating financial institution shall notify  
26 the agency of the anticipated amount and the reasons for the cost  
27 overrun.

28 (d) If unanticipated environmental response costs arise, the  
29 financial institution, subject to the agreement executed pursuant to  
30 subdivision (e), may, with the concurrence of the agency, expend  
31 the money in the fund or access available insurance benefits, minus  
32 applicable deductions, to pay those costs. If the participating  
33 financial institution determines that there is a default on a loan, the  
34 financial institution, with the concurrence of the agency, may draw  
35 upon the fund or insurance to satisfy the loan. The agency shall not  
36 make any payments from insurance or from the fund for  
37 unanticipated environmental response costs or for default loan  
38 losses until all funds originally allocated to remediation have been  
39 spent. The agency may recover funds disbursed pursuant to this  
40 section through subrogation and may place a lien on the property



1 remediated with fund assets, but shall not commence or cause  
2 another to commence a foreclosure procedure.

3 (e) Any financial institution desiring to become a participating  
4 financial institution shall execute an agreement in the form  
5 prescribed by the agency. The agreement shall contain the terms  
6 and provisions set forth in subdivision (a) to (d), inclusive, and any  
7 other terms and conditions the agency deems necessary.

8

9

Article 9. Regulations

10

11 25405.19. On or before January 1, 2003, the agency, in  
12 consultation with the Attorney General and the Secretary of Trade  
13 and Commerce, shall adopt regulations to implement this chapter.

14

SEC. 3. Section 17279.4 of the Revenue and Taxation Code  
15 is amended to read:

16

17 17279.4. Section 198 of the Internal Revenue Code, relating  
18 to expensing of environmental remediation costs, is modified as  
19 follows:

20

(a) (1) If a taxpayer has, at any time, made an election for  
21 federal purposes under Section 198(a) of the Internal Revenue  
22 Code to have Section 198 of the Internal Revenue Code apply to  
23 a qualified environmental remediation expenditure, Section 198  
24 of the Internal Revenue Code shall apply to that qualified  
25 environmental remediation expenditure for state purposes, a  
26 separate election for state purposes shall not be allowed under  
27 paragraph (3) of subdivision (e) of Section 17024.5, and the  
28 federal election shall be binding for purposes of this part.

29

(2) If a taxpayer fails to make an election for federal purposes  
30 under Section 198(a) of the Internal Revenue Code to have Section  
31 198 of the Internal Revenue Code apply to a qualified  
32 environmental remediation expenditure, an election under Section  
33 198(a) of the Internal Revenue Code shall not be allowed for state  
34 purposes, Section 198 of the Internal Revenue Code shall not apply  
35 to that qualified environmental remediation expenditure for state  
36 purposes, and a separate election for state purposes shall not be  
37 allowed under paragraph (3) of subdivision (e) of Section 17024.5.

38

(b) No inference as to the proper treatment for purposes of this  
39 part of qualified environmental remediation expenditures for  
periods before the enactment of this section shall be made.



1     (c) Notwithstanding subdivisions (b) and (c) of Section 198 of  
2 Title 26 of the United States Code, the qualified environmental  
3 remediation expenditures that a taxpayer may elect to treat as an  
4 expense not chargeable to a capital account, may also include any  
5 amount paid or incurred in connection with the abatement or  
6 control of hazardous materials at an eligible property, as defined  
7 pursuant to subdivision (f) of Section 25405 of the Health and  
8 Safety Code.

9     SEC. 4. The sum of forty million dollars (\$40,000,000) is  
10 hereby transferred from the General Fund to the Financial  
11 Assurance and Insurance for Redevelopment Fund and  
12 appropriated therefrom to the California Environmental  
13 Protection Agency for expenditure during the 2001–2002 fiscal  
14 year to implement Article 8 (commencing with Section 25405.17)  
15 of Chapter 6.15 of Division 20 of the Health and Safety Code.

O

