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HEALTH AND SAFETY CODE - HSC

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 27007] (*Division 20 enacted by Stats. 1939, Ch. 60.)*

CHAPTER 6.82. California Land Reuse and Revitalization Act of 2004 [25395.60 - 25395.109] (*Chapter 6.82 added by Stats. 2004, Ch. 705, Sec. 1.)*

ARTICLE 3. Liability [25395.80 - 25395.86] (*Article 3 added by Stats. 2004, Ch. 705, Sec. 1.)*

25395.80. For purposes of this chapter, to qualify as a bona fide purchaser, innocent landowner, or contiguous property owner a person shall establish, by a preponderance of the evidence, all of the following conditions:

- (a) On or before the date on which the person acquired the site, the person made all appropriate inquiries into the previous ownership and uses of the site.
- (b) The person exercises appropriate care with respect to the release or threatened release of hazardous materials at the site.
- (c) The person provides full cooperation, assistance, and access to a person who is authorized to conduct response actions or natural resource restoration at the site, including the cooperation and any access necessary for the installation, integrity, operation, and maintenance of complete or partial response actions or natural resource restoration at the site.
- (d) The person complies with land use controls established or relied on, in connection with an approved response action at the site, and does not impede the effectiveness or integrity of any aspect of any remedy employed at the site in connection with a response action.
- (e) The person complies with all requests for information or an administrative subpoena concerning the release or threatened release of hazardous substances by any agency with jurisdiction under an applicable statute.
- (f) The person provides all notices and satisfies reporting requirements required by state or federal law with respect to the discovery or release of hazardous substances at the site.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.81. (a) Except as provided in Section 25395.85, and except as otherwise provided under this section, a bona fide purchaser, innocent landowner, or contiguous property owner who did not cause or contribute to the release at the site, qualifies for the following immunities:

- (1) The bona fide purchaser, innocent landowner, or contiguous property owner is not liable under any applicable statute for a claim made by any person, other than an agency, for response costs or other damages associated with a release or threatened release of a hazardous material at the site characterized in the site assessment conducted pursuant to, or a response plan approved pursuant to, Article 6 (commencing with Section 25395.90).
- (2) An agency shall not take an action under an applicable statute to require a bona fide purchaser, innocent landowner, or contiguous property owner to take a response action, other than a response action required in an approved response plan, with respect to the hazardous material release at a site that is characterized in the site assessment conducted pursuant to, or a response plan approved pursuant to Article 6 (commencing with Section 25395.90), unless both of the following conditions apply:
 - (A) The conditions on the property pose an endangerment.
 - (B) The agency does one of the following:
 - (i) Makes all reasonable efforts, including taking appropriate administrative enforcement actions, to compel any necessary response action from other potentially responsible parties, and those efforts have been unsuccessful.

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

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

(c) The immunities described in this section shall attach when the bona fide purchaser, innocent landowner, or contiguous property owner enters into an agreement with an agency pursuant to Section 25395.92 and shall remain in effect unless one of the following occurs:

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

(2) The bona fide purchaser, innocent landowner, or contiguous property owner or an agency terminates the agreement before a finding of no further action is made pursuant to subdivision (b) of Section 25395.95 or a certificate of completion is issued pursuant to Section 25395.97.

(d) A person who otherwise qualifies for immunity under this chapter and who commits fraud, intentional nondisclosure, or misrepresentation to an agency with respect to any requirement of this chapter, does not qualify as a bona fide purchaser, innocent landowner, or contiguous property owner.

(e) This section does not relieve a bona fide purchaser, innocent landowner or contiguous property owner from reporting, disclosure and notification requirements under any applicable statute.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.82. (a) Notwithstanding Sections 25395.69, 25395.70, and 25395.75, on and after the date when the immunity specified in subdivision (c) of Section 25395.81 attaches, the person shall remain eligible for immunity if a release of hazardous materials at the site during a response action is de minimis and the agency determines that all necessary response actions to address the release have been taken.

(b) Notwithstanding Sections 25395.69, 25395.70, and 25395.75, on and after the date when the immunity specified in subdivision (c) of Section 25395.81 attaches, the person shall remain eligible for immunity if either of the following occur:

(1) Both of the following conditions are met:

(A) A release of hazardous materials that poses an unreasonable risk is discovered before the agency makes a finding of no further action pursuant to Section 25395.95 or issues a certificate of completion pursuant to Section 25395.97.

(B) The release specified in subparagraph (A) is appropriately resolved to the satisfaction of the agency pursuant to paragraph (8) of subdivision (a) of Section 25395.96.

(2) All of the following conditions are met:

(A) A release of hazardous materials that poses an unreasonable risk is discovered after the agency makes a finding of no further action pursuant to Section 25395.95, or issues a certificate of completion pursuant to Section 25395.97.

(B) The innocent landowner, bona fide purchaser, or contiguous property owner did not cause or contribute to the release.

(C) The release specified in subparagraph (A) is appropriately resolved to the satisfaction of the agency pursuant to paragraph (8) of subdivision (a) of Section 25395.96.

(c) Notwithstanding Sections 25395.69, 25395.70, and 25395.75, on and after the date when the immunity specified in subdivision (c) of Section 25395.81 attaches, the person shall remain eligible for immunity obtained pursuant to this chapter with regard to a release that is the subject of a finding of no further action made pursuant to Section 25395.95 or a certificate of completion issued pursuant to Section 25395.97. If the person causes or contributes to a release of a hazardous material, that person shall be responsible for responding to that release in accordance with all applicable statutes.

(d) Notwithstanding Sections 25395.69, 25395.70, and 25395.75, on and after the date when the immunity specified in subdivision (c) of Section 25395.81 attaches to a site and a release of hazardous materials is discovered on or under the site, a response action shall be conducted at the site in accordance with the following:

(1) If the response action is for petroleum related contamination caused predominately by a release from an underground storage tank, the funds in the Underground Storage Tank Cleanup Fund shall, to the extent permissible by law, be used in accordance with Section 25299.51.

(2) If the response action is for a hazardous materials release not otherwise subject to paragraph (1), and the agency determines the hazardous material release endangers public health or safety, the person who entered into the agreement with the agency shall pay for, or undertake, the response action. If the agency determines the hazardous materials release does not endanger public health or safety, the person who entered into the agreement shall not be required to pay for, or undertake, the response action.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.83. (a) If there are unrecovered costs incurred by an agency at a site for which an owner of the site is not liable as an innocent landowner, bona fide purchaser, or contiguous property owner, an agency shall have a lien on the site, or may, by agreement with the owner, obtain from the owner a lien on other property or other assurance of payment for the unrecovered response costs, subject to all of the following requirements:

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

(2) The response action increased the fair market value of the site above the fair market value of the site that existed before the response action was initiated.

(b) The lien may include costs that are first incurred by the agency with respect to a response action at the site.

(c) The lien amount shall not exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property, and shall not exceed the unrecovered response costs actually incurred by the agency.

(d) The lien shall continue until the earlier of satisfaction of the lien by sale or other means, or recovery of all response costs incurred by the agency at the site. Once the amount of the lien is satisfied in full, the agency shall record satisfaction on lien on the real property.

(e) The notice of the lien shall be recorded in the official records of the county recorder's office for the county in which the real property is located.

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

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.84. (a) A court of competent jurisdiction may award reasonable attorneys' fees and experts' fees to a person who initiates a claim under an applicable law for contribution for, or recovery of, response costs incurred for a response action, or for any other response costs incurred at a site, if the person meets all of the following criteria:

(1) The person is a bona fide purchaser, an innocent landowner, a contiguous property owner, or a bona fide ground tenant, as defined in subdivision (b) of Section 25395.102, and qualifies for immunity pursuant to this chapter.

(2) The person is a prevailing party.

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

(A) If a response plan has been approved for that site pursuant to Article 6 (commencing with Section 25395.90) or Article 7 (commencing with Section 25395.102), as applicable, a copy of the approved response plan.

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

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

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

(Amended by Stats. 2006, Ch. 510, Sec. 1. Effective January 1, 2007. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.85. An innocent landowner, bona fide purchaser, contiguous landowner, or bona fide ground tenant, as defined in subdivision (b) of Section 25395.102, may seek contribution from any person who is responsible for a discharge or release of hazardous materials for which the innocent landowner, bona fide purchaser, contiguous landowner, or bona fide ground tenant incurs agency oversight costs for the review of a response plan or oversight of the implementation of a response plan subject to this chapter.

(Amended by Stats. 2006, Ch. 510, Sec. 2. Effective January 1, 2007. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.86. (a) This chapter does not provide immunity from any of the following:

- (1) Liability for bodily injury or wrongful death.
- (2) Any requirement imposed under Chapter 6.5 (commencing with Section 25100), including, but not limited to, corrective action and closure and postclosure requirements.
- (3) Criminal acts.
- (4) Permit violations.
- (5) Contractual indemnity agreements between purchasers and sellers of real property.
- (6) New releases of hazardous materials that are caused or contributed to by an innocent landowner, bona fide purchaser, or contiguous property owner.

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

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

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

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

- (1) Limit a defense to liability that may be available to a person under any other provision of law.
- (2) Impose any new obligation on an owner of real property other than those specifically assumed by the owner under an agreement entered into pursuant to Article 6 (commencing with Section 25395.90).

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)