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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 6. Streamlined Site Investigation And Response Plan Agreements [25395.90 - 25395.101] (*Article 6 added by Stats. 2004, Ch. 705, Sec. 1.*)

25395.90. (a) Except as otherwise expressly provided in this article, the definitions in Article 2 (commencing with Section 25395.63) apply to the terms used in this article.

(b) "Action level" has the same meaning as defined in paragraph (1) of subdivision (c) of Section 116455.

(c) "Host jurisdiction" means the city or county in which the site is located and which has the authority to take action regarding the site pursuant to Title 7 (commencing with Section 65000) of the Government Code.

(d) "Unreasonable risk" at a site means that a condition at a site requires a response action pursuant to Part 2 (commencing with Section 78000) of Division 45 of this code or Division 7 (commencing with Section 13000) of the Water Code.

(*Amended by Stats. 2022, Ch. 258, Sec. 82. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.*)

25395.91. (a) Only the following are eligible to enter into an agreement pursuant to this article:

(1) A bona fide purchaser, innocent landowner, or contiguous property owner who meets the requirements specified in Section 25395.80.

(2) A prospective purchaser who is in contract to acquire a site through a purchase agreement, option agreement, or otherwise, and satisfies the requirements of Section 25395.69, except for any provision that requires current ownership of the site. However, a prospective purchaser who enters into an agreement pursuant to this article shall not receive the immunities provided in Section 25395.81 until the time that the prospective purchaser acquires the site.

(b) An agreement entered under this article is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code.

(*Amended by Stats. 2009, Ch. 167, Sec. 1. (SB 143) Effective January 1, 2010. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.*)

25395.92. (a) A bona fide purchaser, innocent landowner, or contiguous property owner who seeks to qualify for the immunity provided by this chapter shall enter into an agreement with an agency pursuant to this article that includes the performance of a site assessment, and, if the agency determines that a response plan is necessary pursuant to Section 25395.96, the preparation and implementation of a response plan.

(b) Before finalizing the agreement, the requested agency shall notify other appropriate agencies, including the host jurisdiction.

(c) A person who enters into an agreement with an agency pursuant to this section shall submit sufficient information to the agency for the agency to determine whether the site is an eligible site, whether the person meets the conditions to qualify as a bona fide purchaser, innocent landowner, or contiguous property owner pursuant to this chapter, and to prepare an agreement pursuant to this section.

(d) (1) A person who enters into an agreement pursuant to this section shall agree to take all actions required for a response action pursuant to Part 2 (commencing with Section 78000) of Division 45 and Division 7 (commencing with Section 13000) of the Water Code. These actions may include actions necessary to prevent an unreasonable risk before the approval of a response plan.

(2) In determining whether there is unreasonable risk at a site for purposes of this subdivision, the agency shall take into account the intended use of the property, in accordance with any changed use of the property, as specified in subdivision (d) of Section 25395.96.

(Amended by Stats. 2022, Ch. 258, Sec. 83. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.93. (a) A person may withdraw from an agreement entered into pursuant to this article by providing a 30-day written notice to the agency and doing both of the following:

(1) Reimbursing the agency for all costs incurred by the agency pursuant to the agreement.

(2) Demonstrating to the satisfaction of the agency that conditions at the site to which the agreement applies do not pose an endangerment to public health and safety or the environment. If the agency determines that conditions at the site pose an endangerment to public health, safety, or the environment, this article does not prevent the agency from exercising its authority to take appropriate response actions or to cause the person or persons responsible for the endangerment to take appropriate response actions.

(b) A person who enters into an agreement with an agency pursuant to this article shall reimburse the agency for all agency costs, including, but not limited to, costs incurred while reviewing a site assessment plan or a response plan or overseeing the implementation of a site assessment or response plan by the person pursuant to this article, except that the department's costs shall be reimbursed pursuant to Chapter 6.66 (commencing with Section 25269) and shall be recoverable pursuant to Section 79650.

(c) The entry into an agreement pursuant to this article shall not constitute an admission of fact or liability or conclusion of law for any purpose or proceeding and a person who enters into an agreement under this article shall not be deemed liable under any other provision of law solely by reason of entering into that agreement.

(d) If the conditions described in paragraph (1) of subdivision (c) of Section 25395.81 or in subdivision (d) of Section 25395.81 occur, an agency may withdraw from an agreement entered into pursuant to this chapter by providing a 30-day written notice to the other party.

(Amended by Stats. 2022, Ch. 258, Sec. 84. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.94. (a) (1) A person who enters into an agreement pursuant to this article with an agency for the oversight of a site assessment shall submit a site assessment plan to the agency to conduct a site assessment of the site in accordance with the requirements of this section.

(2) If the agency requires a health risk assessment as part of that agreement, the health assessment shall be prepared in accordance with Sections 79265, 79270, and subdivision (a) of Section 79275.

(b) The site assessment plan shall provide for the evaluation of all of the following:

(1) Whether a release of hazardous materials has occurred at the site, a threat of a release of hazardous materials exists at the site, or there is a threat of a release of hazardous materials from the site.

(2) If a release or threatened release of hazardous materials exists at the site or there is a release or a threatened release from the site, whether the release or threatened release poses an unreasonable risk to public health and safety or the environment.

(c) The site assessment plan shall also include all of the following:

(1) Adequate characterization of the hazardous materials released or threatened to be released at, or from, the site and documentation of the findings.

(2) Reasonably available information about the site, including, where appropriate, a risk assessment that evaluates the risk posed by any hazardous materials released or threatened to be released at, or from, the site, and information regarding reasonably anticipated foreseeable uses of the site based on current and projected land use and zoning designations.

(3) If the release has impacted groundwater, reasonable characterization of underlying groundwater, including present and anticipated beneficial uses of that water.

(d) A person shall submit the site assessment plan to the agency for review and approval.

(e) The agency shall evaluate the adequacy of the site assessment plan to ensure that it contains all necessary information.

(f) After evaluating the site assessment plan, if the agency finds that the site assessment plan is adequate, the agency shall approve the site assessment plan and provide notification to appropriate persons, including notification of any public water system that relies on impacted groundwater for public drinking water purposes.

(Amended by Stats. 2022, Ch. 258, Sec. 85. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.95. (a) After implementation of the site assessment plan, the person shall submit to the agency a report of the findings made pursuant to the plan. Based upon a review of this information, the agency shall determine whether a response action is necessary to address any unreasonable risk from hazardous materials at the site.

(b) If the agency determines that there is no unreasonable risk at the site and that there are no hazardous materials at the site at levels that are not suitable for unrestricted use of the site, the agency shall make a finding that no further action is necessary at the site.

(c) If the agency determines that there are hazardous materials at the site at levels that are not suitable for unrestricted use, but that are suitable for the reasonably anticipated foreseeable use of the site based on current and projected land use and zoning designations, the agency shall find that no further action is necessary at the site except that a land use control that imposes appropriate restrictions pursuant to Section 25395.99 shall be executed and recorded and the public comment and participation requirements of Section 25395.96 shall be met before the execution and recording of any land use control. On or before 15 days after the date when the land use control is recorded pursuant to Section 25395.99, the agency shall state in writing that this act constitutes "appropriate care" for the purposes of Section 25395.67.

(Amended by Stats. 2005, Ch. 22, Sec. 124. Effective January 1, 2006. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.96. (a) If, upon review of the site assessment prepared pursuant to this article, the agency determines that a response action is necessary to prevent or eliminate an unreasonable risk, the bona fide purchaser, innocent landowner, or contiguous property owner shall submit a response plan to the agency to conduct a response action at the site, in conformance with the agreement entered into pursuant to Section 25395.92. The response plan shall include all of the following:

(1) The response plan shall provide for an opportunity for the public, other agencies, and the host jurisdiction to participate in decisions regarding the response action, taking into consideration the nature of the community interest, and shall include all of the following:

(A) Thirty days before taking action pursuant to the response plan, the agency shall take all of the following actions:

(i) Notify all other appropriate governmental entities and local agencies, including, but not limited to, the department, the regional board, or a redevelopment agency, that is not a party to the response plan regarding the proposed response plan.

(ii) Place a notice in a newspaper of general circulation, in the area of the site, including, but not limited to, a community-based newspaper, as appropriate.

(iii) Post notice of the proposed response plan on the site.

(B) All of the following methods for public participation shall be included in the response plan:

(i) Thirty days' prior public notice in a factsheet format of the proposed response plan, in English and in any other language commonly spoken in the area of the site.

(ii) Access, at both the agency and at local repositories, to the proposed response plan, site assessment, addenda, and any other supporting documentation, including materials listed as references in the response plan and site assessment.

(iii) Procedures for providing a reasonable opportunity to comment on the plan and related documents specified in clause (ii).

(iv) If a public meeting is requested, the holding of a public meeting by the agency in the area to receive comments.

(v) The agency's consideration of any comments received before taking any action regarding the response plan.

(C) The response plan may also provide for, but is not limited to, proposing the use of other methods for public participation, including the use of public notices, direct notification of interested parties, electronic copies of the response plan, site assessment addenda, and other supporting documentation, including materials listed as references in the response plan and

site assessment, electronic comment forms, forming advisory groups, as appropriate, to disseminate information and assist the agency in gathering public input, additional public meetings or public hearings, and an opportunity to comment on the proposed response plan prior to approval.

(D) The agency, as part of its communications with affected communities, shall provide information regarding the process by which decisions about the site are made and the recourse that is available for those who may disagree with an agency decision.

(E) The agency shall consider the issue of environmental justice, as defined in subdivision (e) of Section 65040.12 of the Government Code, for communities most impacted, including low-income and racial minority populations before taking action on the response plan.

(F) To the extent possible, the agency shall coordinate its public participation activities with those undertaken by the host jurisdiction and other agencies associated with the development of the property, to avoid duplication to the extent feasible.

(G) It is the intent of the Legislature that the public participation process established pursuant to this paragraph ensures full and robust participation of a community affected by this chapter.

(2) Identification of the release or threatened release that is the subject of the response plan and documentation that the plan is based on an adequate characterization of the site.

(3) An identification of the response plan objectives and the proposed remedy, and an identification of the reasonably anticipated future land uses of the site and of the current and projected land use and zoning designations. This identification shall include confirmation by the host jurisdiction that the anticipated future land uses and current and projected land uses and zoning designations are accurate.

(4) A description of activities that will be implemented to control any endangerment that may occur during the response action at the site.

(5) A description of any land use control that is part of the response action.

(6) A description of wastes other than hazardous materials at the site and how they will be managed in conjunction with the response action.

(7) Provisions for the removal of containment or storage vessels and other sources of contamination, including soils and free product, that cause an unreasonable risk.

(8) Provisions for the agency to require further response actions based on the discovery of hazardous materials that pose an unreasonable risk to human health and safety or the environment that are discovered during the course of the response action or subsequent development of the site.

(9) Any other information that the agency determines is necessary.

(b) The agency shall evaluate the adequacy of the plan submitted pursuant to subdivision (a) and shall approve the plan if the agency makes all of the following findings:

(1) The plan contains the information required by subdivision (a).

(2) When implemented, the plan will place the site in a condition that allows it to be used for its reasonably anticipated future land use without unreasonable risk to human health and safety and the environment.

(3) The plan addresses any public comments.

(4) If applicable, the plan provides for long-term operation and maintenance, including land use and engineering controls, that are part of the remedy contained in the response plan.

(c) (1) On or before 60 days after the date an agency receives a response plan, the agency shall make a written determination that proper completion of the response plan constitutes "appropriate care" for purposes of subdivision (a) of Section 25395.67.

(2) Upon approval of the response plan by the agency, the agency shall notify all appropriate persons, including the host jurisdiction.

(d) If the use of the property changes, after a response plan is approved, to a use that requires a higher level of protection, the agency may require the preparation and implementation of a new response plan pursuant to this article.

(e) The owner of a site shall not make any change in use of a site inconsistent with any land use control recorded for the site, unless the change is approved by the agency in accordance with subdivision (f) of Section 25395.99.

(Amended by Stats. 2006, Ch. 562, 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.)

25395.97. (a) Except as provided in Section 25395.99, the agency shall issue a certificate of completion upon determining that all response actions have been satisfactorily completed in accordance with an approved response plan.

(b) Notwithstanding subdivision (a), the agency shall issue a certificate of completion when a response action plan includes long-term obligations that have not been completed, including operation and maintenance requirements or monitoring, only if the agency makes all of the following determinations:

(1) All response actions, other than long-term operation and maintenance at the site, have been completed.

(2) The person has submitted an adequate long-term operation and maintenance plan and has demonstrated initial compliance.

(c) If the agency determines that long-term operation and maintenance is required at a site, the agency may, as a condition of issuing a certificate of completion, enter into an operation and maintenance agreement with the person that governs the long-term operation and maintenance activities and that provides for adequate financial assurance.

(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.)

25395.98. A person who acquires a property from an innocent landowner, bona fide purchaser, or contiguous property owner, and the property was previously issued a certificate of completion or no further action determination, may qualify as a bona fide prospective purchaser or contiguous property owner by demonstrating to the agency that the person meets all of the qualifying conditions of Section 25395.80 and either Section 25395.69 or 25395.70, as applicable.

(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.)

25395.99. (a) A response plan may require the use of a land use control that imposes appropriate conditions, restrictions, and obligations on land use or activities, if, after completion of the removal and remedial actions specified in the response plan, hazardous materials remain at the site at a level that is not suitable for the unrestricted use of the site.

(b) Except as provided in subdivision (c), if the agency approves a response plan that requires the use of a land use control, the land use control shall be executed by the landowner and recorded by the landowner in the office of the county recorder in each county in which all, or a portion of, the land is located within 10 days of the date of execution.

(c) An agency shall not issue a certificate of completion to a person who submits a response plan that is approved by the agency and that requires the use of a land use control, until the agency receives a certified copy of the recorded land use control. If the site that requires the land use control does not have an owner, or the agency determines the owner is incapable of executing a land use control in accordance with this section, the agency may record in the county records a "Notice of Land Use Restriction" that has the same effect as any other land use control executed pursuant to this section, and that is subject to the variance and termination procedures specified in subdivision (f).

(d) Notwithstanding any other provision of law, a land use control that is executed pursuant to this section and that is recorded so as to provide constructive notice shall run with the land from the date of recordation, is binding upon all of the owners of the land, and their heirs, successors and assignees, and the agents, employees, or lessees of the owners, heirs, successors and assignees, and is enforceable pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(e) Notwithstanding any other provision of law, a land use control executed pursuant to this section is subject to Section 57012.

(f) A land use control imposed pursuant to this section is subject to the variance and removal procedures specified in Sections 25223 and 25224.

(Amended by Stats. 2012, Ch. 39, Sec. 75. (SB 1018) Effective June 27, 2012. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.100. To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude any portion of a response action conducted entirely onsite from the hazardous waste facilities permit requirements of Sections 25200.3, 25201, and 25201.6, if both of the following apply:

(a) The response action is carried out pursuant to an approved response plan.

(b) The response plan specifies that the response action will be conducted in compliance with the standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the site, as necessary to prevent an unreasonable risk to public health and safety or the environment and any other condition imposed by the agency.

(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.)

25395.101. (a) Except as expressly provided in this article, this article does not affect the authority of an agency to issue an order or take any other action under any provision of law to protect public health and safety or the environment.

(b) Except as otherwise expressly provided in this article, this article does not affect the authority of the agency or any other public agency to pursue any existing legal, equitable, or administrative remedies pursuant to state or federal law.

(c) Except as otherwise expressly provided in this article, Part 2 (commencing with Section 78000) of Division 45 does not apply to this article.

(d) If a local agency determines that, due to an emergency, it is necessary to gain access to a site that is the subject of a finding of no further action or a certificate of completion, the person who has obtained immunity pursuant to this chapter with regard to that site shall allow the local agency access to the site to take any action necessary to mitigate that emergency, or take any other necessary response action. However, that person shall not be required to pay for, or undertake, any of those actions taken by or required by the local agency, unless the person caused or contributed to the release at the site that constituted the emergency.

(Amended by Stats. 2022, Ch. 258, Sec. 86. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258. Repealed as of January 1, 2027, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)