

CALIFORNIA HEALTH AND SAFETY CODE
DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS
CHAPTER 6.85. CALIFORNIA EXPEDITED REMEDIAL ACTION REFORM ACT
OF 1994
ARTICLE 4. EXPEDITED SITE REMEDIATION

25398.6. (a) All remedies selected at a site subject to this chapter shall meet all of the following criteria:

- (1) Be protective of human health and the environment.
- (2) Provide long-term reliability at reasonable cost.
- (3) Provide reasonable protection to the waters of the state, as required by the Water Code.

(4) Leave the site in a condition that allows it to be permanently used for its planned use and free of any significant risk to human health or any potential for any future significant environmental damage.

(b) A response action may achieve protection of human health and the environment by any of the following methods:

(1) Proven and effective engineering controls and appropriate land use controls to eliminate or mitigate risk at a site when utilized for its planned use.

(2) Treatment that reduces the toxicity, mobility, or volume of hazardous substances.

(3) Removal of hazardous substances.

(4) A combination of engineering and land use controls, treatment, and removal.

(5) Other methods of protection.

(c) Except as provided in subdivision (d), the department shall give no special preference to one or more available types of response action, including engineering and land use controls, treatment, removal, or other methods of protection, but shall evaluate available response action options on the individual merits of each option, or combination of options, reasonably available in light of site-specific conditions. In selecting the appropriate remedy, the department shall balance all of the following factors:

(1) The effectiveness of the remedy.

(2) The long-term reliability of the remedy.

(3) Any short-term risk to the affected community, to those engaged in the remediation effort, or to the environment.

(4) The reasonableness of the cost of the remedy.

(d) For discrete areas within a site that contain hazardous substances which are: (1) present in high concentrations or (2) are highly mobile, and for which containment cannot prevent significant risk of harm to human health or the environment from exposure to the hazardous substances, the department shall select treatment or removal, or both, as the remedial alternative or alternatives. The department may, however, select engineering and land use controls, or other methods of protection, to be implemented in combination with treatment or removal, or both, if such a combination will prevent a significant risk of harm from exposure.

(e) A remedial action plan prepared pursuant to this chapter shall include all of the following:

(1) The selection of a response action alternative or combination of alternatives described in subdivision (b) that are appropriate for the site and that satisfy the response action criteria set forth in

this section.

(2) A site-specific assessment prepared for the site pursuant to Section 25398.4.

(3) A description of the characteristics of the site, including the potential for offsite migration of hazardous substances, the condition of surface or subsurface soil, and the hydrogeologic conditions.

(4) An analysis of the cost-effectiveness of the remedial action measures.

(5) An analysis of the ability to implement the remedial action measures.

(6) Consideration of the historical use of the site, background levels of hazardous substances present there due to natural conditions, and the existing and planned use of the site, in determining the extent, type, and scope of the remedy appropriate for the site.

(f) A remedial action plan prepared pursuant to this chapter shall include all of the following:

(1) A summary of the site investigation report setting forth the full extent of contamination at the site, including an assessment of potential human health risks from exposure to the hazardous substances and an assessment of environmental impacts which shall include the impact of the contamination on the planned uses of the site and the beneficial uses of water.

(2) An analysis of the long-term and short-term protection afforded by the remedial action with regard to human health and the environment.

(3) An analysis of the compliance of the remedial action with federal, state, and local statutes, regulations, and ordinances.

(g) In addition to the requirements of subdivision (a), a remedial action plan prepared pursuant to this chapter shall do all of the following:

(1) Describe all proposed remedial action measures in detail.

(2) Set forth a schedule for implementation of the plan.

(3) Set forth a plan for long-term operation and maintenance of the remedial action measures, if any are required.

(h) Any remedial action plan approved pursuant to this section shall include a statement of reasons setting forth the basis for the remedial action selected. The statement shall include a description of each alternative evaluated and the reasons for the rejection of alternatives that were evaluated and not selected.

(i) Before approving a remedial action plan, the department shall do all of the following:

(1) Notify the public, including those persons reasonably believed to be members of the affected community, of the response action proposed in the plan in a manner that provides reasonable assurance of reaching those persons on a timely basis. The notice shall include posting notices in the area where the proposed remedial action would be taken and notification, by direct mail, of the recorded owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll and all potentially responsible persons identified in the plan.

(2) Provide at least 30 days for comment by the potentially responsible persons, appropriate federal, state, and local agencies, the affected community, and other members of the Public.

(3) Hold one or more public meetings with the potentially responsible persons, the affected community, and other members of the

public, if any, seeking information or desiring to comment, concerning the response action. The information provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the response action and a description of the proposed response action, the planned use, and the remedial objectives. The department shall give all of the parties entitled by this section to a public meeting a fair opportunity to comment on the merits of the plan.

(4) Comply with Section 25397.2.

(j) After complying with subdivision (i), the department shall review and consider any comments received at the public meeting or by other means within the specified time period, shall consider the affected community's acceptance of the proposed remedial alternative or alternatives, and shall propose revisions to the draft plan, if appropriate.

(k) When reviewing a remedial action plan, the department shall give no special preferences to one or more available types of response action, including engineering and land use controls, treatment, removal, or other types of corrective action, but shall evaluate available response action options on the individual merits of each option reasonably available in light of specific site conditions.

(l) Within 60 days after the close of the comment period set forth in paragraph (2) of subdivision (i), the department shall approve the final remedial action plan, or issue a notice of deficiency to the person who submitted the plan that describes, in detail, any deficiencies in the plan. A remedial action plan found to be deficient shall be modified in a reasonable time. However, any notice of rejection of the notice of deficiency shall be filed with the department within 30 days from the date of receipt of the notice of deficiency. Within 60 days of receiving a modified plan, the department shall approve the plan or advise the person who prepared the plan, in detail, of the new or continuing deficiencies. Any failure to act by the department as provided in this subdivision may be appealed to the secretary. If the secretary fails to act on behalf of the department within 30 days after the appeal is filed, the department's failure to act may be challenged by any responsible person for the site pursuant to the provisions of Section 1085 of the Code of Civil Procedure.

(m) Once approved by the department, a draft plan shall become final 60 days from the date that notice of its approval is provided in writing by appropriate means, as provided in subdivision (b) of Section 25398.10, unless a petition for review is filed prior to that time pursuant to Section 25398.10.

(n) A remedial action plan is not required for the abatement of an interim endangerment pursuant to Section 25398.2.

(o) Nothing in this chapter shall be construed to change the standards for response actions taken at voluntary action sites that are overseen by the department pursuant to Section 25201.9 or any other authority.

25398.7. (a) A remedial action plan may utilize land use controls to limit or restrict land use where appropriate. All land use controls shall be recorded by the site owner in the county in which the site is located. The site owner shall provide the department

with a copy of the land use controls which have been appropriately recorded.

(b) Any person who violates the terms of a land use control which that person knew, or reasonably should have known, applied to the property, shall be subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day for each day of violation.

(c) The terms and conditions of a land use control may be modified only with the express written consent of the department, based on a determination that the response actions implemented at the site provide sufficient protection of human health and the environment required by subdivision (a) of Section 25398.6, and are sufficient to permit the planned use of the site. If additional response action is required to provide that protection, the department shall not approve the request for modification of the restriction or control until completion of the additional response action. Implementation of a modification to a land use control shall be in accordance with the following procedure:

(1) The person requesting the modification to the permitted use of the site shall provide the request in writing to the department for the site to approve a modification to an existing land use control. The request shall be accompanied by supporting documentation demonstrating that the response action implemented at the site provides the required protection. The request shall be accompanied by any applicable costs.

(2) Within 120 days of receiving the request, and after a public notice is placed in a newspaper of general circulation in the affected area, and after a 30-day public comment period, a duly noticed public meeting shall be held on the merits of the request, the department shall do one of the following:

(A) Approve the proposed modification.

(B) Approve the proposed modification with conditions for implementation of additional response action.

(C) Disapprove the proposed modification and provide the owner with the reasons for that disapproval.

(3) (A) The approval or denial of a request for modification shall become final within 30 days from the date that the department acts to approve or deny the modification and provides notice to all persons required to receive notice pursuant to, and in the manner required by, paragraph (2). Within 30 days from the date that any decision to approve a request for modification becomes final, the site owner shall record the modified land use control in the county in which the site is located and provide the department with a copy of the land use control which has been endorsed by the county recorder. The approved modification shall take effect upon recordation and after notice of the final decision is given in writing, by appropriate means, to immediately adjacent property owners, commenters, and persons who attended the public meeting and requested this notice.

(B) If the approval is accompanied with conditions which require compliance prior to modification of the land use control, the site owner shall provide the department with a copy of the land use control which has been appropriately recorded within 30 days after the department has notified the site owner that compliance with those conditions has been demonstrated. The approved modification shall take effect upon recordation.

