

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Site Mitigation and Brownfields Reuse Program

REPORT ON CALIFORNIA EXPEDITED REMEDIAL ACTION
REFORM ACT OF 1994

November 2006

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**Prepared Pursuant to section 4 of Assembly Bill 2701
(Runner, ch. 644, stats. 2004)**

This report provides an overview of the activities of the Department of Toxic Substances Control (DTSC) to implement the Expedited Remedial Action Program (ERAP) pilot program established by Chapter 6.85 (commencing with section 25396) of division 20 of the Health and Safety Code. Additionally, this report updates the 2004 report posted on DTSC's webpage at:

http://www.dtsc.ca.gov/SiteCleanup/Brownfields/upload/ERAP_Report.pdf.

Under the provisions of Assembly Bill (AB) 2701 (ch. 644, stats. 2004), DTSC is required to provide information biennially on its website to describe its activities and accomplishments including: a listing of sites that have been selected for response action; a listing of the sites that received a certificate of completion under ERAP; an evaluation of the effectiveness of the program in expediting the cleanup of selected sites; and a comparison of ERAP to DTSC's Voluntary Cleanup Program (VCP).

The ERAP Process

ERAP is a pilot project administered by DTSC's Site Mitigation and Brownfields Reuse Program (SMBRP) to promote the cleanup of up to 30 hazardous substance release sites. The Site Designation Process, created by AB 2061 (ch. 1184, stats. 1993) was amended by Senate Bill (SB) 923 (ch. 435, stats. 1994) to require the Site Designation Committee (Committee) to review and act on ERAP applications. The Committee is comprised of the following six persons or their designees: Secretary for Environmental Protection; Director of DTSC; Chairperson of State Water Resources Control Board; Director of Department of Fish and Game; Director of Office of Environmental Health Hazard Assessment; and Chairperson of Air Resources Board.

A total of seven sites have been certified under ERAP: ANR Freight Systems; Alhambra Manufactured Gas Plant; Fountaingrove Plaza; Panorama Drive; Lindberg Street Development; River Street Development; and Ferro Union Site, Burlington Northern Santa Fe Railway. Since June 1995, the Committee has designated 18 sites to participate in ERAP. Early in the program DTSC dropped one site--known as Tow Basin in San Diego--from the program because the applicant failed to enter into an enforceable agreement with DTSC. The Southern California Edison (SCE) Manufacturing Gas Plant at Long Beach was also removed from the program by DTSC in November 2005 because SCE would not record deed restrictions for the site as required by DTSC when hazardous materials, hazardous wastes or constituents, or

hazardous substances will remain at the property at levels that are not suitable for unrestricted use. Consequently, there are nine sites remaining in ERAP that continue in the process of investigation and/or cleanup and closure.

ERAP allows for payment of "orphan" share remediation costs for up to ten sites (depending on available State funding) where the responsible party is either insolvent, or cannot be located or identified. ERAP has designated five sites as approved for orphan shares. Four of the five sites approved for orphan shares have had their shares paid and one more site is still in the remediation process and will receive orphan share funding upon request after site certification. Whether or not a site will be eligible for orphan share funding is determined through the ERAP application and approval process. In order to receive the orphan share funding, one or more of the responsible parties must complete the investigation and remediation of the site and pay for all of DTSC's oversight costs. Once the site is certified, the responsible parties can submit a claim for payment of the orphan share.

A brief summary of all ERAP sites is provided as follows:

SITE STATUS REPORT

1. ANR Freight Systems, Burlington Northern Santa Fe Railway Vernon (Los Angeles County)

Designated: June 28, 1995

Entered into Agreement: June 27, 1996

This site is part of Burlington Northern Santa Fe Railway's brownfields project that involves the purchase of properties to expand its inter-modal facility. This parcel was contaminated with lead from a former foundry.

Status: Certificate of Completion issued October 28, 1998. On August 14, 1998, a land use covenant was recorded by the property owner and the site is now being used to store trailer trucks.

2. California Steel Industries Company Fontana (San Bernardino County)

Designated: August 1, 1995

Entered into Agreement: July 8, 1996

California Steel Industries operates a steel milling facility on 400 acres of the former Kaiser Steel Plant site. Heavy metals and petroleum are the primary chemicals of concern.

Status: Work in Progress. DTSC released three of the 31 areas of concern for reuse after a Remedial Action Plan (RAP) was approved by DTSC. The site investigation work was completed and the report for the remaining 28 areas of

concern and a risk assessment was approved by DTSC. DTSC is currently reviewing the draft RAP prepared for a portion of the site.

**3. Southern California Edison, Long Beach II
Long Beach (Los Angeles County)**

Designated: October 24, 1995

Entered into Agreement: June 24, 1996

This is the site of a former manufactured gas plant that operated at the turn of the 20th century. The site is located below a freeway overpass with an active oil production facility onsite. Contamination involves polynuclear aromatic hydrocarbons (PNAs) and oil.

Status: Removed from Program – November 22, 2005. Remediation activities were completed by SCE. The treatment system was decommissioned and the site was repaved. The Final Remedial Action Report was reviewed and approved by DTSC in October 2002. Due to the underground utility features, a thin layer of contamination remains at the site. Since the site was not cleaned up to residential standards (unrestricted use), a deed restriction is required before DTSC will issue a Certificate of Completion. SCE has refused to record deed restrictions and DTSC has removed this site from the program.

**4. Alhambra Manufactured Gas Plant Site
Alhambra (Los Angeles County)**

Designated: November 29, 1995

Entered into Agreement: April 16, 1996

This former manufactured gas plant is in a residential neighborhood and impacted approximately 20 homes. This is one of ten sites eligible to receive orphan share funds.

Status: Certificate of Completion issued February 28, 1998. Significant soil contamination was discovered during the site investigation process. Final remediation and restoration activities cost \$5.04 million. The allocation of liability resulted in 61 percent being apportioned to the orphan share. In Fiscal Year (FY) 1997-98, Southern California Edison submitted an orphan share claim of \$3.074 million. In FY 1997-98, \$2.9 million was paid from the Expedited Site Remediation Trust Fund and the remainder was paid in FY 1998-99.

**5. General Electric Company
Anaheim (Orange County)**

Designated: April 24, 1996

Entered into Agreement: October 29, 1996

General Electric (GE) is using a phased approach to remediate polychlorinated biphenyls (PCBs) contaminated soils offsite, due to potential exposure to

humans. Contamination at the onsite facility will be addressed at a later date. DTSC approved a risk assessment for the railroad right-of-way in June 2000, for a health index of 1 milligram/kilogram of PCB under a residential scenario. DTSC approved the RAP in October 2002 and the engineering design in August 2003.

Status: Work in Progress. Most of the contaminated soil was removed; however, total removal of the contaminated soil is not feasible due to its proximity to a high-pressure gas line, and the cleanup activities will not meet the health risk-based closure. In addition, DTSC's Hazardous Waste Management Program (HWMP) is overseeing Resource Conservation and Recovery Act (RCRA) issues, and a tank removal work plan was submitted to DTSC for review. A health risk assessment will be conducted by the project proponent after the removal of the tank.

**6. Amvac Chemical Corporation, Railroad Right of Way
City of Commerce (Los Angeles County)**

Designated: May 29, 1996

Entered into Agreement: April 14, 1997

Pesticides and chemicals are manufactured at the facility, and a variety of chemicals were discharged during the transfer of chemicals between the cars and product lines. This facility has two hazardous waste permitted units. A rail spur owned by Burlington Northern Santa Fe Railroad (Railroad) is located outside the facility.

Status: Deed Restriction Required. In June 1998, 2,000 cubic yards of pesticide and arsenic contaminated soil located outside the facility fence line were removed. The area was remediated to industrial standards, with residual arsenic contaminated soil remaining ten feet below the surface. Since offsite soil contamination remains at levels that prohibit residential (or unrestricted) land use, a deed restriction must be recorded before DTSC can issue a Certificate of Completion. DTSC has been unable to negotiate a deed restriction with the Railroad while onsite contaminated soil and potential contaminated groundwater are being investigated. HWMP will provide oversight of the investigation and the closure of the permitted units. The applicant may withdraw from the program.

**7. Fountaingrove Plaza
Santa Rosa (Sonoma County)**

Designated: May 29, 1996

Entered into Agreement: January 7, 1997

This abandoned property was previously the site of a trucking operation and used for heavy equipment sales and repair, auto repair, petroleum storage, warehouse, and other industrial uses. Shallow groundwater is impacted by

trichloroethylene (TCE). This is one of ten sites eligible to receive orphan share funds.

Status: Certificate of Completion Issued – Ongoing Operation and Maintenance. The site is in the Operation and Maintenance (O&M) phase. In March 1999, Fountaingrove Plaza submitted an orphan share claim for \$415,664, which was paid out of the Expedited Remedial Action Trust Fund in FY 1998-99. A groundwater extraction and discharge system is in operation, and two additional monitoring wells are being installed in anticipation of a trial shut down. However, based upon the results from one of the wells, the trial shutdown was not conducted. An additional monitoring well will be installed in the fall of 2006 to better define the extent of the groundwater plume within site boundaries. DTSC has also approved the relocation of the treatment system and reinforcement of the extraction trench as part of redevelopment plans for the site. DTSC completed the first five-year review of the site in 2004.

**8. Panorama Drive
Bakersfield (Kern County)**

Designated: May 29, 1996

Entered into Agreement: January 7, 1997

A residential community consisting of 19 residential lots was built on this former burn dump that was operated by the City of Bakersfield (City). Soils were contaminated with lead and dioxin. Since the site has been certified, the City purchased the majority of these properties and resold them.

Status: Certificate of Completion issued June 23, 1998. After removal of contaminated soil, the properties were re-landscaped to allow for the sale of homes.

**9. Golden Technology
Santa Rosa (Sonoma County)**

Designated: August 28, 1996

Entered into Agreement: March 20, 1998

Golden Technology operated a printed circuit board manufacturing company that released hazardous substances, including trichloroethylene (TCE) and heavy metals. This is one of ten sites eligible to receive orphan share funds.

Status: Work in Progress. The Remedial Action Plan and Design were approved by DTSC and implemented--two stainless steel sumps were removed along with 3,283 tons of soil. Deed restrictions were recorded by the property owner in December 2005. However, additional monitoring of wells is ongoing to characterize contamination in the lower zone.

**10. Ferro Union Site, Burlington Northern Santa Fe Railway
Vernon (Los Angeles County)**

Designated: October 30, 1996

Entered into Agreement: April 1998

This site is another part of Burlington Northern Santa Fe Railway's brownfields project that involves the purchase of properties to expand its inter-modal facility. This parcel is contaminated with lead from local contaminated debris material used as fill material.

Status: Certificate of Completion issued August 2, 2004. An asphalt cover on the property was completed and approved by DTSC in April 1999. Because hazardous substances remain in the soil and under the property, the RAP includes requirements for recording a deed restriction and for entering into an O&M agreement for the asphalt cover. The deed restriction was recorded in December 2003 by the property owner. The O&M Agreement has also been executed, and the site is being used to store trailer trucks.

**11. Amvac Chemical Corporation, Main Facility
Commerce (Los Angeles County)**

Designated: March 27, 1997

Entered into Agreement: June 29, 1998

Pesticides and chemicals are manufactured at this location. This facility is adjacent to the rail spur site listed as item #6 above.

Status: Work In Progress. The Preliminary Site Assessment was completed and the site is undergoing the second phase of the soil and soil gas investigation to fill data gaps from the first site investigation. The RCRA Facility Assessment was completed and the facility is undergoing a Phase II RCRA Investigation with oversight by DTSC's HWMP.

**12. Tow Basin, North Harbor Drive
San Diego (San Diego County)**

Designated: March 27, 1997

The San Diego Port District currently owns this parcel with the intent of revitalizing the parcel for commercial use. The Tow Basin (Building 923) is in a concrete basin that was used to conduct hydrodynamic designs of boats, ships, submersible vehicles and seaplanes. Performance tests were also conducted on oil skimming systems designed for offshore oil spill clean-up. The primary contaminant of concern is PCB.

Status: Site Dropped From ERAP Program. DTSC removed the site from ERAP for failing to negotiate an enforceable agreement. However, DTSC is addressing the site under the statutory authority of Chapter 6.8 of the Health and

Safety Code. In November 2004, DTSC approved the Final Implementation Report, which addressed the demolition of the Tow Building and the excavation of contaminated soil. Approximately 142,477 pounds of PCB-contaminated soil were removed. DTSC reviewed the Groundwater Workplan and Bay Sediment Plan in 2005.

**13. River Street Development
Santa Cruz (Santa Cruz County)**

Designated: December 11, 1997

Entered into Agreement: December 21, 1998

The site consists of nine parcels in downtown Santa Cruz, where considerable redevelopment is taking place. Soil and groundwater contamination includes total petroleum hydrocarbons related to an underground tank, PNAs, and lead. This is one of the sites already determined to be eligible to receive orphan share funds. River Street submitted an orphan share claim for \$1,000,349.31, which was paid out of the Expedited Remedial Action Trust Fund in September 2005.

Status: Certificate of Completion issued March 1, 2005. Ongoing Operation and Maintenance. Treatment of the shallow groundwater continues using oxygen-releasing compound and groundwater monitoring. Deed restrictions were recorded by the property owner in February 2005.

**14. Lindberg Street Development
Santa Cruz (Santa Cruz County)**

Designated: December 11, 1997

Entered into Agreement: December 21, 1998

The site consists of two parcels in downtown Santa Cruz. Lead was likely released during a previous auto wrecking operation at the site. This is one of ten sites eligible to receive orphan share funds. In FY 2000-01, the responsible party submitted an orphan share claim for \$555,612, which was paid out of the Expedited Remedial Action Trust Fund.

Status: Certificate of Completion issued March 1, 2001. Soil containing chemicals above residential cleanup goals were removed and disposed of offsite.

**15. PG&E Site
Redding (Shasta County)**

Designated: February 5, 1998

Entered into Agreement: November 3, 1998

This is the location of a former manufactured gas plant that operated from 1886 to 1947. After the plant was dismantled, PG&E sold several parcels that are now used for commercial businesses. A small stream adjoins a portion of the

manufactured gas plant. PNAs and petroleum are present in the soil, and the groundwater contains petroleum hydrocarbons.

Status: Work In Progress. Implementation of Cleanup Alternative is 95% complete. The soil and groundwater remedial activities were completed in 2003 and 2004. DTSC is drafting a deed restriction for areas associated with the historical manufactured gas plant operations. A Final Remediation Action Implementation Report is being reviewed by DTSC.

**16. PG&E Site
Colusa (Colusa County)**

Designated: February 5, 1998

Agreement in Place: October 27, 1998

This is the location of a former manufactured gas plant that operated at the turn of the 20th century until 1940. The site is located in the City of Colusa and is used by PG&E as a service center for gas and electric work crews, a substation, and a pole yard. Subsurface soils are contaminated with PNAs, cyanide, phenyls, and metals.

Status: Work In Progress. DTSC issued a conditional Site Investigation approval letter with some additional data requirements still being pursued with the responsible party.

**17. PG&E Site
Fresno (Fresno County)**

Designated: April 30, 1998

Entered into Agreement: November 3, 1998

This is the location of a former manufactured gas plant that operated from 1918 until 1929. The site is located in the City of Fresno and used by PG&E as a utility yard. A portion of the site was sold and is currently vacant. Soils are contaminated with PNAs and metals.

Status: Work In Progress. Site Investigation Report is in progress. Interim Removal Action Workplan is pending completion and review by DTSC to address lamp black exposed on surface soils.

**18. Alhambra Combined Facility (Southern California Edison)
Alhambra (Los Angeles County)**

Designated: April 29, 1999

Agreement in Place: April 13, 2000

The site was used as a wood treating facility from 1920 until 1957. Since 1957, it has been used as a utility yard. Onsite soils are contaminated with

pentachlorophenol and PCBs as a result of past site activities. Southern California Edison has divided the property into three operable units.

Status: Work In Progress. The in-situ thermal desorption unit began operation at the Phase I Area of Operable Unit 2 in March 2003. Area of Concern 2, which consisted of in situ thermal desorption followed by a thermal oxidizer, was completed in March 2006. DTSC is currently waiting for submittal of the completion report by Edison. The site may be eligible for unrestricted use.

COMPARISON OF THE EXPEDITED REMEDIAL ACTION PROGRAM (ERAP) WITH THE VOLUNTARY CLEANUP PROGRAM (VCP)

ERAP: ERAP provides significant incentives for redevelopment of contaminated properties by promoting cleanups based on the planned land use, by providing a covenant not to sue, and by outlining a fair and equitable liability scheme. ERAP was designed to test alternative methods for addressing cleanups and has provided ideas for future programmatic changes. Since 1994, 18 sites have been designated to participate in the pilot program and seven sites have been certified as being satisfactorily remediated. ERAP provides for mitigation rather than litigation by revising the liability scheme based on fair and equitable standards, and it provides orphan share funding for up to ten sites. To date, four sites have received orphan share funds and more than \$5.045 million has been distributed in orphan share funding. Golden Technology is the only site remaining that was approved for orphan shares; however, the groundwater investigation is still ongoing.

Some of the ERAP sites have not been certified by DTSC because the property has not been cleaned up to “unrestricted” use and hazardous materials, hazardous wastes or constituents, or hazardous substances remain at the property at levels that are not suitable for unrestricted use. Land use covenants (deed restrictions) are required to guarantee that information about property containing contamination is available to local governments and the public; to provide disclosure to buyers, sellers, lending institutions, brokers, title and escrow companies; to ensure that long-term mitigation measures or monitoring requirements are carried out and maintained; and to ensure that subsequent property owners or lessees have a duty to assume responsibility for any requirements or restrictions pertaining to contamination when they take over the property. This is consistent with DTSC’s Requirements for Land Use Covenants regulations in section 67391.1 in Title 22, Division 4.5, Chapter 39, California Code of Regulations.

VCP: DTSC’s VCP (replaced the “Walk-In” Program in 1993) allows motivated parties who are able to fund the cleanup under DTSC’s oversight to move ahead at their own speed to investigate and remediate their sites. DTSC has found that working cooperatively with willing and able project proponents is an efficient and cost-effective approach to site investigation and cleanup of sites that does not pose a substantial threat to public health or the environment. DTSC’s VCP stresses the use of presumptive remedies and innovative technologies to expedite cleanups, along with risk analysis and land use covenants that can link the cleanup standards with the planned

use of the property. Since its creation in 1993, 675 projects have entered the program, and approximately 296 have been successfully completed.

RECOMMENDATION: ERAP provides significant incentives for high-risk brownfield cleanups and this pilot project should be continued to fully test its alternative methods for addressing contaminated sites that pose a risk to public health or the environment. However, no new sites have been designated since 1996.

DTSC'S BROWNFIELDS PROGRAM

For several years now, DTSC has been establishing a comprehensive Brownfields Program. Brownfields are properties contaminated or thought to be contaminated, and are underutilized due to perceived remediation costs and liability concerns. Governor Schwarzenegger and the Legislature have actively supported the redevelopment of brownfields to renew prosperity in California and reduce a burden on the environment. In the second half of the 2003-2004 Legislative Session, the Governor signed two major brownfields bills.

AB 389 (ch. 705, stats. 2004) enacts the California Land Reuse and Revitalization Act of 2004 (Act). The Act makes legislative findings concerning brownfields properties and the importance of cleaning up these sites and returning them to productive use in order to protect public health and safety and the environment. The Act provides immunity from financial liability to an innocent landowner, a bona fide purchaser, or a contiguous property owner (as defined by the bill and under certain specified conditions). The Act establishes requirements for persons who want to qualify for the immunity provisions, and also on the regulatory agencies (DTSC, State Water Resources Control Board (SWRCB), and the Regional Water Quality Control Boards (RWQCBs)). It contains a sunset provision of January 1, 2010.

The Act requires DTSC to revise and upgrade its database systems to enable compatibility with the existing databases of SWRCB, including the Geographical Information System (GIS) mapping. DTSC must also maintain and display additional information on brownfields, as well as other types of sites. The Act authorizes DTSC to expend federal grant funding (when appropriate) to implement the database provisions.

In addition, the Act requires the California Environmental Protection Agency (Cal/EPA) to develop a form that the innocent landowner, bona fide prospective purchaser, or contiguous property owner is required to complete in order to qualify for immunity from liability. The bill requires Cal/EPA to prepare a legislative mandated report beginning in January 1, 2006 and post its findings on the Internet. The bill directs Cal/EPA to designate a "Brownfields Ombudsperson" using existing resources or when funding becomes available.

SB 989 (ch. 510, stats. 2006) extends the immunities provided under the Act to

bonafide ground tenants, as defined, provided they meet certain conditions and conduct specified site assessment and cleanup actions.

AB 2144 (ch. 562, stats. 2006) modifies the public participation requirements under the Act, and requires the oversight agency to consider the issue of environmental justice, as defined, in development of response actions at sites being cleaned up under the Act.

SB 805 (ch. 717, stats. 2004) expands the application of the California Land Environmental Restoration and Reuse Act (CLERRA). Enacted in 2001, CLERRA (SB 32, ch. 764, stats. 2001) gives cities and counties the authority to either order, or directly undertake, the investigation and cleanup of abandoned and underutilized parcels of brownfields properties. CLERRA provides local governments and certain owners, developers, and lenders with limited immunities from requirements of State or local laws for further investigation or cleanup work on properties that have already been cleaned up pursuant to the Act's environmental oversight process. Prior to the passage of SB 805, a property larger than five acres of contiguous land under the same ownership was not eligible for cleanup under CLERRA. SB 805 allows the use of CLERRA to clean up a site that is under a single ownership and larger than five acres, if that site is an infill site and meets certain conditions, as specified by the bill.

SB 471 (ch. 586, stats. 2005) deletes an exclusion from the definition of "property" under CLERRA, thereby including as "property," a site that has one or more full-time equivalent employees on an annualized basis.

SB 354 (ch. 523, stats. 2006) removes an exclusion from the definition of "property" under the CLERRA to allow local agencies to act at sites with pending State agency enforcement orders.

In the 2005-2006 Legislative Session, the Brownfields bills were aimed at making clarifying language changes to those bills passed in the 2003-2004 Legislative Session, rather than establishing new Brownfields programs.

For more information on DTSC's Brownfields Program, see our web site at:
<http://www.dtsc.ca.gov/SiteCleanup/index.html#Brownfields%20Reuse>.

Attachments: Excerpt (page 46 only) of chaptered version of AB 2701 (ch. 644, stats. 2004)
Chaptered version of Senate Bill 923 (ch. 435, stats. 1994)

GLOSSARY OF TERMS

Brownfields

Properties that are contaminated or thought to be contaminated, which are underutilized due to perceived remediation costs and liability concerns.

CEQA

The California Environmental Quality Act (CEQA) requires public agency decision makers to consider and document the environmental implications of their actions.

DTSC

Department of Toxic Substances Control.

ERAP (Expedited Remedial Action Program)

ERAP provides: a liability scheme based on fair and equitable standards; identification protection through a covenant not to sue; a risk-based cleanup based on the ultimate use of the site; a streamlined remediation process; and a dispute resolution process.

Deed Restrictions

A deed restriction is a recorded document that limits the use of property.

Land Use Covenants Regulations

Land Use Covenants (LUCs) include easements, servitudes, covenants, and restrictions that run with the land and restrict uses for cleanups where hazardous materials, hazardous wastes or constituents, or hazardous substances are left in place at levels not suitable for unrestricted use of the land. DTSC's LUC regulations were adopted on April 19, 2003.

Operable Unit

A term used for each of a number of separate activities undertaken as part of a cleanup. A typical operable unit would be the removal of drums and tanks from the surface of the site.

Operation and Maintenance (O&M)

These are activities that must be maintained or monitored after a site has been remediated in order to protect public health or safety or the environment. The activities include such things as maintaining an asphalt cap or monitoring groundwater wells.

Remedial Action Plan (RAP)

This is a remedy selection document that explains the reasons for selecting a cleanup alternative for a contaminated site. A key element of a RAP is to provide the public with an opportunity to comment on the proposed cleanup remedy. DTSC is required to consider all comments before approving the final RAP.