



**California Environmental Protection
Agency
Department of Toxic Substances Control
Site Mitigation Program**

FACT SHEET

FINANCIAL INCENTIVES TO CLEAN UP HAZARDOUS SUBSTANCE SITES

New Legislation Passes

Senate Bill 2056, effective January 1, 1993, provides an incentive for all responsible parties (RPs) who either have entered an agreement or been named in an order requiring site cleanup to comply with the agreement or order. It does this by providing that RPs who either have entered into an agreement with or been issued an Order by the Department of Toxic Substances Control (Department), and who are in compliance, may pursue treble damages from RPs who do not comply.

Prior to passage of this new law, if one or more RPs complied with a cleanup order or entered with an agreement to respond to site contamination, there was no provision in state law to encourage remaining RPs to participate in the site remediation. They could simply stand by until such time as the complying RPs pursued contribution by filing a lawsuit. The potential that treble damages may be imposed provides an incentive for all named RPs to comply from the outset. Thus, SB 2056 has established a clear financial incentive to clean up hazardous substance release sites.

What Are The Major Elements Of The Bill?

These are the major elements of SB 2056:

- 1) Adds Health and Safety Code (H&SC) section 25359.3:

- RPs who have entered into an agreement with the Department or who are complying with an order issued by the Department and who are in compliance with that agreement or order, may seek treble damages from any noncomplying RP.
- RPs may not be assessed treble damages if a court determines that the RPs had sufficient cause for not complying with an order or agreement or is an innocent land owner or where the principles of "fundamental fairness" will be violated (as determined by a court).
- RPs seeking treble damages must show that the noncomplying RP was provided notice of the order/agreement by means of personal service or certified mail.
- One-half of any treble damages will be directed to future site cleanups overseen by the Department.
- Noncomplying RPs shall be deemed to have acted willfully with respect to their liability for purposes of the Insurance Code, so that their insurance companies will not be liable for treble damages.

2) Amends H&SC section 25363:

- Any person who has incurred removal/remedial action costs in accordance with this chapter or the federal act may seek contribution or indemnity from any person who is liable pursuant to this chapter, except that no claim may be asserted against a RP whose liability has been determined and which has been or is being fully discharged pursuant to H&SC section 25356.6 or is actively participating in an apportionment proceeding.

- Any person who seeks contribution or indemnity shall give written notice to the Director of the Department of Toxic Substances Control upon filing an action or cross complaint.

3) Amends H&SC section 25360:

- The amount of cost determined pursuant to this section shall be recoverable at the discretion of the Department, either in a separate action or by way of intervention as of right in an action for contribution or indemnity.

4) Amends H&SC section 25359 to be consistent with damages terminology:

- Establishes liability for treble damages for a person who fails to provide a removal/remedial action pursuant to an order issued under H&SC section 25358.3.
- Treble damages equal three times the amount of the defendant's contribution share.
- No treble damages shall be assessed to an innocent property owner.

What Procedures Do Qualifying RPs Have To Follow?

- RPs must notify the Director of the Department in writing that they are

seeking contribution or indemnity pursuant to H&SC section 25359.3(a). The Department requests that this notification include a copy of the lawsuit and a copy of the order or agreement.

- The RP seeking treble damages must show that the contribution defendant received the order or agreement by personal service or certified mail.

What Is The Department's Role?

The Department will follow its standard policies and procedures for overseeing and supervising the investigation and removal/remedial actions taken at hazardous substance release sites, as required by H&SC section 25355.7 (Assembly Bill 189). (See Policy and Procedure #EO-92-002-PP (formerly SM #92-1), effective July 1, 1992).

- Beginning in January 1993, the Department's Project Managers will send copies of this Fact Sheet to all identified RPs at sites where Orders have already been issued.
- The Department will continue to send all Orders and agreements to RPs by certified mail and document such in order to meet the notice requirement of H&SC section 25359.3(a).
- As determined by the Department, the Department's Project Managers will amend Orders or issue Orders when new RPs are identified.
- This Fact Sheet will be enclosed with the Department's cover letter for all Orders.
- Regional Site Mitigation Offices will have copies of this Fact Sheet available for any interested party.