

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Insufficient Data Exists on the Number of Abandoned, Idled, or Underused Contaminated Properties, and Liability Concerns and Funding Constraints Can Impede Their Cleanup and Redevelopment

REPORT NUMBER 2002-121, JULY 2003

California Environmental Protection Agency, the Department of Toxic Substances Control, and the State Water Resources Control Board combined response as of October 2004

Audit Highlights . . .

Our review of the entities under the California Environmental Protection Agency (Cal/EPA) that oversee the cleanup of contaminated sites, the Department of Toxic Substances Control (Toxics) and the State Water Resources Control Board (State Water Board), found the following:

- State law does not require Toxics or the State Water Board to capture information on brownfields, such as the number of sites and their potential reuses.*
- Toxics anticipates needing between \$124 million and \$146 million for the remediation of 45 existing orphan sites and \$2.4 million in fiscal year 2003–04 for orphan shares.*
- The State Water Board's unaudited data indicate that it has seven orphan sites to which it has committed \$1.4 million in state resources for cleanup.*

continued on next page . . .

The Joint Legislative Audit Committee requested that the Bureau of State Audits conduct an audit of the California Environmental Protection Agency (Cal/EPA) and its entities involved in the cleanup of properties contaminated by hazardous material and waste, the Department of Toxic Substances Control (Toxics) and the State Water Resources Control Board (State Water Board). We were asked to provide information on how many orphan sites and sites with orphan shares exist in the State, as well as how much funding is needed and how much is directly available to clean up those sites.

Finding #1: California lacks a comprehensive inventory of brownfields.

California does not have a uniform definition for brownfields. Further, state law does not require Toxics or the State Water Board to maintain databases to capture information on brownfields, such as the number of sites and their potential reuse. On May 30, 2003, Toxics did submit an application to the United States Environmental Protection Agency (U.S. EPA) to receive a state response grant. Toxics intends to use a portion of the grant to work with the State Water Board and the regional water quality control boards (regional water boards) to maintain and display accurate geographical information on brownfield sites and other properties that pose environmental concerns.

- ☑ *The reuse of brownfields faces challenges, such as the liability provisions the federal Superfund law imposes and limited funding opportunities.*

Toxics and the State Water Board have yet to apply for certain federal grants available to assist with the State's assessment and cleanup costs for certain sites, such as mine-scarred lands.

We recommended that if Toxics does not receive funding from the U.S. EPA, Cal/EPA should seek guidance from the Legislature to determine if it desires a database to track the State's efforts to promote the reuse of properties with contamination. If the Legislature approves the development or upgrade of a statewide database that includes relevant data to identify brownfields sites and their planned and actual uses, Cal/EPA should establish a uniform brownfield definition to ensure consistency.

Cal/EPA Action: Partial corrective action taken.

Cal/EPA told us that Toxics was awarded funds from the U.S. EPA under the Small Business Liability Relief and Brownfields Revitalization Act for fiscal years 2003–04 and 2004–05. In conjunction with the award of these funds, Toxics and the State Water Board plan to continue efforts to operate and enhance their site information databases. The grant also calls for a survey and inventory of brownfields in the State. To accomplish this task, Cal/EPA informally surveyed other state brownfield programs for information about the challenges, features, and operating costs of their inventories. Cal/EPA also intends to hold a series of discussions with various stakeholders and will use the information to proceed with its inventory efforts.

Finding #2: Existing databases do not provide a comprehensive reporting of orphan sites and sites with orphan shares.

Toxics maintains a database to track the number of contaminated sites in the State. Although this database currently reports the number of orphan sites under its jurisdiction, the database is not able to track the number of sites with orphan shares. Additionally, due to incomplete data relating to responsible parties in the State Water Board's database, we were unable to identify the number of orphan sites under its jurisdiction. The State Water Board told us that orphan shares do not exist since the nine regional water boards apportion liability for cleanup using a strict application of joint and several liability. Under a strict application of joint and several liability there are no orphan shares because even though some share of the cleanup costs is not attributable to a responsible party, each must assume full responsibility for those costs.

We recommended that to obtain a comprehensive listing of the number of orphan sites and sites with orphan shares, the Legislature should consider requiring Cal/EPA and its entities to capture necessary data in their existing or new databases.

Legislative Action: Legislation passed.

Chapter 705, Statutes of 2004 (Assembly Bill 389) directs Toxics to install improvements to its database systems to maintain and display information that includes the number of brownfield sites, each brownfield site's location, acreage, response action, site assessments, and the number of orphan sites where the department is overseeing the response action.

Finding #3: Toxics and the State Water Board have yet to apply for all available federal grants.

The Small Business Liability Relief and Brownfields Revitalization Act (revitalization act) provides grants and loans to states, local governments, and other eligible participants to inventory, characterize, assess, conduct planning, and remediate brownfields. However, Toxics and the State Water Board have not applied for all available monies under the revitalization act to assist with the State's assessment and cleanup costs for certain sites.

We recommended that to reduce the State's brownfield assessment and cleanup costs, Cal/EPA should ensure that Toxics and the State Water Board apply for all available funding under the revitalization act.

Cal/EPA Action: Pending.

Cal/EPA stated that Toxics applied for and was awarded grant funds from the U.S. EPA for a variety of brownfield activities, including targeted site investigations, program coordination with the State Water Board, public outreach activities, Web site improvements, and assisting local jurisdictions. Additionally, Cal/EPA stated that Toxics and the State Water Board are actively pursuing other available competitive brownfield funds.

