



Assemblymember Tasha Boerner, 77th District

AB 3040: CONTAMINATED SITE CLEAN-UP

(AS INTRODUCED FEBRUARY 16, 2024)

SUMMARY

AB 3040 would expedite clean-up of legacy pollution in California by clarifying that environmental regulatory orders can trigger historic insurance coverage.

BACKGROUND

More than 100 years of industrial development in California has left a legacy of hundreds of thousands of contaminated sites. Contaminated sites with the highest levels of pollution are disproportionately located in disadvantaged communities.

Typically, the investigation and remediation of contaminated properties in California is accomplished through regulatory processes directed by federal, state, and local environmental agencies. Regulatory orders and other directives requiring the investigation and remediation of contamination often involve administrative proceedings that are equivalent to litigation in federal and state courts.

Environmental actions and administrative proceedings are costly. Necessary investigation and remediation of contaminated properties is often delayed, sometimes indefinitely, due to lack of funding.

Historical comprehensive general liability policies which do not contain broad environmental exclusions (typically issued before the mid-1980s), provide a critical source of funding for this work, especially where responsible parties do not otherwise possess sufficient financial assets to comply with regulatory directives. Unfortunately, insurers often deny coverage under these old policies unless and until a lawsuit has been filed against the policyholder, encouraging policyholders to oppose agency directives and force lawsuits simply to obtain insurance coverage. This results in significant delays and expenses.

EXISTING LAW

In 2010, the California Supreme Court affirmed in *Ameron Int'l Corp. v. Ins. Co. of the State of Pennsylvania* (2010) 50 Cal. 4th 1370 (“*Ameron*”) that an administrative adjudicative proceeding can be the equivalent of a “suit,” as that term is used in such historic insurance policies, because a policyholder would reasonably expect coverage under the terms of the policies. The California Supreme Court therefore ruled that coverage was triggered by the administrative proceeding even without a lawsuit filed in federal or state court, consistent with the huge majority of courts to have evaluated this issue across the United States. This decision has not been consistently recognized by insurers, however, limiting its effectiveness.

THIS BILL

Specifically, AB 3040 would codify the California Supreme Court’s *Ameron* ruling by clarifying that a “suit” or “lawsuit,” as used in a liability insurance policy, includes environmental regulatory orders. This clarification will increase the availability of funding for investigation and cleanup of contamination.

As a result, AB 3040 will benefit California’s policyholders and the State of California, which assumes responsibility for orphaned sites where responsible parties have inadequate financial assets for cleanup. This bill provides for the prompt investigation and remediation of contaminated sites in California—many of which are in the most vulnerable communities in the state.

SUPPORT

- Port of San Diego (Sponsor)

OPPOSITION

- None on file

FOR MORE INFORMATION

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