

AMENDED IN SENATE MAY 27, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 275

Introduced by Committee on Environmental Safety and Toxic Materials (Assembly Members Alejo (Chair), Gonzalez, McCarty, and Ting)

February 11, 2015

An act to amend Sections 25360.4, 25363, and 25366.5 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 275, as amended, Committee on Environmental Safety and Toxic Materials. Hazardous substances: liability recovery actions.

(1) Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substances removal or remedial actions and requires the Attorney General to recover from the liable person, as defined, certain costs incurred by the Department of Toxic Substances Control or a California regional water quality control board, upon the request of the department or regional board. The act authorizes, except as specified, a party found liable for any costs or expenditures recoverable under the act *for those actions* to establish, as specified, that only a portion of those costs or expenditures are attributable to the party, and ~~be required~~ *requires the party* to pay only for that portion. If each party does not establish ~~it's~~ *its* liability, the act requires ~~the a~~ court to apportion those costs or expenditures, as specified, among the defendants and the remaining portion of the judgment is required to be paid from the Toxic Substances Control Account. Existing law authorizes the money deposited in the Toxic Substances Control Account in the General Fund to be appropriated to the Department of

Toxic Substances Control for specified purposes, including the payment of ~~removal and remedial actions~~ *the costs* incurred by the ~~state~~. *state for those actions.*

This bill would *specifically apply those provisions to response and corrective actions, and would delete* the requirement that the remaining portion of a judgment for costs and expenditures that is not apportioned among the liable persons be paid from that account.

(2) The act requires an action brought pursuant to it for the recovery of the costs of a removal or remedial action to be commenced within 3 years after completion of the removal or remedial action has been certified by the department.

This bill would, except as provided, instead allow ~~an~~ *a response or corrective* action to be commenced either within that 3-year period ~~or within 6 years of the initiation of a removal or remedial action, whichever date is later.~~ *or, if operation and maintenance is required as part of the response or corrective action, within three years after completion of operation and maintenance has been certified by the department or a regional board.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25360.4 of the Health and Safety Code
2 is amended to read:
3 25360.4. (a) (1) (A) Except as provided in *subparagraph (B)*
4 *and* paragraph (2), an action under Section 25360 for the recovery
5 ~~of the costs of removal or remedial action~~ *costs* incurred by the
6 department ~~from the state account, or any other source~~ *or a*
7 *regional board in carrying out or overseeing a response or*
8 *corrective action pursuant to this chapter or Chapter 6*
9 *(commencing with Section 25100), or as otherwise authorized by*
10 law, or for the recovery of ~~administrative oversight~~ costs incurred
11 by the department in connection with a ~~removal or remedial~~
12 *response or corrective* action performed by the ~~department~~
13 *department, a regional board, or by* a responsible party, shall be
14 commenced within three years after completion of the ~~removal or~~
15 ~~remedial~~ *response or corrective* action has been certified by the
16 department, ~~or within six years of the initiation of a removal or~~
17 ~~remedial action, whichever date is later.~~ *or a regional board.*

1 (B) *If operation and maintenance is required as part of the*
2 *response or corrective action, the action for recovery shall be*
3 *commenced within three years after completion of operation and*
4 *maintenance has been certified by the department or a regional*
5 *board.*

6 (2) No action described in paragraph (1) may be brought that,
7 as of December 31, 2015, had not been commenced by the
8 department within three years after the certification of the
9 completion of the removal or remedial action.

10 (b) An action under subdivision (c) of Section 25352 for costs
11 incurred by the department for the purposes specified in subdivision
12 (a) or (b) of Section 25352 shall be commenced within three years
13 after certification by the department of the completion of the
14 activities authorized under subdivisions (a) and (b) of Section
15 25352.

16 (c) In an action described in subdivision (a) or (b) for recovery
17 ~~of the costs of a removal action, a remedial action, administrative~~
18 *response or corrective action costs, oversight costs, or damages,*
19 where the court has entered a judgment for ~~these~~ past costs or
20 damages, the court shall also enter an order reserving jurisdiction
21 over the case and the court shall have continuing jurisdiction to
22 determine any future liability and the amount of the future liability.
23 The department *or regional board* may immediately enforce the
24 judgment for past costs and damages. The department *or the*
25 *regional board* may apply for a court judgment for ~~future further~~
26 costs and damages that have been incurred during the ~~removal and~~
27 ~~remedial actions~~ *response or corrective action, operation and*
28 *maintenance, or during the performance of the activities authorized*
29 *by Section 25352, but the application shall be made not later than*
30 *three years after the certification of completion of the* ~~actions or~~
31 ~~activities.~~ *response or corrective action, operation and*
32 *maintenance, or activities authorized pursuant to Section 25352.*

33 (d) An action may be commenced under Section 25360 or
34 subdivision (c) of Section 25352 at any time prior to expiration of
35 the applicable ~~limitation~~ *limitations* period provided for by this
36 section.

37 ~~SEC. 2. Section 25363 of the Health and Safety Code is~~
38 ~~amended to read:~~

39 ~~25363. (a) Except as provided in subdivision (e), a party found~~
40 ~~liable for costs or expenditures recoverable under this chapter who~~

1 establishes by a preponderance of the evidence that only a portion
2 of those costs or expenditures are attributable to that party's
3 actions, shall be required to pay only for that portion.

4 (b) ~~Except as provided in subdivision (c), if the trier of fact finds~~
5 ~~the evidence insufficient to establish each party's portion of costs~~
6 ~~or expenditures under subdivision (a), the court shall apportion~~
7 ~~those costs or expenditures, to the extent practicable, according to~~
8 ~~equitable principles, among the defendants.~~

9 (c) ~~The standard of liability for costs or expenditures recoverable~~
10 ~~pursuant to this chapter is strict liability.~~

11 (d) ~~A person who has incurred removal or remedial action costs~~
12 ~~in accordance with this chapter or the federal act may seek~~
13 ~~contribution or indemnity from any person who is liable pursuant~~
14 ~~to this chapter. An action to enforce a claim may be brought as a~~
15 ~~cross-complaint by any defendant in an action brought pursuant~~
16 ~~to Section 25360 or this section, or in a separate action after the~~
17 ~~person seeking contribution or indemnity has paid removal or~~
18 ~~remedial action costs in accordance with this chapter or the federal~~
19 ~~act. A plaintiff or cross-complaint seeking contribution or~~
20 ~~indemnity shall give written notice to the director upon filing an~~
21 ~~action or cross-complaint under this section. In resolving claims~~
22 ~~for contribution or indemnity, the court may allocate costs among~~
23 ~~liable parties using the appropriate equitable factors.~~

24 (e) ~~Notwithstanding this chapter, a response action contractor~~
25 ~~who is found liable for any costs or expenditures recoverable under~~
26 ~~this chapter and who establishes by a preponderance of the~~
27 ~~evidence that only a portion of those costs or expenditures are~~
28 ~~attributable to the response action contractor's actions shall be~~
29 ~~required to pay only that portion of the costs or expenditures~~
30 ~~attributable to the response action contractor's actions.~~

31 *SEC. 2. Section 25363 of the Health and Safety Code is*
32 *amended to read:*

33 25363. (a) Except as provided in subdivision (f), any (e), a
34 party found liable for any costs or expenditures recoverable under
35 this chapter who establishes by a preponderance of the evidence
36 that only a portion of those costs or expenditures are attributable
37 to that party's actions, shall be required to pay only for that portion.

38 (b) Except as provided in subdivision (f); (e), if the trier of fact
39 finds the evidence insufficient to establish each party's portion of
40 costs or expenditures under subdivision (a), the court shall

1 apportion those ~~costs or expenditures~~, *costs*, to the extent
2 practicable, according to equitable principles, among the
3 defendants.

4 ~~(e) The state account shall pay any portion of the judgment in~~
5 ~~excess of the aggregate amount of costs or expenditures~~
6 ~~apportioned under subdivisions (a) and (b).~~

7 ~~(d)~~

8 (c) The standard of liability for ~~any costs or expenses~~
9 recoverable pursuant to this chapter is strict liability.

10 ~~(e) Any~~

11 (d) A person who has incurred ~~removal or remedial response~~
12 ~~or corrective~~ action costs in accordance with this ~~chapter~~ *chapter*,
13 *Chapter 6.5 (commencing with Section 25000)*, or the federal act
14 may seek contribution or indemnity from any person who is liable
15 pursuant to this ~~chapter~~, ~~except that no claim may be asserted~~
16 ~~against a person whose liability has been determined and which~~
17 ~~has been or is being, fully discharged pursuant to Section 25356.6,~~
18 ~~or against a person who is actively participating in a pending~~
19 ~~apportionment proceeding pursuant to Section 25356.6.~~ *chapter.*

20 An action to enforce a claim may be brought as a cross-complaint
21 by any defendant in an action brought pursuant to Section 25360
22 or this section, or in a separate action after the person seeking
23 contribution or indemnity has paid ~~removal or remedial response~~
24 ~~or corrective~~ action costs in accordance with this ~~chapter~~ *chapter*,
25 *Chapter 6.5 (commencing with Section 25000)*, or the federal act.
26 ~~Any~~ A plaintiff or ~~cross-complainant~~ *cross-complainant* seeking
27 contribution or indemnity shall give written notice to the director
28 upon filing an action or ~~cross-complaint~~ *cross-complaint* under
29 this section. In resolving claims for contribution or indemnity, the
30 court may allocate costs among liable parties using ~~those equitable~~
31 ~~factors which are appropriate.~~ *appropriate equitable factors.*

32 (f)

33 (e) Notwithstanding this chapter, ~~any~~ a response action
34 contractor who is found liable for any costs ~~or expenditures~~
35 recoverable under this chapter and who establishes by a
36 preponderance of the evidence that only a portion of those costs
37 ~~or expenditures~~ are attributable to the response action contractor's
38 ~~actions~~, *actions* shall be required to pay only that portion of the
39 costs ~~or expenditures~~ attributable to the response action contractor's
40 actions.

1 SEC. 3. Section 25366.5 of the Health and Safety Code is
2 amended to read:
3 25366.5. (a) A public agency operating a household hazardous
4 waste collection program or a person operating such a program
5 under a written agreement with a public agency, or, for material
6 received from the public as used oil, a person operating a certified
7 used oil collection center as provided in Section 48660 of the
8 Public Resources Code, shall not be held liable in a cost recovery
9 action brought pursuant to Section 25360, including, but not limited
10 to, an action to recover the fees imposed by Section 25343 or an
11 action brought pursuant to subdivision (d) of Section 25363, for
12 waste that has been properly handled and transported to an
13 authorized hazardous waste treatment, storage, or disposal facility
14 at a location other than that of the collection program.
15 (b) For purposes of this section, “household hazardous waste
16 collection program” means a program or facility, specified in
17 Section 25218.1, in which hazardous wastes from households and
18 conditionally exempt small quantity generators, are collected and
19 ultimately transferred to an authorized hazardous waste treatment,
20 storage, or disposal facility.
21 (c) Except as provided in subdivision (a), this section does not
22 affect or modify the obligations or liabilities of a person imposed
23 pursuant to state or federal law.