

AMENDED IN SENATE JULY 13, 2015

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 requires the party to pay only for that portion. If each party does not establish its liability, the act requires 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 the costs incurred by the state for those actions.

This bill would specifically apply those provisions to response and corrective actions, *instead of to removal and remedial 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~~ *action, or for the recovery of specified administrative costs*, 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 action for the recovery of the costs of carrying out or overseeing* a response or corrective action to be commenced either within that 3-year period 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 costs incurred by the department or a regional board in carrying
6 out or overseeing a response or corrective action pursuant to this
7 chapter or Chapter ~~6~~ 6.5 (commencing with Section 25100), or as
8 otherwise authorized by law, ~~or for the recovery of oversight costs~~
9 ~~incurred by the department in connection with a response or~~
10 ~~corrective action performed by the department, a regional board,~~
11 ~~or a responsible party,~~ shall be commenced within three years after
12 completion of ~~the all~~ response or corrective ~~action~~ *actions* has
13 been certified by the ~~department,~~ *department* or a regional board.
14 (B) If operation and maintenance is required as part of the
15 response or corrective action, the action for recovery *of costs*

1 *incurred by the department or a regional board* shall be
2 commenced within three years after completion of operation and
3 maintenance has been certified by the department or a regional
4 board.

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

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

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

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

34 SEC. 2. Section 25363 of the Health and Safety Code is
35 amended to read:

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

1 (b) Except as provided in subdivision (e), if the trier of fact finds
2 the evidence insufficient to establish each party’s portion of costs
3 under subdivision (a), the court shall apportion those costs, to the
4 extent practicable, according to equitable principles, among the
5 defendants.

6 (c) The standard of liability for costs recoverable pursuant to
7 this chapter is strict liability.

8 (d) A person who has incurred response or corrective action
9 costs in accordance with this chapter, Chapter 6.5 (commencing
10 with Section 25000), or the federal act may seek contribution or
11 indemnity from any person who is liable pursuant to this chapter.
12 An action to enforce a claim may be brought as a cross-complaint
13 by any defendant in an action brought pursuant to Section 25360
14 or this section, or in a separate action after the person seeking
15 contribution or indemnity has paid response or corrective action
16 costs in accordance with this chapter, Chapter 6.5 (commencing
17 with Section 25000), or the federal act. A plaintiff or
18 cross-complainant seeking contribution or indemnity shall give
19 written notice to the director upon filing an action or
20 cross-complaint under this section. In resolving claims for
21 contribution or indemnity, the court may allocate costs among
22 liable parties using appropriate equitable factors.

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

29 SEC. 3. Section 25366.5 of the Health and Safety Code is
30 amended to read:

31 25366.5. (a) A public agency operating a household hazardous
32 waste collection program or a person operating such a program
33 under a written agreement with a public agency, or, for material
34 received from the public as used oil, a person operating a certified
35 used oil collection center as provided in Section 48660 of the
36 Public Resources Code, shall not be held liable in a cost recovery
37 action brought pursuant to Section 25360, including, but not limited
38 to, an action to recover the fees imposed by Section 25343 or an
39 action brought pursuant to subdivision (d) of Section 25363, for
40 waste that has been properly handled and transported to an

1 authorized hazardous waste treatment, storage, or disposal facility
2 at a location other than that of the collection program.

3 (b) For purposes of this section, “household hazardous waste
4 collection program” means a program or facility, specified in
5 Section 25218.1, in which hazardous wastes from households and
6 conditionally exempt small quantity generators, are collected and
7 ultimately transferred to an authorized hazardous waste treatment,
8 storage, or disposal facility.

9 (c) Except as provided in subdivision (a), this section does not
10 affect or modify the obligations or liabilities of a person imposed
11 pursuant to state or federal law.

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