

Assembly Bill No. 275

Passed the Assembly September 2, 2015

Chief Clerk of the Assembly

Passed the Senate August 31, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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, 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 3 years after completion of operation and maintenance has been certified by the department or a regional board.

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

SECTION 1. Section 25360.4 of the Health and Safety Code is amended to read:

25360.4. (a) (1) (A) Except as provided in subparagraph (B) and paragraph (2), an action under Section 25360 for the recovery of costs incurred by the department or a regional board in carrying out or overseeing a response or corrective action pursuant to this chapter or Chapter 6.5 (commencing with Section 25100), or as otherwise authorized by law, shall be commenced within three years after completion of all response or corrective actions has been certified by the department or a regional board.

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

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

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

(c) In an action described in subdivision (a) or (b) for recovery of response or corrective action costs, oversight costs, or damages, where the court has entered a judgment for past costs or damages, the court shall also enter an order reserving jurisdiction over the case and the court shall have continuing jurisdiction to determine

any future liability and the amount of the future liability. The department or regional board may immediately enforce the judgment for past costs and damages. The department or the regional board may apply for a court judgment for further costs and damages that have been incurred during the response or corrective action, operation and maintenance, or during the performance of the activities authorized by Section 25352, but the application shall be made not later than three years after the certification of completion of the response or corrective action, operation and maintenance, or activities authorized pursuant to Section 25352.

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

(e) This section does not apply to a cost recovery action brought by a regional board under the Water Code.

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

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

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

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

(d) A person who has incurred response or corrective action costs in accordance with this chapter, Chapter 6.5 (commencing with Section 25100), or the federal act may seek contribution or indemnity from any person who is liable pursuant to this chapter. An action to enforce a claim may be brought as a cross-complaint by any defendant in an action brought pursuant to Section 25360 or this section, or in a separate action after the person seeking contribution or indemnity has paid response or corrective action costs in accordance with this chapter, Chapter 6.5 (commencing with Section 25100), or the federal act. A plaintiff or

cross-complainant seeking contribution or indemnity shall give written notice to the director upon filing an action or cross-complaint under this section. In resolving claims for contribution or indemnity, the court may allocate costs among liable parties using appropriate equitable factors.

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

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

25366.5. (a) A public agency operating a household hazardous waste collection program or a person operating such a program under a written agreement with a public agency, or, for material received from the public as used oil, a person operating a certified used oil collection center as provided in Section 48660 of the Public Resources Code, shall not be held liable in a cost recovery action brought pursuant to Section 25360, including, but not limited to, an action to recover the fees imposed by Section 25343 or an action brought pursuant to subdivision (d) of Section 25363, for waste that has been properly handled and transported to an authorized hazardous waste treatment, storage, or disposal facility at a location other than that of the collection program.

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

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

Approved _____, 2015

Governor