

ASSEMBLY BILL

No. 2894

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

February 29, 2016

An act to amend Sections 25390.1, 25390.3, and 25390.6 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2894, as introduced, Committee on Environmental Safety and Toxic Materials. Hazardous waste: Orphan Share Reimbursement Trust Fund.

Existing law establishes the Orphan Share Reimbursement Trust Fund to pay specified costs and claims relating to response actions at hazardous substance release sites under circumstances in which the share of liability for those costs is attributable to the activities of persons who are defunct or insolvent. Existing law requires moneys expended from the fund for those purposes to be recoverable by the Attorney General, at the request of the administrator of the fund, from any liable person or persons who have not entered into, or are not in compliance with, a written cleanup agreement for the completion of all response actions necessary at the hazardous release site, as specified. Existing law provides that any potentially responsible party who withholds information required to be submitted, or who submits false information, is subject to a civil penalty of up to \$25,000 for each piece of information withheld or for each piece of false information submitted.

This bill would subject a potentially responsible party to that civil penalty only if the party knowingly and willfully withholds information

required to be submitted or knowingly and willfully submits false information. The bill would also make nonsubstantive changes to related provisions.

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

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

1 SECTION 1. Section 25390.1 of the Health and Safety Code
2 is amended to read:

3 25390.1. The Legislature finds and declares all of the following:

4 (a) This article, which establishes an Orphan Share
5 Reimbursement Trust Fund, operates in conjunction with the
6 federal liability scheme under the federal act (*42 U.S.C. Sec. 9601*
7 *et seq.*) as in effect on July 1, 1998, for the recovery of response
8 costs expended by government agencies.

9 (b) Under federal liability, at sites where there are insolvent or
10 defunct parties that cannot contribute to the cost of cleanup, viable
11 responsible parties pay the share of liability for that cleanup that
12 may be attributable to insolvent and defunct parties.

13 (c) The Orphan Share Reimbursement Trust Fund is created to
14 mitigate the payment of an insolvent or defunct party's liability
15 share by viable responsible parties, to the extent money in the fund
16 is available, and to encourage responsible parties to quickly and
17 efficiently remediate contamination.

18 SEC. 2. Section 25390.3 of the Health and Safety Code is
19 amended to read:

20 25390.3. (a) The Orphan Share Reimbursement Trust Fund is
21 hereby created in the State Treasury.

22 (b) The administrator of the fund may expend ~~the money~~ *moneys*
23 deposited in the fund as provided in this article, upon appropriation
24 by the Legislature. The administrator of the fund shall act in a
25 fiduciary capacity, shall prudently administer the fund, and shall
26 protect the fund from any unreasonable or unjustified claims,
27 including any unreasonable or unjustified determinations of the
28 orphan share percentage.

29 (c) Except as provided in subdivision (d) and subdivision (b)
30 of Section 25358.7.2, the administrator of the fund may expend
31 ~~the money~~ *moneys* in the fund for all of the following purposes:

1 (1) To pay claims for reimbursement of all, or any part of, the
2 orphan share at a site paid by the responsible party filed pursuant
3 to Section 25390.4.

4 (2) For the costs of implementing this article.

5 (3) To pay the reasonable costs of the department and the
6 regional board for performance of its duties under this article,
7 including, but not limited to, its participation in the orphan share
8 determination process set forth in Section 25390.5, unless those
9 costs are paid by a potentially responsible party under an agreement
10 specified in paragraph (3) of subdivision (a) of Section 25390.4.
11 The expenditures from the fund for purposes of this paragraph
12 shall not exceed 5 percent of the total amount appropriated from
13 the fund in the annual Budget Act for purposes of this subdivision
14 for that fiscal year.

15 (4) To pay the portion of costs attributable to the orphan share
16 incurred by the department and the regional boards to oversee
17 actions of potentially responsible parties, unless those costs are
18 paid by a potentially responsible party under an agreement
19 specified in paragraph (3) of subdivision (a) of Section 25390.4.

20 (d) If an appropriation from the General Fund is made to the
21 fund in any fiscal year and an amount greater than five million
22 dollars (\$5,000,000) in unexpended funds, beyond any amount
23 approved by the administrator of the fund to pay claims pursuant
24 to this article from that General Fund appropriation, ~~remain~~ *remains*
25 in the fund at the end of that fiscal year, and if the department
26 determines that additional funding for orphan sites beyond that
27 appropriated from the Toxic Substances Control Account is
28 required for the next fiscal year, the administrator may expend the
29 amount in excess of five million dollars (\$5,000,000) from the
30 General Fund appropriation to pay for response costs incurred by
31 the department or the regional boards under this chapter at sites
32 listed pursuant to Section 25356 where no viable responsible parties
33 exist.

34 SEC. 3. Section 25390.6 of the Health and Safety Code is
35 amended to read:

36 25390.6. (a) Any costs paid from the fund pursuant to
37 paragraphs (1) and (4) of subdivision (c) of Section 25390.3 shall
38 be recoverable by the Attorney General, at the request of the
39 administrator of the fund, from any liable person or persons who
40 have not entered into, or are not in compliance with, a written

1 cleanup agreement entered into pursuant to paragraph (3) of
2 subdivision (a) of Section 25390.4 that provides for the completion
3 of all response actions necessary at the site under the oversight
4 and at the direction of the department or the regional board.
5 (b) ~~Any~~A potentially responsible party who *knowingly and*
6 *willfully* withholds information required to be submitted under this
7 section, or who *knowingly and willingly* submits false information,
8 ~~is~~ *shall be* subject to a civil penalty of up to twenty-five thousand
9 dollars (\$25,000) for each piece of information withheld or for
10 each piece of false information submitted.