

Senate Bill No. 1757

CHAPTER 632

An act to amend Sections 25179.5, 25179.8, 25179.11, 25179.12, 25396, 25398.2, 25398.10, and 25399 of the Health and Safety Code, relating to hazardous waste and substances.

[Approved by Governor September 19, 1996. Filed
with Secretary of State September 19, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1757, Calderon. Hazardous waste: surface impoundments: hazardous substances: expedited remedial action.

(1) Existing law, the Hazardous Waste Treatment Act of 1995, prohibits from land disposal any hazardous waste restricted from land disposal pursuant to the federal Resource Conservation and Recovery Act of 1976 (RCRA), except as specified. Existing law provides that the treatment standards adopted pursuant to the federal act are the minimum treatment standards for that waste.

Under existing law, any hazardous waste land disposal restriction, treatment standard, or land disposal criteria adopted before January 1, 1996, that prohibited land disposal remains in effect only if specified conditions apply to that restriction, standard, or criteria. The Department of Toxic Substances Control is authorized to grant a variance from the restriction, treatment standard, or criteria if the hazardous waste has not been restricted or prohibited under RCRA or if the waste has been granted an equivalent or less stringent variance by the Administrator of the Environmental Protection Agency.

A person discharging a hazardous waste into a surface impoundment that was constructed before July 1, 1986, and for which an application for waste discharge requirements was submitted on or before September 1, 1986, is exempt from those previously adopted restrictions, standards, and criteria. Specified land treatment units are those restrictions, standards and criteria.

This bill would additionally exempt such a surface impoundment and those land treatment facilities from the land disposal prohibitions for hazardous waste restricted from land disposal pursuant to RCRA and from the federal minimum treatment standards. The bill would also make conforming changes.

The bill would revise the requirements for the granting of a waiver from those restrictions and standards to instead prohibit the department from granting a variance for waste that is restricted or prohibited by the Environmental Protection Agency unless the waste has been granted a variance by the administrator and the



department's variance does not permit less stringent management, or the Environmental Protection Agency has delegated the authority to grant variances to the department pursuant to RCRA.

(2) Under existing law, the California Expedited Remedial Action Reform Act of 1994, the term "response costs" is defined as including all costs incurred by the state or any responsible person in taking response action under the act, including costs incurred by any state agency in implementing and administering the act and costs incurred by the state in relation to any judicial review or arbitration.

The act requires the department, upon the request of a responsible person to have a site remediated pursuant to the act, to forward the request to the Site Designation Committee in the California Environmental Protection Agency, along with the department's recommendations, and authorizes the committee to select a site for remediation pursuant to the act only if the site meets specified requirements.

This bill would revise the definition of the term "response costs" for purposes of the act to specify that the costs of implementing and administering the act are subject to the limitations imposed by the bill. The bill would require response costs incurred by the state because of an arbitration proceeding to be paid as prescribed.

The bill would authorize the department and the Administrator of the Expedited Site Remediation Trust Fund, on behalf of the trust fund, to recover up to $\frac{1}{30}$ of response costs incurred by the state in implementing and administering the act, in addition to any other recovered response costs. The bill would require the department to specify in the Governor's Budget the amount of costs for which it will seek recovery, and to specify either in that document, or in a separate document submitted to the Joint Legislative Budget Committee, the methodology used in calculating those costs.

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

SECTION 1. Section 25179.5 of the Health and Safety Code is amended to read:

25179.5. (a) Notwithstanding any other provision of law, except as provided in this article, any hazardous waste restricted from land disposal by the federal act, or by the Environmental Protection Agency pursuant to the federal act, or by the department pursuant to Section 25179.6, is prohibited from land disposal in the state, unless one of the following circumstances apply:

(1) The hazardous waste, or the producer of the hazardous waste is granted a variance, extension, exclusion, or exemption by the administrator of the Environmental Protection Agency or by the department.

(2) The waste is treated in accordance with an applicable treatment standard.



(3) The federal restriction is stayed or otherwise conditioned by an appropriate court of law.

(4) It is a solid hazardous waste generated in the cleanup or decontamination of any site contaminated only by hazardous waste that has not been restricted or prohibited by the federal act or prohibited by the Environmental Protection Agency pursuant to the federal act, and which does not meet the treatment standards established by the department pursuant to Section 25179.6, if the department or other federal, state, or local agency with authority to approve the cleanup or decontamination has approved the disposal of the waste.

(b) Any treatment standard adopted or amended by the Environmental Protection Agency pursuant to subsection (m) of Section 6924 of the federal act, for a hazardous waste prohibited from land disposal pursuant to subdivision (a) which is in effect is the minimum treatment standard required to be met before the hazardous waste may be disposed of, using land disposal, in the state. Any treatment standard adopted or amended by the Environmental Protection Agency shall become effective in the state upon the effective date of that adoption or amendment, as specified in the final rule published in the Federal Register. Except as provided in Section 25179.6, any extension, variance, or exemption from the treatment standard granted by the Administrator of the Environmental Protection Agency shall also apply in this state.

(c) Subdivision (b) applies only to hazardous waste land disposal restrictions, standards, or criteria enforced by the department and does not limit or affect the standards adopted by any other local, state, or federal agency.

(d) Any hazardous waste or treated hazardous waste that meets all applicable treatment standards pursuant to this section may be disposed of to land at a hazardous waste disposal facility that has been issued a hazardous waste facilities permit allowing that disposal, if the disposal is conducted in compliance with this chapter, the applicable regulations adopted by the department, and the requirements of the permit issued by the department.

SEC. 2. Section 25179.8 of the Health and Safety Code is amended to read:

25179.8. (a) Except as provided in subdivision (d), the department may grant a variance from the requirements of Sections 25179.5 and 25179.6 for a hazardous waste, consistent with the provisions of Sections 25143.

(b) The department may grant a variance from the requirements of Section 25179.6 for agricultural drainage waters which meet the criteria established by the department pursuant to Section 25141 if a person demonstrates, to the satisfaction of the department, that all of the following conditions apply to the waste:



(1) There are no technically and economically feasible treatment, reuse, or recycling alternatives available to render the agricultural drainage water nonhazardous.

(2) The applicant can demonstrate that the continued disposal of agricultural drainage waters does not pose an immediate or significant long-term risk to public health or the environment.

(3) The disposal of the agricultural drainage waters is in compliance with the requirements of Section 25179.3.

(c) A variance granted by the department pursuant to subdivision (b) shall remain in effect for a period not longer than three years and may be renewed for additional three-year periods.

(d) When granting a variance pursuant to this section, the department may specify, where appropriate, any treatment which shall be required prior to land disposal of the waste, and may impose requirements which may be necessary to protect the public health and the environment.

(e) The department shall not grant a variance pursuant to subdivision (a) for hazardous waste which is restricted or prohibited by the Environmental Protection Agency pursuant to the federal act, unless either of the following applies:

(1) The waste has been granted a variance by the Administrator of the Environmental Protection Agency and the variance granted by the department does not permit less stringent management than that required pursuant to the federal variance.

(2) The Environmental Protection Agency has delegated the authority to grant variances to the department pursuant to the federal act.

SEC. 3. Section 25179.11 of the Health and Safety Code is amended to read:

25179.11. (a) A person discharging a hazardous waste into a surface impoundment that was constructed before July 1, 1986, and for which an application for waste discharge requirements was submitted on or before September 1, 1986, is exempt from the requirements of Sections 25179.5 and 25179.6 if all of the following conditions apply to the surface impoundment:

(1) The surface impoundment, the management of the hazardous waste discharged into the surface impoundment, and any residue resulting from the treatment of the hazardous waste meet the requirements of Section 3005(j) of the federal act and Section 268.4 of Title 40 of the Code of Federal Regulations, if applicable.

(2) The surface impoundment is in compliance with Article 9.5 (commencing with Section 25208).

(3) Hazardous waste is discharged into the surface impoundment for purposes of treating the hazardous waste to comply with any treatment standard in effect pursuant to Section 25179 or adopted by the department pursuant to Section 25179.6 for that hazardous waste, and the residues that result from the treatment of the hazardous



waste which do not meet that treatment standard are removed for subsequent management within one year from the date of placement of the hazardous waste into the surface impoundment.

(b) A person discharging a hazardous waste into a surface impoundment that was constructed after July 1, 1986, and for which an application for waste discharge requirements was submitted after September 1, 1986, is exempt from the requirements of Sections 25179.5 and 25179.6 if all of the following conditions apply to the surface impoundment:

(1) The surface impoundment, the management of the hazardous waste discharged into the surface impoundment, and any residue resulting from the treatment of the hazardous waste meet the requirements of Section 3005(j) of the federal act and Section 268.4 of Title 40 of the Code of Federal Regulations, if applicable.

(2) The surface impoundment is in compliance with Article 9.5 (commencing with Section 25208).

(3) Hazardous waste is discharged into the surface impoundment for purposes of treating the hazardous waste to comply with any treatment standard in effect pursuant to Section 25179.5 or adopted by the department pursuant to Section 25179.6 for that hazardous waste, and the residues that result from the treatment of the hazardous waste which do not meet that treatment standard are removed for subsequent management within one year from the date of placement of the hazardous waste into the surface impoundment.

(4) The department determines that the use of the surface impoundment to treat the hazardous waste is the only means by which the hazardous waste can be treated using the best demonstrated available technology.

SEC. 4. Section 25179.12 of the Health and Safety Code is amended to read:

25179.12. (a) Except as provided in subdivisions (b) and (c), a person operating a land treatment facility is exempt from the requirements of Sections 25179.5 and 25179.6 if the facility is in compliance with the requirements of all state and federal statutes and regulations applicable to land treatment facilities, including, but not limited to, subdivision (b), and the facility has either been issued a final hazardous waste facilities permit or is operating under, and in compliance with, the requirements of interim status and the facility operator has submitted an application for a final permit.

(b) Land treatment facilities at which hazardous constituents have migrated from the treatment zone shall not be eligible for an exemption pursuant to subdivision (a) until the contamination has been removed to the satisfaction of the department. In order for the department to determine whether hazardous constituents have migrated from the treatment zone, the owner or operator of the land treatment facility shall provide data to the department on at least all of the following:



- (1) Soil cores taken from below the treatment zone.
- (2) Groundwater monitoring.
- (3) Unsaturated zone monitoring.
- (4) Waste analysis.
- (5) Historical activities at the facility.

(c) A land treatment facility may not treat hazardous waste which has been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the federal act unless the land treatment has been authorized by the Administrator of the Environmental Protection Agency.

SEC. 5. Section 25396 of the Health and Safety Code is amended to read:

25396. Unless the context indicates otherwise, the following definitions govern the construction of this chapter.

(a) “Affected community” means the local residents or workers living or working, and owners of businesses operating, in proximity to the site, who are, or may be, directly impacted by the conditions at the site, or by any response action. “Affected community” also includes the legislative body of the jurisdiction in which a site is located.

(b) “Agency” means the California Environmental Protection Agency.

(c) “Arbitration panel” means the arbitration panel convened pursuant to Section 25398.10.

(d) “Beneficial uses of water” means uses of the waters of the state that are identified in the current State Water Resources Control Board and California regional water quality control boards’ water quality control plans for the area in which the site is located.

(e) “Department” means the Department of Toxic Substances Control.

(f) “Engineering controls” means measures to control or contain migration of hazardous substances or to prevent, minimize or mitigate environmental damage which may otherwise result from a release or threatened release, including, but not limited to, caps, covers, dikes, trenches, leachate collection systems, treatment systems, and groundwater containment systems or procedures.

(g) “Federal act” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (42 U.S.C. Sec. 9601 et seq.).

(h) “Fund administrator” means the state officer assigned the responsibility of protecting the viability of the trust fund as the representative of the state for the orphan share in all actions concerning apportionment of liability if there is a potential apportionment of liability to the orphan share for payment from the trust fund.

(i) “Hazardous substance” shall have the same meaning as set forth in Sections 25316 and 25317.



(j) (1) “Insolvent” means a person or entity who has received a discharge of liability under Section 727, 944, or 1141 of Title 11 of the United States Code, for pre-petition response costs relating to a site selected for response actions pursuant to this chapter.

(2) Notwithstanding paragraph (1), a person or entity is not insolvent with respect to any payment that the department receives or will receive for any pre-petition response costs as a result of the bankruptcy, or with respect to any post-petition response costs.

(k) “Interim endangerment” means conditions at a site which pose a significant risk either of harm to human health or of serious environmental damage unless immediate response action is initiated before remedial action measures set forth in a remedial action plan prepared for the site are implemented.

(l) “Land use controls” means recorded instruments restricting the present and future uses of the site, including, but not limited to, recorded easements, covenants, restrictions or servitudes, or any combination thereof, as appropriate. Land use controls shall run with the land from the date of recordation, shall bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(m) “Orphan share” means that share of liability for the costs of response actions apportioned to responsible persons who are insolvent or cannot be identified or located. The department may adopt regulations to further define a process to determine when a responsible person cannot be identified or located.

(n) “Person” shall have the same meaning as set forth in Section 25319.

(o) “Planned use” means the reasonably expected future land uses based on all of the following factors:

(1) The land use history of the site and surrounding properties, the current land uses of the site and surrounding properties and recent development patterns in the area where the site is located.

(2) Land use designations at the site and surrounding properties, including current and likely future zoning and local land use plans and the presence, if any, of groundwater and surface water recharge areas.

(3) The potential for economic redevelopment.

(4) Current plans for the site by the property owner or owners.

(5) Affected community comments on the proposals for use of the site.

(p) “Release” has the same meaning as set forth in Sections 25320 and 25321.

(q) “Remedy” or “remedial action” means actions that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of a hazardous substance and



that, when carried through to completion, allow a site to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. “Remedy” or “remedial action” includes, but is not limited to, all of the following:

(1) Actions at the location of the release, such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling, reuse, diversion, destruction, or segregation of reactive wastes, dredging, excavation, repair, or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to ensure that these actions protect human health and safety, or the environment.

(2) The costs of permanent relocation of residents and businesses and community facilities where the Governor determines that, alone or in combination with other measures, that relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect human health and safety, or the environment.

(3) Offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(r) “Remove” or “removal” means the cleanup or removal of released hazardous substances from the environment, those actions which may be necessarily taken in the event of the threat or release of hazardous substances into the environment, those actions which may be necessary to monitor, assess, and evaluate the release, or threat of release, of hazardous substances, the disposal of removed material, and the taking of other actions which may be necessary to prevent, minimize, or mitigate damage to human health and safety, or the environment, which may otherwise result from a release or threat of release. “Remove” or “removal” also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation and housing of threatened individuals not otherwise provided.

(s) “Respond,” “response,” or “response action” means removal actions, and remedial actions, including, but not limited to, operation and maintenance measures.

(t) “Response costs” means all costs incurred by the state or any responsible person in taking response actions under this chapter at a specific site, including costs incurred by any state agency in implementing and administering this chapter pursuant to the limitations established in subdivision (f) of Section 25399, and in overseeing response actions under this chapter. Those costs shall



include all costs incurred by the state in relation to any judicial review of a decision of an arbitration panel pursuant to subdivision (e) of Section 25398.10 or any arbitration conducted pursuant to this chapter.

(u) “Responsible person” has the same meaning as set forth in Section 25323.5 for “responsible party” or “liable person.”

(v) “Secretary” means the Secretary for Environmental Protection.

(w) “Site” means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(x) “Site Designation Committee” or “committee” means the Site Designation Committee created pursuant to Section 25261.

(y) “State board” means the State Water Resources Control Board.

(z) “Trust fund” means the Expedited Site Remediation Trust Fund created pursuant to subdivision (a) of Section 25399.1.

SEC. 6. Section 25398.2 of the Health and Safety Code is amended to read:

25398.2. (a) Within 90 days from the date of the selection of a site pursuant to Section 25396.6, the department shall hold a conference with the identified potentially responsible persons for purposes of explaining all of the following:

(1) The department’s requirements for the performance of a site investigation and the preparation of a site investigation report to determine the nature and extent of possible releases of hazardous substances at the site.

(2) The department’s requirements for a community assessment.

(3) The department’s procedures for carrying out response activities, including requirements for public participation.

(b) (1) Except as provided in paragraph (2), within 90 days from the date of the close of the conference, the department may enter into an enforceable agreement with one or more responsible persons for a site selected pursuant to Section 25396.6. The enforceable agreement shall require all of the following:

(A) The responsible person shall take necessary response actions at the site pursuant to this chapter.

(B) The responsible person or persons shall pay all of the state’s response costs that are related to the site on an ongoing basis, within 60 days from the date of receipt of each invoice from the department, except response costs incurred by the state in relation to an arbitration conducted pursuant to this chapter, or judicial review of the arbitration decision, if the arbitration or judicial review is



initiated by a responsible person who is not a party to the enforceable agreement. After liability is finally apportioned pursuant to this chapter, each participating responsible person's share of response costs may be adjusted in relation to the shares of other participating responsible persons. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the department.

(C) The department and the responsible person enter into a covenant not to sue each other or any responsible person who has entered into an enforceable agreement under this section pursuant to the federal act. However, any site selected for remediation pursuant to this chapter shall not be immune from, and, if appropriate, may be subject to, natural resource damage claims pursuant to subdivision (f) of Section 9607 of the federal act.

(D) If a responsible person subject to the agreement fails to comply with this chapter or any regulation, requirement, or order issued or adopted pursuant to this chapter, the department shall remove the site from eligibility for response action pursuant to Chapter 6.65 (commencing with Section 25260) and this chapter, and may direct that any further response actions at that site be taken pursuant to Chapter 6.8 (commencing with Section 25300), unless one or more of the remaining responsible persons, if any, agree to assume the noncomplying responsible person's responsibilities under the agreement.

(2) The 90-day period to enter into an agreement may be extended by agreement of the department and the responsible person or responsible persons.

(c) The covenants not to sue executed by responsible persons and the department shall be expressly conditioned upon performance of all obligations under this chapter and the enforceable agreement.

(d) If no responsible person enters into an enforceable agreement pursuant to subdivision (b), the response actions at the site shall no longer be governed by this chapter.

(e) A draft remedial action plan shall be prepared pursuant to Section 25398.6 by the responsible person. The draft remedial action plan shall be approved by the department pursuant to Section 25398.6 for each site selected. Preliminary and intermediate actions may be taken prior to the approval of a remedial action plan to ensure protection of public health and the environment.

(f) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C.A. Sec. 6901 et seq.), the department may exclude from the hazardous waste facilities permit requirements of Section 25201, those portions of any response action selected and carried out pursuant to this chapter, that complies with all laws, rules, regulations, standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the site, and with any other condition imposed



by the department as necessary to protect human health and safety or the environment. The department may enforce any federal or state law, rule, regulation, standard, requirement, criteria, or limitation with which the response action is required to comply pursuant to this subdivision.

SEC. 7. Section 25398.10 of the Health and Safety Code is amended to read:

25398.10. (a) The Director of Environmental Health Hazard Assessment shall convene an arbitration panel, if a timely petition is filed with the director, for purposes of resolving all disputes with any responsible person concerning any of the following:

(1) The remedial action plan developed pursuant to Section 25398.6, including disputes regarding remedy selection, other technical issues, conditions of approval, or any other element of the plan.

(2) The department's proposed apportionment of liability pursuant to Section 25398.8.

(3) Any proposed de minimis settlements pursuant to Section 25398.9.

(4) The department's approval or denial of a change in land use pursuant to Section 25398.7.

(5) The department's approval or denial of a certificate of completion pursuant to Section 25398.15, as provided in subdivision (b) of Section 25398.15.

(b) (1) Petitions for disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) shall be filed within 60 days from the date that the notice of approval of the remedial action plan is issued, or from the date that the responsible person or persons preparing the remedial action plan notify the department in writing, by appropriate means, of the responsible person or person's rejection of a notice of deficiency. Within 10 days of the department's approval of the remedial action plan or receipt of a notice of a rejection of a notice of deficiency for the remedial action plan, the department shall provide notice in writing, by appropriate means, of its approval, or receipt of the notice of rejection, to all responsible persons for the site and to the public. The notice shall indicate the rights of the parties to file petitions for arbitration of the disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) and the deadline for the filing of a petition. Petitions for arbitration of disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) may be made by any responsible person. Petitions for arbitration of disputes concerning the matter specified in paragraph (1) of subdivision (a) may also be filed by the affected community, and petitions for arbitration of disputes concerning the matters specified in paragraphs (2) and (3) of subdivision (a) may



be filed by any member of the public if orphan shares that are to be paid from the trust fund are at issue.

(2) Petitions for the arbitration of all disputes concerning the matters specified in paragraphs (4) and (5) of subdivision (a) may be made by any responsible person for the site, the affected community, or the public, and shall be made prior to the time that the action in dispute becomes final.

(3) Prior to submitting a petition for arbitration, the responsible persons shall make all reasonable efforts to resolve the dispute.

(4) If one or more petitions for arbitration have been filed for any combination of review of the remedial action plan, apportionment of liability, or de minimis settlements, the arbitration panel shall review all of these petitions in a consolidated hearing. The arbitration panel shall minimize the need for hearings on all other issues by consolidating hearings in all cases where reasonably possible.

(5) The arbitrators shall be selected as provided in subdivision (d) of Section 25356.2.

(c) All the provisions of Sections 25356.2, 25356.3, 25356.4 and 25356.6 apply to arbitration proceedings conducted pursuant to this section, except for all of the following:

(1) The arbitration panel shall apply the factors and standards for liability apportionment set forth in subdivision (c) of Section 25398.8, instead of those set forth in subdivision (c) of Section 25356.2.

(2) The provisions of subdivision (a) of Section 25356.3 and the provisions of subdivisions (c) and (e) of Section 25356.4 shall not apply.

(3) The arbitrators shall be bound by, and shall apply, the requirements and standards set forth in this chapter and Chapter 6.65 (commencing with Section 25260) that are applicable to the dispute that is the subject of the arbitration.

(4) The arbitrators shall have the expertise and experience appropriate to understand and critically evaluate the issues to be arbitrated.

(d) The arbitration panel shall hold a public hearing on any matter presented to the panel for evaluation, shall take all evidence presented, shall keep a record of the proceedings, including all testimony and evidence presented, and shall have discretion in the determination of facts. All findings and decisions of the panel shall be supported by substantial evidence in light of the whole record. The response action for which the arbitration panel has been requested to act pursuant to this section shall not be stayed during the pendency of the arbitration proceedings. Notice of the arbitration panel's decision shall be provided in writing, by appropriate means, within five days from the date that the arbitration panel has reached a decision, to the responsible persons, the affected community, the public, and any other person or entity who participated in the arbitration proceeding and requested notice of the decision.



(e) The department, any member of the advisory committee described in Section 25263, or, for purposes of appealing the approval of a remedial action plan by the arbitration panel, any member of the affected community, may seek judicial review of a decision of the arbitration panel by filing a petition for a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to those entities or persons. Any person authorized to petition for arbitration may also seek judicial review of a decision of the arbitration panel concerning any matter for which the person is authorized pursuant to subdivision (b) to submit a petition for arbitration, by filing a petition for writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to that person. No person may seek judicial review of a matter that is subject to arbitration, if requested, that has not been first presented to an arbitration panel.

(f) Except for acts of recklessness, gross negligence, fraud, deceit, or other criminal activity, the arbitrators are immune from liability for any actions taken in their role as arbitrators.

(g) Response costs incurred by the state because of an arbitration proceeding shall be paid as follows:

(1) By the responsible person or responsible persons who are parties to the enforceable agreement described in subdivision (b) of Section 25398.2 if either of the following occurs:

(A) The arbitration proceeding or judicial review is initiated by one of those participating responsible persons, the affected community, or a member of the public.

(B) Judicial review is sought by the department or a member of the advisory committee described in Section 25263.

(2) By the responsible person or responsible persons who initiated the arbitration proceeding if the responsible person or responsible persons are not parties to the enforceable agreement described in subdivision (b) of Section 25398.2.

SEC. 8. Section 25399 of the Health and Safety Code is amended to read:

25399. (a) A responsible person is liable to the department and the trust fund for the response costs as provided in the agreement entered into pursuant to Section 25398.2, and for any other response costs incurred by the state, which are allocated to the responsible person in a final liability apportionment decision by the department pursuant to Section 25398.8 or the final decision of an arbitration panel pursuant to Section 25398.10 and which have been paid, or assigned for payment, from the trust fund.

(b) Actions to recover any response costs incurred by the state shall be commenced by the Attorney General, upon the request of



the department or the fund administrator, against the responsible person or persons.

(c) The department and the fund administrator shall only seek response costs in an action pursuant to paragraph (b) from those responsible persons who have not paid their apportioned share of response costs to the department, or who have otherwise failed to comply with this chapter or any regulation, agreement, or order adopted pursuant to this chapter.

(d) Any person who has incurred response costs in accordance with this chapter may seek contribution or indemnity from any person who is liable pursuant to this chapter, except that no claim may be asserted against a person whose liability has been determined and which has been or is being fully discharged pursuant to this chapter, or against a person who has executed an agreement with the department pursuant to Section 25398.2, and is in compliance with this chapter and any regulation, agreement, or order adopted pursuant to this chapter. An action to enforce a claim may be brought as a cross-complaint by a defendant in an action brought pursuant to this section, or in a separate action for contribution or indemnity after the plaintiff has paid the department for response costs in accordance with this chapter. Any plaintiff or cross-complainant seeking contribution or indemnity shall give written notice to the department upon filing an action or cross-complaint under this section. In resolving claims for contribution or indemnity, the court shall allocate costs among liable parties, including the orphan shares, as set forth in the department's final liability apportionment decision or an arbitration panel decision pursuant to this chapter, except in instances where responsible parties have agreed to pay for orphan shares pursuant to the agreement provided for in Section 25398.2.

(e) (1) An action under this section for the recovery of response costs shall be commenced within three years after a certificate of completion is issued pursuant to Section 25398.15 or, in cases where responsible persons are identified by the department after that three-year period, within three years after the responsible persons are identified.

(2) A subsequent action or actions under this section for further response costs may be maintained at any time during the response action, but shall be commenced no later than three years after the date of completion of all response action.

(f) In addition to any other response costs recovered from the responsible parties for each site, the department and the fund administrator, on behalf of the trust fund, may recover up to one-thirtieth of those costs incurred by the state in implementing and administering this chapter. The department shall specify in the Governor's Budget the amount of costs for which it will seek recovery pursuant to this subdivision, and shall specify either in that document, or in a separate document submitted to the Joint



Legislative Budget Committee, the methodology used in calculating those costs.

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