

1-1-1985

Environmental Protection

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Environmental Protection*, 17 PAC. L. J. 715 (1986).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol17/iss2/23>

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Environmental Protection

Environmental Protection; hazardous substances—homeowner compensation

Health and Safety Code §25375 (amended).

AB 2407 (Filante); 1985 STAT. Ch 1469

Support: Department of Health Services; Department of Finance

Under existing law, any person suffering a loss proximately caused by the release¹ of a hazardous substance² is authorized to file a claim with the State Board of Control for 100 percent of uninsured out-of-pocket medical expenses for a period of up to three years from the onset of treatment³ and for eighty percent of uninsured lost wages or business income⁴ during the three year period after the hazardous substance release.⁵ With the enactment of Chapter 1469, a claimant also may be entitled to full compensation for the uninsured out-of-pocket expense of any remedial action ordered by federal, state or local authorities,⁶ and undertaken to correct damage to an owner-occupied single-family residence.⁷ Compensation under Chapter 1469 is conditioned upon a determination by the Department that either (1) the release of the hazardous substance originated outside the boundaries of the property,⁸ or (2) the release occurred within the boundaries of the property, was the result of an unlawful act, and the responsible person cannot be identified or located or a judgment against the responsible person cannot be satisfied.⁹ Chapter 1469 limits compensation to \$25,000 per residence and \$100,000 for five contiguous residences, with compensation reduced by the amount that the remedial action results in a capital improvement to the residence.¹⁰ In the event that the release of a hazardous substance renders owner-occupied real

1. CAL. HEALTH & SAFETY CODE §25320 (definition of release).

2. *Id.* §25316 (definition of hazardous substance).

3. *Id.* §25375(a)(1).

4. *Id.* §25375(a)(2) (business income must be in lieu of wages).

5. *Id.* §25375(a)(2) (compensation for lost income may not exceed \$15,000 per year).

6. *Id.* §25375(a)(3)(B).

7. *Id.* §25375(a)(3)(A).

8. *Id.* §25375(a)(3)(C)(i).

9. *Id.* §25375(a)(3)(C)(ii).

10. *Id.* §25375(a).

property permanently unfit for occupancy,¹¹ Chapter 1469 provides for compensation in an amount equal to 100 percent of the fair market value of the property.¹² Additionally, Chapter 1469 empowers the board to provide compensation for 100 percent of expenses incurred as the result of the evacuation of a residence ordered by a state or federal agency.¹³ Finally, Chapter 1469 requires that before compensation¹⁴ can be paid, the board must find that (1) a hazardous substance was released, (2) the claimant or the claimant's property was exposed to the release, and that (3) the exposure was of such a duration or in such quantity that the claimant suffered a loss.¹⁵

11. *Id.* §25375(a)(4) (definition of permanently unfit for occupancy).

12. *Id.* (definition of fair market value).

13. *Id.* §25375(a)(5) (board must find that the expenses were reasonable emergency expenditures incurred within twelve months of an evacuation ordered by a state or federal agency).

14. *Id.* (compensation must be pursuant to HEALTH AND SAFETY CODE §25375(a)).

15. *Id.* §25375(b) (release or evacuation order which resulted in the claim for compensation must occur on or after January 1, 1986).

Environmental Protection; hazardous substances—littering

Vehicle Code §23112.5 (new).

AB 231 (La Follette); 1985 STAT. Ch 646

Support: Department of Transportation; Department of Finance;
California Highway Patrol; Department of Health Services

Under existing law, any person convicted of specified violations related to littering on highways¹ is to be fined.² Chapter 646 requires any person that dumps, spills, or releases³ hazardous material⁴ or hazar-

1. CAL. VEH. CODE §§23112 (illegal to place on, or allow to escape on to, any highway any bottle, can, garbage, glass, nail, offal, paper, wire, any substance likely to injure or damage highway traffic, or any noisome, nauseous, or offensive matter of any kind), 23111 (illegal to place on, or allow to escape on to, any highway any lighted or nonlighted cigarette, cigar, match, or any flaming or glowing substance). *See also id.* §23114 (only clear water or feathers from live birds may be placed on, or allow to escape on to, any highway from a vehicle).

2. *Id.* §42001.7. Every person convicted of a violation under Vehicle Code §§23111, 23112, or 23113(a) is to be punished by a fine of not less than \$20 but no more than \$1,000 upon first conviction; not less than \$50 but no more than \$1,000 upon second conviction; and not less than \$100 but no more than \$1,000 upon third or subsequent conviction. *Id.*

3. CAL. VEH. CODE §23112.5. The dump, spill, or release can be either negligent or intentional. *See id.*

4. Hazardous material is any substance, material, or device posing an unreasonable risk to health, safety, or property during transportation, as defined pursuant to Vehicle Code §2402.7

dous waste⁵ upon a highway⁶ to notify the proper authority⁷ as soon as the person knows of the dump, spill, or release, and notification is possible.⁸ Any person convicted of a violation under Chapter 646 is to be punished by a mandatory fine of not less than \$2,000.⁹

and includes explosives and hazardous wastes or substances as defined by regulations adopted pursuant to Health and Safety Code section 25141. CAL. VEH. CODE §353.

5. Hazardous waste is any waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either (1) cause, or significantly contribute to, any increase in mortality, or an increase in serious irreversible, or incapacitating reversible, illness; or (2) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Unless expressly provided otherwise, the term hazardous waste is to be understood also to include extremely hazardous waste. CAL. HEALTH & SAFETY CODE §25117. Extremely hazardous waste is any hazardous waste or mixture of hazardous wastes that, if human exposure should occur, may likely result in death, disabling personal injury, or serious illness because of its quantity, concentration, or chemical characteristics. *Id.* §25115.

6. Highway is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel and includes streets. CAL. VEH. CODE §360.

7. The proper authority is the California Department of the Highway Patrol or the agency having traffic jurisdiction for that highway. CAL. HEALTH & SAFETY CODE §23112.5.

8. *Id.*

9. *Id.*

Environmental Protection; stay of proceedings

Code of Civil Procedure §917.15 (new).

SB 530 (Greene); 1985 STAT. Ch 1492

Support: Attorney General; Department of Health Services

Existing law provides that the perfecting of an appeal stays the proceeding in the trial court on the judgment or order that is being appealed, including the enforcement of the judgment or order.¹ With enactment of Chapter X, the perfecting of an appeal will not stay enforcement of the judgment or order² of a trial court if: (1) the order requires a responsible party to take appropriate removal or remedial actions in response to a release or threatened release of a hazardous substance;³ or (2) the order requires a person to comply with specified provisions⁴ relating to hazardous waste.⁵

1. CAL. CIV. PROC. CODE §916(a).

2. This includes judgments, orders appealed from, or administrative orders that are the subject of the trial court proceeding. *Id.* §917.15.

3. The order must be pursuant to Health and Safety Code §25358.3(a). CAL. CIV. PROC. CODE §917.15.

4. Specified provisions are Health and Safety Code §25181, or any rule, regulation, permit, covenant, standard, requirement, or order issued, adopted or executed pursuant to Health and Safety Code §§25100-25249. CAL. CIV. PROC. CODE §917.15(b).

5. *Id.* §917.15.

