

Memorandum 98-18

Environment Code: Division 1 (Rules of Construction and Definitions)

Attached to this memorandum is an initial staff draft of Division 1 of the proposed Environment Code, relating to rules of construction and definitions. This is pretty much boilerplate stuff found at the beginning of every code. The following aspects of the draft are noteworthy.

Name of Code

We have tentatively named the code Environment, rather than Environmental. Names of codes in California tend to be nouns describing the subject matter of the laws contained in the code (“the environment”), rather than adjectives qualifying the character of the laws contained in the code (“environmental law”). See, e.g., Government (rather than Governmental) Code. This practice is not universal, however. See, e.g., Financial (rather than Finance) Code.

Of the twenty-three states that appear to have relatively consolidated bodies of environmental statutes, three use the noun “Environment” to describe the body of statutes (Arizona, Indiana, Maryland). The New Jersey Law Revision Commission’s environmental statutes project uses the noun “Environment”. The remaining states use the term “Environmental” as an adjective modifying another noun:

- Environmental Conservation (Alaska, New York)
- Environmental Control (Missouri)
- Environmental Improvement (New Mexico)
- Environmental Law (Arkansas)
- Environmental Protection (Connecticut, Kentucky, Michigan, Minnesota, Montana, South Carolina, South Dakota, Tennessee)
- Environmental Quality (Louisiana, Texas, Utah, Wyoming)
- Environmental Regulation (Wisconsin)
- Environmental Resources (West Virginia)
- Environmental Safety (Illinois)

Structural Issues

The standard (but not universal) California code hierarchy is:

Code
Division
Part
Chapter
Article
Section

Where an additional structural subdivision is required, a Title is used. In older codes (Civil, Civil Procedure, Penal), a Title is of lower rank than a Part. In newer Codes (Corporations, Education, Government), a Title is the first breakdown, of higher rank than a Division.

It is not clear whether we will need to use Titles in the Environment Code. Our initial drafts do not use Titles. If Titles become necessary, we will consult with Legislative Counsel on the proper hierarchical structure.

Effect of Location of Statute in Code

At prior meetings, the Commission has heard the concern that relocation of a statute to the Environment Code may inadvertently encourage constructional emphasis on environmental over other aspects of the statute. We have sought to address this concern by adding a provision in proposed Section 5 that the code heading does not in any manner affect the scope, meaning, or intent of the code. The Comment states that, “Location of a provision in this code, or relocation from another code, is strictly for organizational purposes and does not imply that the provision should necessarily be construed to give the provision an ‘environmental’ emphasis.”

Gender

A standard rule of construction in many codes deals with use of masculine gender. See, e.g., Evid. Code § 9 (“The masculine gender includes the feminine and neuter.”) We have omitted this provision since our intent in drafting this code is to make all references gender-neutral (unless there is a reason not to, such as a statute relating to women’s health issues).

Future revisions of the code should not be a concern, since the Legislative Counsel ensures that all new legislation is gender-neutral. (Note, however, that

the Legislative Counsel tends to use the construction “he or she”, which in many cases ought to be construed to include the neuter.)

Respectfully submitted,

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ENVIRONMENT CODE

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ENVIRONMENT CODE

DIVISION 1. RULES OF CONSTRUCTION AND DEFINITIONS

PART 1. RULES OF CONSTRUCTION

§ 1. Title of code

1. This code shall be known as the Environment Code.

Comment. Section 1 is a standard type of provision in the codes. See, e.g., Evid. Code § 1; Fam. Code § 1; Prob. Code § 1.

§ 2. Continuation of existing law

2. A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation of the previously existing provision and not as a new enactment, and a reference in a statute to the provision of this code shall be deemed to include a reference to the previously existing provision unless a contrary intent appears.

Comment. Section 2 is a standard type of provision in the codes. See, e.g., Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a). See also Gov't Code §§ 9604 (construction of restatements and continuations), 9605 (construction of amended statutory provision). The last clause makes clear that a statutory reference to a new Environment Code provision includes a reference to the former law from which it is drawn. *Cf.* Gov't Code § 9604 (reference to previously existing provision deemed reference to restatement or continuation).

A number of terms and phrases are used in the Comments to the sections of the Environment Code to indicate the sources of the sections and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision “continues” a former provision “without change” if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where a typographical error or punctuation is corrected without a change in meaning. Some Comments may describe the relationship by simply stating that the Environment Code provision “continues” or is “the same as” a former provision,

(2) *Continues without substantive change.* A new provision “continues” a former provision “without substantive change” if the substantive law remains the same, but the language differs to an insignificant degree. This may include revision of language to make a statute gender-neutral.

(3) *Restates without substantive change.* A new provision “restates” a former provision “without substantive change” if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the “same in substance.”

☞ **Staff Note.** Other terminology commonly used in Law Revision Commission Comments is described in paragraphs (4)-(11), below. Because this code, at least initially, is a nonsubstantive compilation of existing statutes, it is likely that this Comment terminology will be used sparingly, if at all.

(4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,” the Comment may say that the former provision is continued or restated, but also note the specific differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

(5) *Generalizes, broadens, restates in general terms.* A new provision may be described as “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new provision deals with the same subject as the former provision, but treats it in a significantly different manner.

(7) *New.* A provision is described as “new” where it has no direct source in prior statutes.

(8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not previously been enacted into statutory law.


(10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

(11) *Statement in Comment that section is “comparable” to another section.* A Comment may state that a provision is “comparable” to another provision. If the Comment to a section notes that another section is “comparable,” that does not mean that the other section is the same or substantially the same. The statement is included in the Comment so that the statute user is alerted to the other section and can review the cases under that section for possible use in interpreting the section containing the statement in the Comment.

§ 3. Construction of provision drawn from uniform act

3. A provision of this code, insofar as it is the same in substance as a provision of a uniform act, shall be construed to effectuate the general purpose to make uniform the law in those states that enact the provision.

Comment. Section 3 is a standard type of provision in uniform acts. *Cf.* Fam. Code § 3 & Comment.

 **Staff Note.** This provision is a place holder. It is not clear at present whether any uniform acts enacted in California will be made part of the Environment Code.

§ 4. Transitional provision for amendments, additions, and repeals

4. (a) As used in this section:

(1) “New law” means either of the following, as the case may be:

(A) The act that enacted this code.

(B) The act that makes a change in this code, whether effectuated by amendment, addition, or repeal of a provision of this code.

(2) “Old law” means the applicable law in effect before the operative date of the new law.

(3) “Operative date” means the operative date of the new law.

(b) This section governs the application of the new law except to the extent otherwise expressly provided in the new law.

(c) Subject to the limitations provided in this section, the new law applies on the operative date to all matters governed by the new law, regardless of whether an event occurred or circumstance existed before, on, or after the operative date,

1 including, but not limited to, commencement of a proceeding, making of an order,
2 or taking of an action.

3 (d) If a document or paper is filed before the operative date, the contents,
4 execution, and notice of the document or paper are governed by the old law and
5 not by the new law; but subsequent proceedings taken after the operative date
6 concerning the document or paper, including an objection or response, a hearing,
7 an order, or other matter relating to the document or paper is governed by the new
8 law and not by the old law.

9 (e) If an order is made before the operative date, or an action on an order is taken
10 before the operative date, the validity of the order or action is governed by the old
11 law and not by the new law. Nothing in this subdivision precludes proceedings
12 after the operative date to modify an order made, or alter a course of action
13 commenced, before the operative date to the extent proceedings for modification
14 of an order or alteration of a course of action of that type are otherwise provided in
15 the new law.

16 (f) No person is liable for an action taken before the operative date that was
17 proper at the time the action was taken, even though the action would be improper
18 if taken on or after the operative date, and the person has no duty, as a result of the
19 enactment of the new law, to take any step to alter the course of action or its
20 consequences.

21 (g) If the new law does not apply to a matter that occurred before the operative
22 date, the old law continues to govern the matter notwithstanding its repeal or
23 amendment by the new law.

24 (h) If a party shows, and the court determines, that application of a particular
25 provision of the new law or of the old law in the manner required by this section or
26 by the new law would substantially interfere with the effective conduct of the
27 proceedings or the rights of the parties or other interested persons in connection
28 with an event that occurred or circumstance that existed before the operative date,
29 the court may, notwithstanding this section or the new law, apply either the new
30 law or the old law to the extent reasonably necessary to mitigate the substantial
31 interference.

32 **Comment.** Section 4 is a standard type of provision in the codes. See Fam. Code § 4; Prob.
33 Code § 3. This section provides general transitional rules applicable to the Environment Code.
34 This section applies both to the act that enacted the Environment Code and to any later act that
35 changes the code, whether the change is effectuated by amendment, addition, or repeal of a
36 provision of the code.

37 The rules stated in this section are general provisions that apply absent a special rule stated in a
38 new law. Special rules may defer or accelerate application of a new law despite the general rules
39 stated in this section. See subdivision (b).

40 The general rule prescribed in subdivision (c) is that a new law applies immediately on its
41 operative date to all matters, including pending proceedings. The general rule is qualified by the
42 exceptions listed in subdivision (d) (contents, execution, and notice of papers and documents are
43 governed by the law applicable when the paper or document was filed), subdivision (e) (orders
44 are governed by the law applicable when the order was made, subject to any applicable
45 modification procedures), and subdivision (f) (acts are governed by the law applicable when the
46 act was done).

1 Where a new law fails to address a matter that occurred before its operative date, subdivision
2 (g) makes clear that old law continues to govern the matter.

3 Because it is impractical to attempt to deal with all the possible transitional problems that may
4 arise in the application of a new law to various circumstances, subdivision (h) provides a safety
5 valve that permits the court to vary the application of the new law where there would otherwise
6 be a substantial impairment of procedure or justice. This provision is intended to apply only in the
7 extreme and unusual case, and is not intended to excuse compliance with the basic transitional
8 provisions simply because of minor inconveniences or minor impacts on expectations or other
9 interests.

10 In addition to governing other substantive provisions, Section 4 also governs itself. It therefore
11 becomes operative on the date the Environment Code becomes operative and applies to
12 provisions enacted and operative before, on, or after that date.

13 **§ 5. Effect of headings in code**

14 5. Code, division, part, chapter, article, and section headings do not in any
15 manner affect the scope, meaning, or intent of this code.

16 **Comment.** Section 5 is a standard type of provision in the codes. See, e.g., Evid. Code § 5;
17 Fam. Code § 5; Prob. Code § 4.

18 The reference in this section to “code” headings is new. Location of a provision in this code, or
19 relocation from another code, is strictly for organizational purposes and does not imply that the
20 provision should necessarily be construed to give the provision an “environmental” emphasis.

21 **§ 6. Construction of code**

22 6. Unless the provision or context otherwise requires, the general provisions and
23 rules of construction in this part govern the construction of this code.

24 **Comment.** Section 6 is a standard type of provision in the codes. See, e.g., Evid. Code § 4;
25 Fam. Code § 6; Prob. Code § 6. See also Section 2 Comment.

26 **§ 7. Reference to statute includes amendments and additions**

27 7. Whenever a reference is made to a portion of this code or to another law, the
28 reference applies to all amendments and additions regardless of when made.

29 **Comment.** Section 7 is a standard type of provision in the codes. See, e.g., Corp. Code § 9;
30 Evid. Code § 6; Fam. Code § 7. See also Gov't Code §§ 9604 (construction of restatements and
31 continuations), 9605 (construction of amended statutory provision).

32 **§ 8. Reference to division, part, chapter, article, section, or part of section**

33 8. Unless otherwise expressly stated:

34 (a) “Division” means a division of this code.

35 (b) “Part” means a part of the division in which that term occurs.

36 (c) “Chapter” means a chapter of the division or part, as the case may be, in
37 which that term occurs.

38 (d) “Article” means an article of the chapter in which that term occurs.

39 (e) “Section” means a section of this code.

40 (f) “Subdivision” means a subdivision of the section in which that term occurs.

41 (g) “Paragraph” means a paragraph of the subdivision in which that term occurs.

42 (h) “Subparagraph” means a subparagraph of the paragraph in which that term
43 occurs.

Comment. Section 8 is a standard type of provision in the codes. See, e.g., Evid. Code § 7; Fam. Code § 8; Prob. Code § 8.

§ 9. Construction of tenses

9. The present tense includes the past and future tenses, and the future, the present.

Comment. Section 9 is a standard type of provision in the codes. See, e.g., Fam. Code § 9; Prob. Code § 9; Veh. Code § 12.

§ 10. Construction of singular and plural

10. The singular number includes the plural, and the plural, the singular.

Comment. Section 10 is a standard type of provision in the codes. See, e.g., Corp. Code § 13; Fam. Code § 10; Prob. Code § 10.

§ 11. Meaning of shall, may, shall not, and may not

11. “Shall” is mandatory and “may” is permissive. “Shall not” and “may not” are prohibitory.

Comment. The first sentence of Section 11 is a standard type of provision in the codes. See, e.g., Corp. Code § 15; Fam. Code § 12; Prob. Code § 12.

The second sentence is a new provision making clear that “shall not” and “may not” are equivalent prohibitory expressions. This is not a substantive change. The provision is drawn from Family Code Section 12.

§ 12. Severability of provisions

12. If a provision or clause of this code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

Comment. Section 12 is a standard type of provision in the codes. See, e.g., Corp. Code § 19; Fam. Code § 13; Prob. Code § 11.


PART 2 . DEFINITIONS

§ 50. Application of definitions

50. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this code.

Comment. Section 50 is a standard type of provision in the codes. See, e.g., Evid. Code § 100; Fam. Code § 50; Prob. Code § 20. See also Section 11 (meaning of “shall,” “may,” “shall not,” and “may not”). For a comparable provision, see Section 6.

This part may be supplemented by definitions applicable only in divisions, parts, chapters, and articles to which they relate.

 **Staff Note.** It is anticipated that definitions applicable throughout the code will be used sparingly, since most terms defined in environmental statutes are unique to the statutes in which they occur. Each term defined in this part will be checked against each statute in which the term is used to make sure the definition is appropriate for that statute.

1 **§ 60. “County”**

2 60. “County” includes city and county.

3 **Comment.** Section 60 is a standard type of provision in the codes. See, e.g., Civ. Code § 14;
4 Fam. Code § 67.

5 **§ 70. “Person”**

6 70. “Person” includes a natural person, firm, association, organization,
7 partnership, business trust, corporation, or public entity.

8 **Comment.** Section 70 is a standard type of provision in the codes. See, e.g., Evid. Code § 175;
9 Fam. Code § 105; Gov’t Code § 17.

10 ☞ **Staff Note.** To the extent a statute is intended to refer only to a natural person or individual,
11 the statute should be expressly so limited.
