

Memorandum 2019-41

**Recodification of Toxic Substance Statutes
(Site Clean-Up)**

In this study, the Commission¹ is undertaking a nonsubstantive reorganization of Chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.² The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.³

The Commission has been preparing a draft of the proposed recodification for Chapter 6.8. Attached to this memorandum is an initial draft of “Chapter 5: Cleanup of Hazardous Substance Releases,” “Chapter 6. Site-Specific Rules for Cleanup,” and “Chapter 7. Enforcement.”

Commissioners and other interested persons should review the attached draft and raise any concerns identified. **Comments on any aspect of the draft, including issues that the Commission should consider adding to the list of substantive items for possible future study, would be welcome.**

Unless otherwise indicated, any statutory citations are to the Health and Safety Code.

GENERAL DRAFTING APPROACH

As with the prior draft legislation for this project, the staff has taken a fairly conservative approach to drafting. For the most part, the language used in the draft is drawn from existing law verbatim.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)).

3. Minutes (Feb. 2019), p. 3.

Certain minor language changes to conform to legislative drafting practices or correct clear technical errors were made without notation.⁴ Otherwise, any proposed changes to the language of the provision are described in the corresponding Staff Note.⁵

In accordance with the Commission's prior decisions in this study, certain minor changes were made as a matter of course, but these changes are flagged in the corresponding Staff Note.⁶

In several instances, the staff discovered problems with the existing language or cross-references. Where possible, the staff proposed correcting the provision and discussed the issue in a Staff Note.⁷ Where the appropriate resolution was unclear, the staff requested comment on the issue.⁸

In addition, the staff identified a few provisions that could seemingly benefit from restatement for clarity.⁹ Generally, the staff was unsure whether these provisions might be sufficiently clear to practitioners familiar with this area of law. For these provisions, a Staff Note was included requesting comment on the whether the provision is sufficiently clear. Based on the comment received, the Commission can decide on the appropriate course of action for these provisions (i.e., leave unchanged, restate, or add to list for future study).

The proposed legislation contains an introductory, explanatory Staff Note.¹⁰ This initial Staff Note describes the Commission's comments, the tables included in the proposed legislation, the Staff Notes, and other helpful information for stakeholders reviewing the proposed legislation. This Staff Note will be reproduced in future drafts of proposed legislation and will be updated as needed.

4. Changes the staff made to conform to legislative drafting practice included eliminating uses of the words "such" and "thereof," changing uses of the word "which" to "that," and correcting a missing or extraneous comma. In rare cases, these changes may be flagged in a Staff Note. See, e.g., proposed Section 68855 (Note 1).

5. See, e.g., Staff Notes for proposed Sections 68925, 68935 (Note 2), 68960, 69065, and 69320.

6. See Minutes (Apr. 2019), p. 3-4. Such changes are discussed, for example, in Staff Notes for proposed Sections 68870 (Note 1), 68975 (Note 1), 69450 (Note 2), and 69475 (Note 1).

7. See, e.g., Staff Note for proposed Sections 69070 (Notes 1 and 3), 69100 (Note 1), 69225 (Note 1), and 69230 (Note 1).

8. See, e.g., Staff Notes for proposed Sections 69100 (Note 3), 69235, and 69475 (Note 3).

9. See Staff Notes for proposed Sections 69160 and 69355.

10. See page i of attached draft proposed legislation.

STRUCTURE OF PROPOSED CHAPTERS 5, 6, AND 7

Proposed Chapter 5 includes provisions related to cleaning up hazardous substance releases. The chapter is organized into the following articles:

- (1) General Provisions
- (2) Exigent Actions
- (3) Referral of Site to Department by State or Regional Water Board
- (4) Public Participation
- (5) Community Advisory Groups
- (6) Oversight and Review of Responsible Party Actions
- (7) Orders to Potentially Responsible Parties
- (8) Expenditures
- (9) Preliminary Endangerment Assessment
- (10) Initiation of Removal or Remedial Action
- (11) Local Government Removal or Remedial Actions
- (12) Planning
- (13) Standards
- (14) On-site Hazardous Waste Facility for Response Action
- (15) Operation and Maintenance
- (16) Illegal Drug Lab Cleanup
- (17) Judicial Review of Response Actions

Proposed Chapter 6 includes rules related to cleanup of hazardous substance releases at specific sites. The chapter is organized into the following articles:

- (1) Financial Provisions
- (2) Santa Susana Field Laboratory
- (3) Stringfellow Quarry Class I Hazardous Waste Disposal Site

Proposed Chapter 7 includes enforcement rules related to hazardous substance release cleanups. The chapter is organized into the following articles:

- (1) Noncompliance with Order
- (2) Response Action
- (3) Natural Resource Damages
- (4) Administrative Process for Penalty Collection

Proposed Section 68875 (Section 25354)

As indicated in Memorandum 2019-40, the staff is proposing changes to one of the provisions contained in the cumulative draft. Proposed Section 68240, which continues much of Section 25354, relates to the reserve account for emergencies. Proposed Section 68240 also includes authority for taking cleanup actions with funds in that account. Originally, this material was all included in "Chapter 2. Financial Provisions." That location seems to be an appropriate location for the provisions related to the reserve account generally. However, proposed Chapter 5 seems to be a better location for the provisions related to cleanup authority.¹¹

For ease of reference, the text of proposed Section 68240 is reproduced below:

§ 68240. Reserve account for emergencies

68240. (a) There is hereby continuously appropriated from the state account to the department the sum of one million dollars (\$1,000,000) for each fiscal year as a reserve account for emergencies, notwithstanding Section 13340 of the Government Code. The department shall expend moneys available in the reserve account only for the purpose of taking immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an explosion of, or human exposure to, hazardous substances caused by the release or threatened release of a hazardous substance.

(b)(1) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when, in the judgment of the department, immediate corrective action is necessary to remedy or prevent an emergency specified in subdivision (a).

(3) The contracts made pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(4) If the department finds that the corrective action includes the relocation of individuals, the department may contract with those individuals for out-of-pocket expenses incurred in moving for an amount of not more than one thousand dollars (\$1,000).

11. Those provisions include the second sentence of subdivision (a) and all of subdivision (b) of proposed Section 68240.

(c) Once the appropriation made pursuant to subdivision (a) is fully expended, the director may file a report with the Legislature if it is in session or, if it is not in session, with the Committee on Rules of the Assembly and the Senate as to the moneys expended pursuant to this section. The Legislature may appropriate moneys from the state account, in addition to those moneys appropriated pursuant to subdivision (a), to the department for the purpose of taking corrective action pursuant to subdivision (a).

(d) Except as provided in subdivision (c), the amount deposited in the reserve account and appropriated pursuant to this section shall not exceed one million dollars (\$1,000,000) in any fiscal year. On June 30 of each year, the unencumbered balance of the reserve account shall revert to and be deposited in the state account.

In preparing the attached draft, the staff found that the cleanup authority provisions are cross-referenced frequently.¹² And, these provisions are strongly related to the topic and contents of proposed Chapter 5.

For these reasons, the staff proposes removing the cleanup authority provisions from proposed Section 68240 and, instead, recodifying those provisions in proposed Section 68875, as shown in the attached draft. **Does the Commission approve of that approach?**

If the Commission approves the change, the necessary implementing changes will be made in the next iteration of the cumulative draft.

Uses of the Term “Remediation”

Several provisions in this draft use the term “remediation.”¹³

“Remediation” is similar to the defined terms, “remedy” and “remedial action.”¹⁴ Read strictly, the definition for “remedy” appears not to apply to uses of the term “remediation.”

In some cases, however, it seems that “remediation” was used as a synonym of the defined terms.¹⁵ While in other cases, it is not clear whether “remediation” is being used that way.¹⁶ In either situation, the draft includes a Staff Note requesting comment on the issue.

Alternatively, it may make sense to address the issue more comprehensively, as an issue for future study.

12. See, e.g., proposed Sections 68880, 68930, 69060, 69135.

13. See proposed Sections 69100, 69105, 69260, 69380, 69475.

14. See proposed Section 68125 in cumulative draft.

15. See, e.g., proposed Section 69105 (Note 1).

16. See, e.g., proposed Section 69100 (Note 4).

Would the Commission like to include this issue on the list of items for possible future study?

NEXT STEPS

The staff will prepare an updated cumulative draft, which incorporates these provisions and reflects any decisions made by the Commission on the attached proposed legislation.

Respectfully submitted,

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