

## Memorandum 2019-48

**Recodification of Toxic Substance Statutes  
(Cumulative Draft of Material Previously Reviewed)**

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In this study, the Commission<sup>1</sup> 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.<sup>2</sup> The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.<sup>3</sup>

Attached is a cumulative draft of the material that the Commission has previously considered for inclusion in a tentative recommendation for the recodification of Chapter 6.8. The draft contains proposed legislation for Chapters 1 through 7 of Part 2 of proposed new Division 45 of the Health and Safety Code, as well as “Staff Notes” for these provisions. The “Staff Notes” provide background information, highlight issues where public comment is sought, and draw attention to restated provisions. The “Staff Notes” will be converted to “Notes” when the tentative recommendation is prepared. This draft reflects all of the Commission’s decisions to date.

Commissioners and other interested persons should review the attached draft and raise any concerns. **Comments on any aspect of the draft are welcome.**<sup>4</sup>

Respectfully submitted,

Kristin Burford  
Staff Counsel

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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](http://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.

4. Written comments can be in any form. They should be directed to [kburford@clrc.ca.gov](mailto:kburford@clrc.ca.gov). Comments may also be made orally at the upcoming Commission meeting (scheduled for September 26, 2019), which will be open to the public. The agenda is available at [http://www.clrc.ca.gov/Menu1\\_meetings/agenda.html](http://www.clrc.ca.gov/Menu1_meetings/agenda.html).



CUMULATIVE PRELIMINARY DRAFT  
FOR DIVISION 45

**Staff Note.** This is a work in progress. The material shown below may be changed. All of the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code unless otherwise indicated.

**Comments.** A draft of an official Commission “Comment” follows each proposed code section in the recodification. Such Comments will be included in any final recommendation. The Comments are drafted as if the existing code sections have been repealed and replaced with the proposed legislation. Thus, existing code sections are referred to as “former” sections.

The Comments indicate the source of each recodified code section and describe how the recodified code section compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

**Tables.** There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular form, the disposition of every provision of the existing code that has been included in this draft.

There is also a “derivation table” at the end of the proposed recodification. It summarizes, in tabular form, the statutory derivation of every new code provision in this draft.

**Notes.** Some provisions in this draft are followed by a “Staff Note.” Staff Notes are typically intended to be temporary and will not be part of the Commission’s final recommendation. Staff Notes are drafted to reflect the state of the law today. Thus, the sections in the proposed legislation are referred to as “proposed” sections.

Staff Notes serve to flag issues requiring special attention or treatment. Where a Staff Note serves as a prompt for public comment, it will typically be continued in the Commission’s tentative recommendation as a “Note” calling for comment. However, where the Commission decides against a staff-proposed restatement and reverts to existing statutory language, the Staff Note would not be continued in future drafts.

**Cross-references.** In some places, the provisions proposed for recodification in this draft cross-refer to provisions contained in Chapter 6.8. Where the cross-referenced provision has not yet been included in the recodification draft, the cross-reference is unchanged and is shown in bold text. Bracketed text designates cross-references that have been updated in form, but still need to be updated to reflect the recodified section number.

As new Division 45 is drafted, these references will be updated to reflect the new numbering scheme. Where the cross-referenced material is contained in this draft, the cross-reference was updated to reflect the recodified section number.

**Public comment.** The Commission welcomes public comment on any issue relating to the content of this draft or any other aspect of this study. Comments should be directed to Kristin Burford ([kburford@clrc.ca.gov](mailto:kburford@clrc.ca.gov)).

# Contents

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE .....	1
PART 1. GENERAL PROVISIONS [RESERVED] .....	1
PART 2. HAZARDOUS SUBSTANCE ACCOUNT .....	1
CHAPTER 1. GENERAL PROVISIONS .....	1
Article 1. Preliminary Provisions .....	1
§ 68000. Short title .....	1
§ 68005. Legislative intent .....	1
Article 2. Effect of Recodification .....	2
§ 68010. Nonsubstantive reform .....	2
§ 68015. Continuation of existing law .....	2
§ 68020. Judicial decision interpreting former law .....	3
§ 68025. Constitutionality .....	4
§ 68030. Conforming rule change .....	4
Article 3. Definitions .....	5
§ 68035. Applicable definitions .....	5
§ 68040. “Agency” .....	5
§ 68045. “Contract competitor” .....	5
§ 68050. “Department” .....	5
§ 68055. “Director” .....	5
§ 68060. “Feasibility study” .....	6
§ 68065. “Federal act” .....	6
§ 68070. “Federally permitted release” .....	6
§ 68075. “Hazardous substance” .....	6
§ 68080. “Operation and maintenance” .....	7
§ 68085. “Person” .....	7
§ 68090. “Phase I environmental assessment” .....	8
§ 68095. “Preliminary endangerment assessment” .....	8
§ 68100. “Regional board” .....	9
§ 68105. “Release” .....	9
§ 68110. “Release authorized or permitted pursuant to state law” .....	10
§ 68115. “Remedial design” .....	10
§ 68120. “Remedial investigation” .....	10
§ 68125. “Remedy” or “remedial action” .....	11
§ 68130. “Removal action work plan” .....	11
§ 68135. “Remove” or “removal” .....	11
§ 68140. “Response,” “respond,” or “response action” .....	12
§ 68145. “Responsible party” or “liable person” .....	12
§ 68150. “Secretary” .....	13
§ 68155. “Site” .....	13
§ 68160. “Site cleanup evaluation” .....	13
§ 68165. “State account” .....	13
§ 68170. “Tier” .....	13
Article 4. Construction of Part .....	14
§ 68185. Construction as to liability .....	14
CHAPTER 2. FINANCIAL PROVISIONS .....	14
Article 1. Budget .....	14
§ 68200. Items to be scheduled in Budget Act .....	14
Article 2. Externally-Funded Positions .....	15

§ 68210. Protection of positions funded by federal grant or responsible party.....	15
Article 3. State Account .....	17
§ 68220. Actions involving state account .....	17
§ 68225. Excess expenditures .....	17
§ 68230. Subaccount for funds for response action at specific site .....	17
§ 68235. Subaccount for site operation and maintenance .....	18
§ 68240. Reserve account for emergencies .....	19
Article 4. Site Remediation Account .....	20
§ 68260. Site Remediation Account.....	20
§ 68265. Encumbrance and disbursement of funds.....	20
Article 5. Hazardous Substance Cleanup Bond Act of 1984 .....	21
§ 68280. Short title .....	21
§ 68285. Definitions .....	21
§ 68290. Application of State General Obligation Bond Law .....	22
§ 68295. Creation of Hazardous Substance Cleanup Committee .....	22
§ 68300. Authority of committee to create debt for specified purposes .....	22
§ 68305. Authorized uses of funds from bond proceeds .....	23
§ 68310. Bonds as general obligations of state .....	24
§ 68315. Transfers to General Fund .....	24
§ 68320. Appropriation from General Fund.....	24
§ 68325. Withdrawals from General Fund.....	25
§ 68330. Tax-exempt funds .....	25
§ 68335. Determination on issuance of bonds .....	25
§ 68340. Authority to sell bonds .....	26
§ 68345. Uses of bond proceeds.....	26
Article 6. Revolving Loans Fund.....	26
§ 68360. Definitions .....	26
§ 68365. Revolving Loans Fund .....	27
Article 7. Illegal Drug Lab Cleanup Account.....	28
§ 68370. Illegal Drug Lab Cleanup Account .....	28
CHAPTER 3. GENERAL POWERS AND DUTIES.....	28
Article 1. Regulatory Authority .....	28
§ 68400. Authority to adopt regulations.....	28
Article 2. Federal Assistance .....	29
§ 68410. Obligation to seek federal funds and agreements.....	29
Article 3. Public Outreach.....	29
§ 68420. Community service offices.....	29
Article 4. Investigatory Powers.....	30
§ 68435. Purpose of investigation .....	31
§ 68440. Authority to require person to provide relevant information .....	31
§ 68445. Disclosure of information.....	32
§ 68450. Entry, inspection, and sampling of property .....	33
§ 68455. Entry to property without voluntary grant of access .....	35
§ 68460. Immunity for entry and response action.....	35
Article 5. Protection of Trade Secrets.....	35
§ 68480. “Trade secrets” .....	35
§ 68485. Identification of trade secret information .....	36
§ 68490. Procedures for protection of trade secret information.....	36
§ 68495. Penalty for knowing and willful dissemination of trade secret information .....	36
Article 6. Abandoned Sites .....	36
§ 68505. Notice regarding abandoned sites.....	36

Article 7. Laboratories .....	37
§ 68510. Accreditation requirement .....	37
Article 8. Technology Demonstration Program .....	38
§ 68525. Technology demonstration program for treatment technologies .....	38
§ 68530. Definitions .....	38
§ 68535. Criteria for selection .....	39
§ 68540. Selection of sites .....	40
§ 68545. Solicitation of proposals .....	40
§ 68550. Selection of technology demonstration projects .....	41
§ 68555. Recovery of incremental costs .....	41
§ 68560. Technology transfer program .....	42
§ 68565. Consideration of cost-effectiveness .....	43
Article 9. Content of Biennial Report .....	43
§ 68575. San Gabriel Valley groundwater sites .....	44
§ 68580. Accounting of expenditures from emergency reserve account .....	45
CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES .....	45
Article 1. General Powers of Director .....	45
§ 68650. Powers of director in event of release or threatened release of hazardous substances .....	45
§ 68655. Authority to take or contract for response or other authorized actions .....	46
§ 68660. Judicial proceedings .....	48
Article 2. Reporting Requirement .....	49
§ 68675. Prohibition and reporting requirement for releases .....	49
§ 68680. Liability for failure to report .....	50
Article 3. Disclosure Requirement .....	51
§ 68700. Disclosure requirement for property owner .....	51
§ 68705. Disclosure requirement for lessee or renter .....	51
Article 4. Securing Site of Release .....	52
§ 68720. Conditions when order to secure site is required .....	52
§ 68725. Requirements of order to secure site .....	52
§ 68730. Advising agencies on health risks and site requirements .....	53
§ 68735. Penalty for failure to comply with order to secure site .....	53
§ 68740. Remedies and penalties not exclusive .....	54
Article 5. Listing of Hazardous Substance Release Sites .....	54
§ 68760. List of selected hazardous substance release sites .....	54
§ 68765. Criteria for selection of hazardous substance release sites .....	54
§ 68770. Priority tiers for listed hazardous substance release sites .....	55
§ 68775. Requirements for listed hazardous substance release sites .....	56
§ 68780. Conformance of expenditures with prioritization of sites .....	56
§ 68785. Commencement of response actions at sites .....	57
§ 68790. Responsibility for response action compliance .....	57
§ 68795. Application of administrative rulemaking requirements .....	57
CHAPTER 5. CLEANUP OF HAZARDOUS SUBSTANCE RELEASES .....	58
Article 1. General Provisions .....	58
§ 68850. Coordination of response actions by Governor .....	58
§ 68855. Consistency requirements for response actions .....	58
§ 68860. No duplication of federal response actions .....	59
Article 2. Exigent Actions .....	59
§ 68870. Powers of director to address imminent or substantial endangerment .....	59
§ 68875. Immediate corrective action .....	61
§ 68880. Exemptions for exigent actions .....	61

§ 68885. Prequalification of bidders for exigent actions .....	62
Article 3. Referral of Site to Department by State or Regional Water Board .....	63
§ 68900. Referral of sites to department for listing.....	63
§ 68905. Authority of department at listed, referred site .....	63
§ 68910. Notice to state or regional board regarding referred site.....	64
Article 4. Public Participation.....	65
§ 68925. Role of community service offices.....	65
§ 68930. Department or regional board facilitation of public participation in response actions.....	65
§ 68935. Notice and comment opportunity for local agencies.....	67
Article 5. Community Advisory Groups.....	68
§ 68950. Establishment of group.....	68
§ 68955. Composition of group.....	69
§ 68960. Communication with group.....	69
§ 68965. Participation in group meetings.....	69
§ 68970. Relationship with other public participation provisions .....	70
§ 68975. Technical assistance grants for group .....	70
Article 6. Oversight and Review of Responsible Party Actions .....	71
§ 69000. Policies and procedures for oversight by department or state board.....	71
§ 69005. Voluntary enforceable agreements for actions at petroleum release sites.....	71
Article 7. Orders to Potentially Responsible Parties.....	72
§ 69020. Issuance of orders .....	72
§ 69025. Meeting with potentially responsible parties .....	73
§ 69030. Request for issuance of order to potentially responsible party .....	73
§ 69035. Determination not subject to judicial review .....	74
Article 8. Expenditures .....	74
§ 69055. Required actions before expenditures by department at listed site .....	74
§ 69060. Conditions where required actions not applicable for expenditure .....	76
§ 69065. Authorized expenditures .....	77
§ 69070. Limitations on expenditures for sites owned or operated by federal, state, or local governments or agencies .....	78
§ 69075. Limitation on expenditure for natural resources damages prior to September 25, 1981 .....	80
Article 9. Preliminary Endangerment Assessment .....	80
§ 69100. Required action prior to preliminary endangerment assessment or no further action letter.....	80
§ 69105. Reimbursement of department oversight costs for preliminary endangerment assessment .....	82
Article 10. Initiation of Removal or Remedial Actions .....	83
§ 69130. Authority to initiate removal or remedial action .....	83
§ 69135. Actions required prior to initiation of removal or remedial action .....	83
Article 11. Local Government Removal or Remedial Actions .....	84
§ 69160. Prerequisites to local government-initiated removal or remedial actions .....	84
§ 69165. Local government deemed to be acting in place of department.....	85
§ 69170. Department recovery of costs reimbursed to local government.....	85
§ 69175. Reimbursement eligibility of local government removal or remedial action costs.....	86
Article 12. Planning .....	86
§ 69190. “State board” .....	86
§ 69195. Preparation or approval of plans .....	86
§ 69200. Request by party for preparation or approval of plan .....	87
§ 69205. Standards for plan.....	87
§ 69210. Content of plan .....	88

§ 69215. Public review and comment on plan .....	89
§ 69220. Judicial review of plan .....	90
§ 69225. Situations in which plan not required.....	90
§ 69230. Waiver from required standards for plan .....	91
§ 69235. Costs of removal action .....	92
§ 69240. Application of Water Code provisions .....	93
Article 13. Standards.....	93
§ 69260. Standards for response actions .....	93
§ 69265. Standards for risk assessment for response action .....	94
§ 69270. Level of hazardous substance that is protective of public health .....	95
§ 69275. Content of exposure assessment.....	95
Article 14. On-site Hazardous Waste Facility for Response Action .....	96
§ 69290. Discretion to exclude from permitting requirements .....	96
§ 69295. Enforcement .....	96
Article 15. Operation and Maintenance .....	97
§ 69310. “Small business” .....	97
§ 69315. Financial assurance for operation and maintenance.....	97
§ 69320. Valid financial assurance mechanisms .....	97
§ 69325. Conditions for waiver of financial assurance requirement.....	98
§ 69330. Reporting on financial assurance .....	99
Article 16. Illegal Drug Lab Cleanup .....	100
§ 69350. Expenditures and contracting .....	100
§ 69355. Notice to department by law enforcement .....	100
§ 69360. Department obligation upon receipt of notice .....	101
§ 69365. Notification of local environmental health officer .....	101
§ 69370. Generator of hazardous waste and substances at site .....	101
§ 69375. Regulations .....	102
§ 69380. Methods, standards, and procedures .....	102
§ 69385. Applicability of article contingent on funding .....	103
Article 17. Judicial Review of Response Actions.....	103
§ 69400. Judicial review of response action adequacy .....	103
CHAPTER 6. SITE-SPECIFIC RULES RELATED TO CLEANUP .....	104
Article 1. Financial Provisions.....	104
§ 69450. Site-specific appropriations for state account monies.....	104
Article 2. Santa Susana Field Laboratory .....	105
§ 69465. Legal remedies .....	105
§ 69470. Response action.....	105
§ 69475. Land transfers .....	106
Article 3. Stringfellow Quarry Class I Hazardous Waste Disposal Site.....	106
§ 69490. Use of onsite treatment, storage, transfer, or disposal facility .....	106
§ 69495. Priority of removal and remedial actions .....	107
CHAPTER 7. ENFORCEMENT .....	107
Article 1. Noncompliance with Order.....	107
§ 69550. Penalty for noncompliance with order .....	107
§ 69555. Treble damages from noncompliant contribution defendant .....	108
Article 2. Response Actions.....	108
§ 69570. Treble damages for failure to provide response action .....	108
Article 3. Natural Resources Damages .....	109
§ 69580. Prohibition on recovery of damages for certain losses occurring before September 25, 1981 .....	109
Article 4. Administrative Process for Penalty Collection .....	109

§ 69590. Complaint for penalties .....	109
§ 69595. Hearing for penalties .....	110
§ 69600. Deposit and expenditure of penalties .....	110
DISPOSITION OF EXISTING LAW .....	111
DERIVATION OF NEW LAW .....	113
SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY .....	115

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DRAFT LEGISLATION

1 **Health & Safety Code §§ 68000-[6XXXX] (added). Hazardous substance response**

2 SEC. \_\_\_\_. Division 45 (commencing with Section 68000) is added to the Health  
3 and Safety Code, to read:

4 DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

5 PART 1. GENERAL PROVISIONS [RESERVED]

6 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

7 **Staff Note.** In drafting proposed legislation for Part 2, the staff assumed that the entirety of  
8 Chapter 6.8 (commencing with Section 25300) of Division 20 would be recodified in this part.  
9 The provisions contained in this draft, particularly those that cross-refer to the part, will require  
10 reconsideration and possible adjustment if provisions of Chapter 6.8 of Division 20 are recodified  
11 in a different location.

12 CHAPTER 1. GENERAL PROVISIONS

13 Article 1. Preliminary Provisions

14 **§ 68000. Short title**

15 68000. (a) This part shall be known and may be cited as the Carpenter-Presley-  
16 Tanner Hazardous Substance Account Act.

17 (b) This part recodifies the provisions of former Chapter 6.8 (commencing with  
18 Section 25300) of Division 20. The act that added this part shall be known and  
19 may be cited as the “Hazardous Substance Account Recodification Act of 2020.”

20 **Comment.** Subdivision (a) of Section 68000 continues former Section 25300 without  
21 substantive change. The Carpenter-Presley-Tanner Hazardous Substance Account Act was  
22 formerly codified as Chapter 6.8 (commencing with Section 25300) of Division 20 of this code.

23 Subdivision (b) is new. It provides a convenient means of referring to the recodification of  
24 former Chapter 6.8 (commencing with Section 25300) of Division 20. For background, see  
25 *Recodification of Hazardous Substance Account Provisions*, \_\_ Cal. L. Revision Comm’n  
26 Reports \_\_ (2019).

27 **Staff Note.** In drafting proposed Section 68000(b), the staff assumed that the Commission will  
28 approve a final recommendation in this study in 2019 and seek introduction of implementing  
29 legislation in 2020. The dates in Section 68000(b) and the accompanying Comment will require  
30 adjustment if those assumptions prove incorrect.

31 **§ 68005. Legislative intent**

32 68005. It is the intent of the Legislature to do all of the following:

1 (a) Establish a program to provide for response authority for releases of  
2 hazardous substances, including spills and hazardous waste disposal sites that pose  
3 a threat to the public health or the environment.

4 (b) Compensate persons, under certain circumstances, for out-of-pocket medical  
5 expenses and lost wages or business income resulting from injuries proximately  
6 caused by exposure to releases of hazardous substances.

7 (c) Make available adequate funds in order to permit the State of California to  
8 assure payment of its 10-percent share of the costs mandated pursuant to Section  
9 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

10 **Comment.** Section 68005 continues former Section 25301 without substantive change.

11 See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68085 (“person”), 68105  
12 (“release”), 68140 (“response”), 68155 (“site”).

## 13 Article 2. Effect of Recodification

### 14 § 68010. Nonsubstantive reform

15 68010. Nothing in the Hazardous Substance Account Recodification Act of  
16 2020 is intended to substantively change the law contained in former Chapter 6.8  
17 (commencing with 25300) of Division 20. The act is intended to be entirely  
18 nonsubstantive in effect. Every provision of this part and every other provision of  
19 this act, including, without limitation, every cross-reference in every provision of  
20 the act, shall be interpreted consistent with the nonsubstantive intent of the act.

21 **Comment.** Section 68010 is modeled on Penal Code Section 16005. It makes clear that the  
22 Hazardous Substance Account Recodification Act of 2020 has no substantive effect. The act is  
23 intended solely to make the Carpenter-Presley-Tanner Hazardous Substance Account Act more  
24 user-friendly. For background, see *Recodification of Hazardous Substance Account Provisions*,  
25 \_\_ Cal. L. Revision Comm’n Reports \_\_ (2019).

26 For specific guidance on the impact of a judicial decision interpreting a predecessor of a  
27 provision in this part, see Section 68020. For specific guidance on the impact of a judicial  
28 decision assessing the constitutionality of a predecessor of a provision in this part, see Section  
29 68025.

30 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

### 31 § 68015. Continuation of existing law

32 68015. (a) A provision of this part insofar as it is substantially the same as a  
33 previously existing provision relating to the same subject matter, shall be  
34 considered as a restatement and continuation of the previously existing provision  
35 and not as a new enactment.

36 (b) A reference in a statute or regulation to a previously existing provision that is  
37 restated and continued in this part shall, unless a contrary intent appears, be  
38 deemed a reference to the restatement and continuation.

39 (c) A reference in a statute or regulation to a provision of this part that is  
40 substantially the same as a previously existing provision, shall, unless a contrary  
41 intent appears, be deemed to include a reference to the previously existing  
42 provision.

1 (d) A reference in a regulation to a provision of former Chapter 6.8  
2 (commencing with Section 25300) of Division 20, rather than to the provision of  
3 this part that continues the former provision, has no effect on the validity of the  
4 regulation.

5 **Comment.** Subdivision (a) of Section 68015 is similar to Section 2, which is a standard  
6 provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2;  
7 Penal Code §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2.

8 Subdivision (b) is drawn from Government Code Section 9604 and Penal Code Section  
9 16010(b).

10 Subdivision (c) is drawn from Family Code Section 2 and Penal Code Section 16010(c).

11 Subdivision (d) is new. It is added to make clear that any delay in updating regulations to  
12 reflect the enactment of this part does not have any effect on the validity of the regulation. A  
13 regulation continues to be valid even if it refers to a provision of former Chapter 6.8 of Division  
14 20.

15 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

16 **§ 68020. Judicial decision interpreting former law**

17 68020. (a) A judicial decision interpreting a previously existing provision is  
18 relevant in interpreting any provision of this part that restates and continues that  
19 previously existing provision.

20 (b) However, in enacting the Hazardous Substance Account Recodification Act  
21 of 2020, the Legislature has not evaluated the correctness of any judicial decision  
22 interpreting a provision affected by the act.

23 (c) The Hazardous Substance Account Recodification Act of 2020 is not  
24 intended to, and does not, reflect any assessment of any judicial decision  
25 interpreting any provision affected by the act.

26 **Comment.** Section 68020 is modeled on Penal Code Section 16020.

27 Subdivision (a) makes clear that case law construing a predecessor provision is relevant in  
28 construing its successor in the Hazardous Substance Account Recodification Act of 2020.

29 Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.8 (commencing with  
30 Section 25300) of Division 20, the Legislature has not taken any position on any case interpreting  
31 any of those provisions.

32 For specific guidance on the impact of a judicial decision assessing the constitutionality of a  
33 predecessor of a provision in this part, see Section 68025. For general guidance on the  
34 nonsubstantive impact of the Hazardous Substance Account Recodification Act of 2020, see  
35 Section 68010.

36 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

37 **Staff Note.** In another ongoing recodification project, the Commission is proposing to include a  
38 section similar to proposed Section 68020 that addresses Attorney General opinions, rather than  
39 judicial decisions. The staff considered whether such a provision should be included in this  
40 project, as well. The staff searched for, but did not find, Attorney General opinions related to  
41 Chapter 6.8. For this reason, this draft does not include a provision about the effect of the  
42 recodification on Attorney General opinions. **The staff welcomes comment on whether a  
43 provision regarding the effect of the recodification on Attorney General opinions should be  
44 included in this proposed legislation.**

1    **§ 68025. Constitutionality**

2       68025. (a) A judicial decision on the constitutionality of a previously existing  
3       provision is relevant in determining the constitutionality of any provision of this  
4       part that restates and continues that previously existing provision.

5       (b) However, in enacting the Hazardous Substance Account Recodification Act  
6       of 2020, the Legislature has not evaluated the constitutionality of any provision  
7       affected by the act, or the correctness of any judicial decision on the  
8       constitutionality of any provision affected by the act.

9       (c) The Hazardous Substance Account Recodification Act of 2020 is not  
10      intended to, and does not, reflect any determination of the constitutionality of any  
11      provision affected by the act.

12      **Comment.** Section 68025 is modeled on Penal Code Section 16025.

13      Subdivision (a) makes clear that case law on the constitutionality of a predecessor provision are  
14      relevant in determining the constitutionality of its successor in the Hazardous Substance Account  
15      Recodification Act of 2020.

16      Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.8 (commencing with  
17      Section 25300) of Division 20, the Legislature has not taken any position on the constitutionality  
18      of any of those provisions.

19      For specific guidance on the impact of a judicial decision interpreting a predecessor of a  
20      provision in this part, see Section 68020. For general guidance on the nonsubstantive effect of the  
21      Hazardous Substance Account Recodification Act of 2020, see Section 68010.

22      See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

23    **§ 68030. Conforming rule change**

24      68030. (a) The department or another state agency may make a conforming rule  
25      change without complying with the rulemaking procedure specified in Article 5  
26      (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2  
27      of the Government Code, if the rule change meets all of the requirements of this  
28      section.

29      (b) To proceed under this section, the department or agency shall submit all of  
30      the following to the Office of Administrative Law:

31      (1) A completed and signed form STD 400.

32      (2) A statement declaring that each proposed rule change in the submission is a  
33      conforming rule change.

34      (3) A copy of the text of each regulation to be changed, with strikeout and  
35      underscore showing the changes.

36      (c) On receipt of a submission described in subdivision (b), the Office of  
37      Administrative Law shall file the changed regulations with the Secretary of State  
38      and have them published in the California Code of Regulations.

39      (d) For the purposes of this section, a “conforming rule change” means a rule  
40      change that deletes a reference to a provision of former Chapter 6.8 (commencing  
41      with Section 25300) of Division 20 and replaces it with a reference to the  
42      provision of this part that continues or restates the former provision. A “rule  
43      change” includes a change to the text of a regulation in the California Code of  
44      Regulations, a regulation’s citation of authority, or a regulation’s reference.

1 **Comment.** Section 68030 is new.  
2 See Section 68050 (“department”).

3 Article 3. Definitions

4 **§ 68035. Applicable definitions**

5 68035. The definitions set forth in this article shall govern the interpretation of  
6 this part. Unless the context requires otherwise and except as provided in this  
7 article, the definitions contained in Section 101 of the federal act (42 U.S.C. Sec.  
8 9601) shall apply to the terms used in this part.

9 **Comment.** Section 68035 continues former Section 25310 without substantive change.  
10 See Section 68065 (“federal act”).

11 **Staff Note.** The second sentence of Section 25310 provides for the application of definitions  
12 contained in Section 101 of the federal act. Section 101 defines over 40 terms. The defined terms  
13 in Section 101 include commonly understood words, including “claim,” “damages,”  
14 “environment,” “disposal,” “liability,” and “transport.” Section 101 also defines several terms  
15 that are also defined in this proposed article, including “hazardous substance,” “person,”  
16 “release,” “remove,” “remedy,” and “respond.” Assessing the applicability of the federal act’s  
17 definitions for each individual use of the defined terms in this law would be a significant  
18 undertaking. And, the benefits of doing such work in this nonsubstantive study are limited. For  
19 these reasons, the staff does not plan to exhaustively evaluate the application of federal  
20 definitions in this study.

21 In general, the staff is unsure whether this provision provides sufficient clarity as to when the  
22 federal definitions apply. **The staff welcomes comment on this issue.**

23 It seems possible that this would be a topic for which future study would be useful. Depending  
24 on the comment received, the Commission may want to consider adding this topic to the list of  
25 substantive issues for future study in the Commission’s recommendation.

26 **§ 68040. “Agency”**

27 68040. “Agency” means the California Environmental Protection Agency.

28 **Comment.** Section 68040 continues former Section 25310.5 without substantive change.

29 **§ 68045. “Contract competitor”**

30 68045. “Contract competitor” means any person competing for a state contract  
31 pursuant to subdivision (a) of Section 68655.

32 **Comment.** Section 68045 continues former Section 25311 without substantive change.  
33 See Section 68085 (“person”).

34 **§ 68050. “Department”**

35 68050. “Department” means the Department of Toxic Substances Control.

36 **Comment.** Section 68050 continues former Section 25312 without substantive change.

37 **§ 68055. “Director”**

38 68055. “Director” means the Director of Toxic Substances Control.

39 **Comment.** Section 68055 continues former Section 25313 without substantive change.

1 § 68060. “Feasibility study”

2 68060. “Feasibility study” means the identification and evaluation of technically  
3 feasible and effective remedial action alternatives to protect public health and the  
4 environment, at a hazardous substance release site, or other activities deemed  
5 necessary by the department for the development of a remedial action plan.

6 **Comment.** Section 68060 continues former Section 25314 without substantive change.

7 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
8 (“remedy”), 68155 (“site”).

9 § 68065. “Federal act”

10 68065. “Federal act” means the federal Comprehensive Environmental  
11 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.  
12 9601 et seq.).

13 **Comment.** Section 68065 continues former Section 25315 without substantive change.

14 § 68070. “Federally permitted release”

15 68070. “Federally permitted release” has the same meaning as defined in  
16 Section 101(10) of the federal act (42 U.S.C. Sec. 9601(10)).

17 **Comment.** Section 68070 continues former Section 25325 without substantive change.

18 See Sections 68065 (“federal act”), 68105 (“release”).

19 § 68075. “Hazardous substance”

20 68075. (a) “Hazardous substance” means:

21 (1) Any substance designated pursuant to Section 1321(b)(2)(A) of Title 33 of  
22 the United States Code.

23 (2) Any element, compound, mixture, solution, or substance designated pursuant  
24 to Section 102 of the federal act (42 U.S.C. Sec. 9602).

25 (3) Any hazardous waste having the characteristics identified under or listed  
26 pursuant to Section 6921 of Title 42 of the United States Code, but not including  
27 any waste the regulation of which under the federal Solid Waste Disposal Act (42  
28 U.S.C. Sec. 6901 et seq.) has been suspended by act of Congress.

29 (4) Any toxic pollutant listed under Section 1317 (a) of Title 33 of the United  
30 States Code.

31 (5) Any hazardous air pollutant listed under Section 7412 of Title 42 of the  
32 United States Code.

33 (6) Any imminently hazardous chemical substance or mixture with respect to  
34 which the Administrator of the United States Environmental Protection Agency  
35 has taken action pursuant to Section 2606 of Title 15 of the United States Code.

36 (7) Any hazardous waste or extremely hazardous waste as defined by Sections  
37 25117 and 25115, respectively, unless expressly excluded.

38 (b) “Hazardous substance” does not include:

39 (1) Petroleum, including crude oil or any fraction of crude oil that is not  
40 otherwise specifically listed or designated as a hazardous substance in paragraphs

1 (1) to (6), inclusive, of subdivision (a), and natural gas, natural gas liquids,  
2 liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas  
3 and synthetic gas usable for fuel).

4 (2) Ash produced by a resource recovery facility utilizing a municipal solid  
5 waste stream.

6 (3) Nontoxic, nonflammable, noncorrosive stormwater runoff drained from  
7 underground vaults, chambers, or manholes into gutters or storm sewers.

8 **Comment.** Subdivision (a) of Section 68075 continues former Section 25316 without  
9 substantive change.

10 Subdivision (b) restates former Section 25317 without substantive change.

11 See Section 68065 (“federal act”).

12 **Staff Note.** Subdivision (a) of Section 25317 was restated for clarity and to conform to legislative  
13 drafting practices. Subdivision (a) has been broken into paragraphs (1) and (2) of subdivision (b)  
14 in proposed Section 68075.

15 Section 25317(a) currently reads as follows:

16 “(a) Petroleum, including crude oil or any fraction thereof which is not otherwise  
17 specifically listed or designated as a hazardous substance in subdivisions (a) to (f), inclusive, of  
18 Section 25316, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable  
19 for fuel (or mixtures of natural gas and such synthetic gas), or the ash produced by a resource  
20 recovery facility utilizing a municipal solid waste stream.”

21 The changes reflected in proposed Section 68075 are intended to be nonsubstantive. **The staff**  
22 **welcomes any comment on the proposed restatement of this subdivision.**

23 **§ 68080. “Operation and maintenance”**

24 68080. “Operation and maintenance” means those activities initiated or  
25 continued at a hazardous substance release site following completion of a response  
26 action that are deemed necessary by the department or regional board in order to  
27 protect public health or safety or the environment, to maintain the effectiveness of  
28 the response action at the site, or to achieve or maintain the response action  
29 standards and objectives established by the final remedial action plan or final  
30 removal action work plan applicable to the site.

31 **Comment.** Section 68080 continues former Section 25318.5 without substantive change.

32 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),  
33 68105 (“release”), 68125 (“remedy”), 68130 (“removal action work plan”), 68140 (“response”),  
34 68155 (“site”).

35 **§ 68085. “Person”**

36 68085. “Person” means an individual, trust, firm, joint stock company, business  
37 concern, partnership, limited liability company, association, and corporation,  
38 including, but not limited to, a government corporation. “Person” also includes  
39 any city, county, city and county, district, commission, the state or any  
40 department, agency, or political subdivision thereof, any interstate body, and the  
41 United States and its agencies and instrumentalities, to the extent permitted by  
42 law.

43 **Comment.** Section 68085 restates former Section 25319 without substantive change.

1 **Staff Notes. (1)** In proposed Section 68085, the order of the phrases in the first sentence in the  
2 definition of “person” from Section 25319 were changed to improve clarity. Minor changes to the  
3 text were made to conform to legislative drafting practices. The text of Section 25319 is as  
4 follows:

5 “25319. ‘Person’ means an individual, trust, firm, joint stock company, business concern,  
6 corporation, including, but not limited to, a government corporation, partnership, limited liability  
7 company, and association. “Person” also includes any city, county, city and county, district,  
8 commission, the state or any department, agency, or political subdivision thereof, any interstate  
9 body, and the United States and its agencies and instrumentalities, to the extent permitted by  
10 law.”

11 The changes reflected in proposed Section 68085 are intended to be nonsubstantive. **The staff  
12 welcomes any comment on the proposed restatement of this definition.**

13 **(2)** The staff had difficulty determining the intended application of the final phrase in the second  
14 sentence of the definition of “person.” In particular, it was unclear whether “to the extent  
15 permitted by law” was intended to serve as a limitation to all of the listed entities in the second  
16 sentence or whether that phrase was only intended to modify the last set of listed entities (“the  
17 United States and its agencies and instrumentalities”). If the former application is intended, the  
18 staff would propose moving the phrase “to the extent permitted by law” to the front of the  
19 sentence (to read “‘Person’ also includes, to the extent permitted by law, ...”). If the latter  
20 application is intended, it would seem to be more clear to move “to the extent permitted by law”  
21 to precede “the United States ...”. (to read “any interstate body, and, to the extent permitted by  
22 law, the United States and its agencies and instrumentalities”) **The staff welcomes comment on  
23 this issue.**

24 **§ 68090. “Phase I environmental assessment”**

25 68090. “Phase I environmental assessment” means a preliminary assessment of  
26 a property to determine whether there has been, or may have been, a release of a  
27 hazardous substance based on reasonably available information about the property  
28 and general vicinity. A phase I environmental assessment may include, but is not  
29 limited to, a review of public and private records, current and historical land uses,  
30 prior releases of a hazardous material, database searches, reviews of relevant files  
31 of federal, state, and local agencies, visual and other surveys of the property and  
32 general vicinity, interviews with current and previous owners and operators, and  
33 review of regulatory correspondence and environmental reports. Sampling or  
34 testing is not required as part of a phase I environmental assessment.

35 **Comment.** Section 68090 continues former Section 25319.1 without substantive change.  
36 See 68075 (“hazardous substance”), 68105 (“release”).

37 **§ 68095. “Preliminary endangerment assessment”**

38 68095. “Preliminary endangerment assessment” means an activity that is  
39 performed to determine whether current or past hazardous substance management  
40 practices have resulted in a release or threatened release of a hazardous substance  
41 that poses a threat to the public health or the environment and is conducted in a  
42 manner that complies with the guidelines published by the department entitled  
43 “Preliminary Endangerment Assessment: Guidance Manual,” or as those

1 guidelines may be amended by the department. A preliminary endangerment  
2 assessment includes all of the following activities:

3 (a) Sampling and analysis of a site.

4 (b) A preliminary determination of the type and extent of hazardous material  
5 contamination of a site.

6 (c) A preliminary evaluation of the risks the hazardous materials contamination  
7 of a site may pose to public health or the environment.

8 **Comment.** Section 68095 continues former Section 25319.5 without substantive change.

9 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155  
10 (“site”).

11 **§ 68100. “Regional board”**

12 68100. “Regional board” means a California regional water quality control  
13 board.

14 **Comment.** Section 68100 continues former Section 25319.6 without substantive change.

15 **§ 68105. “Release”**

16 68105. (a) “Release” means any spilling, leaking, pumping, pouring, emitting,  
17 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into  
18 the environment.

19 (b) “Release” does not include any of the following:

20 (1) Any release that results in exposure to persons solely within a workplace,  
21 with respect to a claim those exposed persons may assert against their employer.

22 (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft,  
23 vessel, or pipeline pumping station engine.

24 (3) Release of source, byproduct, or special nuclear material from a nuclear  
25 incident, as those terms are defined in the federal Atomic Energy Act of 1954 (42  
26 U.S.C. Sec. 2011 et seq.), if the release is subject to requirements with respect to  
27 financial protection established by the Nuclear Regulatory Commission under  
28 Section 2210 of Title 42 of the United States Code.

29 (4) For the purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or  
30 any other response action, any release of source, byproduct, or special nuclear  
31 material, as those terms are defined in the federal Atomic Energy Act of 1954 (42  
32 U.S.C. Sec. 2011 et seq.), from any processing site designated under Section  
33 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a  
34 part of the federal Uranium Mill Tailings Radiation Control Act of 1978.

35 (5) The normal application of fertilizer, plant growth regulants, and pesticides.

36 **Comment.** Subdivision (a) of Section 68105 continues former Section 25320 without  
37 substantive change.

38 Subdivision (b) restates former Section 25321 without substantive change.

39 See Sections 68065 (“federal act”), 68085 (“person”), 68140 (“response”).

40 **Staff Note.** Proposed Section 68105(b) separates the text of Section 25321(c) into two paragraphs  
41 ((3) and (4)) for clarity. The proposed language also includes changes to conform to legislative

1 drafting practices and to correct an apparent error (i.e., an omitted comma). Subdivision (c) of  
2 Section 25321 reads as follows:

3 “(c) Release of source, byproduct, or special nuclear material from a nuclear incident, as  
4 those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011, et seq.), if such  
5 release is subject to requirements with respect to financial protection established by the Nuclear  
6 Regulatory Commission under Section 2210 of Title 42 of the United States Code or, for the  
7 purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or any other response action, any  
8 release of source byproduct, or special nuclear material from any processing site designated under  
9 Section 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a part of  
10 the Uranium Mill Tailings Radiation Control Act of 1978.”

11 The changes reflected in proposed Section 68105 are intended to be nonsubstantive. **The staff**  
12 **welcomes any comment on the proposed restatement of this subdivision.**

13 **§ 68110. “Release authorized or permitted pursuant to state law”**

14 68110. “A release authorized or permitted pursuant to state law” means any  
15 release into the environment that is authorized by statute, ordinance, regulation, or  
16 rule of any state, regional, or local agency or government or by any specific  
17 permit, license, or similar authorization from such an agency, including one of the  
18 foregoing, that recognizes a standard industry practice, including variances  
19 obtained from the agency that allow operations for facilities during a period of  
20 time when releases from the facilities do not conform with relevant statutes,  
21 ordinances, regulations, or rules. The term includes a federally permitted release,  
22 as defined by Section 68070, and releases that are in accordance with any court  
23 order or consent decree.

24 **Comment.** Section 68110 continues former Section 25326 without substantive change.  
25 See Sections 68040 (“agency”), 68070 (“federally permitted release”), 68105 (“release”).

26 **§ 68115. “Remedial design”**

27 68115. “Remedial design” means the detailed engineering plan to implement the  
28 remedial action alternative or initial remedial measure approved by the  
29 department.

30 **Comment.** Section 68115 continues former Section 25322.1 without substantive change.  
31 See Sections 68050 (“department”), 68125 (“remedy”).

32 **§ 68120. “Remedial investigation”**

33 68120. “Remedial investigation” means those actions deemed necessary by the  
34 department to determine the full extent of a hazardous substance release at a site,  
35 identify the public health and environment threat posed by the release, collect data  
36 on possible remedies, and otherwise evaluate the site for purposes of developing a  
37 remedial action plan.

38 **Comment.** Section 68120 continues former Section 25322.2 without substantive change.  
39 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
40 (“remedy”), 68155 (“site”).

1 § 68125. “Remedy” or “remedial action”

2 68125. “Remedy” or “remedial action” includes all of the following:

3 (a) Those actions that are consistent with a permanent remedy, that are taken  
4 instead of, or in addition to, removal actions in the event of a release or threatened  
5 release of a hazardous substance into the environment, as further defined by  
6 Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)), except that any  
7 reference in Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)) to the  
8 President, relating to determinations regarding the relocation of residents,  
9 businesses, and community facilities shall, for the purposes of this part, be deemed  
10 to be a reference to the Governor and any other reference in that section to the  
11 President shall, for the purposes of this part, be deemed a reference to the  
12 Governor, or the director, if designated by the Governor.

13 (b) Those actions that are necessary to monitor, assess, and evaluate a release or  
14 a threatened release of a hazardous substance.

15 (c) Site operation and maintenance.

16 **Comment.** Section 68125 continues former Section 25322 without substantive change.

17 See Sections 68055 (“director”), 68065 (“federal act”), 68075 (“hazardous substance”), 68080  
18 (“operation and maintenance”), 68105 (“release”), 68135 (“remove”), 68155 (“site”).

19 § 68130. “Removal action work plan”

20 68130. “Removal action work plan” means a work plan prepared or approved by  
21 the department or a regional board that is developed to carry out a removal action,  
22 in an effective manner, that is protective of the public health and safety and the  
23 environment. The removal action work plan shall include a detailed engineering  
24 plan for conducting the removal action, a description of the onsite contamination,  
25 the goals to be achieved by the removal action, and any alternative removal  
26 options that were considered and rejected and the basis for that rejection.

27 **Comment.** Section 68130 continues former Section 25323.1 without substantive change.

28 See Sections 68050 (“department”), 68100 (“regional board”), 68135 (“remove”).

29 **Staff Note.** Proposed Section 68130 replaces the phrase “a California regional water quality  
30 control board” used in Section 25323.1 with “a regional board.” The term “regional board” is  
31 defined in proposed Section 68100, which continues Section 25319.6.

32 § 68135. “Remove” or “removal”

33 68135. “Remove” or “removal” includes the cleanup or removal of released  
34 hazardous substances from the environment or the taking of other actions as may  
35 be necessary to prevent, minimize, or mitigate damage that may otherwise result  
36 from a release or threatened release, as further defined by Section 101(23) of the  
37 federal act (42 U.S.C. Sec. 9601(23)).

38 **Comment.** Section 68135 continues former Section 25323 without substantive change.

39 See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”).

1 § 68140. “Response,” “respond,” or “response action”

2 68140. “Response,” “respond,” or “response action” have the same meanings as  
3 defined in Section 101(25) of the federal act (42 U.S.C. Sec. 9601(25)). The  
4 enforcement and oversight activities of the department and regional board are  
5 included within the meaning of “response,” “respond,” or “response action.”

6 **Comment.** Section 68140 continues former Section 25323.3 without substantive change. An  
7 erroneous cross-reference to “Section 9601(25) of the federal act” has been corrected to refer to  
8 “Section 101(25) of the federal act.”

9 See Sections 68050 (“department”), 68065 (“federal act”), 68100 (“regional board”).

10 **Staff Note.** Proposed Section 68140 replaces the reference to “Section 9601(25) of the federal  
11 act” used in Section 25323.3 with “Section 101(25) of the federal act.” Section 9601 *of the U.S.*  
12 *Code* corresponds to Section 101 *of the federal act*. See, e.g., proposed Section 68135. The  
13 original reference to Section 9601 of the federal act appears to have been an error.

14 § 68145. “Responsible party” or “liable person”

15 68145. (a)(1) “Responsible party” or “liable person,” for the purposes of this  
16 part, means those persons described in Section 107(a) of the federal act (42 U.S.C.  
17 Sec. 9607(a)).

18 (2)(A) Notwithstanding paragraph (1), but except as provided in subparagraph  
19 (B), a person is not a responsible party or liable person, for purposes of this part,  
20 for the reason that the person has developed or implemented innovative  
21 investigative or innovative remedial technology with regard to a release site, if the  
22 use of the technology has been approved by the department for the release site and  
23 the person would not otherwise be a responsible party or liable person. Upon  
24 approval of the use of the technology, the director shall acknowledge, in writing,  
25 that, upon proper completion of the innovative investigative or innovative  
26 remedial action at the release site, the immunity provided by this subparagraph  
27 shall apply to the person.

28 (B) Subparagraph (A) does not apply in any of the following cases:

29 (i) Conditions at the release site have deteriorated as a result of the negligence of  
30 the person who developed or implemented the innovative investigative or  
31 innovative remedial technology.

32 (ii) The person who developed or implemented the innovative investigative or  
33 innovative remedial technology withheld or misrepresented information that was  
34 relevant to the potential risks or harms of the technology.

35 (iii) The person who implemented the innovative investigative or innovative  
36 remedial technology did not follow the implementation process approved by the  
37 department.

38 (b) For the purposes of this part, the defenses available to a responsible party or  
39 liable person shall be those defenses specified in Sections 101(35) and 107(b) of  
40 the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

41 (c) Any person who unknowingly transports hazardous waste to a solid waste  
42 facility pursuant to the exemption provided in subdivision (e) of Section 25163  
43 shall not be considered a responsible party for purposes of this part solely because

1 of the act of transporting the waste. Nothing in this subdivision shall affect the  
2 liability of this person for the person’s negligent acts.

3 **Comment.** Section 68145 continues former Section 25323.5 without substantive change.

4 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68085  
5 (“person”), 68105 (“release”), 68125 (“remedy”), 68155 (“site”).

6 **§ 68150. “Secretary”**

7 68150. “Secretary” means the Secretary for Environmental Protection.

8 **Comment.** Section 68150 continues former Section 25326.3 without substantive change.

9 **§ 68155. “Site”**

10 68155. “Site” has the same meaning as the term “facility” is defined by Section  
11 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

12 **Comment.** Section 68155 continues former Section 25323.9 without substantive change.

13 See Section 68065 (“federal act”).

14 **§ 68160. “Site cleanup evaluation”**

15 68160. “Site cleanup evaluation” means an evaluation by the department of the  
16 effectiveness of a removal or remedial action conducted by a responsible party, to  
17 reduce or eliminate actual or potential public health and environmental threats  
18 posed by a hazardous substance release site if the action itself is not the subject of  
19 oversight by the department.

20 **Comment.** Section 68160 continues former Section 25326.5 without substantive change.

21 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
22 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

23 **§ 68165. “State account”**

24 68165. “State account” means the Toxic Substances Control Account  
25 established pursuant to Section 25173.6.

26 **Comment.** Section 68165 continues subdivision (a) of former Section 25324 without  
27 substantive change.

28 **Staff Note.** Subdivision (b) of Section 25324 states a substantive rule, rather than a definition:

29 “(b) Notwithstanding any other provision of this section, any costs incurred and payable  
30 from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site  
31 Remediation Account prior to July 1, 2006, to implement this chapter, shall be recoverable from  
32 the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable  
33 from the state account.”

34 This subdivision will be recodified with other related provisions in a future draft.

35 **§ 68170. “Tier”**

36 68170. “Tier” means a grouping of hazardous substance release sites that require  
37 removal and remedial actions, that are listed alphabetically, and that are of a  
38 roughly equivalent priority for removal and remedial action.

39 **Comment.** Section 68170 continues former Section 25327 without substantive change.

1 See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135  
2 (“remove”), 68155 (“site”).

3 Article 4. Construction of Part

4 § 68185. Construction as to liability

5 68185. (a) This part shall not be construed as imposing any new liability  
6 associated with acts that occurred on or before January 1, 1982, if the acts were  
7 not in violation of existing state or federal laws at the time they occurred.

8 (b) Nothing in this part shall be construed as authorizing recovery for response  
9 costs or damages resulting from any release authorized or permitted pursuant to  
10 state law.

11 (c) Except as provided in Sections **25360, 25361, 25362, and 25363**, nothing in  
12 this part shall affect or modify in any way the obligations or liability of any person  
13 under any other provision of state or federal law, including common law, for  
14 damages, injury, or loss resulting from a release of any hazardous substance or for  
15 removal or remedial action or the costs of removal or remedial action of the  
16 hazardous substance.

17 **Comment.** Section 68185 restates former Section 25366 without substantive change.

18 See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68110  
19 (“release authorized or permitted pursuant to state law”), 68125 (“remedy”), 68135 (“remove”),  
20 68140 (“response”).

21 **Staff Note.** Section 25366(b) specifies that this part does not authorize recovery for costs or  
22 damages resulting from “any release authorized or permitted pursuant to state law or a federally  
23 permitted release.” In proposed Section 68110, “release authorized or permitted pursuant to state  
24 law” is defined to include “a federally permitted release,” which term is separately defined in  
25 proposed Section 68070. The use of both of these terms in subdivision (b) appears to be  
26 redundant. For this reason, the staff proposes to delete the phrase “or a federally permitted  
27 release.”

28 This change to subdivision (b) is intended to be nonsubstantive. **The staff welcomes any**  
29 **comment on the proposed restatement of this subdivision.**

30 CHAPTER 2. FINANCIAL PROVISIONS

31 Article 1. Budget

32 § 68200. Items to be scheduled in Budget Act

33 68200. In each annual Budget Act, the Director of Finance shall schedule those  
34 projects proposed for the upcoming fiscal year that will incur direct costs for  
35 removal and remedial actions at hazardous substance release sites.

36 **Comment.** Section 68200 restates former Section 25342 without substantive change.

37 See Section 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135  
38 (“remove”), 68155 (“site”).

39 **Staff Note.** Proposed Section 68200 restates Section 25342 to clarify this provision. Currently,  
40 Section 25342 reads as follows:

1 “25342. The Director of Finance shall schedule in the annual Budget Act the projects  
2 proposed in any fiscal year, that will incur direct costs for removal and remedial actions at  
3 hazardous substance release sites.”

4 Currently, the reference to projects “proposed in any fiscal year” is ambiguous. The  
5 Commission concluded that Section 25342 most likely requires scheduling of projects proposed  
6 in the fiscal year that is the subject of the Budget Act. The provision has been restated to make  
7 clear that this provision requires the scheduling of those projects.

8 The changes reflected in this proposed section are intended to be nonsubstantive. **The staff**  
9 **requests comment on whether this proposed restatement is consistent with the understood**  
10 **scope of Section 25342.**

11 Article 2. Externally-Funded Positions

12 § 68210. Protection of positions funded by federal grant or responsible party

13 68210. (a)(1) Notwithstanding Section 12439 of the Government Code, the  
14 Controller may not eliminate any externally-funded position.

15 (2) Notwithstanding any other provision of law, including Section 4.10 of the  
16 Budget Act of 2003, for the 2003–04 and 2004–05 fiscal years, the Director of  
17 Finance may not eliminate any externally-funded position.

18 (b) Neither the Controller nor the Department of Finance may impose any hiring  
19 freeze or personal services limitations, including any position reductions, upon any  
20 externally-funded position.

21 (c) The Controller and Department of Finance shall exclude, from the  
22 department’s base for purposes of calculating any budget or position reductions  
23 required by any state agency or any state law, any externally-funded position and  
24 the specific amounts attributable to any externally-funded position.

25 (d) Notwithstanding any other provision of law, neither the Controller nor the  
26 Department of Finance may require the department to reduce authorized positions  
27 or other appropriations for other department programs, including personal  
28 services, to replace the reductions precluded by subdivisions (a), (b), and (c).

29 (e) Notwithstanding any other provision of law, upon the request of the  
30 department, and upon review and approval by the Department of Finance, the  
31 Controller shall augment any Budget Act appropriations, except for appropriations  
32 from the General Fund, necessary to implement this section.

33 (f)(1) This section does not apply to any department appropriation or  
34 expenditure of General Fund moneys.

35 (2) This section does not limit the authority of the Department of Finance to  
36 eliminate a position when funding for the position, through an agreement with a  
37 party or by a federal grant, is no longer available.

38 (g) For the purposes of this section, “externally-funded position” includes both  
39 of the following:

40 (1) A direct or indirect position that provides oversight and related support of  
41 remediation and hazardous substance management at a military base, including a

1 closed military base, that is funded through an agreement with a party responsible  
2 for paying the department’s costs.

3 (2) A direct or indirect position that is funded by a federal grant that does not  
4 require a state match funded from the General Fund.

5 **Comment.** Section 68210 restates former Section 25353.5 without substantive change.

6 See Sections 68050 (“department”), 68075 (“hazardous substance”).

7 **Staff Notes. (1)** Paragraph (a)(2) refers to a section of the Budget Act from 2003 and specifies  
8 certain fiscal years (2003-04 and 2004-05). It is unclear whether any aspect of this provision is  
9 obsolete. **The staff welcomes comment on this issue.**

10 **(2)** Proposed Section 68210 includes a new subdivision (g), defining the term “externally-funded  
11 position” and restates subdivisions (a)-(c) to use the defined term. The term “externally-funded  
12 position” is defined to avoid the repetition of text describing such positions in subdivisions (a)-(c)  
13 of Section 25353.5. This change is intended to improve clarity.

14 Currently, subdivisions (a)-(c) of Section 25353.5 read as follows:

15 “25353.5. (a)(1) Notwithstanding Section 12439 of the Government Code, the Controller  
16 may not eliminate any direct or indirect position that provides oversight and related support of  
17 remediation and hazardous substance management at a military base, including a closed military  
18 base, that is funded through an agreement with a party responsible for paying the department’s  
19 costs, and may not eliminate any direct or indirect position that is funded by a federal grant that  
20 does not require a state match funded from the General Fund.

21 (2) Notwithstanding any other provision of law, including Section 4.10 of the Budget Act  
22 of 2003, for the 2003–04 and 2004–05 fiscal years, the Director of Finance may not eliminate any  
23 direct or indirect position that provides oversight and related support of remediation and  
24 hazardous substance management at a military base, including a closed military base, that is  
25 funded through an agreement with a party responsible for paying the department’s costs, and may  
26 not eliminate any direct or indirect position that is funded by a federal grant that does not require  
27 a state match funded from the General Fund.

28 (b) Neither the Controller nor the Department of Finance may impose any hiring freeze or  
29 personal services limitations, including any position reductions, upon any direct or indirect  
30 position of the department that provides oversight and related support of remediation and  
31 hazardous substance management at a military base, including a closed military base, that is  
32 funded through an agreement with a party responsible for paying the department’s costs, or on  
33 any direct or indirect position that is funded by a federal grant that does not require a state match  
34 funded from the General Fund.

35 (c) The Controller and Department of Finance shall exclude, from the department’s base  
36 for purposes of calculating any budget or position reductions required by any state agency or any  
37 state law, the specific amounts and direct or indirect positions that provide oversight and related  
38 support of remediation and hazardous substance management at a military base, including a  
39 closed military base, that are funded through an agreement with a party responsible for paying the  
40 department’s costs, and shall exclude the specific amounts and any direct or indirect positions  
41 that are funded by a federal grant that does not require a state match funded from the General  
42 Fund.”

43 The changes reflected in proposed Section 68210 are intended to be nonsubstantive. **The staff**  
44 **welcomes any comment on the proposed restatement of these subdivisions, as well as the**  
45 **definition in proposed subdivision (g).**

1 Article 3. State Account

2 § 68220. Actions involving state account

3 68220. The state account may sue and be sued in its own name.

4 **Comment.** Section 68220 continues former Section 25331 without substantive change.  
5 See Section 68165 (“state account”).

6 § 68225. Excess expenditures

7 68225. Expenditures from the state account shall not be made in excess of the  
8 total amount of money in the state account at any one time. Expenditures in excess  
9 of that amount may be made only when additional money is collected or otherwise  
10 added to the state account.

11 **Comment.** Section 68225 continues former Section 25357 without substantive change.  
12 See Section 68165 (“state account”).

13 § 68230. Subaccount for funds for response action at specific site

14 68230. (a) Notwithstanding any other provision of law, the Controller shall  
15 establish a separate subaccount in the state account, for any funds received from a  
16 settlement agreement or the General Fund for a removal or remedial action to be  
17 performed at a specific site.

18 (b) Notwithstanding Section 13340 of the Government Code, funds deposited in  
19 the subaccount for those removal or remedial actions are hereby continuously  
20 appropriated to the department, without regard to fiscal years, for removal or  
21 remedial action at the specific site, and for administrative costs associated with the  
22 removal or remedial action at the specific site.

23 (c) Notwithstanding any other provision of law, money in the subaccount for  
24 those removal or remedial actions shall not revert to the General Fund or be  
25 transferred to any other fund or account in the State Treasury, except for purposes  
26 of investment as provided in Article 4 (commencing with Section 16470) of  
27 Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

28 (d) Notwithstanding Section 16305.7 of the Government Code, all interest or  
29 other increment resulting from investment of the funds specified in subdivision (a)  
30 pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of  
31 Division 4 of Title 2 of the Government Code shall be deposited in the subaccount  
32 for removal or remedial action at the specific sites.

33 (e) At the conclusion of all removal or remedial actions at the specific site, any  
34 unexpended funds in any subaccounts established pursuant to this section shall be  
35 transferred to the subaccount for site operation and maintenance established  
36 pursuant to Section 68235, if necessary, for those activities at the site, or, if not  
37 needed for site operation and maintenance at the site, to the state account.

38 (f) There is hereby created a subaccount in the state account as the successor  
39 fund to the Stringfellow Insurance Proceeds Account created pursuant to former  
40 Section 25330.6, as amended by Chapter 178 of the Statutes of 2007. All assets,

1 liabilities, and surplus in the Stringfellow Insurance Proceeds Account shall be  
2 transferred to, and become a part of, this subaccount for the Stringfellow  
3 Superfund Site in Riverside County, as provided in Section 16346 of the  
4 Government Code. All appropriations from the Stringfellow Insurance Proceeds  
5 Account, to the extent encumbered, shall continue to be available from the  
6 subaccount for expenditure for the same purposes and periods.

7 **Comment.** Section 68230 continues former Section 25330.4(a)-(e) and (f)(1) without  
8 substantive change. For ease of reference, former paragraph (f)(1)'s reference to "former Section  
9 25330.6, as that section read on January 1, 2013" has been replaced with a reference to the last  
10 statute to amend the section prior to that date.

11 Former Section 68230(f)(2) is obsolete and has not been continued.

12 See Sections 68050 ("department"), 68080 ("operation and maintenance"), 68125 ("remedy"),  
13 68135 ("remove"), 68155 ("site"), 68165 ("state account").

14 **Staff Notes. (1)** Subdivision (e) of Section 25330.4 refers to the "Toxic Substances Control  
15 Account." Proposed Section 68230 replaces that reference with the "state account." In proposed  
16 Section 68165, "state account" is defined as "the Toxic Substances Control Account established  
17 pursuant to Section 25173.6."

18 **(2)** The staff was unable to find any information about the subaccount created by subdivision (f)  
19 (i.e., the successor fund to the Stringfellow Insurance Proceeds Account). **The staff welcomes**  
20 **comment on the status of this subaccount.**

21 **(3)** Subdivision (f) of proposed Section 68230 is currently paragraph (1) of subdivision (f) of  
22 Section 25330.4. Section 25330.4 contains a paragraph (f)(2) that provides:

23 "(2) This subdivision shall become operative on July 1, 2013."

24 This provision appears to no longer be needed, as subdivision (f) is now operative. Proposed  
25 Section 68230 would not continue this paragraph. This change is intended to be nonsubstantive.  
26 **The staff welcomes comment on whether this proposed change is problematic for any**  
27 **reason.**

28 **§ 68235. Subaccount for site operation and maintenance**

29 68235. (a) The Controller shall establish a separate subaccount for site operation  
30 and maintenance in the state account. All of the following amounts shall be  
31 deposited in the subaccount:

32 (1) Funds received from responsible parties for site operation and maintenance.

33 (2) Funds received from the federal government pursuant to the federal act for  
34 site operation and maintenance.

35 (3) Funds received from cities, counties, or any other state or local agency for  
36 site operation and maintenance.

37 (4) Funds appropriated from the state account by the Legislature for site  
38 operation and maintenance.

39 (b) Notwithstanding Section 13340 of the Government Code, funds deposited in  
40 the subaccount for site operation and maintenance are hereby continuously  
41 appropriated to the department, without regard to fiscal years, for site operation  
42 and maintenance, and for administrative costs associated with site operation and  
43 maintenance.

1 (c) Notwithstanding any other provision of law, money in the subaccount for site  
2 operation and maintenance shall not revert to the General Fund or be transferred to  
3 any other fund or account in the State Treasury, except for purposes of investment  
4 as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2  
5 of Division 4 of Title 2 of the Government Code.

6 (d) Notwithstanding Section 16305.7 of the Government Code, all interest or  
7 other increment resulting from investment of the funds specified in subdivision (a)  
8 pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of  
9 Division 4 of Title 2 of the Government Code shall be deposited in the subaccount  
10 for site operation and maintenance.

11 **Comment.** Section 68235 continues former Section 25330.5 without substantive change.

12 See Sections 68050 (“department”), 68065 (“federal act”), 68080 (“operation and  
13 maintenance”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

14 **§ 68240. Reserve account for emergencies**

15 68240. (a) There is hereby continuously appropriated from the state account to  
16 the department the sum of one million dollars (\$1,000,000) for each fiscal year as  
17 a reserve account for emergencies, notwithstanding Section 13340 of the  
18 Government Code.

19 (b) Once the appropriation made pursuant to subdivision (a) is fully expended,  
20 the director may file a report with the Legislature if it is in session or, if it is not in  
21 session, with the Committee on Rules of the Assembly and the Senate as to the  
22 moneys expended pursuant to Section 68875. The Legislature may appropriate  
23 moneys from the state account, in addition to those moneys appropriated pursuant  
24 to subdivision (a), to the department for the purpose of taking corrective action  
25 pursuant to subdivision (a) of Section 68875.

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

31 **Comment.** Subdivision (a) of Section 68240 continues the first sentence of subdivision (a) of  
32 former Section 25354.

33 Subdivisions (b) and (c) continue subdivisions (c), with the exception of the first sentence, and  
34 (d), respectively, of former Section 25354. The first sentence of subdivision (c) of former Section  
35 25354 is continued without substantive change in Section 68580.

36 See Sections 68050 (“department”), 68055 (“director”), 68165 (“state account”).

37 **Staff Note.** Proposed Section 68240 continues the provisions of Section 25354 that relate  
38 specifically to the financial rules for the “reserve account for emergencies.” Section 25354 also  
39 contains provisions that govern the expenditures of the funds and the undertaking of “immediate  
40 corrective action necessary to remedy or prevent an emergency... caused by a release or  
41 threatened release of a hazardous substance.” See Section 25354(a). Those provisions are  
42 continued elsewhere in this part. See proposed Section 68875.

43 The internal cross-references in Section 25354 have been updated to refer either to this  
44 proposed section or to proposed Section 68875, depending on the purpose of the cross-reference.

1 For instance, references to “subdivision (a)” within Section 25354 have been updated to refer  
2 either to proposed Section 68240(a) (regarding funding the account) or proposed Section  
3 68875(a) (regarding taking corrective action).

4 These changes are all intended to be nonsubstantive. **The staff welcomes comment on any of**  
5 **these proposed updates.**

## 6 Article 4. Site Remediation Account

### 7 § 68260. Site Remediation Account

8 68260. (a) There is in the General Fund the Site Remediation Account, which  
9 shall be administered by the director. The account shall be funded by money  
10 transferred from the state account, upon appropriation by the Legislature.  
11 Consistent with the requirements of Section 114(c) of the federal act (42 U.S.C.  
12 Sec. 9614(c)), the moneys in the account may be expended by the department,  
13 upon appropriation by the Legislature, for direct site remediation costs.

14 (b)(1) For purposes of this section, “direct site remediation costs” means  
15 payments to contractors for investigations, characterizations, removal,  
16 remediation, or long-term operation and maintenance at sites contaminated or  
17 suspected of contamination by hazardous materials, where those actions are  
18 authorized pursuant to this part.

19 (2) “Direct site remediation costs” also means the state-mandated share pursuant  
20 to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

21 (3) “Direct site remediation costs” does not include the department’s  
22 administrative expenses or the department’s expenses for staff to perform  
23 oversight of investigations, characterizations, removals, remediations, or long-  
24 term operation and maintenance.

25 **Comment.** Section 68260 continues former Section 25337 without substantive change.

26 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68080  
27 (“operation and maintenance”), 68135 (“remove”), 68155 (“site”), 68165 (“state account”).

28 **Staff Note.** Subdivision (a) of Section 25337 requires that the expenditure of moneys in the Site  
29 Remediation Account for direct site remediation costs be “[c]onsistent with the requirements of  
30 Section 114(c) of the federal act.”

31 It is unclear which requirements in Section 114(c) of the federal act would govern the state’s  
32 expenditure of funds for direct site remediation costs. The provision seems to apply to the  
33 recovery of expended funds from a service station dealer. **The staff welcomes comment on**  
34 **whether this cross-reference needs to be revised.**

### 35 § 68265. Encumbrance and disbursement of funds

36 68265. Funds in the Site Remediation Account appropriated for removal or  
37 remedial action pursuant to this part are available for encumbrance for three fiscal  
38 years subsequent to the fiscal year in which the funds are appropriated and are  
39 available for disbursement in liquidation of encumbrances pursuant to Section  
40 16304.1 of the Government Code.

41 **Comment.** Section 68265 continues former Section 25330.2 without substantive change.

42 See Section 68125 (“remedy”), 68135 (“remove”).

Article 5. Hazardous Substance Cleanup Bond Act of 1984

§ 68280. Short title

68280. This article shall be known and may be cited as the Johnston-Filante Hazardous Substance Cleanup Bond Act of 1984.

**Comment.** Section 68280 continues former Section 25385 without substantive change.

§ 68285. Definitions

68285. For purposes of this article, and for purposes of Section 16722 of the Government Code as applied to this article, the following definitions apply:

(a) “Board” means the department.

(b) “Committee” means the Hazardous Substance Cleanup Committee created pursuant to Section 68295.

(c) “Director” means the director.

(d) “Fund” means the state account.

(e) “Orphan site” means a site with a release or threatened release of a hazardous substance with no reasonably identifiable responsible parties.

(f) “Orphan share” means those costs of removal or remedial action at sites with a release or threatened release of hazardous substances, which costs are in excess of amounts included in a cleanup agreement.

(g) “Responsible party” means a person who is, or may be, responsible or liable for carrying out, or paying for the costs of, a removal or remedial action.

**Comment.** Section 68285 continues former Section 25385.1 without substantive change.

See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

**Staff Notes. (1)** Proposed Section 68285 would revise Section 25385.1 to use the defined terms, “department” and “director,” in subdivisions (a) and (c). The relevant subdivisions of Section 25385.1 are reproduced below:

“25385.1 For purposes of this article, and for purposes of Section 16722 of the Government Code as applied to this article, the following definitions apply:

(a) ‘Board’ means the Department of Toxic Substances Control.

...

(c) ‘Director’ means the Director of Toxic Substances Control.

...”

Although the definition for “director” in proposed subdivision (c) may appear to be redundant, the definition in this section applies for the purposes of Government Code Section 16722, as well as this article. Given the broader application of the definitions in this section, the staff concluded that definition for “director” in subdivision (c) should be continued.

The changes reflected in proposed Section 68285 are intended to be nonsubstantive. **The staff welcomes any comment on these changes.**

**(2)** This section defines two terms that are not used in this article: “orphan site” and “orphan share.” These terms are also not used in Government Code Section 16722, nor the State General Obligation Bond Law that contains that section. It is unclear whether these definitions have any ongoing utility. Would it be appropriate to exclude these definitions from the recodified law? **The staff welcomes comment on this issue.**

1 (3) Subdivision (g) of proposed Section 68285 defines “responsible party.” In proposed Section  
2 68145, this term is already defined for the part as a whole. These definitions of “responsible  
3 party” are drafted significantly differently. **The staff requests comment on whether this issue**  
4 **has caused problems in practice.**

5 **§ 68290. Application of State General Obligation Bond Law**

6 68290. The State General Obligation Bond Law (Chapter 4 (commencing with  
7 Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) is  
8 adopted for the purpose of the issuance, sale, and repayment of, and otherwise  
9 providing with respect to, the bonds authorized to be issued pursuant to this  
10 article, and the provisions of that law are included in this article as though set out  
11 in full in this article, except that, notwithstanding anything in the State General  
12 Obligation Bond Law, the maximum maturity of bonds shall not exceed 30 years  
13 from the date of the bonds, or from the date of each respective series. The maturity  
14 of each respective series shall be calculated from the date of the series.

15 **Comment.** Section 68290 continues former Section 25385.2 without substantive change.

16 **Staff Note.** The staff is unsure of the intended effect of this provision. In particular, the staff is  
17 unsure of the effect of statements that the State General Obligation Bond Law is “adopted” for  
18 this article and the “provisions of that law are included in this article as though set out in full in  
19 this article.” In its research, the staff found that these statements are very similar to language  
20 included in other bond legislation from the same year. Thus, this may be standard language for  
21 incorporating the State General Obligation Bond Law. **The staff welcomes comment on**  
22 **whether the language of this provision causes any problems in practice and should be**  
23 **restated.**

24 **§ 68295. Creation of Hazardous Substance Cleanup Committee**

25 68295. The Hazardous Substance Cleanup Committee, which is hereby created,  
26 shall consist of the Governor, the Director of Finance, the Treasurer, the  
27 Controller, and the secretary.

28 **Comment.** Section 68295 continues former Section 25385.4 without substantive change.  
29 See Section 68150 (“secretary”).

30 **Staff Note.** Section 25384.4 refers to the “Secretary for Environmental Protection.” Proposed  
31 Section 68295 replaces that reference with the defined term, “secretary.” See proposed Section  
32 68150.

33 **§ 68300. Authority of committee to create debt for specified purposes**

34 68300. The committee may create debts or liabilities of the State of California,  
35 in the aggregate of one hundred million dollars (\$100,000,000), in the manner  
36 provided in this article. The debts or liabilities shall be created for the purpose of  
37 providing moneys, for deposit in the fund, for the purposes specified in Section  
38 68305.

39 **Comment.** Section 68300 restates former Section 25385.5 without substantive change.  
40 See Section 68285 (“committee” and “fund”).

1 **Staff Note.** Proposed Section 68300 restates Section 25385.5 to eliminate uses of the singular and  
2 plural form of the same word and to make necessary revisions to implement this change. Section  
3 25385.5 reads as follows (with emphasis added):

4 “25385.5. The committee may create a **debt or debts, liability or liabilities**, of the State  
5 of California, in the aggregate of one hundred million dollars (\$100,000,000), in the manner  
6 provided in this article. The **debt or debts, liability or liabilities**, shall be created for the purpose  
7 of providing moneys, for deposit in the fund, for the purposes specified in Section 25385.6.”

8 Section 13 provides “[t]he singular number includes the plural, and the plural the singular.”  
9 For this reason, it does not appear to be necessary to use both the singular and plural forms of the  
10 words. While the singular form is typically preferred for legislative drafting, proposed Section  
11 68300 was simplified to use only the plural form to minimize the need for additional, conforming  
12 changes.

13 The changes reflected in proposed Section 68300 are intended to be nonsubstantive. **The staff**  
14 **welcomes any comment on the proposed restatement.**

15 **§ 68305. Authorized uses of funds from bond proceeds**

16 68305. (a) The moneys in the state account that are the proceeds of bonds issued  
17 and sold pursuant to this article may be used, upon appropriation by the  
18 Legislature, for the purposes specified in this section.

19 (b) The board may expend moneys in the fund, that are the proceeds of bonds  
20 issued and sold pursuant to this article upon the authorization of the committee, for  
21 all of the following purposes:

22 (1) To provide the state share of a removal or remedial action pursuant to  
23 Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)) if the site is the  
24 subject of a final remedial action plan issued pursuant to Article 12 (commencing  
25 with Section 69190) of Chapter 5.

26 (2) To pay all costs of a removal or remedial action incurred by the state, or by  
27 any local agency with the approval of the director, in response to a release or  
28 threatened release of a hazardous substance at a site that is listed in the priority  
29 ranking of sites pursuant to Article 5 (commencing with Section 68760) of  
30 Chapter 4 and is the subject of a final remedial action plan issued pursuant to  
31 Article 12 (commencing with Section 69190) of Chapter 5, to the extent that the  
32 costs are not paid by responsible parties or are reimbursed by the federal act.

33 (3) To pay for site characterization of a release of hazardous substances, even if  
34 a remedial action plan has not been prepared, approved, adopted, or made final for  
35 that site.

36 **Comment.** Section 68305 continues former Section 25385.6 without substantive change.

37 See Sections 68055 (“director”), 68065 (“federal act”), 68075 (“hazardous substance”), 68105  
38 (“release”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”), 68155 (“site”), 68165  
39 (“state account”), 68285 (“board”, “committee,” “director,” “fund,” and “responsible party”).

40 **Staff Note.** Paragraph (b)(2) of proposed Section 68305 describes costs for which expenditure of  
41 bond proceeds funds is authorized. The provision appears to permit expenditures of bond funds in  
42 two different situations, i.e., when either “costs *are not* paid by responsible parties or *are*  
43 reimbursed by the federal act” (emphasis added). Given that, the staff considered whether to  
44 separate this provision into two subparagraphs. **The staff welcomes comment on whether such**  
45 **a change would be helpful or problematic.**

1    **§ 68310. Bonds as general obligations of state**

2       68310. (a) All bonds authorized by this article, which are sold and delivered as  
3 provided in this article, constitute valid and legally binding general obligations of  
4 the State of California, and the full faith and credit of the State of California are  
5 hereby pledged for the punctual payment of both the principal of and the interest  
6 on the bonds.

7       (b) There shall be collected annually, in the same manner and at the same time  
8 as other state revenue is collected, that sum, in addition to the ordinary revenues of  
9 the state, which is required to pay the principal of, and interest on, the bonds as  
10 provided in this article, and all officers charged by law with any duty in regard to  
11 the collection of the revenue shall perform each and every act that is necessary to  
12 collect this additional sum.

13       **Comment.** Section 68310 restates former Section 25385.7 without substantive change.

14       **Staff Note.** Section 25385.7(a) ends with the phrase “both the principal and interest thereon.”  
15 Proposed Section 68310 replaces that phrase with “both the principal of and the interest on the  
16 bonds.” This stylistic change and a replacement of “which” with “that” in subdivision (b) are the  
17 only changes made to the existing language of Section 25385.7.

18    **§ 68315. Transfers to General Fund**

19       68315. Notwithstanding Section 68345, the money deposited in the fund is  
20 available for transfer to the General Fund if money was deposited in the fund  
21 pursuant to any provision of law requiring repayments to the state for assistance  
22 financed by the proceeds of the bonds issued pursuant to this article. When  
23 transferred to the General Fund, that money shall be applied as a reimbursement to  
24 the General Fund for the principal and interest payments on the bonds that have  
25 been paid from the General Fund.

26       **Comment.** Section 68315 continues former Section 25386 without substantive change.  
27 See Section 68285 (“fund”).

28    **§ 68320. Appropriation from General Fund**

29       68320. There is hereby appropriated from the General Fund in the State  
30 Treasury, for the purpose of this article, an amount equal to the sum of all of the  
31 following:

32       (a) The sum, annually, that will be necessary to pay the principal of, and the  
33 interest on, the bonds issued and sold pursuant to this article, as the principal and  
34 interest become due and payable.

35       (b) The sum that is necessary to carry out Section 68325, which sum is  
36 appropriated without regard to fiscal years, notwithstanding Section 13340 of the  
37 Government Code.

38       **Comment.** Section 68320 continues former Section 25386.1 without substantive change.

1    **§ 68325. Withdrawals from General Fund**

2       68325. (a) For the purpose of carrying out this article, the Director of Finance  
3 may, by executive order, authorize the withdrawal from the General Fund of  
4 amounts not to exceed the amount of the unsold bonds that the committee has, by  
5 resolution, authorized to be sold for the purpose of carrying out this article.

6       (b) Any amounts withdrawn shall be deposited in the fund and shall be  
7 disbursed by the board in accordance with this article.

8       (c) Any moneys made available pursuant to this section shall be returned to the  
9 General Fund from moneys received from the sale of bonds sold for the purpose of  
10 carrying out this article.

11       **Comment.** Section 68325 continues former Section 25386.2 without substantive change.  
12 Subdivision designators have been added.

13       See Section 68285 (“board,” “committee,” and “fund”).

14    **§ 68330. Tax-exempt funds**

15       68330. Notwithstanding any other provision of this bond act, or of the State  
16 General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of  
17 Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells  
18 bonds pursuant to this bond act that include a bond counsel opinion to the effect  
19 that the interest on the bonds is excluded from gross income for federal tax  
20 purposes under designated conditions, the Treasurer may maintain separate  
21 accounts for the bond proceeds invested and the investment earnings on those  
22 proceeds, and may use or direct the use of those proceeds or earnings to pay any  
23 rebate, penalty, or other payment required under federal law, or take any other  
24 action with respect to the investment and use of those bond proceeds, as may be  
25 required or desirable under federal law in order to maintain the tax-exempt status  
26 of those bonds and to obtain any other advantage under federal law on behalf of  
27 the funds of this state.

28       **Comment.** Section 68330 continues former Section 25386.25 without substantive change.

29    **§ 68335. Determination on issuance of bonds**

30       68335. Upon the request of the board, and supported by a statement of the  
31 proposed actions to be taken pursuant to Section 68305, the committee shall  
32 determine whether it is necessary or desirable to issue any bonds authorized  
33 pursuant to this article in order to take these actions, and if so, the amount of  
34 bonds that should be issued and sold. Successive issues of bonds may be  
35 authorized and sold to take these actions progressively, and it is not necessary that  
36 all of the bonds authorized by this article to be issued are sold at any one time.

37       **Comment.** Section 68335 continues former Section 25386.3 without substantive change.

38       See Section 68285 (“board” and “committee”).

1 **§ 68340. Authority to sell bonds**

2 68340. The committee may authorize the Treasurer to sell all, or any part of, the  
3 bonds authorized under this article at the time or times as may be fixed by the  
4 Treasurer.

5 **Comment.** Section 68340 continues former Section 25386.4 without substantive change.  
6 See Section 68285 (“committee”).

7 **§ 68345. Uses of bond proceeds**

8 68345. Except as provided in Section 68315, all proceeds from the sale of  
9 bonds, except those derived from premiums and accrued interest, are available for  
10 the purposes specified in Section 68305, but are not available for transfer to the  
11 General Fund to pay the principal of, and interest on, the bonds.

12 **Comment.** Section 68345 continues former Section 25386.5 without substantive change. A  
13 cross-reference to “subdivision (c) of Section 25385.3” has been deleted as obsolete because that  
14 section was repealed by its own terms on January 1, 2007. See 2006 Cal. Stat. ch. 77, § 39.

15 **Staff Note.** Proposed Section 68345 deletes a seemingly obsolete cross-reference contained in  
16 Section 25386.5. The language of Section 25386.5, with the relevant cross-reference in bold, is  
17 set out below:

18 “25386.5. Except as provided in **subdivision (c) of Section 25385.3** and Section 25386,  
19 all proceeds from the sale of bonds, except those derived from premiums and accrued interest, are  
20 available for the purposes specified in Section 25385.6, but are not available for transfer to the  
21 General Fund to pay the principal of, and interest on, the bonds.”

22 This cross-reference appears to be obsolete. Section 25385.3 was repealed by its own terms on  
23 January 1, 2007. See 2006 Cal. Stat. ch. 77, § 39. Prior to its repeal, subdivision (c) required that  
24 the principal and interest of bonds be paid from funds according to Section 25385.9, which was  
25 also repealed in the same legislation. See 2006 Cal. Stat. ch. 77, § 42. Former Section 25385.9  
26 required that the bond principal and interest be paid from the “Hazardous Substance Clearing  
27 Account” according to a specified priority scheme pertaining to the source of the funds.

28 According to the legislative digest for the bill resulting in the repeal of both of these  
29 provisions, the legislation repealed certain accounts, including the Hazardous Substance Clearing  
30 Account, and provided that the state account (i.e., the Toxic Substance Control Account) was the  
31 successor fund for those accounts, taking on all the assets, liability and surplus of the repealed  
32 accounts. The staff searched for, but did not find a provision that, similar to subdivision (c) of  
33 former Section 25385.3, permits the use of bond proceeds in the successor state account in a  
34 manner inconsistent with proposed Section 68345. Thus, the reference to “subdivision (c) of  
35 Section 25385.3” appears to be obsolete.

36 **The staff welcomes comment on whether the cross-reference to “subdivision (c) of Section**  
37 **25385.3” is indeed obsolete and, if so, whether the proposed deletion of the cross-reference**  
38 **raises any concerns.**

39 Article 6. Revolving Loans Fund

40 **§ 68360. Definitions**

41 68360. Unless the context otherwise requires, the following definitions govern  
42 the construction of this article:

43 (a) “Brownfield site” has the same meaning as defined in Section 101 of the  
44 federal act (42 U.S.C. Sec. 9601).

1 (b) “Brownfield law” means the federal Small Business Liability Relief and  
2 Brownfields Revitalization Act (Public Law 107-118) as amending the federal act.

3 (c) “Federal Trust Fund” means the Federal Trust Fund established pursuant to  
4 Section 16360 of the Government Code.

5 (d) “Fund” means the Revolving Loans Fund established pursuant to this article.

6 **Comment.** Section 68360 continues former Section 25395.35 without substantive change.  
7 Technical changes were made to correct the federal law citations and conform to the standard  
8 federal act citation format used in this part.

9 See Section 68065 (“federal act”).

10 **Staff Notes. (1)** Subdivision (a) of Section 25395.35 was amended to conform the federal act  
11 citation to the citation form predominately used in this law. Section 25395.35(a) provides:

12 “(a) ‘Brownfield site’ has the same meaning as defined in Section 9601 of Title 42 of the  
13 United States Code.”

14 **(2)** Subdivision (b) of Section 25395.35 was restated to conform the federal law citation to the  
15 citation practice used in California statutory drafting and to correct the name of the federal act.  
16 Subdivision (b) of Section 25395.35 provides:

17 “(b) ‘Brownfield law’ means the Small Business Liability Relief and Brownfields  
18 Revitalization Act of 2002 (Public Law 107-117) as amending the federal act.”

19 **§ 68365. Revolving Loans Fund**

20 68365. (a) The Revolving Loans Fund is hereby created in the State Treasury.  
21 Notwithstanding Section 13340 of the Government Code, all moneys in the fund  
22 shall be continuously appropriated, without regard to fiscal year, to the department  
23 for expenditure in accordance with this part. The department is the state agency  
24 responsible for administering the fund.

25 (b) All of the following moneys shall be deposited in the fund:

26 (1) Notwithstanding Section 25173.6, moneys received pursuant to the  
27 brownfield law and transferred to the fund from the Federal Trust Fund.

28 (2) The amounts collected for loan services.

29 (3) Interest payments.

30 (4) Principal repayments.

31 (5) Notwithstanding Section 16475 of the Government Code, any interest earned  
32 upon the moneys deposited in the fund.

33 (c) The department may expend the moneys in the fund only for the purposes  
34 authorized by the brownfield law, as specified in subsection (k) of Section 104 of  
35 the federal act (42 U.S.C. Sec. 9604(k)), including providing financial assistance  
36 for both of the following:

37 (1) Issuing loans for response actions to eligible brownfield sites.

38 (2) Making subgrants for response actions to eligible brownfield sites.

39 (d) Any repayment of fund moneys, including interest payments, and all interest  
40 earned on, or accruing to, any moneys in the fund, that are deposited in the fund,  
41 as provided in subdivision (b), shall be available, in perpetuity, for expenditure for  
42 the purposes and uses authorized by the brownfield law.

1 **Comment.** Section 68365 continues former Section 25395.36 without substantive change.  
2 Technical changes were made to conform to the standard federal act citation format used in this  
3 part.

4 See Sections 68050 (“department”), 68140 (“response”), 68360 (“brownfield site,” “brownfield  
5 law,” “Federal Trust Fund,” and “fund”).

6 **Staff Note.** Subdivision (c) of Section 25395.36 was amended to conform the federal act citation  
7 to the citation form predominately used in this law. Section 25395.35(c) provides, in relevant  
8 part:

9 “(c) The department may expend the moneys in the fund only for the purposes authorized  
10 by the brownfield law, as specified in subsection (k) of Section 9604 of Title 42 of the United  
11 States Code, including providing financial assistance for both of the following:”  
12

## 13 Article 7. Illegal Drug Lab Cleanup Account

### 14 § 68370. Illegal Drug Lab Cleanup Account

15 68370. The Illegal Drug Lab Cleanup Account is hereby created in the General  
16 Fund and the department may expend any money in the account, upon  
17 appropriation by the Legislature, to carry out the removal actions required by  
18 Article 16 (commencing with Section 69350) of Chapter 5 and to implement  
19 Section 69380, including, but not limited to, funding an interagency agreement  
20 entered into with the Office of Environmental Health Hazard Assessment to  
21 provide guidance services. The account shall be funded by moneys appropriated  
22 directly from the General Fund.

23 **Comment.** Section 68370 continues subdivision (f) of former Section 25354.5 without  
24 substantive change.

25 See Section 68050 (“department”), 68135 (“remove”).

26 **Staff Note.** Section 25354.5(f) refers to “removal actions required by this section.” The  
27 remainder of Section 25354.5, which includes the provisions pertaining to removal actions, has  
28 been proposed for recodification as Article 16 (commencing with Section 69350) of Chapter 5.  
29 For this reason, the reference to “this section” has been updated to refer to Article 16 of Chapter  
30 5. **The staff welcomes any comment on this cross-reference update.**

## 31 CHAPTER 3. GENERAL POWERS AND DUTIES

### 32 Article 1. Regulatory Authority

#### 33 § 68400. Authority to adopt regulations

34 68400. The department shall adopt any regulations necessary to carry out its  
35 responsibilities pursuant to this part, including, but not limited to, regulations  
36 governing the expenditure of, and accounting procedures for, moneys allocated to  
37 state, regional, and local agencies pursuant to this part.

38 **Comment.** Section 68400 continues former Section 25351.5 without substantive change.

39 See Section 68050 (“department”).

1

## Article 2. Federal Assistance

2 **§ 68410. Obligation to seek federal funds and agreements**

3 68410. The state shall actively seek to obtain all federal funds to which it is  
4 entitled under the federal act and shall take all actions necessary to enter into  
5 contractual or cooperative agreements under Sections 104(c)(3) and 104(d)(1) of  
6 the federal act (42 U.S.C. Sec. 9604(c)(3) and 42 U.S.C. Sec. 9604(d)(1)).

7 **Comment.** Section 68410 continues former Section 25358 without substantive change.  
8 See Section 68065 (“federal act”).

9

## Article 3. Public Outreach

10 **§ 68420. Community service offices**

11 68420. (a) The department and the State Water Resources Control Board shall  
12 establish two community service offices, one to serve northern California and the  
13 other to serve southern California.

14 (b) Notwithstanding **subdivision (c) of Section 25390.3**, the department and, if  
15 appropriate, the State Water Resources Control Board shall expend a total of four  
16 hundred thousand dollars (\$400,000) per year from the Orphan Share  
17 Reimbursement Trust Fund established **pursuant to Article 7.8 (commencing**  
18 **with Section 25390)** on the operation of the community service offices established  
19 pursuant to this section. The offices shall use these funds to provide direct  
20 technical and logistical support to any community advisory group established  
21 pursuant to Section 68950. Funds allocated pursuant to this subdivision shall  
22 supplement, and not supplant, any funds expended for the purposes of developing  
23 and implementing other public participation activities required to be undertaken  
24 pursuant to this part, including, but not limited to, activities undertaken pursuant to  
25 the National Contingency Plan or the public participation plan required to be  
26 adopted by the department pursuant to Section 68930.

27 (c) The State Water Resources Control Board may contract with the department  
28 to provide this service on behalf of a regional board if the State Water Resources  
29 Control Board finds that it would be more practical and economical to do so.

30 (d) In implementing this section and Section 68925, the department and the  
31 regional boards are not obligated to expend funds beyond the amounts  
32 appropriated in any fiscal year for purposes of developing and implementing  
33 public participation activities required by other provisions of this part unless the  
34 Orphan Share Reimbursement Trust Fund contains funding at the level specified  
35 in subdivision (b).

36 **Comment.** Section 68420 continues former Section 25358.7.2, with the exceptions described  
37 in this comment, without substantive change. Obsolete language in subdivision (a) about the  
38 timing for the establishment of the community service offices is not continued. The second  
39 sentence of former Section 25358.7.2(a) is continued elsewhere in this part.

40 See Sections 68050 (“department”), 68100 (“regional board”).

1 **Staff Notes. (1)** The first sentence of subdivision (a) of Section 25358.7.2 provides:

2 “On or before July 1, 2000, the department and the State Water Resources Control Board  
3 shall establish two community service offices, one to serve northern California and the other to  
4 serve southern California.”

5 Proposed Section 68420(a) does not continue the introductory clause, “[o]n or before July 1,  
6 2000.” Given that it is well past July 1, 2000, this language would appear to be obsolete. The  
7 changes reflected in proposed Section 68420(a) are intended to be nonsubstantive. **The staff  
8 welcomes any comment on this proposed change.**

9 **(2)** The first sentence of Section 25358.7.2(b) refers to community service offices established  
10 “pursuant to this section.” Although part of Section 25358.7.2 was proposed for continuation  
11 elsewhere in this part, this proposed section contains the provisions relevant to the establishment  
12 of community service offices. For this reason, the cross-reference was not changed to refer to the  
13 other proposed section recodifying Section 25358.7.2 (proposed Section 68925).

14 **(3)** The second sentence of Section 25358.7.2(b) refers to a community advisory group  
15 “established pursuant to Section 25358.7.1.” Section 25358.7.1 has been proposed for  
16 recodification as several sections (proposed Sections 68935, 68950, 68955, 68960, 68965,  
17 68970). Only one of those sections, proposed Section 68950, pertains to the establishment of  
18 community advisory groups and appears to be relevant for this cross-reference. For this reason,  
19 the cross-reference has been updated to refer only to proposed Section 68950. **The staff  
20 welcomes comment on this proposed cross-reference update.**

21 **(4)** The last sentence of Section 25358.7.2(b) refers to a “public participation workplan” required  
22 to be adopted pursuant to Section 25358.7 (proposed Section 68930). Section 25358.7 uses  
23 slightly different terminology, requiring the adoption of a “public participation plan.” For this  
24 reason, this proposed Section has been corrected to refer to a “public participation plan.” This is  
25 intended to be a nonsubstantive change.

26 **(5)** The staff believes that subdivision (d) is difficult to understand and could benefit from  
27 restatement for clarity. **The staff welcomes comment on the meaning of this provision and  
28 whether stakeholders find this provision sufficiently clear.**

## 29 Article 4. Investigatory Powers

30 **Staff Note.** Proposed Article 4 contains the substance of Section 25358.1. This provision would  
31 benefit from changes to standardize terms and provide short forms for lengthy, repeated phrases.  
32 In many cases, the subdivisions use different terms (or, more often, groups of terms) to refer to  
33 roughly the same concepts. In the staff’s view, it seems likely that some of these differences are  
34 immaterial and the terms are used interchangeably. For instance, it is unclear why one provision  
35 governs “[t]he department, *a representative of the department*, or any person designated by the  
36 director” (see proposed Section 68435), while another governs “[a]ny officer or employee of the  
37 department, *a representative of the director*, or a person designated by the director” (see proposed  
38 Section 68440(a)), and, yet another, governs “[a]n officer, employee, *representative*, or designee”  
39 (proposed Section 68450(d)).

40 Similarly, the provisions describe the purposes for which different activities authorized by the  
41 article may be undertaken. Overall, proposed Section 68435 provides that the actions in this  
42 article may be taken only for the purpose of “determining under this part the need for a response  
43 action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this  
44 part.” However, proposed Section 68440(c) indicates that a person required to provide  
45 information to the department must allow the department access to the records “for purposes of  
46 assisting the department in determining the need for a response action.” And, proposed Section  
47 68460 grants immunity to an authorized person for entering land “for the purpose of taking a

1 response action pursuant to this part.” The staff was unsure whether the different purposes for  
2 different provisions were intended or might be inadvertent.

3 The staff believes that this proposed Article could be improved by standardizing terminology  
4 and using defined terms to simplify the provisions and improve readability. Such changes,  
5 however, pose a risk of substantive change. **For this reason, the staff proposes adding**  
6 **restatement of this article to standardize terms, simplify the provisions and improve**  
7 **readability to the list of substantive issues for possible future study that will be included in**  
8 **the Commission’s recommendation.**

9 **§ 68435. Purpose of investigation**

10 68435. The department, a representative of the department, or any person  
11 designated by the director may take the actions specified in this article only if  
12 there is a reasonable basis to believe that there has been or may be a release or  
13 threatened release of a hazardous substance, and only for the purpose of  
14 determining under this part the need for a response action, the choosing or taking  
15 of a response action, or otherwise for the purpose of enforcing this part.

16 **Comment.** Section 68435 continues subdivision (a) of former Section 25358.1 without  
17 substantive change.

18 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68085  
19 (“person”), 68105 (“release”), 68140 (“response”).

20 **§ 68440. Authority to require person to provide relevant information**

21 68440. (a) Any officer or employee of the department, a representative of the  
22 director, or a person designated by the director may require any person who has or  
23 may have information relevant to any of the following matters to furnish the  
24 information, upon reasonable notice:

25 (1) The identification, nature, and quantity of materials that have been, or are,  
26 generated, treated, stored, or disposed of at a hazardous substance release site or  
27 that have been, or are, transported to a hazardous substance release site.

28 (2) The nature or extent of a release or a threatened release of a hazardous  
29 substance at, or from, a hazardous substance release site.

30 (3) The ability of a person to pay for or to perform a response action, consistent  
31 with Section 104(e) of the federal act (42 U.S.C. Sec. 9604(e)).

32 (b) Any person required to furnish information pursuant to this article shall pay  
33 any costs of photocopying or transmitting the information.

34 (c) A person who is required to provide information pursuant to subdivision (a)  
35 shall, in accordance with Section 68455, allow the officer, employee,  
36 representative, or designee, upon reasonable notice and at reasonable times, to  
37 have access to, and copy, all records relating to the hazardous substances for  
38 purposes of assisting the department in determining the need for a response action.

39 **Comment.** Section 68440 continues subdivisions (b)–(d), inclusive, of former Section 25358.1  
40 without substantive change.

41 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075  
42 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68140 (“response”), 68155  
43 (“site”).

1 **Staff Notes. (1)** Section 25358.1(b)(3) contains a reference to “subdivision (e) of Section 104 of  
 2 the federal act (42 U.S.C. Sec. 9604(e)).” In proposed Section 68440(a)(3), the format of this  
 3 citation has been standardized in accordance with the predominant form for federal act citations  
 4 contained in Chapter 6.8.

5 **(2)** Proposed Section 68440(c) provides that a person required to provide information *shall* allow  
 6 access to records “pursuant to Section 68455.” Proposed Section 68455 applies when the  
 7 department is denied access to property. That section requires the department to obtain an  
 8 inspection warrant (pursuant to Title 13 of Part 3 of the Code of Civil Procedure), unless it is an  
 9 emergency.

10 The purpose of the cross-reference to Section 68455 is unclear in this provision. The cross-  
 11 reference may simply be intended to clarify that the department should seek a warrant in  
 12 accordance with proposed Section 68455 *if* access to records is denied.

13 Another reading of this provision could be that this provision places additional requirements on  
 14 the department seeking record access, even with a warrant. In particular, this provision could be  
 15 read to require the department, after obtaining a warrant for record access, to seek access only  
 16 “upon reasonable notice and at reasonable times.” However, those requirements appear to be in  
 17 tension with Code of Civil Procedure Section 1822.56, which places notice and timing  
 18 requirements on the execution of an inspection warrant, but authorizes immediate execution in  
 19 specified circumstances with court approval.

20 **The staff welcomes comment on these issues.**

21 **(3)** Proposed Section 68440(c) requires access to records “relating to hazardous substances for  
 22 purposes of assisting the department in determining the need for a response action.” This  
 23 contrasts with proposed Section 68450(a)(4), which allows access to property “to determine the  
 24 need for a response action, *or the appropriate remedial action, to effectuate a response action*  
 25 *under this part*” (emphasis added). The difference in these provisions suggests that the  
 26 department’s ability to seek documentary information is more limited than the department’s  
 27 ability to enter and inspect property. In particular, the department’s access to documentary  
 28 information seems to extend only to information relevant to whether a response action is needed,  
 29 and not the scope or design of the needed response action. The staff cannot discern a policy  
 30 justification for this discrepancy and, thus, believes that the discrepancy may be unintentional.

31 **The staff welcomes comment on this issue.**

32 **§ 68445. Disclosure of information**

33 68445. (a) The department may disclose information submitted pursuant to this  
 34 article to authorized representatives, contractors, or other governmental agencies  
 35 only in connection with the department’s responsibilities pursuant to this part. The  
 36 department shall establish procedures to ensure that information submitted  
 37 pursuant to this article is used only in connection with these responsibilities and is  
 38 not otherwise disseminated without the consent of the person who provided the  
 39 information to the department.

40 (b) The department may also make available to the United States Environmental  
 41 Protection Agency any information required by law to be furnished to that agency.  
 42 The sharing of information between the department and that agency pursuant to  
 43 this article does not constitute a waiver by the department or of any affected  
 44 person of any privilege or confidentiality provided by law that pertains to the  
 45 information.

46 **Comment.** Section 68445 continues subdivisions (j) and (k) of former Section 25358.1 without  
 47 substantive change.

1 See Sections 68050 (“department”), 68085 (“person”).

2 **§ 68450. Entry, inspection, and sampling of property**

3 68450. (a) Any officer or employee of the department, representative of the  
4 director, or person designated by the director may, in accordance with Section  
5 68455, enter, at reasonable times, any of the following properties:

6 (1) Any nonresidential establishment or other place or property where any  
7 hazardous substances may be, or have been, produced, stored, treated, disposed of,  
8 or transported from.

9 (2) Any nonresidential establishment or other place or property from which, or  
10 to which, a hazardous substance has been, or may have been, released.

11 (3) Any nonresidential establishment or other place or property where a  
12 hazardous substance release is, or may be, threatened.

13 (4) Any nonresidential establishment or other place or property where entry is  
14 needed to determine the need for a response action, or the appropriate remedial  
15 action, to effectuate a response action under this part.

16 (5) Any residential place or property that, if it were a nonresidential  
17 establishment or other place or property, would otherwise meet the criteria  
18 described in paragraphs (1) to (4), inclusive, if the department, representative, or  
19 person designated by the director is able to establish, based upon reasonably  
20 available evidence, that hazardous substances have been released onto or under the  
21 residential place or real property and if entry is made only at reasonable times and  
22 after reasonable notification to the owners and occupants.

23 (b) Any officer or employee of the department, representative of the director, or  
24 person designated by the director may, in accordance with Section 68455, carry  
25 out any of the following activities:

26 (1) Inspect and obtain samples from any establishment or other place or property  
27 specified in subdivision (a) or from any location of any suspected hazardous  
28 substance.

29 (2) Inspect and obtain samples of any substances from any establishment or  
30 place or property specified in subdivision (a).

31 (3) Inspect and obtain samples of any containers or labeling for the suspected  
32 hazardous substances, and samples of the soil, vegetation, air, water, and biota on  
33 the premises.

34 (4) Set up and maintain monitoring equipment for the purpose of assessing or  
35 measuring the actual or potential migration of hazardous substances.

36 (5) Survey and determine the topographic, geologic, and hydrogeologic features  
37 of the land.

38 (6) Photograph any equipment, sample, activity, or environmental condition  
39 described in paragraphs (2) to (5), inclusive.

40 (c)(1) If photographs are to be taken pursuant to paragraph (6) of subdivision  
41 (b), the department shall do all of the following:

42 (A) Comply with all procedures established pursuant to Section 68490.

1 (B) Notify the person whose facility is photographed prior to public disclosure  
2 of the photographs.

3 (C) Upon the request of the person owning the facility, submit a copy of any  
4 photograph to the person for the purpose of determining whether trade secret  
5 information, as defined in Section 68480, or facility security, would be revealed  
6 by the photograph.

7 (2) “Disclosure,” as used in Section 68485, for purposes of this paragraph, does  
8 not include the review of the photograph by a court of competent jurisdiction or by  
9 an administrative law judge. A court or judge may review the photograph in  
10 camera.

11 (d) An officer, employee, representative, or designee who enters a place,  
12 establishment, or property pursuant to this article shall make a reasonable effort to  
13 inform the owner or the owner’s authorized representative of the inspection and  
14 shall provide split samples to the owner or the representative upon request.

15 **Comment.** Section 68450 continues subdivisions (e)–(h), inclusive, of former Section 25358.1  
16 without substantive change.

17 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68085  
18 (“person”), 68105 (“release”), 68125 (“remedy”), 68140 (“response”).

19 **Staff Notes. (1)** Proposed Section 68450(c)(1)(C) contains a cross-reference to a definition for  
20 “trade secret.” Currently, that cross-reference points to Section 25358.2. Section 25358.2 is  
21 proposed for recodification as Article 5 of this chapter. The definition of “trade secret” is  
22 contained in proposed Section 68480. As proposed above, the updated cross-reference would  
23 refer only to proposed Section 68480, as opposed to proposed Article 5 as a whole. This change is  
24 intended to be nonsubstantive, but it seemed more helpful to more precisely point to the relevant  
25 provision. **The staff welcomes comment on this proposed cross-reference update.**

26 **(2)** Proposed Section 68450(c)(2) contains a cross-reference to a use of the term “disclosure.”  
27 Currently, that cross-reference points to Section 25358.2, which is proposed for recodification as  
28 Article 5. The term “disclosure” was only used once in Section 25358.2. Proposed Section 68485  
29 will continue the portion of Section 25358.2 that uses the term “disclosure.” For this reason, the  
30 updated cross-reference would refer only to proposed Section 68485, as opposed to proposed  
31 Article 5 as a whole. This change is intended to be nonsubstantive, but it seemed more helpful to  
32 more precisely point to the relevant provision. **The staff welcomes comment on this proposed**  
33 **cross-reference update.**

34 **(3)** Proposed Section 68450 would seem to benefit from a restatement for clarity. In the staff’s  
35 review of this provision, we identified several issues that may need to be addressed. The most  
36 significant of these are discussed in turn below. **The staff welcomes comment on these issues**  
37 **and whether they have caused problems in practice.**

38 • Overall, the section suffers from a lack of parallelism. For instance, the section uses different  
39 terms to refer to the same general concept (e.g., “establishment or other place or property” in  
40 subdivision (a), “facility” in subdivision (c), “premises” in paragraph (b)(3)). It is not clear  
41 whether the different terms are interchangeable or, if not, how the different terms relate to each  
42 other (e.g., is “facility” a subset of “establishment or other place or property”?).

43 • Proposed paragraph (a)(5) would seem to benefit from restatement for clarity. This paragraph  
44 appears to permit entry to residential property if three conditions are established:

- 45 (1) The property, were it nonresidential, would meet the criteria in paragraphs (1)-(4)  
46 (2) Hazardous substances have been released onto or under the property  
47 (3) Entry is made at a reasonable time after reasonable notice

1 The first criterion appears to be superfluous. Anytime the second criterion is met, it would seem  
2 that the first criterion would necessarily be satisfied (proposed paragraph (a)(2) applies when  
3 “hazardous substance has been ...released” to/from property). **The staff welcomes comment on  
4 how this provision is understood in practice.**

5 • Proposed subdivision (b) is unclear and inconsistent in its description of activities and  
6 locations. For this reason, the scope of the provisions is not clear from the text of the statutes. For  
7 instance, paragraph (1) permits obtaining samples at a specified place, while paragraph (2)  
8 permits obtaining samples “of any substances” at the specified place.

9 • Proposed paragraph (c)(4) contains a limitation on the term “[d]isclosure, as used in  
10 [proposed Section 68485 (Section 25358.2)]” that applies for “the purposes of this paragraph.”  
11 The legal effect of this provision is unclear. First, it appears that the limitation (“for purposes of  
12 this paragraph”) is too narrow, as “disclosure” is not otherwise used in the paragraph. Even  
13 assuming a broader application was intended, the staff cannot determine the intended effect of  
14 this provision.

15 **§ 68455. Entry to property without voluntary grant of access**

16 68455. If the owner or the owner’s authorized representative does not  
17 voluntarily grant access to a place, establishment, or property pursuant to this  
18 article, the officer, employee, representative, or designee shall first obtain a  
19 warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the  
20 Code of Civil Procedure. However, if there is an emergency posing an immediate  
21 threat to public health and safety, the officer, employee, representative, or  
22 designee may enter the place, establishment, or property without the consent of the  
23 owner or owner’s authorized representative and without the issuance of a warrant.

24 **Comment.** Section 68455 continues subdivision (i) of former Section 25358.1 without  
25 substantive change.

26 **§ 68460. Immunity for entry and response action**

27 68460. The department, and any person authorized by the department to enter  
28 upon any lands for the purpose of taking a response action pursuant to this part,  
29 shall not be held liable, in either a civil or criminal proceeding, for trespass or for  
30 any other acts that are necessary to carry out the response action.

31 **Comment.** Section 68460 continues subdivision (l) of former Section 25358.1 without  
32 substantive change.

33 See Sections 68050 (“department”), 68085 (“person”), 68140 (“response”).

34 **Article 5. Protection of Trade Secrets**

35 **§ 68480. “Trade secrets”**

36 68480. “Trade secrets,” as used in this article, may include, but are not limited  
37 to, any formula, plan, pattern, process, tool, mechanism, compound, procedure,  
38 production data, or compilation of information that is not patented, that is known  
39 only to certain individuals within a commercial concern who are using it to  
40 fabricate, produce, develop, or compound an article of trade or a service having  
41 commercial value, and that gives its user an opportunity to obtain a business  
42 advantage over competitors who do not know or use it.

1 **Comment.** Section 68480 continues subdivision (a) of former Section 25358.2 without  
2 substantive change.

3 **§ 68485. Identification of trade secret information**

4 68485. Any person providing information pursuant to subdivision (a) of Section  
5 68440 shall, at the time of its submission, identify all information that the person  
6 believes is a trade secret. Any information or record not identified as a trade secret  
7 is available to the public, unless exempted from disclosure by other provisions of  
8 law.

9 **Comment.** Section 68485 continues subdivision (c) of former Section 25358.2 without  
10 substantive change.

11 See Sections 68085 (“person”), 68480 (“trade secret”).

12 **§ 68490. Procedures for protection of trade secret information**

13 68490. The department shall establish procedures to ensure that trade secret  
14 information is utilized by the department only in connection with the  
15 responsibilities of the department pursuant to this part and is not otherwise  
16 disseminated without the consent of the person who provided the information to  
17 the department. However, any information shall be made available to  
18 governmental agencies for use in making studies and for use in judicial review or  
19 enforcement proceedings involving the person furnishing the information.

20 **Comment.** Section 68490 continues subdivision (b) of former Section 25358.2 without  
21 substantive change.

22 See Sections 68050 (“department”), 68085 (“person”), 68480 (“trade secret”).

23 **§ 68495. Penalty for knowing and willful dissemination of trade secret information**

24 68495. Any person who knowingly and willfully disseminates information  
25 protected by this article or procedures established by the department pursuant to  
26 Section 68490 shall, upon conviction, be punished by a fine of not more than five  
27 thousand dollars (\$5,000), imprisonment in the county jail not to exceed one year,  
28 or by both that fine and imprisonment.

29 **Comment.** Section 68495 continues subdivision (d) of former Section 25358.2 without  
30 substantive change.

31 See Sections 68050 (“department”), 68085 (“person”).

32 **Article 6. Abandoned Sites**

33 **§ 68505. Notice regarding abandoned sites**

34 68505. (a) The director shall notify, within 20 working days, each of the  
35 appropriate county health officers as to all the potential abandoned sites of which  
36 the department has knowledge or that the department is investigating for releases  
37 of hazardous substances that may have occurred or might be occurring at  
38 abandoned sites. The county health officers may request quarterly updates on the  
39 status of the investigations of these sites.

1 (b) As used in this section, “abandoned site” means an inactive disposal,  
 2 treatment, or storage facility that cannot, with reasonable effort, be traced to a  
 3 specific owner, a site whose owner is the subject of an order for relief in  
 4 bankruptcy, or a location where a hazardous substance has been illegally disposed.

5 (c) Within 10 working days of the identification of an abandoned site, the  
 6 department or a county health officer shall notify the other agency of the status of  
 7 the site. The department and the county health officer shall inform the other  
 8 agency of orders to fence and post these sites and the status of compliance with  
 9 those orders. The department or the county health officers may request quarterly  
 10 updates of the testing, enforcement action, and remedial or removal actions that  
 11 are proposed or ongoing.

12 **Comment.** Section 68505 continues former Section 25359.6 without substantive change.

13 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105  
 14 (“release”), 68135 (“remove”), 68155 (“site”).

15 **Staff Note.** Proposed Section 68505(a) requires the director to notify county health officers of all  
 16 potential abandoned sites “of which the department has knowledge or that the department is  
 17 investigating for releases of hazardous substances.” The director must perform this notification  
 18 “within 20 working days.” It appears that this subdivision required a one-time, initial notification  
 19 to county health officers of the status of the department’s abandoned site work within 20 working  
 20 days of the effective date of the legislation enacting this duty. It is not clear whether this  
 21 provision has an ongoing effect and needs to be continued. **The staff welcomes comment on this**  
 22 **issue.**

23 Article 7. Laboratories

24 § 68510. Accreditation requirement

25 68510. The analysis of any material that is required to demonstrate compliance  
 26 with this part shall be performed by a laboratory accredited by the State Water  
 27 Resources Control Board pursuant to Article 3 (commencing with Section 100825)  
 28 of Chapter 4 of Part 1 of Division 101.

29 **Comment.** Section 68510 restates former Section 25358.4 without substantive change. The  
 30 reference to the “State Department of Health Services” in former Section 25358.4 was changed to  
 31 refer instead to the “State Water Resources Control Board.” Formerly, the State Department of  
 32 Health Services was the state agency authorized to accredit laboratories under Article 3  
 33 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101. See former Section  
 34 100825(c)(1), (4), (18) as added by 2005 Cal. Stat. ch. 406, § 2. Currently, the State Water  
 35 Resources Control Board is the agency authorized to accredit laboratories under that article. See  
 36 Section 100825(c)(1), (4), (11), (12).

37 **Staff Note.** Proposed Section 68510 would replace a reference to the “State Department of Health  
 38 Services” with a reference to the “State Water Resources Control Board.” Formerly, the State  
 39 Department of Health Services had the accreditation authority under the referenced article. See  
 40 former Section 100825(c)(1), (4), (18), as added by 2005 Cal. Stat. ch. 406, § 2 (AB 1317).  
 41 Currently, the State Water Resources Control Board is the agency granted the authority to  
 42 accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

43 The change to the agency reference is intended to be nonsubstantive. **The staff welcomes**  
 44 **comment on this proposed change.**

1 The staff did not simply delete the agency name, which could prevent future discrepancies  
2 from arising if the accrediting agency changes. The staff concluded that deleting the agency name  
3 could potentially be substantive. The referenced article provides for a second form of  
4 accreditation (“TNI accreditation”) conducted by accrediting bodies recognized by a national  
5 nonprofit (“TNI”). See Section 100825(c)(14)-(20). It is unclear whether such accreditation  
6 would be sufficient for the purposes of laboratory analyses conducted under this part. **The staff  
7 welcomes comment on this issue.**

8 Article 8. Technology Demonstration Program

9 § 68525. Technology demonstration program for treatment technologies

10 68525. Notwithstanding Section 69055, the department shall carry out a  
11 program of full-scale demonstrations to evaluate treatment technologies that can  
12 be safely utilized for removal and remedial actions to hazardous substance  
13 releases.

14 **Comment.** Section 68525 continues former Section 25368 without substantive change.

15 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
16 (“remedy”), 68135 (“remove”), 68530 (“full-scale demonstration” and “treatment technologies”).

17 **Staff Note.** Section 25368 requires the department to carry out a technology demonstration  
18 program “[n]otwithstanding Section 25355.5.” Section 25355.5 has been proposed for  
19 recodification as several provisions (proposed Sections 69055, 69060, 69065, and 69130(b)).  
20 Proposed Section 69055 (Section 25355.5(a)) appears to be the only provision that is relevant to  
21 this cross-reference, as it is the provision that precludes expenditures at hazardous substance  
22 release sites unless specified actions have been taken. For this reason, the cross-reference to  
23 Section 25355.5 has been updated to refer only to Section 69055. **The staff welcomes any  
24 comment on this proposed cross-reference update.**

25 § 68530. Definitions

26 68530. For the purposes of this article, the following definitions apply:

27 (a) “Treatment technologies” means methods, techniques, or processes,  
28 including proprietary or patented methods, that permanently alter the composition  
29 of hazardous substances at hazardous substance release sites through chemical,  
30 biological, or physical means so as to make the substances nonhazardous or to  
31 significantly reduce the toxicity, mobility, or volume, or any combination of these  
32 characteristics, of the hazardous substances or contaminated materials being  
33 treated.

34 (b) “Full-scale demonstration” means a demonstration of a technology that is of  
35 a size or capacity that permits valid comparison of the technology to the technical  
36 performance and cost of conventional technologies, that is likely to be cost-  
37 effective, and that will result in a substantial or complete remedial or removal  
38 action to a hazardous substance release site.

39 **Comment.** Section 68530 restates former Section 25368.1 without substantive change.

40 See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135  
41 (“remove”), 68155 (“site”).

1 **Staff Note.** Proposed Section 68530(a) restates Section 25368.1 to eliminate the word “thereof.”  
2 “Thereof” was replaced with “of these characteristics.” This change is intended to be  
3 nonsubstantive. **The staff welcomes any comment on this proposed change.**

4 **§ 68535. Criteria for selection**

5 68535. The department shall select technology demonstration projects to be  
6 evaluated pursuant to this article using criteria that include, at a minimum, all of  
7 the following requirements:

8 (a) The project proposal includes complete and adequate documentation of  
9 technical feasibility.

10 (b) The project proposal includes evidence that a technology has been  
11 sufficiently developed for full-scale demonstration and can likely operate on a  
12 cost-effective basis.

13 (c) The department has determined that a site is available and suitable for  
14 demonstrating the technology, taking into account the following:

15 (1) The physical, biological, chemical, and geological characteristics of the site.

16 (2) The extent and type of contamination found at the site.

17 (3) The capability to conduct demonstration projects in a manner to ensure the  
18 protection of human health and the environment.

19 (d) The technology to be demonstrated preferably has widespread applicability  
20 in removal and remedial actions at other sites in the state.

21 (e) The project will be developed to the extent that a successful demonstration  
22 on a hazardous substance release site may lead to commercial utilization by  
23 responsible parties at other sites in the state.

24 (f) The department has determined that adequate funding is available from one  
25 or more of the following sources:

26 (1) Responsible parties.

27 (2) The United States Environmental Protection Agency.

28 (3) The state account.

29 **Comment.** Section 68535 restates former Section 25368.2 without substantive change.

30 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
31 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state  
32 account”), 68530 (“full-scale demonstration”).

33 **Staff Notes. (1)** Proposed Section 68535(c) restates Section 25368.2(c) to add paragraphs and to  
34 eliminate uses of the singular and plural form of the same word (see Section 13; see also Note for  
35 proposed Section 68300). Section 25368.2(c) reads as follows (with emphasis on relevant text  
36 added):

37 “(c) The department has determined that a site is available and suitable for demonstrating  
38 the *technology or technologies*, taking into account the physical, biological, chemical, and  
39 geological characteristics of the site, the extent and type of contamination found at the site, and  
40 the capability to conduct demonstration projects in a manner to ensure the protection of human  
41 health and the environment.”

42 Section 13 provides “[t]he singular number includes the plural, and the plural the singular.”  
43 For this reason, it does not appear to be necessary to use both the singular and plural forms of the

1 same word. Proposed Section 68535 was simplified to use only the singular form in accordance  
2 with standard drafting practice.

3 The changes reflected in proposed Section 68535 are intended to be nonsubstantive. **The staff**  
4 **welcomes any comment on the proposed restatement.**

5 (2) Section 25368.2(f)(2) lists “The Environmental Protection Agency” as a source of funding.  
6 Both the state and federal government have an Environmental Protection Agency. It seems likely  
7 that this provision was intended to refer to the federal agency, as the original enactment of these  
8 statutes occurred before the creation of the state agency. See 1987 Cal. Stat. ch. 1156, § 2;  
9 Executive Order W-5-91 of Governor Wilson (1991). For this reason, proposed Section  
10 68535(f)(2) was changed to read “[t]he *United States* Environmental Protection Agency”  
11 (emphasis added). This change is intended as a nonsubstantive correction. **The staff welcomes**  
12 **comment on this issue.**

13 **§ 68540. Selection of sites**

14 68540. The department shall identify hazardous substance release sites, listed  
15 pursuant to Article 5 (commencing with Section 68760) of Chapter 4, that are  
16 particularly well-suited for technology demonstration projects. In identifying  
17 hazardous substance release sites, the department shall consider, at a minimum, all  
18 of the following:

19 (a) The state’s priority ranking for removal and remedial actions to hazardous  
20 substance release sites adopted pursuant to Article 5 (commencing with Section  
21 68760) of Chapter 4.

22 (b) The volume and variability of the hazardous substance release at the site.

23 (c) The availability of data characterizing the hazardous substance release.

24 (d) The accessibility of the hazardous substance release.

25 (e) Availability of required utilities.

26 (f) Support of federal and local governments.

27 (g) Potential for adverse effects to public health and the environment.

28 **Comment.** Section 68540 continues former Section 25368.3 without substantive change.

29 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
30 (“remedy”), 68135 (“remove”), 68155 (“site”).

31 **§ 68545. Solicitation of proposals**

32 68545. (a) The department shall annually, on or before July 1, publish a  
33 solicitation for proposals to conduct treatment demonstration projects that utilize  
34 technologies that are at a stage of development suitable for full-scale  
35 demonstrations at hazardous substance release sites. The solicitation notice shall  
36 prescribe information to be included in the proposal, including technical and  
37 economic data derived from the applicant’s own research and development efforts,  
38 and any other information that may be prescribed by the department to assess the  
39 technology’s potential and safety and the types of removal or remedial action to  
40 which it may be applicable.

41 (b) Any person, private entity, or public entity may submit an application to the  
42 department in response to the solicitation. The application shall contain a proposed  
43 treatment demonstration plan setting forth how the treatment demonstration

1 project is to be carried out and any other information that the department may  
2 require.

3 **Comment.** Section 68545 restates former Section 25368.4 without substantive change.

4 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105  
5 (“release”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”), 68155 (“site”), 68530  
6 (“full-scale demonstration”).

7 **Staff Note.** Proposed Section 68545(b) restates the introductory clause of the subdivision. The  
8 introductory clause of Section 25368.4(b) provides “[a]ny person and private or public entity”  
9 may submit an application to propose a treatment demonstration project. The use of the  
10 conjunction “and” in this phrase appears to be an error. The proposed change reflected in Section  
11 68545 is intended to be nonsubstantive. **The staff welcomes comment on this issue.**

12 **§ 68550. Selection of technology demonstration projects**

13 68550. (a) On or before January 1, after reviewing all proposals submitted  
14 pursuant to Section 68545, the department shall annually select at least two  
15 treatment demonstration projects, to be commenced during that calendar year,  
16 using, at a minimum, the criteria specified in Section 68535.

17 (b) If the department determines that the required number of demonstrations  
18 required by subdivision (a) cannot be initiated consistent with the criteria specified  
19 in Section 68535 in any fiscal year, the department shall inform the appropriate  
20 committees of the Legislature of the reasons for its inability to conduct these  
21 demonstration projects.

22 (c) Each treatment demonstration project selected pursuant to this section shall  
23 be performed by the applicant, or by a person approved by the applicant and the  
24 department.

25 **Comment.** Section 68550 continues former Section 25368.5 without substantive change.

26 See Sections 68050 (“department”), 68085 (“person”).

27 **§ 68555. Recovery of incremental costs**

28 68555. Notwithstanding **Section 25360**, if the department determines that using  
29 an alternative treatment technology to conduct a removal or remedial action at a  
30 hazardous substance release site listed pursuant to **[paragraph (2) or (3) of**  
31 **subdivision (b) of Section 25356]** would be more costly than another available  
32 and feasible removal or remedial action method that would also achieve  
33 satisfactory results, the department may determine not to attempt to recover from  
34 the liable person the incremental costs of the removal or remedial action  
35 attributable to the alternative treatment technology.

36 **Comment.** Section 68555 continues former Section 25368.6 without substantive change.

37 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
38 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68530 (“treatment  
39 technologies”).

40 **Staff Note.** Section 25368.6 references a hazardous substance release site listed “pursuant to  
41 paragraph (2) or (3) of subdivision (b) of Section 25356.” Section 25356(b), which is proposed  
42 (with renumbering of the provisions) for recodification in this draft as proposed Section 68520,  
43 does not currently have a paragraph (3). However, an earlier version of Section 25356(b) did have

1 a paragraph (3). See former Section 25356, as amended by 1988 Cal Stat. ch. 1387, § 6. At that  
 2 time, the “list” was significantly different and structured differently. And, it appears that a site  
 3 “listed pursuant to paragraph (2) and (3)...” would include only sites where the department (as  
 4 opposed to a responsible party) was conducting the response action.

5 Given the significant changes to the law since this cross-reference was added originally, the  
 6 staff is unsure whether this cross-reference can or should be updated to achieve the same  
 7 substantive result as the cross-reference did previously. Regardless, this cross-reference is broken  
 8 and must be updated in the recodification. **The staff invites comment on how this cross-**  
 9 **reference should be revised.**

10 **§ 68560. Technology transfer program**

11 68560. (a) The department shall conduct a technology transfer program that  
 12 shall include the development, collection, evaluation, coordination, and  
 13 dissemination of information relating to the utilization of alternative or innovative  
 14 hazardous waste treatment technologies demonstrated pursuant to this article.

15 (b) The information in subdivision (a) shall include all of the following:

16 (1) An evaluation of each treatment demonstration project’s efficacy relating to  
 17 performance and cost in achieving permanent and significant reduction in risks  
 18 from hazardous substance releases.

19 (2) Documentation of the testing procedures utilized in the project, the data  
 20 collected, and the quality assurance and quality control that was conducted.

21 (3) The technology’s applicability, pretreatment and posttreatment  
 22 measurements, and the technology’s advantages or disadvantages compared to  
 23 other available technologies.

24 **Comment.** Section 68560 restates former Section 25368.7 without substantive change.

25 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68530  
 26 (“treatment technologies”).

27 **Staff Notes.** (1) Proposed Section 68560 restates Section 25368.7 to add subdivisions. Section  
 28 25368.7 provides:

29 “25368.7. The department shall conduct a technology transfer program that shall include  
 30 the development, collection, evaluation, coordination, and dissemination of information relating  
 31 to the utilization of alternative or innovative hazardous waste treatment technologies  
 32 demonstrated pursuant to this article. The information shall include an evaluation of each  
 33 treatment demonstration project’s efficacy relating to performance and cost in achieving  
 34 permanent and significant reduction in risks from hazardous substance releases. The information  
 35 shall also include documentation of the testing procedures utilized in the project, the data  
 36 collected, and the quality assurance and quality control which was conducted. The information  
 37 shall also include the technology’s applicability, pretreatment and posttreatment measurements,  
 38 and the technology’s advantages or disadvantages compared to other available technologies.

39 The changes reflected in proposed Section 68560 are intended to be nonsubstantive. **The staff**  
 40 **welcomes any comment on the proposed restatement.**

41 (2) Proposed Section 68560 uses the term “hazardous waste.” The term “hazardous waste” is not  
 42 defined in Chapter 6.8. The provisions of Chapter 6.8 mostly address “hazardous substances.”  
 43 And, proposed Section 68560 generally governs technologies used for responding to a “hazardous  
 44 substance” release. See, e.g., proposed Sections 68525, 68530, 68535. Given this context, it  
 45 seems likely that the use of the term “hazardous waste” in this section should be replaced with  
 46 “hazardous substance.” **The staff welcomes comment on this issue.**

1 § 68565. Consideration of cost-effectiveness

2 68565. Notwithstanding subdivision (e) of Section 69205, when preparing or  
3 approving a remedial action plan for a site listed pursuant to **[paragraph (2) or (3)**  
4 **of subdivision (b) of Section 25356]**, that has been selected for a treatment  
5 demonstration project pursuant to this article, the department shall consider the  
6 cost-effectiveness of the project but is not required to choose the most cost-  
7 effective measure.

8 **Comment.** Section 68565 continues former Section 25368.8 without substantive change.  
9 See Section 68050 (“department”), 68125 (“remedy”), 68155 (“site”).

10 **Staff Notes. (1)** The introductory clause of Section 25368.8 provides that this rule applies  
11 “[n]otwithstanding paragraph (5) of subdivision (c) of Section 25356.1.” This cross-reference is  
12 erroneous, as Section 25356.1(c) does not have any paragraphs. It appears that this cross-  
13 reference should refer to paragraph (5) of subdivision (d). For this reason, the cross-reference has  
14 been updated to refer to the provision that recodifies Section 25356.1(d)(5) (proposed Section  
15 69205(e)). **The staff welcomes comment on this proposed cross-reference correction.**

16 **(2)** Section 25368.8 references a hazardous substance release site listed “pursuant to paragraph  
17 (2) or (3) of subdivision (b) of Section 25356.” As described in the Note for proposed Section  
18 68555, Section 25356(b)(3) does not currently exist. It is unclear how this cross-reference should  
19 be updated, for the reasons described in the earlier Note.

20 **The staff welcomes comment on the appropriate resolution of this issue.**

21 Article 9. Content of Biennial Report

22 **Staff Note.** The reporting requirements in this proposed article both pertain to “the biennial report  
23 specified in Section 25178.” It may be beneficial to consolidate all of the required contents of that  
24 report in Section 25178.

25 Section 25178 is currently located in Chapter 6.5 of Division 20, which is also included in the  
26 Commission’s recodification assignment. Section 25178 provides:

27 “25178. On or before January 1 of each odd-numbered year, the department shall post on  
28 its Web site, at a minimum, all of the following:

29 (a) The status of the regulatory and program developments required pursuant to  
30 legislative mandates.

31 (b) (1) The status of the hazardous waste facilities permit program that shall include all of  
32 the following information:

33 (A) A description of the final hazardous waste facilities permit applications received.

34 (B) The number of final hazardous waste facilities permits issued to date.

35 (C) The number of final hazardous waste facilities permits yet to be issued.

36 (D) A complete description of the reasons why the final hazardous waste facilities  
37 permits yet to be issued have not been issued.

38 (2) For purposes of paragraph (1), “hazardous waste facility” means a facility that uses a  
39 land disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of  
40 wastes regulated as hazardous waste pursuant to the federal act.

41 (c) The status of the hazardous waste facilities siting program.

42 (d) The status of the hazardous waste abandoned sites program.

43 (e) A summary of enforcement actions taken by the department pursuant to this chapter  
44 and any other actions relating to hazardous waste management.

45 (f) Summary data on annual quantities and types of hazardous waste generated,  
46 transported, treated, stored, and disposed.

47 (g) Summary data regarding onsite and offsite disposition of hazardous waste.

48 (h) Research activity initiated by the department.

- 1 (i) Regulatory action by other agencies relating to hazardous waste management.
- 2 (j) A revised listing of recyclable materials showing any additions or deletions to the list
- 3 prepared pursuant to Section 25175 that have occurred since the last report.
- 4 (k) Any other data considered pertinent by the department to hazardous waste
- 5 management.
- 6 (l) The information specified in subdivision (c) of Section 25161, paragraph (4) of
- 7 subdivision (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and
- 8 25356.5.
- 9 (m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site in
- 10 Orange County.”

11 The existing provisions that are proposed for recodification in this article are currently cross-  
12 referenced in subdivision (l). Subdivision (l) also contains an obsolete cross-reference to Section  
13 25356.5, which was part of Chapter 6.8, but has been repealed; this cross-reference will need to  
14 be deleted or corrected as appropriate when the Commission recodifies Chapter 6.5.

15 **The staff welcomes comment on the whether the requirements proposed for inclusion in**  
16 **this article should, instead, be incorporated into Section 25178.**

17 **§ 68575. San Gabriel Valley groundwater sites**

18 68575. (a) The department shall report to the Governor and the Legislature on  
19 the progress of the cleanup of the San Gabriel Valley groundwater sites in Los  
20 Angeles County, and on the progress of enforcement actions relating to those sites,  
21 in the biennial report specified in Section 25178. The report shall include, but not  
22 be limited to, all of the following:

- 23 (1) State expenditures and planned expenditures.
- 24 (2) Actions accomplished at the sites.
- 25 (3) Actions planned, including a time schedule for the accomplishment of
- 26 planned actions.

27 (b) The report may be prepared in cooperation with other state and federal  
28 agencies involved with the sites, and shall include a summary of the activities of  
29 those additional agencies.

30 **Comment.** Section 68575 continues former Section 25334.7 without substantive change.  
31 See Section 68050 (“department”), 68155 (“site”).

32 **Staff Notes. (1)** Proposed Section 68575 requires that the department report “to the Governor and  
33 the Legislature...in the biennial report specified in Section 25178.” Section 25178 currently  
34 involves posting information on a website biennially and does not appear to require that a report  
35 be submitted to the Governor or the Legislature. Formerly, Section 25178 required a report to be  
36 submitted to the Legislature biennially. See former Section 25178, as amended by 1987 Cal. Stat.  
37 ch. 822, § 1. The staff is unsure how to reconcile the requirements of proposed Section 68575 and  
38 Section 25178. **The staff welcomes comment on this issue.**

39 **(2)** Proposed Section 68575 requires the department to report to the Governor and the Legislature  
40 regarding the status of cleanup at the specified sites.

41 In the course of the staff’s work on this study, the staff came across a Government Code  
42 provision regarding legislation that requires state agencies to submit reports to the Legislature.  
43 Specifically, Government Code Section 10231.5 provides, in part:

44 “10231.5. (a) A bill that, as introduced or amended in either house of the Legislature,  
45 would require a state agency to submit a report on any subject to either house of the Legislature  
46 generally, a committee or office of either house of the Legislature, or the Legislative Counsel

1 Bureau shall include a provision that repeals the reporting requirement, or makes the requirement  
2 inoperative, no later than a date four years following the date upon which the bill, as enacted,  
3 becomes operative or four years after the due date of any report required every four or more  
4 years. If the bill requires that the report be submitted to either house of the Legislature generally,  
5 it shall also include a provision that requires the report to be submitted pursuant to Section 9795.”

6 This provision seems to indicate a legislative policy determination that reporting requirements  
7 may become stale. This reporting requirement was originally enacted in 1990. See 1990 Cal. Stat.  
8 ch. 1624, § 1. It may be appropriate to consider and seek input on whether there is a continuing  
9 need for this particular report to be submitted to the Legislature. Given the nonsubstantive nature  
10 of this study, any change to the legal duty to provide a report to the Legislature would be beyond  
11 the scope of this study. However, the Commission may want to add this topic to the list of  
12 substantive issues for future study. **The staff welcomes comment on this issue.**

13 **§ 68580. Accounting of expenditures from emergency reserve account**

14 68580. The department shall include in the biennial report specified in Section  
15 25178 an accounting of the moneys expended pursuant to Section 68875.

16 **Comment.** Section 68580 continues the first sentence of subdivision (c) of former Section  
17 25354 without substantive change.

18 See Section 68050 (“department”).

19 **Staff Note.** Section 25354(c) requires reporting of moneys expended “pursuant to this section.”  
20 Section 25354 has been proposed for continuation in three provisions (proposed Sections 68240,  
21 68580, and 68875). Proposed Section 68875 contains the provisions of Section 25354 that govern  
22 the expenditures of the funds and the undertaking of “immediate corrective action necessary to  
23 remedy or prevent an emergency... caused by a release or threatened release of a hazardous  
24 substance.” See Section 25354(a).

25 For this reason, the cross-reference has been updated to refer to proposed Section 68875. This  
26 change is intended to be nonsubstantive. **The staff welcomes comment on this proposed**  
27 **update.**

28 CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES

29 Article 1. General Powers of Director

30 **§ 68650. Powers of director in event of release or threatened release of hazardous**  
31 **substances**

32 68650. When the director determines that a release of a hazardous substance has  
33 occurred or is about to occur, the director may do any or all of the following:

34 (a) Undertake those investigations, monitoring, surveys, testing, and other  
35 information gathering necessary to identify the existence, source, nature, and  
36 extent of the hazardous substances involved and the extent of danger to the public  
37 health or environment.

38 (b) Undertake those planning, legal, fiscal, economic, engineering, architectural,  
39 and other studies or investigations that are necessary or appropriate to plan and  
40 direct response actions, to recover the cost of those actions, and to enforce this  
41 part.

1       **Comment.** Section 68650 continues subdivision (b) of former Section 25358.3 without  
2 substantive change.

3       See Sections 68055 (“director”), 68075 (“hazardous substance”), 68105 (“release”), 68140  
4 (“response”).

5       **§ 68655. Authority to take or contract for response or other authorized actions**

6       68655. (a) Whenever there is a release or threatened release of a hazardous  
7 substance into the environment, the director may take or contract for any  
8 necessary removal or remedial action and may take or contract for any actions  
9 authorized by Section 68650, in compliance with the provisions of this part,  
10 including, but not limited to, subdivision (a) of Section 69130.

11       (b) Any person bidding for a contract specified in subdivision (a) shall submit a  
12 disclosure statement, as specified by Section 25112.5, except for a federal, state,  
13 or local agency. The director may prohibit a person from bidding on such a  
14 contract if the director makes any of the following determinations:

15       (1) The director determines, in writing, that the bidder, or, if the bidder is a  
16 business entity, any trustee, officer, director, partner, or any person holding more  
17 than 5 percent of the equity in or debt liability of that business entity, has engaged  
18 in activities resulting in any federal or state conviction that are significantly related  
19 to the fitness of the bidder to perform the bidder’s duties or activities under the  
20 contract. For purposes of this paragraph, “conviction” means a plea or verdict of  
21 guilty or a conviction following a plea of nolo contendere. Any action that the  
22 department may take pursuant to this subdivision relating to the department’s  
23 refusal to permit a person to bid on the contract may be based upon a conviction  
24 for which any of the following has occurred:

25       (A) The time for appeal has elapsed.

26       (B) The judgment of conviction has been affirmed on appeal.

27       (C) Any order granting probation is made suspending the imposition of  
28 sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the  
29 Penal Code permitting that person to withdraw the plea of guilty and to enter a  
30 plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
31 accusation, information, or indictment.

32       (2) The director determines, in writing, that the bidder, or, if the bidder is a  
33 business entity, any trustee, officer, director, partner, or any person holding more  
34 than 5 percent of the equity in or debt liability of that business entity, has violated  
35 or failed to comply with this part, Chapter 6.5 (commencing with Section 25100)  
36 or Chapter 6.7 (commencing with Section 25280) of Division 20, the Porter-  
37 Cologne Water Quality Control Act (Division 7 (commencing with Section 13000)  
38 of the Water Code), the federal act, the federal Resource Conservation and  
39 Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the federal  
40 Hazardous Materials Transportation Authorization Act of 1994, as amended (49  
41 U.S.C. Sec. 5101 et seq.), the federal Toxic Substances Control Act (15 U.S.C.  
42 Sec. 2601 et seq.), or any other equivalent federal or state statute or any  
43 requirement or regulation adopted pursuant thereto relating to the generation,

1 transportation, treatment, storage, recycling, disposal, or handling of a hazardous  
 2 waste, as defined in Section 25117, a hazardous substance, as defined in  
 3 subdivision (a) of Section 68075, or a hazardous material, as defined in Section  
 4 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or  
 5 recurring pattern or may pose a threat to public health or safety or the  
 6 environment.

7 (3) The director determines, in writing, that the bidder has had a license, permit,  
 8 or registration for the generation, transportation, treatment, storage, recycling,  
 9 disposal, or handling of hazardous waste or hazardous substances revoked or  
 10 suspended.

11 **Comment.** Section 68655 restates subdivisions (c) and (d) of former Section 25358.3 without  
 12 substantive change.

13 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075  
 14 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125 (“remedy”), 68135  
 15 (“remove”).

16 **Staff Notes. (1)** Section 25358.3(d)(2) (proposed Section 68655(b)(2)) refers to the “the federal  
 17 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended  
 18 (42 U.S.C. Sec. 9601 et seq.)” Proposed Section 68655 replaces that reference with the “federal  
 19 act.” In proposed Section 68065, “federal act” is defined as “the federal Comprehensive  
 20 Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.  
 21 9601 et seq.)”

22 The names of the other federal acts in proposed Section 68655(b)(2) have been updated to  
 23 include the designation “federal” in accordance with drafting practice. The order of the listed  
 24 federal acts was changed to improve clarity.

25 **The staff welcomes any comment on these proposed nonsubstantive changes.**

26 (2) As indicated above, Section 25358.3(d)(2) lists several federal acts. For all but one of those  
 27 federal acts, the reference specifically refers to the act “as amended.” The reference to the federal  
 28 Toxic Substances Control Act does not include the “as amended” designation. That may have  
 29 been an error. **The staff welcomes comment on this issue.**

30 (3) Section 25358.3(d)(2) refers to “the Hazardous Materials Transportation Authorization Act of  
 31 1994, as amended (49 U.S.C. Sec. 5101 et seq.)” The named act and the U.S. Code cite do not  
 32 appear to be coextensive. The staff does not know how to interpret this cross-reference as drafted.  
 33 **The staff welcomes comment on the meaning of this cross-reference and whether the cross-  
 34 reference is causing problems in practice.**

35 (4) Section 25358.3(d)(2) refers to the definition for hazardous substance in “Section 25316.”  
 36 Currently, Section 25316 defines “hazardous substance,” while Section 25317 contains  
 37 exclusions from the definition for “hazardous substance.” It is not clear whether the reference to  
 38 Section 25316 was intended to avoid incorporating the exclusions in Section 25317. **The staff  
 39 welcomes comment on this issue.**

40 (5) Section 25358.3(d)(3) (proposed Section 68655(b)(3)) uses the term “hazardous waste”  
 41 without reference to an applicable definition. The preceding paragraph also uses the term  
 42 “hazardous waste,” but refers to a definition in “Section 25117.” It seems likely that the definition  
 43 of “hazardous waste” in Section 25117 should also apply to the use of the term in paragraph  
 44 (d)(3). **The staff welcomes comment on this issue.**

1 § 68660. Judicial proceedings

2 68660. (a) Whenever there is a release or threatened release of a hazardous  
 3 substance, the director may request the Attorney General to secure such relief as  
 4 may be necessary from the responsible party to abate the release or threatened  
 5 release. The superior court of the county in which the release or threatened release  
 6 occurs has jurisdiction to grant that relief that the public interest and equities of the  
 7 case may require to protect the public health and safety and the environment.  
 8 Upon a showing by the department that a release or threatened release of a  
 9 hazardous substance has occurred or is occurring, and that there may be an  
 10 imminent or substantial endangerment to the public health and safety or to the  
 11 environment, the court may grant a temporary restraining order or a preliminary or  
 12 permanent injunction.

13 (b) Upon the failure of any person to comply with any order issued by the  
 14 department pursuant to this article, Section 68870, or Section 69055, the director  
 15 may request the Attorney General to petition the superior court for the issuance of  
 16 an injunction requiring that person to comply with the order. The superior court  
 17 shall have jurisdiction to grant a temporary restraining order or a preliminary or  
 18 permanent injunction.

19 (c) In any civil action brought pursuant to this part in which a temporary  
 20 restraining order or a preliminary or permanent injunction is sought, the  
 21 department shall prove that the defendant is a responsible party and that there is a  
 22 release or threatened release of a hazardous substance. It shall not be necessary to  
 23 allege or prove at any stage of the proceeding that irreparable damage will occur  
 24 should the temporary restraining order or the preliminary or permanent injunction  
 25 not be issued, or that the remedy at law is inadequate. The temporary restraining  
 26 order or the preliminary or permanent injunction shall issue without those  
 27 allegations and without that proof.

28 **Comment.** Section 68660 restates subdivisions (e)-(g), inclusive, of former Section 25358.3  
 29 without substantive change.

30 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68085  
 31 (“person”), 68105 (“release”), 68125 (“remedy”), 68145 (“responsible party”).

32 **Staff Notes. (1)** Proposed Section 68660(a) restates subdivision (e) of Section 25358.3 to  
 33 eliminate uses of the singular and plural form of the same word (see Section 13; see also Note for  
 34 proposed Section 68300). Section 25358.3(e) reads as follows (with emphasis on relevant text  
 35 added):

36 “(e) Whenever there is a release or threatened release of a hazardous substance, the  
 37 director may request the Attorney General to secure such relief as may be necessary from the  
 38 responsible *party or parties* to abate the release or threatened release. The superior court of the  
 39 county in which the release or threatened release occurs has jurisdiction to grant that relief that  
 40 the public interest and equities of the case may require to protect the public health and safety and  
 41 the environment. Upon a showing by the department that a release or threatened release of a  
 42 hazardous substance has occurred or is occurring, and that there may be an imminent or  
 43 substantial endangerment to the public health and safety or to the environment, the court may  
 44 grant a temporary restraining order or a preliminary or permanent injunction.”

1 Section 13 provides “[t]he singular number includes the plural, and the plural the singular.”  
2 For this reason, it does not appear to be necessary to use both the singular and plural forms of the  
3 same word. Proposed Section 68660 was simplified to use only the singular form in accordance  
4 with standard drafting practice.

5 The changes reflected in proposed Section 68660 are intended to be nonsubstantive. **The staff  
6 welcomes any comment on the proposed restatement.**

7 **(2)** Section 25358.3(f) refers to an order issued pursuant to Section 25355.5. Section 25355.5 has  
8 been proposed for recodification as multiple sections (proposed Sections 69055, 69060, 69065,  
9 and 69130(b)). Proposed Section 69055 (which recodifies Section 25355.5(a)) is the only one of  
10 those provisions that addresses the issuance of orders and, thus, appears to be the only provision  
11 relevant to this cross-reference. For this reason, the cross-reference to Section 25355.5 has been  
12 updated to refer only to Section 69055. **The staff welcomes any comment on this proposed  
13 cross-reference update.**

14 **(3)** Section 25358.3(g), proposed for recodification as Section 68660(c), contained a semicolon.  
15 The provision has been restated to avoid the use of a semicolon by making the material after the  
16 semicolon a separate sentence.

## 17 Article 2. Reporting Requirement

### 18 § 68675. Prohibition and reporting requirement for releases

19 68675. (a) A person shall not release, or allow or cause a release of, a reportable  
20 quantity of a hazardous substance into the environment that is not authorized or  
21 permitted pursuant to state law.

22 (b) Any release of a reportable quantity of hazardous substance shall be reported  
23 to the department in writing within 30 days of discovery, unless any of the  
24 following apply:

25 (1) The release is permitted or in the permit process.

26 (2) The release is authorized by state law.

27 (3) The release requires immediate reporting to the Office of Emergency  
28 Services pursuant to Section 11002 or 11004 of Title 42 of the United States Code,  
29 or pursuant to Section 25510.

30 (4) The release has previously been reported to the department or the Office of  
31 Emergency Services.

32 (5) The release occurred prior to January 1, 1994.

33 (c) For the purposes of this article, “reportable quantity” means either of the  
34 following:

35 (1) The quantity of a hazardous substance established in Part 302 (commencing  
36 with Section 302.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal  
37 Regulations, the release of which requires notification pursuant to that part.

38 (2) Any quantity of a hazardous substance that is not reportable pursuant to  
39 paragraph (1), but that may pose a significant threat to public health and safety or  
40 to the environment. The department may establish guidelines for determining  
41 which releases are reportable under this paragraph.

1 **Comment.** Section 68675 continues subdivisions (a)-(c), inclusive, of former Section 25359.4  
2 without substantive change. A cross-reference to Section 25507 has been corrected to refer to  
3 Section 25510.

4 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105  
5 (“release”).

6 **Staff Note.** Proposed Section 68675(b)(3) pertains to a release that “requires immediate reporting  
7 to the Office of Emergency Services...pursuant to Section 25507.” The cross-reference to Section  
8 25507 appears to be inapt. Section 25507 governs which businesses are required to implement a  
9 business plan for emergency response for hazardous material releases. Another section in the  
10 same article, Section 25510, pertains to immediate reporting of hazardous material releases.  
11 Section 25510 provides, in part:

12 “Except as provided in subdivision (b), the handler or an employee, authorized  
13 representative, agent, or designee of a handler, shall, upon discovery, immediately report any  
14 release or threatened release of a hazardous material, or an actual release of a hazardous  
15 substance, as defined in Section 374.8 of the Penal Code, to the UPA, and to the [Office of  
16 Emergency Services], in accordance with the regulations adopted pursuant to this section. The  
17 handler or an employee, authorized representative, agent, or designee of the handler shall provide  
18 all state, city, or county fire or public health or safety personnel and emergency response  
19 personnel with access to the handler’s facilities.”

20 The cross-reference has been updated to refer to Section 25510 in proposed Section 68675. **The**  
21 **staff welcomes comment on the proposed correction to this cross-reference.**

22 **§ 68680. Liability for failure to report**

23 68680. (a) The owner of property on which a reportable release has occurred and  
24 any person who releases, or causes a reportable release and who fails to make the  
25 written report required by subdivision (b) of Section 68675, shall be liable for a  
26 penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate  
27 violation and for each day that a violation continues. Each day on which the  
28 released hazardous substance remains is a separate violation unless the person has  
29 either filed the report or is in compliance with an order issued by a local, state, or  
30 federal agency with regard to the release.

31 (b) Liability under this article may be imposed in a civil action or may be  
32 administratively imposed by the department pursuant to Article 4 (commencing  
33 with Section 69590) of Chapter 7.

34 (c) If the violation of subdivision (b) of Section 68675 results in, or significantly  
35 contributes to, an emergency, including, but not limited to, a fire, to which a  
36 county, city, or district is required to respond, the responsible party may be  
37 assessed the full cost of the emergency response by the city, county, or district.

38 **Comment.** Section 68680 continues subdivisions (d)-(f), inclusive, of former Section 25359.4  
39 without substantive change.

40 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105  
41 (“release”), 68140 (“response”), 68145 (“responsible party”).

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Article 3. Disclosure Requirement

**§ 68700. Disclosure requirement for property owner**

68700. Any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property shall, prior to the sale, lease, or rental of the real property by that owner, give written notice of that condition to the buyer, lessee, or renter of the real property. Failure of the owner to provide written notice when required by this section to the buyer, lessee, or renter shall subject the owner to actual damages and any other remedies provided by law. In addition, where the owner has actual knowledge of the presence of any release of a material amount of a hazardous substance and knowingly and willfully fails to provide written notice to the buyer, lessee, or renter, as required by this section, the owner is liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation.

**Comment.** Section 68700 continues subdivision (a) of former Section 25359.7 without substantive change.

See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”).

**§ 68705. Disclosure requirement for lessee or renter**

68705. Any lessee or renter of real property who knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath that real property shall, within a reasonable period of time, either prior to the release or following the discovery by the lessee or renter of the presence or believed presence of the hazardous substance release, give written notice of that condition to the owner of the real property or to the lessor under the lessee’s or renter’s lease or rental agreement.

(a) A lessee or renter who fails to provide written notice when required by this section to the owner or lessor is subject to actual damages and any other remedy provided by law.

(b) If the lessee or renter has knowledge of the presence of a release of a material amount of a hazardous substance, or of a hazardous substance release that is required to be reported to a state or local agency pursuant to law, on or under the real property leased or rented by the lessee or renter and knowingly and willfully fails to provide written notice when required by this section to the owner or lessor, both of the following shall apply:

(1) The failure is deemed to constitute a default, upon the owner’s or lessor’s written notice to the lessee or renter, under the lessee’s or renter’s lease or rental agreement, except that this paragraph does not apply to lessees and renters of property used exclusively for residential purposes.

(2) The lessee or renter is liable for a civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation.

1 (c) A lessee or renter may cure a default under the lessee’s or renter’s lease or  
2 rental agreement that resulted from a violation of this section, by promptly  
3 commencing and completing the removal of, or taking other appropriate remedial  
4 action with respect to, the hazardous substance release. The removal or remedial  
5 action shall be conducted in accordance with all applicable laws and regulations  
6 and in a manner that is reasonably acceptable to, and that is approved in writing  
7 by, the owner or lessor. This subdivision does not relieve the lessee or renter of  
8 any liability for actual damages or for any civil penalty for a violation of this  
9 section.

10 **Comment.** Section 68705 continues subdivision (b) of former Section 25359.7 without  
11 substantive change.

12 See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135  
13 (“remove”).

#### 14 Article 4. Securing Site of Release

##### 15 § 68720. Conditions when order to secure site is required

16 68720. After making a determination, based upon a preliminary site assessment  
17 that there has been a release of a hazardous substance on, under, or into the land  
18 on a site, the department or a county health officer shall order the property owner  
19 to secure the site if all of the following conditions apply to that site:

20 (a) The release does not comply with the terms of a current permit or interim  
21 status document or regulation of the department.

22 (b) The site poses a public health risk if human contact is made with the  
23 hazardous waste or the surrounding contaminated area.

24 (c) There is a likelihood of human or domestic animal contact.

25 **Comment.** Section 68720 continues subdivision (a) of former Section 25359.5 without  
26 substantive change.

27 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155  
28 (“site”).

29 **Staff Note.** Proposed Section 68720(b) refers to “hazardous waste.” The term “hazardous waste”  
30 is not defined in Chapter 6.8. The provisions of Chapter 6.8 mostly address “hazardous  
31 substances.” And, proposed Section 68720 itself governs a site where there has been a release of a  
32 “hazardous substance.” It seems unlikely that the use of the term “hazardous waste” was intended  
33 in this provision, particularly without an applicable definition. **The staff welcomes comment on  
34 this issue.**

##### 35 § 68725. Requirements of order to secure site

36 68725. (a) The order to secure the site shall require, within five days after  
37 receiving notification of the order, the posting of the site with signs. The order  
38 shall also require, within five days after receiving notification of the order, that the  
39 site be enclosed with a fence, unless it is physically and economically infeasible or  
40 unless the fencing is unnecessary because it will not alleviate the danger to the  
41 public health.

1 (b) If fencing is ordered, the fences shall be maintained at the site to prevent  
2 unauthorized persons from gaining access to the site. The signs shall be  
3 maintained and shall meet all of the following requirements:

4 (1) The signs shall be bilingual, appropriate to the local area, and may include  
5 international symbols, as required by the department.

6 (2) The signs shall have lettering that is legible from a distance of at least 25  
7 feet.

8 (3) The signs shall read: “Caution: Hazardous Substance Area, Unauthorized  
9 Persons Keep Out” and shall have the name and phone number of the department  
10 or the county health officer that ordered the posting.

11 (4) The signs shall be visible from the surrounding contaminated area and posted  
12 at each route of entry into the site, including those routes that are likely to be used  
13 by unauthorized persons, at access roads leading to the site, and facing navigable  
14 waterways where appropriate.

15 (5) The signs shall be of a material able to withstand the elements.

16 **Comment.** Section 68725 continues subdivisions (b) and (c) of former Section 25359.5  
17 without substantive change.

18 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68155  
19 (“site”).

20 **§ 68730. Advising agencies on health risks and site requirements**

21 68730. The department or the county health officer shall advise other agencies  
22 on the public health risks and the need for fencing and posting of sites when those  
23 agencies confirm the release of a hazardous substance pursuant to Section 68720.

24 **Comment.** Section 68730 continues subdivision (e) of former Section 25359.5 without  
25 substantive change.

26 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155  
27 (“site”).

28 **§ 68735. Penalty for failure to comply with order to secure site**

29 68735. (a) A property owner who fails to comply with an order of the  
30 department or the county health officer is subject to a civil penalty of up to  
31 twenty-five thousand dollars (\$25,000). In determining the amount of a civil  
32 penalty to be imposed, the court shall consider all relevant circumstances,  
33 including, but not limited to, the economic assets of the property owner and  
34 whether the property owner has acted in good faith.

35 (b) If the property owner fails to secure and post the site, the department or the  
36 county health officer shall secure and post the site pursuant to subdivision (a) of  
37 Section 68725 within 30 days of the expiration of the five-day period and shall  
38 seek recovery of the costs of that securing and posting from the property owner. If  
39 the site is an abandoned site, as defined in Section 68505, if the site cannot be  
40 traced to a specific owner, or if the owner is the subject of an order for relief in  
41 bankruptcy, the department or the county health officer shall secure and post the  
42 site, using any source of funds, pursuant to subdivision (a) of Section 68725.

1 **Comment.** Section 68735 continues subdivision (d) of former Section 25359.5 without  
2 substantive change.

3 See Sections 68050 (“department”), 68155 (“site”).

4 **§ 68740. Remedies and penalties not exclusive**

5 68740. The remedies and penalties specified in this article and Section 68505  
6 are in addition to, and do not affect, any other remedies, enforcement actions,  
7 requirements, or penalties otherwise authorized by law.

8 **Comment.** Section 68740 continues subdivision (f) of former Section 25359.5 without  
9 substantive change.

10 **Article 5. Listing of Hazardous Substance Release Sites**

11 **§ 68760. List of selected hazardous substance release sites**

12 68760. (a) The department shall publish and revise, at least annually, a listing of  
13 the hazardous substance release sites selected for, and subject to, a response action  
14 under this part.

15 (b) The department shall list the sites based upon the criteria adopted pursuant to  
16 Section 68765 and the extent to which deferral of a response action at a site will  
17 result, or is likely to result, in a rapid increase in response costs at the site or in a  
18 significant increase in risk to human health or safety or the environment.

19 (c) The department shall list sites alphabetically within each priority tier, as  
20 specified in Section 68770, and shall update the list of sites at least annually to  
21 reflect new information regarding previously listed sites or the addition of new  
22 sites requiring response actions.

23 (d) The list of sites established pursuant to this section shall be published by the  
24 department and made available to the public or any interested person upon request  
25 and without cost.

26 **Comment.** Section 68760 continues subdivision (b) of former Section 25356 without  
27 substantive change.

28 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105  
29 (“release”), 68140 (“response”), 68155 (“site”), 68170 (“tier”).

30 **§ 68765. Criteria for selection of hazardous substance release sites**

31 68765. (a) The department shall adopt, by regulation, criteria for the selection of  
32 hazardous substance release sites for a response action under this part. The criteria  
33 shall take into account pertinent factors relating to public health, safety and the  
34 environment. The pertinent factors shall include, but are not necessarily limited to,  
35 potential hazards to public health, safety or the environment, the risk of fire or  
36 explosion, and toxic hazards, and shall also include the criteria established  
37 pursuant to Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).

38 (b) The criteria adopted pursuant to subdivision (a) may include a minimum  
39 hazard threshold, below which sites shall not be listed pursuant to this article, if  
40 the sites are subject to the authority of the department to order a response action,

1 or similar action, pursuant to Chapter 6.5 (commencing with Section 25100) of  
2 Division 20.

3 **Comment.** Section 68765 restates subdivision (a) of former Section 25356 without substantive  
4 change. A cross-reference to the federal act has been corrected.

5 See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”),  
6 68105 (“release”), 68140 (“response”), 68155 (“site”).

7 **Staff Notes.** (1) Proposed Section 68765(a) restates Section 25356(a)(1), which provides as  
8 follows:

9 “The department shall adopt, by regulation, criteria for the selection of hazardous  
10 substance release sites for a response action under this chapter. The criteria shall take into account  
11 pertinent factors relating to public health, safety and the environment, which shall include, but are  
12 not necessarily limited to, potential hazards to public health, safety or the environment, the risk of  
13 fire or explosion, and toxic hazards, and shall also include the criteria established pursuant to  
14 Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)).”

15 The changes reflected in proposed Section 68765(a) are intended to be nonsubstantive. **The staff  
16 welcomes any comment on the proposed restatement.**

17 (2) The cross-reference to the federal act in the last sentence of proposed Section 68765(a) has  
18 been corrected. The existing cross-reference refers to “Section 105(8) of the federal act (42  
19 U.S.C. Sec. 9605(8)).” This cross-reference is missing a subdivision designation. Only  
20 subdivision (a) of Section 105 has a paragraph 8. For this reason, the cross-reference was  
21 corrected to refer to “Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).” **The staff  
22 welcomes comments on this proposed correction.**

23 **§ 68770. Priority tiers for listed hazardous substance release sites**

24 68770. The department shall assign each site listed pursuant to Section 68760 to  
25 one of the following priority tiers for the purpose of informing the public of the  
26 relative hazard of listed sites:

27 (a) “Priority tier one” shall include any site that the department determines,  
28 using the criteria described in Section 68760, meets any of the following  
29 conditions:

30 (1) The site may pose a known or probable threat to public health or safety  
31 through direct human contact.

32 (2) The site may pose a substantial probability of explosion or a fire or a  
33 significant risk due to hazardous air emissions.

34 (3) The site has a high potential to contaminate or to continue to contaminate  
35 groundwater resources that are present or possible future sources of drinking  
36 water.

37 (4) There is a risk that the costs of a response action will increase rapidly or  
38 risks to human health or safety or the environment will increase significantly if  
39 response action is deferred.

40 (b) “Priority tier two” shall include any site that poses a substantial but less  
41 immediate threat to public health or safety or the environment and any site that  
42 will require a response action, but presents only a limited and defined threat to  
43 human health or safety or the environment. Priority tier two may contain sites  
44 previously listed in priority tier one if the department determines that direct threats

1 to human health or safety have been removed and if physical deterioration of the  
2 site has been stabilized so that threats to the environment are not significantly  
3 increasing.

4 **Comment.** Section 68770 continues subdivision (c) of former Section 25356 without  
5 substantive change.

6 See Sections 68050 (“department”), 68135 (“remove”), 68140 (“response”), 68155 (“site”),  
7 68170 (“tier”).

8 **§ 68775. Requirements for listed hazardous substance release sites**

9 68775. Hazardous substance release sites listed by the department pursuant to  
10 Section 68760 are subject to this part and all actions carried out in response to  
11 hazardous substance releases or threatened releases at listed sites shall comply  
12 with the procedures, standards, and other requirements set forth in this part or  
13 established pursuant to the requirements of this part.

14 **Comment.** Section 68775 continues subdivision (d) of former Section 25356 without  
15 substantive change.

16 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140  
17 (“response”), 68155 (“site”).

18 **§ 68780. Conformance of expenditures with prioritization of sites**

19 68780. (a) Except as provided in subdivision (b), the department shall expend all  
20 funds appropriated to the department for any response action pursuant to this part,  
21 and shall take all response action pursuant to this part, in conformance with the  
22 assignment of sites to priority tiers pursuant to Section 68770.

23 (b) The department may expend funds appropriated for a response action and  
24 take a response action, without conforming to the listing of sites by tier pursuant to  
25 Section 68770, or at a site that has not been listed pursuant to Section 68760, if  
26 any of the following apply:

27 (1) The department is monitoring a response action conducted by a responsible  
28 party at a site listed pursuant to Section 68760 or at a site that is not listed but is  
29 being voluntarily remediated by a responsible party or another person.

30 (2) The expenditure of funds is necessary to pay for the state share of a response  
31 action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

32 (3) The department is assessing, evaluating, and characterizing the nature and  
33 extent of a hazardous substance release at a site for which the department has not  
34 been able to identify a responsible party, the responsible party is defunct or  
35 insolvent, or the responsible party is not in compliance with an order issued, or an  
36 enforceable agreement entered into, pursuant to Section 69055.

37 (4) The department is carrying out activities pursuant to Section 69065 or  
38 subdivision (b) or (c) of Section 69060.

39 (c) The department may, at any one time, expend funds and take a response  
40 action at more than one site on the list established pursuant to Section 68760. In  
41 addition, the department may, at any one time, oversee the performance of any

1 activities conducted by a responsible party on more than one site on the list  
2 established pursuant to Section 68760.

3 **Comment.** Section 68780 continues subdivision (f) of former Section 25356 without  
4 substantive change.

5 See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”),  
6 68085 (“person”), 68105 (“release”), 68140 (“response”), 68145 (“responsible party”), 68155  
7 (“site”), 68170 (“tier”).

8 **§ 68785. Commencement of response actions at sites**

9 68785. This article does not require the department to characterize every site  
10 listed pursuant to Section 68760 before the department begins response actions at  
11 those sites.

12 **Comment.** Section 68785 continues subdivision (g) of former Section 25356 without  
13 substantive change.

14 See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”).

15 **§ 68790. Responsibility for response action compliance**

16 68790. The department, or, if appropriate, the regional board, is the state agency  
17 with sole responsibility for ensuring that required action in response to a  
18 hazardous substance release or threatened release at a listed site is carried out in  
19 compliance with the procedures, standards, and other requirements set forth in this  
20 part, and shall, as appropriate, coordinate the involvement of interested or affected  
21 agencies in the response action.

22 **Comment.** Section 68790 continues subdivision (h) of former Section 25356 without  
23 substantive change.

24 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),  
25 68105 (“release”), 68140 (“response”), 68155 (“site”).

26 **Staff Note.** Section 25356(h) refers to the “California regional water quality board.” It appears  
27 that this provision should instead refer to the “California regional water quality *control* board.”  
28 Proposed Section 68790 replaces the phrase with the “regional board.” In proposed Section  
29 68100, “regional board” is defined as “a California regional water quality control board.”

30 **§ 68795. Application of administrative rulemaking requirements**

31 68795. (a) The adoption of the minimum hazard threshold pursuant to  
32 subdivision (b) of Section 68765, the department’s development and publication  
33 of the list of sites pursuant to Section 68760, and the assignment of sites to a tier  
34 pursuant to Section 68770, including the classification of a site as within a  
35 minimum threshold pursuant to Section 68770, are not subject to Chapter 3.5  
36 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the  
37 Government Code.

38 (b) The adoption of the criteria used by the department pursuant to Section  
39 68760 to determine the extent to which deferral of a response action at a site will  
40 result, or is likely to result, in a rapid increase in response costs at a site or in a  
41 significant increase in risk to human health or safety or the environment is subject

1 to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2  
2 of the Government Code.

3 **Comment.** Section 68795 continues subdivision (e) of former Section 25356 without  
4 substantive change.

5 See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”), 68170 (“tier”).

6 CHAPTER 5. CLEANUP OF HAZARDOUS SUBSTANCE RELEASES

7 Article 1. General Provisions

8 **§ 68850. Coordination of response actions by Governor**

9 68850. The Governor is responsible for the coordination of all state response  
10 actions for sites identified in Article 5 (commencing with Section 68760) of  
11 Chapter 4 in order to assure the maximum use of available federal funds.

12 **Comment.** Section 68850 continues subdivision (a) of former Section 25355 without  
13 substantive change.

14 See Sections 68140 (“response”), 68155 (“site”).

15 **Staff Note.** Section 25355(a) refers to “sites identified in Section 25356.” Section 25356 has been  
16 proposed for recodification as Article 5 of Chapter 4 of this part. The cross-reference has been  
17 updated accordingly. Section 25356 relates to the listing and prioritization of sites for response  
18 actions. However, Section 25356 also indicates that there may be a class of sites that is not listed  
19 (i.e., those that fall below the minimum hazard threshold). The staff sees benefit in clarifying the  
20 intended meaning of “sites identified in Section 25356.” **The staff welcomes comment on this**  
21 **issue.**

22 **§ 68855. Consistency requirements for response actions**

23 68855. (a) For response actions taken pursuant to the federal act, only those  
24 costs for actions that are consistent with the priorities, guidelines, criteria, and  
25 regulations contained in the national contingency plan, as revised and republished  
26 pursuant to Section 105 of the federal act (42 U.S.C. Sec. 9605), shall qualify for  
27 appropriation by the Legislature and expenditure by the director pursuant to  
28 Sections 68240, 68875, and 69450.

29 (b) For response actions not taken pursuant to the federal act or for response  
30 actions taken that are not specifically addressed by the priorities, guidelines,  
31 criteria, and regulations contained in the national contingency plan, as revised and  
32 republished, the costs of the response actions shall also qualify for appropriation  
33 by the Legislature and expenditure by the department pursuant to Sections 68240,  
34 68875, and 69450 provided they are, to the maximum extent possible, consistent  
35 with the priorities, guidelines, criteria, and regulations contained in the national  
36 contingency plan for similar releases, situations, or events.

37 **Comment.** Section 68855 restates the first two sentences of former Section 25350 without  
38 substantive change.

39 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68105  
40 (“release”), 68140 (“response”).

1 **Staff Notes. (1)** Proposed Section 68855 restates part of Section 25330 to add subdivision  
2 designations and eliminate the word “thereof.” “Thereof” was replaced with the phrase “of the  
3 response actions.” These changes are intended to be nonsubstantive. **The staff welcomes any**  
4 **comment on the proposed changes.**

5 **(2)** Subdivision (a) of proposed Section 68855 refers to “expenditure by the director pursuant to”  
6 three specified sections, while subdivision (b) refers to “expenditure by the department pursuant  
7 to” the same three specified sections. It is not clear why these subdivisions do not refer to the  
8 same entity (either the department or the director). As indicated in Note #3 below, one of the  
9 sections has been repealed. Section 25352 permits appropriation of funds “to the department” for  
10 certain purposes, while Section 25354 allows the department to “expend moneys in the reserve  
11 account.” Given that, it appears that both subdivisions should refer to “expenditure by the  
12 department.” **The staff welcomes comment on this issue.**

13 **(3)** Section 25350 refers to expenditures pursuant to three specified sections, including Section  
14 25351.

15 Currently, Section 25351 does not exist. See 1997 Cal. Stat. ch 870, § 43. Relevant substance  
16 of former Section 25351 does not appear to be currently continued elsewhere in this code. For  
17 that reason, the cross-reference to Section 25351 was not continued.

18 **The staff welcomes comment on this proposed cross-reference update.**

19 **(4)** Section 25350 also refers to expenditures pursuant to Section 25352.

20 Section 25352 has been divided into multiple provisions in this recodification. The cross-  
21 reference to Section 25352 has been updated to refer only to the provisions related to  
22 expenditures (subdivisions (a) and (b) of Section 25352, which are proposed for recodification as  
23 Section 69450). Subdivision (c) of Section 25352, which will be recodified separately, will be  
24 omitted from the cross-reference, as it relates to cost recovery and does not appear relevant.

25 **The staff welcomes comment on this proposed cross-reference update.**

26 **(5)** Section 25350 also refers to expenditures pursuant to Section 25354.

27 Section 25354 has been proposed for recodification as three sections (proposed Sections  
28 68240, 68580, and 68875). One of those sections, proposed Section 68580, was omitted from this  
29 cross-reference, as it contains only a reporting requirement and does not appear to be relevant for  
30 this cross-reference.

31 **The staff welcomes comment on this proposed cross-reference update.**

32 **§ 68860. No duplication of federal response actions**

33 68860. No response actions taken pursuant to this part by the department or  
34 regional or local agencies shall duplicate federal response actions.

35 **Comment.** Section 68855 continues the third sentence of former Section 25350 without  
36 substantive change.

37 See Sections 68050 (“department”), 68140 (“response”).

38 **Article 2. Exigent Actions**

39 **§ 68870. Powers of director to address imminent or substantial endangerment**

40 68870. Whenever the director determines that there may be an imminent or  
41 substantial endangerment to the public health or welfare or to the environment,  
42 because of a release or a threatened release of a hazardous substance, the director  
43 may do any or all of the following:

1 (a) Order any responsible party to take or pay for appropriate removal or  
 2 remedial action necessary to protect the public health and safety and the  
 3 environment. No order under this section shall be made to an owner of real  
 4 property solely on the basis of that ownership as specified in Sections 101(35) and  
 5 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)). The director  
 6 shall give the responsible party an opportunity to assert all defenses to the order.

7 (b) Take or contract for any necessary removal or remedial action.

8 (c) Request the Attorney General to secure relief as may be necessary from the  
 9 responsible party to abate the danger or threat. The superior court of the county in  
 10 which the threat or danger occurs shall have jurisdiction to grant the relief the  
 11 public interest and equities of the case may require to protect public health and  
 12 welfare and the environment. Upon a showing by the department that a release or  
 13 threatened release of a hazardous substance has occurred or is occurring, and that  
 14 there may be an imminent or substantial endangerment to the public health and  
 15 safety or to the environment, the court may grant a temporary restraining order or  
 16 a preliminary or permanent injunction pursuant to subdivision (a) of Section  
 17 68660.

18 **Comment.** Section 68870 restates subdivision (a) of former Section 25358.3 without  
 19 substantive change.

20 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075  
 21 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145  
 22 (“responsible party”).

23 **Staff Notes. (1)** Proposed Section 68870 restates Section 25358.3(a)(1) and (a)(3) to eliminate a  
 24 use of the singular and plural form of the same word: “responsible party or parties.”

25 It does not appear to be necessary to use both the singular and plural forms. Section 13  
 26 provides “[t]he singular number includes the plural, and the plural the singular.” Proposed  
 27 Section 68870 was simplified to use only the singular form in accordance with standard drafting  
 28 practice.

29 Aside from these changes, only two other wording changes were made, both in Section  
 30 25358.3(a)(3). Those two changes were replacing a use of the word “which” with “that” and  
 31 deleting a use of the word “such.”

32 The changes reflected in proposed Section 68870 are intended to be nonsubstantive. **The staff**  
 33 **welcomes any comment on the proposed restatement.**

34 **(2)** Section 25358.3(a) specifies that no order “under this section” shall be made to a real property  
 35 owner solely on the basis of ownership. Section 25358.3 has been proposed for recodification as  
 36 multiple provisions. Proposed Section 68870 continues the only part of Section 25358.3 that  
 37 expressly authorizes orders issued by the director to a responsible party. For this reason, the  
 38 cross-reference will refer only to “this section” and omit the remainder of Section 25358.3  
 39 (proposed for recodification as Article 1 of Chapter 4). **The staff welcomes comment on this**  
 40 **proposed treatment of this reference.**

41 **(3)** Proposed Section 68870(a) precludes an order made to a real property owner “solely on the  
 42 basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act...” Those  
 43 federal act sections do not directly preclude making an order to a property owner based on  
 44 ownership. Rather, these sections provide certain defenses to landowners under specified  
 45 situations (e.g., act of God or act of war). If a landowner had a defense, the defense would  
 46 presumably be raised in response to an order (and would not preclude issuance of the order). **The**

1 **staff welcomes comment on whether this provision has caused problems or confusion in**  
2 **practice.**

3 **§ 68875. Immediate corrective action**

4 68875. (a) The department shall expend moneys available in the reserve  
5 account, established pursuant to subdivision (a) of Section 68240, only for the  
6 purpose of taking immediate corrective action necessary to remedy or prevent an  
7 emergency resulting from a fire or an explosion of, or human exposure to,  
8 hazardous substances caused by the release or threatened release of a hazardous  
9 substance.

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

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

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

21 (4) If the department finds that the corrective action includes the relocation of  
22 individuals, the department may contract with those individuals for out-of-pocket  
23 expenses incurred in moving for an amount of not more than one thousand dollars  
24 (\$1,000).

25 **Comment.** Section 68875 restates the second sentence of subdivision (a) and the whole of  
26 subdivision (b) of former Section 25354 without substantive change.

27 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
28 (“remedy”).

29 **Staff Note.** Section 25354 has been proposed for recodification as multiple provisions. Separating  
30 this section into multiple provisions required the addition of a cross-reference to provide context.  
31 In subdivision (a), the phrase “established pursuant to subdivision (a) of Section 68240” was  
32 added to identify the reserve account. Aside from this change, proposed Section 68875 does not  
33 modify the language it contains from Section 25354. **The staff welcomes comment on this**  
34 **proposed restatement.**

35 **§ 68880. Exemptions for exigent actions**

36 68880. Any removal or remedial action taken or contracted by the department  
37 pursuant to Section 68870 or 68875 shall be exempt from all of the following  
38 provisions:

39 (a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of  
40 Division 2 of the Public Contract Code).

41 (b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the  
42 Government Code.

1 (c) Section 10295 of the Public Contract Code.

2 (d) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of  
3 Division 2 of the Public Contract Code.

4 **Comment.** Section 68880 continues former Section 25358.5 without substantive change.  
5 See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

6 **Staff Notes. (1)** Section 25358.5 provides exemptions for actions taken “pursuant to Section  
7 25354 ....”

8 Section 25354 has been proposed for restatement as three provisions (proposed Sections  
9 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision  
10 authorizing expenditures for immediate corrective action (proposed Section 68875). The  
11 remaining provisions, which relate to appropriations and the funding of the emergency reserve  
12 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not  
13 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

14 **The staff welcomes comment on this proposed cross-reference update.**

15 **(2)** Section 25358(c) cross-refers to several provisions of the Public Contract Code. This cross-  
16 reference includes two articles, Articles 4 and 5, of Chapter 2 of Part 2 of Division 2 of that code.  
17 One of those articles, Article 5, no longer exists. See 2000 Cal. Stat. ch. 759, § 18 (repealing the  
18 heading of Article 5). The provisions of former Article 5 that have not been repealed are now in  
19 Article 4, the final section of which is Section 10381 (former Article 5 commenced with Section  
20 10355). For these reasons, the cross-reference to Article 5 was not continued. **The staff**  
21 **welcomes comment on this cross-reference update.**

22 **§ 68885. Prequalification of bidders for exigent actions**

23 68885. (a) The department may prequalify bidders for remedial or removal  
24 actions taken pursuant to Section 68870 or 68875. The department may reject the  
25 bid of any prospective bidder that has not been prequalified.

26 (b) To prequalify bidders, the department shall adopt and apply a uniform  
27 system of rating bidders. In order to obtain information for such rating, the  
28 department may require from prospective bidders answers to questions, including,  
29 but not limited to, questions about the bidder’s financial ability, the bidder’s  
30 experience in removal and remedial action involving hazardous substances, the  
31 bidder’s past safety record, and the bidder’s past performance on federal, state, or  
32 local government projects. The department may also require prospective bidders to  
33 submit financial statements.

34 (c) The department shall utilize the business financial data and information  
35 submitted by a bidder pursuant to subdivision (b) only for the purposes of  
36 prequalifying bidders pursuant to this section and shall not otherwise disseminate  
37 this data or information.

38 (d) The system of rating bidders may be adopted by the department as  
39 emergency regulations in accordance with Chapter 3.5 (commencing with Section  
40 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for  
41 purposes of that chapter, when these regulations are adopted as emergency  
42 regulations pursuant to Section 11349.6 of the Government Code, the regulations  
43 shall be deemed to be necessary for the immediate preservation of the public  
44 peace, health and safety, and general welfare. It is the intent of the Legislature that

1 emergency regulations adopted pursuant to this subdivision shall remain in effect  
2 until the regulations are adopted as final regulations, pursuant to Chapter 3.5  
3 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the  
4 Government Code.

5 **Comment.** Section 68885 continues former Section 25358.6 without substantive change.

6 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68125 (“remedy”), 68135  
7 (“remove”).

8 **Staff Notes. (1)** Section 68885 permits prequalification of bidders for action taken “pursuant to  
9 Section 25354 ....” This cross-reference has been updated, as described in Note 1 to proposed  
10 Section 68880. **The staff welcomes comment on this proposed cross-reference update.**

11 **(2)** Subdivision (d) of Section 25358.6 pertains to regulations adopted for rating bidders. This  
12 provision, which was originally adopted in 1983, seems to focus on the adoption of regulations at  
13 that time. It is unclear whether this provision has continuing application. **The staff welcomes**  
14 **comment on this issue.**

15 Article 3. Referral of Site to Department by  
16 State or Regional Water Board

17 **Staff Note.** Section 25355.6, which is proposed for recodification in this article, contains several  
18 references to a “California regional water resources control board” or a “California regional water  
19 quality control board.” The staff believes that these references were all intended to refer to a  
20 “California regional water quality control board.” In this proposed article, those references have  
21 all been replaced with the defined term, “regional board.” In proposed Section 68100, “regional  
22 board” is defined as “a California regional water quality control board.”

23 **§ 68900. Referral of sites to department for listing**

24 68900. The State Water Resources Control Board or a regional board that has  
25 jurisdiction over a hazardous substance release site pursuant to Division 7  
26 (commencing with Section 13000) of the Water Code may refer the site to the  
27 department as a candidate for listing pursuant to Article 5 (commencing with  
28 Section 68760) of Chapter 4. After determining that the site meets the criteria  
29 adopted pursuant to Section 68765, the department may place the site on the list of  
30 sites subject to this part and establish its priority ranking pursuant to Article 5  
31 (commencing with Section 68760) of Chapter 4.

32 **Comment.** Section 68900 continues subdivision (a) of former Section 25355.6 without  
33 substantive change.

34 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),  
35 68105 (“release”), 68155 (“site”).

36 **§ 68905. Authority of department at listed, referred site**

37 68905. If a hazardous substance release site is referred to the department and is  
38 listed pursuant to Section 68900, the department may expend money from the state  
39 account for removal or remedial action at the site, upon appropriation by the  
40 Legislature, without first issuing an order or entering into an agreement pursuant  
41 to paragraph (1) of subdivision (a) of Section 69055, if all of the following apply:

1 (a) The State Water Resources Control Board or a regional board has issued  
2 either a cease and desist order pursuant to Section 13301 of the Water Code or a  
3 cleanup and abatement order pursuant to Section 13304 of the Water Code to the  
4 potentially responsible party for the site.

5 (b) The State Water Resources Control Board or the regional board has made a  
6 final finding that the potentially responsible party has not complied with the order  
7 issued pursuant to subdivision (a).

8 (c) The State Water Resources Control Board or the regional board has notified  
9 the potentially responsible party of the determination made pursuant to subdivision  
10 (b) and that the hazardous substance release site has been referred to the  
11 department pursuant to Section 68900.

12 **Comment.** Section 68905 continues subdivision (b) of former Section 25355.6 without  
13 substantive change.

14 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),  
15 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155  
16 (“site”), 68165 (“state account”).

17 **§ 68910. Notice to state or regional board regarding referred site**

18 68910. (a) If a hazardous substance release site is referred to the department  
19 pursuant to Section 68900, and the department makes either of the following  
20 determinations, the department shall notify the appropriate regional board and the  
21 State Water Resources Control Board:

22 (1) The department determines that the site does not meet the criteria established  
23 pursuant to Section 68765 and the site cannot be placed, pursuant to Article 5  
24 (commencing with Section 68760) of Chapter 4, on the list of sites subject to this  
25 part.

26 (2) The department determines that a removal or remedial action at the site will  
27 not commence for a period of one year from the date of listing due to a lack of  
28 funds or the low priority of the site.

29 (b) If a regional board or the State Water Resources Control Board receives a  
30 notice pursuant to subdivision (a), the regional board or state board may take any  
31 further action concerning the hazardous substance release site that the regional  
32 board or state board determines to be necessary or feasible, and that is authorized  
33 by this part or Division 7 (commencing with Section 13000) of the Water Code.

34 **Comment.** Section 68910 continues subdivisions (c) and (d) of former Section 25355.6  
35 without substantive change.

36 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),  
37 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

38 **Staff Note.** Section 25355.6(c)(1) refers to criteria established “pursuant to subdivision (a).” This  
39 cross-reference appears to be erroneous, as Section 25355.6(a) does not involve the establishment  
40 of criteria. Instead, the correct cross-reference appears to be “subdivision (a) of Section 25356,”  
41 which pertains to the criteria for listing sites. That provision would be recodified as proposed  
42 Section 68765. Accordingly, proposed Section 68910(a)(1) would cross-refer to “Section 68765,”  
43 as shown above. **The staff welcomes comment on this proposed cross-reference correction.**

Article 4. Public Participation

§ 68925. Role of community service offices

68925. With regard to sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4 where the department or regional board is taking action to investigate or remediate the site, the community service offices shall facilitate communication between the department or regional board, the responsible parties, and the affected community, including any community advisory group that may have been formed in the community where the hazardous substance release site is located.

**Comment.** Section 68925 restates the second sentence of subdivision (a) of former Section 25358.7.2 without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”), 68105 (“release”), 68145 (“responsible party”), 68155 (“site”).

**Staff Note.** The second sentence of Section 25358.7.2(a) describes the role of the “community assistance offices.” This section also establishes “community service offices.” See proposed Section 68420. The staff found no other references to a “community assistance office” in the Health and Safety Code. It appears that the reference to “community assistance offices” is an error and this provision should apply to “community service offices.” For this reason, proposed Section 68925 replaces the term “community assistance offices” with “community service offices.” **The staff welcomes comment on this proposed correction.**

§ 68930. Department or regional board facilitation of public participation in response actions

68930. (a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4.

(b) The department, or the regional board, as appropriate, shall inform the public, and in particular, persons living in close proximity to a hazardous substance release site listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4, of the existence of the site and the department’s or regional board’s intention to conduct a response action at the site.

(c)(1) The department shall conduct a baseline community survey to determine the level of public interest and desire for involvement in the department’s or regional board’s activities, and to solicit concerns and information regarding the site from the affected community.

(2) Based on the results of the baseline survey, the department or regional board shall develop a public participation plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

1 (d) The department or regional board shall provide any person affected by a  
2 response action undertaken for sites listed pursuant to Article 5 (commencing with  
3 Section 68760) of Chapter 4 with the opportunity to participate in the department’s  
4 or regional board’s decisionmaking process regarding that action by taking all of  
5 the following actions:

6 (1) Provide access to information that the department or regional board is  
7 required to release pursuant to the California Public Records Act (Chapter 3.5  
8 (commencing with Section 6250) of Division 7 of Title 1 of the Government  
9 Code), relating to the action, except for the following:

10 (A) Trade secrets, as defined in Section 68480.

11 (B) Business financial data and information, as specified in subdivision (c) of  
12 Section 68885.

13 (C) Information that the department or regional board is prohibited from  
14 releasing pursuant to any state or federal law.

15 (2) Provide factsheets, based on the expressed level of public interest, regarding  
16 plans to conduct the major elements of the site investigation and response actions.  
17 The factsheets shall present the relevant information in nontechnical language and  
18 shall be detailed enough to provide interested persons with a good understanding  
19 of the planned activities. The factsheets shall be made available in languages other  
20 than English if appropriate.

21 (3) Provide notification, upon request, of any public meetings held by the  
22 department or regional board concerning the action.

23 (4) Provide the opportunity to attend and to participate at those public meetings.

24 (5) Based on the results of the baseline community survey, provide opportunities  
25 for public involvement at key stages of the response action process, including the  
26 health risk assessment, the preliminary assessment, the site inspection, the  
27 remedial investigation, and the feasibility study stages of the process. If the  
28 department or regional board determines that public meetings or other  
29 opportunities for public comment are not appropriate at any of the stages listed in  
30 this section, the department or regional board shall provide notice of that decision  
31 to the affected community.

32 (e) The department or regional board shall develop and make available to the  
33 public a schedule of activities for each site for which remedial action is expected  
34 to be taken by the department or regional board pursuant to this part and shall  
35 make available to the public any plan provided to the department or regional board  
36 by any responsible party, unless the department is prohibited from releasing the  
37 information pursuant to any state or federal law.

38 (f) In making decisions regarding the methods to be used for removal or  
39 remedial actions taken pursuant to this part, the department or regional board shall  
40 incorporate or respond in writing to the advice of persons affected by the actions.

41 (g) This section does not apply to emergency actions taken pursuant to Section  
42 68875.

43 **Comment.** Section 68930 restates former Section 25358.7 without substantive change.

1 See Sections 68050 (“department”), 68060 (“feasibility study”), 68075 (“hazardous  
2 substance”), 68085 (“person”), 68100 (“regional board”), 68105 (“release”), 68120 (“remedial  
3 investigation”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”), 68145 (“responsible  
4 party”), 68155 (“site”).

5 **Staff Notes.** (1) Subdivision (b) of Section 25358.7 was restated as two subdivisions,  
6 subdivisions (b) and (c), in proposed Section 68930. Section 25358.7(b) currently provides:

7 “The department, or the regional board, as appropriate, shall inform the public, and in  
8 particular, persons living in close proximity to a hazardous substance release site listed pursuant  
9 to Section 25356, of the existence of the site and the department’s or regional board’s intention to  
10 conduct a response action at the site, and shall conduct a baseline community survey to determine  
11 the level of public interest and desire for involvement in the department’s or regional board’s  
12 activities, and to solicit concerns and information regarding the site from the affected community.  
13 Based on the results of the baseline survey, the department or regional board shall develop a  
14 public participation plan that shall establish appropriate communication and outreach measures  
15 commensurate with the level of interest expressed by survey respondents. The public  
16 participation plan shall be updated as necessary to reflect any significant changes in the degree of  
17 public interest as the site investigation and cleanup process moves toward completion.”

18 The changes reflected in proposed Section 68930 are intended to be nonsubstantive. **The staff  
19 welcomes comment on the proposed restatement of this provision.**

20 (2) Proposed paragraph (d)(1)(B) excepts “[b]usiness financial data and information, as specified  
21 in subdivision (c) of 25358.6” from the information to which the department or regional board  
22 must provide access. In updating this cross-reference, the staff reviewed the cross-referenced  
23 provision, but was left uncertain of the scope of “business financial data and information.” It is  
24 unclear whether this term is sufficiently clear in practice. **The staff welcomes comment on this  
25 issue.**

26 (3) Subdivision (f) of Section 25358.7 exempts “emergency actions taken pursuant to Section  
27 25354” from the public participation requirements of this section.

28 Section 25354 has been proposed for restatement as three provisions (proposed Sections  
29 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision  
30 authorizing expenditures for immediate corrective action (proposed Section 68875). The  
31 remaining provisions, which relate to appropriations and the funding of the emergency reserve  
32 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not  
33 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

34 **The staff welcomes comment on this proposed cross-reference update.**

35 (4) Subdivision (f) of Section 25358.7 exempts “emergency actions taken pursuant to Section  
36 25354” from the public participation requirements of this section.

37 Chapter 6.8 of Division 20 contains two provisions relating to response actions undertaken in  
38 exigent circumstances. See proposed Sections 68870 and 68875. Typically, a provision providing  
39 exemptions or special treatment for exigent actions will apply to action taken under either of  
40 those provisions. See, e.g., proposed Sections 68880, 69135. However, subdivision (f) only  
41 applies to actions taken under one provision. The staff noticed the different treatment, but was  
42 unsure why this exemption was more limited. **The staff welcomes comment on this issue.**

43 **§ 68935. Notice and comment opportunity for local agencies**

44 68935. The department or regional board shall advise local environmental  
45 regulatory agencies and other appropriate local agencies of planned response  
46 actions and provide opportunities for review and comment.

47 **Comment.** Section 68935 continues the third sentence of subdivision (a) of former Section  
48 25358.7.1 without substantive change.

1 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”).

2 **Staff Notes. (1)** Proposed Section 68935 continues the third sentence of subdivision (a) of  
3 Section 25358.7.1. This provision is proposed for recodification separately, as it does not appear  
4 to be related to community advisory groups. These groups are the focus of the remainder of  
5 Section 25358.7.1. **The staff welcomes comment on whether this provision relates to and**  
6 **should be recodified with the provisions on community advisory groups.**

7 **(2)** This provision originally provided that a “department or regional board shall *also* advise...”  
8 (emphasis added). The word “also” appears to be superfluous and was not continued. The  
9 omission of the word “also” is intended to be a nonsubstantive, technical change. This was the  
10 only change to the wording of this provision. **The staff welcomes any comment on this change.**

11 **(3)** This provision refers to “planned response actions.” The staff did not find any other uses of  
12 this phrase in Chapter 6.8 of Division 20. The staff is not sure whether this phrase is sufficiently  
13 clear as to when this duty to advise is triggered. In particular, it is not clear whether a “planned  
14 response action” would be a response action for which there is a “response action plan” (see  
15 proposed Article 12 in this draft). Or, instead, it may be that a “planned response action” is  
16 simply a response action anticipated to occur soon. **The staff welcomes comment on this issue.**

## 17 Article 5. Community Advisory Groups

### 18 § 68950. Establishment of group

19 68950. (a) At each site, a community advisory group may be established by the  
20 affected community to review any response action and comment on the response  
21 action to be conducted in that community.

22 (b)(1) If the department or regional board, whichever is overseeing a response  
23 action, receives a petition signed by at least 50 members of a community affected  
24 by the response action at a site, the department or regional board shall assist the  
25 petitioners to establish a community advisory group to review the response action  
26 at the site.

27 (2) If the department or regional board, whichever is overseeing a response  
28 action, receives a resolution adopted by the legislative body of the jurisdiction  
29 within which the response action has been or will be initiated, the department or  
30 regional board shall assist the legislative body to establish a community advisory  
31 group to review the response action at the site.

32 **Comment.** Section 68950 continues the first sentence and restates the fourth sentence of  
33 subdivision (a) of former Section 25358.7.1 without substantive change.

34 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68155  
35 (“site”).

36 **Staff Note.** The fourth sentence of Section 25358.7.1 has been restated for clarity. That provision  
37 currently provides:

38 “If the department or regional board, whichever is overseeing a response action, receives  
39 a petition signed by at least 50 members of a community affected by the response action at a site  
40 or a resolution adopted by the legislative body of the jurisdiction within which the response  
41 action has been or will be initiated, the department or regional board shall assist the petitioners or  
42 the legislative body to establish a community advisory group to review the response action at the  
43 site.”

1 The changes reflected in proposed Section 68950(b) are intended to be nonsubstantive. **The staff**  
2 **welcomes comment on the proposed restatement of this provision.**

3 **§ 68955. Composition of group**

4 68955. To the extent possible, the composition of each community advisory  
5 group shall reflect the composition of the affected community and the diversity of  
6 interests of the community by including all of the following types of individuals  
7 on the community advisory group:

8 (a) Persons owning or residing on property located near the hazardous substance  
9 release site or in an adjacent community, or other persons who may be directly  
10 affected by the response action.

11 (b) Individuals from the local business community.

12 (c) Local political or government agency representatives.

13 (d) Local citizen, civic, environmental, or public interest group members  
14 residing in the community.

15 **Comment.** Section 68955 continues subdivision (b) of former Section 25358.7.1 without  
16 substantive change.

17 See Sections 68075 (“hazardous substance”), 68085 (“person”), 68100 (“regional board”),  
18 68105 (“release”), 68140 (“response”), 68155 (“site”).

19 **§ 68960. Communication with group**

20 68960. The department or regional board shall regularly communicate, and  
21 confer as appropriate, with the community advisory group.

22 **Comment.** Section 68960 continues the second sentence of subdivision (a) of former Section  
23 25358.7.1 without substantive change.

24 See Sections 68050 (“department”), 68100 (“regional board”).

25 **Staff Note.** Section 25358.7.1(a) specifies that the department or regional board “shall regularly  
26 communicate ... with the community advisory *committee*” (emphasis added). Otherwise, this  
27 section uses the term “community advisory group.” It seems likely that the use of “committee”  
28 was an error, as the term “community advisory committee” is not used elsewhere. For this reason,  
29 proposed Section 68960 replaces “community advisory committee” with “community advisory  
30 group.” **The staff welcomes comment on this proposed correction.**

31 **§ 68965. Participation in group meetings**

32 68965. The following entities may participate in community advisory group  
33 meetings in order to provide information and technical expertise:

34 (a) The department or regional boards.

35 (b) Representatives of local environmental regulatory agencies.

36 (c) The potentially responsible parties or other persons who are conducting the  
37 response action.

38 **Comment.** Section 68965 continues subdivision (c) of former Section 25358.7.1 without  
39 substantive change.

40 See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68140  
41 (“response”), 68145 (“responsible party”).

1 § 68970. Relationship with other public participation provisions

2 68970. (a) The existence of a community advisory group shall not diminish any  
3 other obligation of the department or regional board with respect to public  
4 participation requirements specified in Section 68930.

5 (b) Nothing in [this article] shall affect the status of any citizen advisory group  
6 formed before [May 26, 1999], a federal Department of Defense Restoration  
7 Advisory Board, or a federal Department of Energy Advisory Board.

8 **Comment.** Section 68970 continues subdivision (d) of former Section 25358.7.1 without  
9 substantive change.

10 See Sections 68050 (“department”), 68100 (“regional board”).

11 **Staff Note. (1)** Subdivision (b) of proposed Section 68970 appears to be stating a transitional rule  
12 addressing different types of community groups that may have been in existence when this  
13 section was enacted. As discussed in Note #2 below, this provision was enacted in 1999. It is  
14 unclear whether this rule has ongoing utility and needs to be continued. **The staff welcomes**  
15 **comment on this issue.**

16 **(2)** Section 25358.7.1(d) provides, in part, that nothing in “this section” affects the status of  
17 certain specified boards or a citizen advisory group formed before the enactment of “this section.”  
18 The proposed updates to these cross-references are described below. The cross-references were  
19 treated differently because the first is a reference to the substantive contents of the section, while  
20 the second is a reference to the section’s date of enactment.

21 For the reference to the substantive contents of the section, Section 25358.7.1 has been  
22 proposed for recodification as several sections in this article. Rather than referring to the five  
23 sections in this article that continue Section 25358.7.1, it seems simpler to update the cross-  
24 reference simply refer to “this article” as a whole.

25 In addition to the sections continuing Section 25358.7.1, this article also includes a provision  
26 continuing Section 25358.8. Expanding the cross-reference to include this provision appears to be  
27 nonsubstantive, as it appears that nothing in Section 25358.8 affects the status of a citizen  
28 advisory group formed before the enactment of Section 25358.7.1, a federal Department of  
29 Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board. **The**  
30 **staff welcomes comment on this proposed cross-reference update.**

31 For the cross-reference to the enactment date, it appears that this section was added in 1999.  
32 See 1999 Cal. Stat. ch. 23, § 2 (SB 47). The bill adding this section was urgency legislation and  
33 was enacted on May 26, 1999. For this reason, the phrase “before the enactment of this section”  
34 was replaced with “before May 26, 1999.” **The staff welcomes comment on this proposed**  
35 **update.**

36 § 68975. Technical assistance grants for group

37 68975. A community advisory group established pursuant to Section 68950 may  
38 request, in writing, and a potentially responsible party may fund, a technical  
39 assistance grant for a site, for the purpose of providing technical assistance to the  
40 community advisory group.

41 **Comment.** Section 68975 restates former Section 25358.8 without substantive change.

42 See Sections 68145 (“responsible party”), 68155 (“site”).

43 **Staff Notes. (1)** Proposed Section 68975 restates Section 25358.8 to eliminate a use of the  
44 singular and plural form of the same word: “potentially responsible party or parties.”

45 It does not appear to be necessary to use both the singular and plural forms. Section 13  
46 provides “[t]he singular number includes the plural, and the plural the singular.” Proposed

1 Section 68975 was simplified to use only the singular form in accordance with standard drafting  
2 practice.

3 Aside from this change, the only other change to this section was the addition of a comma after  
4 the word “site.”

5 The changes reflected in proposed Section 68975 are intended to be nonsubstantive. **The staff  
6 welcomes any comment on the proposed restatement.**

7 **(2)** Section 25358.8 refers to “[a] community advisory group established pursuant to Section  
8 25358.7.1.” Section 25358.7.1 is proposed for recodification as several sections in this proposed  
9 article. The cross-reference has been updated to refer only to proposed Section 68950, which  
10 relates to the establishment of a community advisory group. The remaining provisions of Section  
11 25358.7.1 do not seem to relate to the purpose of this cross-reference. **The staff welcomes  
12 comment on this proposed cross-reference update.**

13 Article 6. Oversight and Review of Responsible Party Actions

14 **§ 69000. Policies and procedures for oversight by department or state board**

15 69000. The department and the State Water Resources Control Board  
16 concurrently shall establish policies and procedures consistent with this part that  
17 the department’s representatives shall follow in overseeing and supervising the  
18 activities of responsible parties who are carrying out the investigation of, and  
19 taking removal or remedial actions at, hazardous substance release sites. The  
20 policies and procedures shall be consistent with the policies and procedures  
21 established pursuant to Section 13307 of the Water Code, and shall include, but  
22 are not limited to, all of the following:

23 (a) The procedures the department will follow in making decisions as to when a  
24 potentially responsible party may be required to undertake an investigation to  
25 determine if a hazardous substance release has occurred.

26 (b) Policies for carrying out a phased, step-by-step investigation to determine the  
27 nature and extent of possible soil and groundwater contamination at a site.

28 (c) Procedures for identifying and utilizing the most cost-effective methods for  
29 detecting contamination and carrying out removal or remedial actions.

30 (d) Policies for determining reasonable schedules for investigation and removal  
31 or remedial action at a site. The policies shall recognize the dangers to public  
32 health and the environment posed by a release and the need to mitigate those  
33 dangers, while taking into account, to the extent possible, the financial and  
34 technical resources available to a responsible party.

35 **Comment.** Section 69000 continues former Section 25355.7 without substantive change.

36 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
37 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

38 **§ 69005. Voluntary enforceable agreements for actions at petroleum release sites**

39 69005. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 68075,  
40 any person may voluntarily enter into an enforceable agreement with the  
41 department pursuant to **[this section]** that allows removal or remedial actions to be  
42 conducted under the oversight of the department at sites with petroleum releases

1 from sources other than underground storage tanks, as defined in Section  
2 25299.24.

3 (b) If the department determines that there may be an adverse impact to water  
4 quality as a result of a petroleum release, the department shall notify the  
5 appropriate regional board prior to entering into the enforceable agreement  
6 pursuant to this section. The department may enter into an enforceable agreement  
7 pursuant to this section unless, within 60 days of the notification provided by the  
8 department, the regional board provides the department with a written notice that  
9 the regional board will assume oversight responsibility for the removal or remedial  
10 action.

11 (c) Agreements entered into pursuant to this section shall provide that the party  
12 will reimburse the department for all costs incurred including, but not limited to,  
13 oversight costs pursuant to the enforceable agreement associated with the  
14 performance of the removal or remedial actions and Chapter 6.66 (commencing  
15 with Section 25269) of Division 20.

16 **Comment.** Section 69005 restates paragraph (c)(2) of former Section 25355 without  
17 substantive change.

18 See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68105  
19 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

20 **Staff Notes. (1)** Section 25355(c)(2)(A) allows a person to enter a voluntary agreement pursuant  
21 to “this subdivision.” The remainder of subdivision (c) (proposed Section 69135(a)) obligates the  
22 department to, before undertaking a remedial or removal action, make an effort to notify  
23 potentially responsible parties and publish notice in a newspaper. That provision does not appear  
24 to be relevant to the entry into a voluntary agreement for department oversight of a removal or  
25 remedial action at a petroleum release site. For this reason, it appears appropriate to update the  
26 cross-reference to refer only to “this section,” which continues paragraph (2) of subdivision (c).  
27 **The staff welcomes comment on this proposed cross-reference change.**

28 **(2)** Section 25355(c)(2) is not consistent in its references to which provision authorizes  
29 enforceable agreements. The reference either points to the subdivision as a whole (see Note #1,  
30 above), the paragraph as a whole, or only subparagraph (A). For consistency, these references  
31 have all been updated to refer to “this section” (which continues paragraph (2) of Section  
32 25355(c)). **The staff welcomes comment on the proposed restatement of these cross-**  
33 **references.**

34 Article 7. Orders to Potentially Responsible Parties

35 § 69020. Issuance of orders

36 69020. In exercising its authority at a hazardous substance release site pursuant  
37 to Sections 68870 or 69055, the department shall issue orders to the largest  
38 manageable number of potentially responsible parties after considering all of the  
39 following:

40 (a) The adequacy of the evidence of each potentially responsible party’s  
41 liability.

42 (b) The financial viability of each potentially responsible party.

1 (c) The relationship or contribution of each potentially responsible party to the  
2 release, or threat of release, of hazardous substances at the site.

3 (d) The resources available to the department.

4 **Comment.** Section 69020 continues subdivision (a) of former Section 25356.1.3 without  
5 substantive change.

6 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68145  
7 (“responsible party”), 68155 (“site”).

8 **Staff Notes. (1)** This provision focuses on orders issued by the department in its exercise of  
9 authority at a hazardous substance release site. One of the cross-referenced provisions, Section  
10 25358.3, focuses on authority of the director, as opposed to the department. **The staff welcomes**  
11 **comment on whether this discrepancy has caused any problems in practice.**

12 **(2)** Subdivision (a) of Section 25356.1.3 refers to the department exercising its authority pursuant  
13 to “subdivision (a) of Section 25355.5 or 25358.3.” The staff understands this cross-reference to  
14 refer to subdivision (a) of Section 25355.5 or subdivision (a) of Section 25358.3. The cross-  
15 reference has been updated to refer to the proposed sections recodifying those subdivisions. **The**  
16 **staff welcomes comment on this proposed cross-reference update.**

17 **§ 69025. Meeting with potentially responsible parties**

18 69025. The department shall schedule a meeting pursuant to Section 25269.5  
19 and notify all identified potentially responsible parties of the date, time, and  
20 location of the meeting.

21 **Comment.** Section 69025 continues subdivision (b) of former Section 25356.1.3 without  
22 substantive change.

23 See Sections 68050 (“department”), 68145 (“responsible party”).

24 **§ 69030. Request for issuance of order to potentially responsible party**

25 69030. (a) A person issued an order pursuant to Section 68870 or 69055 may  
26 identify additional potentially responsible parties for the site to which the order is  
27 applicable and may request the department to issue an order to those parties. The  
28 request shall include, with appropriate documentation, the factual and legal basis  
29 for identifying those parties as potentially responsible parties for the site.

30 (b) The department shall review the request and accompanying information and,  
31 within a reasonable period of time, determine if there is a factual and legal basis  
32 for identifying other persons as potentially responsible parties, and notify the  
33 person that made the request of the action the department will take in response to  
34 the request.

35 **Comment.** Section 69030 continues subdivision (c) of former Section 25356.1.3 without  
36 substantive change.

37 See Sections 68050 (“department”), 68085 (“person”), 68140 (“response”), 68145  
38 (“responsible party”), 68155 (“site”).

39 **Staff Note.** Proposed Section 69030(a) governs a request made by “[a] person issued an order  
40 pursuant to Section 25355.5 or 25358.3.” Each of these cross referenced sections is discussed in  
41 turn below.

42 **(1)** Section 25355.5 has been proposed for recodification as multiple sections (proposed  
43 Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section  
44 25355.5(a)) is the only one of those provisions that addresses the issuance of orders and, thus,

1 appears to be the only provision relevant to this cross-reference. For this reason, the cross-  
2 reference to Section 25355.5 has been updated to refer only to Section 69055. **The staff**  
3 **welcomes any comment on this proposed cross-reference update.**

4 (2) Section 25358.3 has been proposed for recodification as several sections (proposed  
5 Sections 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section  
6 25358.3(a)) is the only provision that addresses the department’s issuance of orders to parties and,  
7 thus, appears to be the only provision that is relevant to this cross-reference. Proposed Section  
8 68660 relates to relief sought in court, in which case the court would be the one to issue orders.  
9 However, it does not appear that court orders would be subject to the rule contained in proposed  
10 Section 69030. For this reason, the cross-reference to Section 25358.3 has been updated to refer  
11 only to Section 68870. **The staff welcomes any comment on this proposed cross-reference**  
12 **update.**

13 **§ 69035. Determination not subject to judicial review**

14 69035. Any determination made by the department regarding the largest  
15 manageable number of potentially responsible parties or the identification of other  
16 persons as potentially responsible parties pursuant to this article is not subject to  
17 judicial review. This section does not affect the rights of any potentially  
18 responsible party or the department under any other provision of this part.

19 **Comment.** Section 69035 continues subdivision (d) of former Section 25356.1.3 without  
20 substantive change.

21 See Sections 68050 (“department”), 68085 (“person”), 68145 (“responsible party”).

22 Article 8. Expenditures

23 **§ 69055. Required actions before expenditures by department at listed site**

24 69055. (a) Except as provided in Sections 69060 and 69065, no money shall be  
25 expended from the state account for removal or remedial actions on any site  
26 selected for inclusion on the list established pursuant to Article 5 (commencing  
27 with Section 68760) of Chapter 4, unless the department first takes both of the  
28 following actions:

29 (1) The department issues one of the following orders or enters into the  
30 following agreement:

31 (A) The department issues an order specifying a schedule for compliance or  
32 correction pursuant to Section 25187.

33 (B) The department issues an order establishing a schedule for removing or  
34 remedying the release of a hazardous substance at the site, or for correcting the  
35 conditions that threaten the release of a hazardous substance. The order shall  
36 include, but is not limited to, requiring specific dates by which necessary  
37 corrective actions shall be taken to remove the threat of a release, or dates by  
38 which the nature and extent of a release shall be determined and the site  
39 adequately characterized, a remedial action plan shall be prepared, the remedial  
40 action plan shall be submitted to the department for approval, and a removal or  
41 remedial action shall be completed.

1 (C) The department enters into an enforceable agreement with a potentially  
 2 responsible party for the site that requires the party to take necessary corrective  
 3 action to remove the threat of the release, or to determine the nature and extent of  
 4 the release and adequately characterize the site, prepare a remedial action plan,  
 5 and complete the necessary removal or remedial actions, as required in the  
 6 approved remedial action plan.

7 (2) The department determines, in writing, that the potentially responsible party  
 8 or parties for the hazardous substance release site have not complied with all of the  
 9 terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or  
 10 an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before  
 11 the department determines that a potentially responsible party is not in compliance  
 12 with the order or agreement, the department shall give the potentially responsible  
 13 party written notice of the proposed determination and an opportunity to correct  
 14 the noncompliance or show why the order should be modified. After the  
 15 department has made the final determination that a potentially responsible party is  
 16 not in compliance with the order or agreement, the department may expend money  
 17 from the state account for a removal or remedial action.

18 (b) Any enforceable agreement entered into pursuant to this section may provide  
 19 for the execution and recording of a written instrument that imposes an easement,  
 20 covenant, restriction, or servitude, or combination thereof, as appropriate, upon the  
 21 present and future uses of the site. The instrument shall provide that the easement,  
 22 covenant, restriction, or servitude, or combination thereof, as appropriate, is  
 23 subject to the variance or removal procedures specified in Sections 25223 and  
 24 25224. Notwithstanding any other provision of law, an easement, covenant,  
 25 restriction, or servitude, or any combination thereof, as appropriate, executed  
 26 pursuant to this section and recorded so as to provide constructive notice runs with  
 27 the land from the date of recordation, is binding upon all of the owners of the land,  
 28 their heirs, successors, and assignees, and the agents, employees, or lessees of the  
 29 owners, heirs, successors, and assignees, and is enforceable by the department  
 30 pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division  
 31 20.

32 **Comment.** Section 69055 continues subdivision (a) of former Section 25355.5 without  
 33 substantive change. An undesignated paragraph in former Section 25355.5(a)(1)(C) has been  
 34 recodified as subdivision (b) of this section.

35 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
 36 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state  
 37 account”).

38 **Staff Notes. (1)** Subdivision (a) of Section 25355.5 is cited in other provisions of this proposed  
 39 part, seemingly for authority for the department to enter into certain agreements or issue certain  
 40 orders. See, e.g., proposed Sections 69020, 69065, 69070. While the department’s authority to  
 41 issue the orders and enter the agreements is clearly implied by this section, this section pertains to  
 42 expenditures by the department. In the staff’s view, the department’s authority regarding the  
 43 orders and agreements could be stated more directly and more clearly. While there seems to be no  
 44 question that this provision indirectly provides the department with necessary authority for the  
 45 orders and agreements, drafting a provision that provides the authority directly poses a risk of

1 substantive change. **The staff welcomes comment on whether addition of a provision directly**  
 2 **authorizing the department to issue orders (described in proposed Section 69055(a)(1)(B))**  
 3 **and enter agreements (described in proposed Section 69055(a)(1)(C)) would be a helpful**  
 4 **addition.** If so, this issue could be added to the list of substantive issues for possible future study  
 5 that will be included in the Commission’s recommendation.

6 (2) Section 25355.5(a)(1)(C) contains an undesignated paragraph. The language in that paragraph,  
 7 which relates to land use restrictions contained in an enforceable agreement, is continued as  
 8 proposed Section 69055(b). However, given that the subject matter of this provision is only  
 9 indirectly related to the topic addressed by this proposed article (“Expenditures”), this location  
 10 does not seem to be a good fit. At this point, the staff has not identified a more appropriate  
 11 location for this provision. **The staff welcomes comment on the placement of this provision.**

12 (3) The undesignated paragraph in Section 25355.5(a)(1)(C) relates to an “enforceable agreement  
 13 entered into pursuant to this section.” Section 25355.5 is proposed for recodification as several  
 14 sections (proposed Sections 69055, 69060, 69065, and 69130(b)). This proposed section contains  
 15 the only provision that discusses entering into an enforceable agreement. For this reason, the  
 16 references to “this section” have not been adjusted to refer to the other proposed sections that  
 17 recodify Section 25355.5, as they do not appear to be relevant. **The staff welcomes comment on**  
 18 **this proposed cross-reference update.**

19 (4) Section 25355.5(a)(1)(C) refers to “to the variance or removal procedures specified in  
 20 Sections 25233 and 25234.” The cross-referenced sections do not currently exist. They were  
 21 repealed in 2012. See 2012 Cal. Stat. ch. 39. It appears that the substance of these provisions was  
 22 continued in Sections 25223 and 25224. See 2012 Cal. Stat. ch. 39, § 75 (amending a different  
 23 cross-reference to Sections 25233 and 25234 to instead cross-refer to Sections 25223 and 25224).  
 24 In proposed Section 69055, the cross-reference has been updated to refer to Sections 25223 and  
 25 25224. **The staff welcomes comment on this proposed cross-reference correction.**

26 **§ 69060. Conditions where required actions not applicable for expenditure**

27 69060. Section 69055 does not apply, and money from the state account shall be  
 28 available, upon appropriation by the Legislature, for removal or remedial actions,  
 29 if any of the following conditions apply:

30 (a) The department, after a reasonable effort, is unable to identify a potentially  
 31 responsible party for the hazardous substance release site.

32 (b) The department determines that immediate corrective action is necessary, as  
 33 provided in Section 68875.

34 (c) The director determines that removal or remedial action at a site is necessary  
 35 because there may be an imminent and substantial endangerment to the public  
 36 health or welfare or to the environment.

37 **Comment.** Section 69060 restates subdivision (b) of former Section 25355.5 without  
 38 substantive change.

39 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105  
 40 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”),  
 41 68165 (“state account”).

42 **Staff Notes.** (1) Section 25355.5(b)(1) permits expenditures where the department is unable to  
 43 identify “a potential responsible party.” This seems to be an error, as it is the only use of this  
 44 phrase in Chapter 6.8. The correct phrase appears to be “a *potentially* responsible party,” a phrase  
 45 that is used repeatedly in Chapter 6.8. For this reason, the provision has been restated to refer to  
 46 “a potentially responsible party.” This change is intended to be nonsubstantive. **The staff**  
 47 **welcomes comment on this proposed correction.**

1 (2) Section 25355.5(b)(2) permits expenditures if “immediate corrective action is necessary, as  
2 provided in Section 25354.”

3 Section 25354 is proposed for recodification as multiple sections (proposed Sections 68240,  
4 68580, and 68875). This cross-reference has been updated to refer only to the provision  
5 authorizing expenditures for immediate corrective action (proposed Section 68875). The  
6 remaining provisions, which relate to appropriations and the funding of the emergency reserve  
7 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not  
8 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

9 **The staff welcomes comment on this proposed cross-reference update.**

10 (3) Section 25355.5(b)(3) involves action taken in a situation of “imminent and substantial  
11 endangerment to the public health or welfare or to the environment.” Proposed Section 68870  
12 appears to be the authority for the director to act when “there may be an imminent or substantial  
13 endangerment to the public health or welfare or to the environment.” For this reason, it would  
14 seem helpful to include a cross-reference to proposed Section 68870 here. **The staff welcomes**  
15 **comment on this issue.**

16 § 69065. Authorized expenditures

17 69065. (a) Notwithstanding Section 69055, the department may expend funds,  
18 upon appropriation by the Legislature, from the state account to conduct activities  
19 necessary to verify that an uncontrolled release of hazardous substances has  
20 occurred at a suspected hazardous substance release site, to issue an order or enter  
21 into an enforceable agreement pursuant to paragraph (1) of subdivision (a) of  
22 Section 69055, and to review, comment upon, and approve or disapprove remedial  
23 action plans submitted by potentially responsible parties subject to the orders or  
24 the enforceable agreement.

25 (b) Notwithstanding Section 69055, the department may expend funds, upon  
26 appropriation by the Legislature, from the state account, to provide for oversight  
27 of removal and remedial actions, or, if the site is also listed on the National  
28 Priorities List by the United States Environmental Protection Agency pursuant to  
29 the federal act, to provide the state’s share of a removal or remedial action  
30 pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

31 **Comment.** Section 69065 continues subdivision (c) and restates subdivision (d) of former  
32 Section 25355.5 without substantive change.

33 See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”),  
34 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155  
35 (“site”), 68165 (“state account”).

36 **Staff Note.** Subdivision (d) of Section 25355.5 was restated for clarity and to correct an apparent  
37 error. Currently, that subdivision states:

38 “(d) Notwithstanding subdivision (a), the department may expend funds, upon  
39 appropriation by the Legislature, from the state account, to provide for oversight of removal and  
40 remedial actions, or, if the site is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3))  
41 [Section 104(c)(3)], to provide the state’s share of a removal or remedial action.”

42 Section 104(c)(3) of the federal act does not appear to provide for any list or listing of sites.  
43 Instead, Section 104 conditions the federal government’s authority to conduct remedial actions  
44 (pursuant to that section) at a site on whether the state in which the site is located has provided  
45 certain assurances in a contract or cooperative agreement. One of the assurances a state must  
46 provide is expressly financial:

1 “...[T]he State will pay or assure payment of (i) 10 per centum of the costs of the  
2 remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater  
3 amount as the President may determine appropriate, taking into account the degree of  
4 responsibility of the State or political subdivision, of any sums expended in response to a release  
5 at a facility that was owned at the time of any disposal of hazardous substances therein by the  
6 State or a political subdivision thereof.”

7 Thus, the citation to Section 104 appears to be misplaced, as it relates to the state’s share of a  
8 removal or remedial action. This issue could be addressed by moving this citation to the end of  
9 the subdivision to read: “...the state’s share of a removal or remedial action pursuant to Section  
10 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).”

11 In addition, the reference to a site “listed on the federal act” appears to be erroneous. The staff  
12 understands that sites are not listed in the federal act. The staff believes that this should be a  
13 reference to the federal National Priorities List (authorized by Section 105(a)(8)(B)). For  
14 information on the National Priorities List (NPL), see [https://www.epa.gov/superfund/superfund-](https://www.epa.gov/superfund/superfund-national-priorities-list-npl)  
15 [national-priorities-list-npl](https://www.epa.gov/superfund/superfund-national-priorities-list-npl). The National Priorities List is also cited in proposed Section 69225 in  
16 this draft. The staff used that citation as a model for drafting the citation in this proposed  
17 provision.

18 The changes reflected in proposed Section 69065 are intended to be nonsubstantive. **The staff**  
19 **welcomes comment on this proposed restatement.**

20 **§ 69070. Limitations on expenditures for sites owned or operated by federal, state, or local**  
21 **governments or agencies**

22 69070. (a) Except as provided in subdivision (b), the department may not  
23 expend funds from the state account for a removal or remedial action with respect  
24 to a hazardous substance release site owned or operated by the federal government  
25 or a state or local agency at the time of disposal to the extent that the federal  
26 government or the state or local agency would otherwise be liable for the costs of  
27 that action, except that the department may expend those funds, upon  
28 appropriation by the Legislature, to oversee the carrying out of a removal or  
29 remedial action at the site by another party.

30 (b) Except as provided in subdivision (d), the department may expend funds  
31 from the state account, upon appropriation by the Legislature, to take a removal or  
32 remedial action at a hazardous substance release site that was owned or operated  
33 by a local agency at the time of release, if all of the following requirements are  
34 met:

35 (1) The department has substantial evidence that a local agency is not the only  
36 responsible party for the site.

37 (2) The department has issued a cleanup order to, or entered into an enforceable  
38 agreement with, the local agency pursuant to Section 69055 and has made a final  
39 determination that the local agency is not in compliance with the order or  
40 enforceable agreement.

41 (c) If a local agency is identified as a potentially responsible party in a remedial  
42 action plan prepared pursuant to Article 12 (commencing with Section 69190), and  
43 the department expends funds pursuant to this part to pay for the local agency’s  
44 share of the removal and remedial action, the expenditure of these funds shall be  
45 deemed to be a loan from the state to the local agency. If the department

determines that the local agency is not making adequate progress toward repaying the loan made pursuant to this section, the State Board of Equalization shall, upon notice by the department, withhold the unpaid amount of the loan, in increments from the sales and use tax transmittals made pursuant to Section 7204 of the Revenue and Taxation Code, to the city or county in which the local agency is located. The State Board of Equalization shall structure the amounts to be withheld so that complete repayment of the loan, together with interest and administrative charges, occurs within five years after a local agency has been notified by the department of the amount that it owes. The State Board of Equalization shall deposit any funds withheld pursuant to this section into the state account.

(d) The department may not expend funds from the state account for a removal or remedial action at any waste management unit owned or operated by a local agency if it meets both of the following conditions:

(1) It is classified as a class III waste management unit pursuant to Article 3 (commencing with Section 20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California Code of Regulations.

(2) It was in operation on or after January 1, 1988.

**Comment.** Section 69070 continues former Section 25353, with the exception of subdivisions (c) and (e), without substantive change. An obsolete cross-reference to the California Administrative Code in paragraph (d)(1) has been updated to refer to the relevant provisions of the California Code of Regulations.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

**Staff Notes.** (1) The introductory clause of subdivision (a) of Section 25353 is missing a word. Proposed Section 69070(a) has been corrected to read “[e]xcept as provided in *subdivision (b)*” (added word in italics).

(2) Proposed Section 69070(b)(2) relates to issuance of a cleanup order or entry into an enforceable agreement “pursuant to Section 25355.5.” Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). With the exception of proposed Section 69055, all of the proposed Sections were omitted from this cross-reference, as they do not appear relevant. Proposed Section 69055 (Section 25355.5(a)) is the only provision that addresses the issuance of orders and entry into enforceable agreements and, thus, appears to be the only provision relevant to this cross-reference. For this reason, the cross-reference to Section 25355.5 has been updated to refer only to Section 69055.

(3) Proposed Section 69070(e) prohibits the expenditure of funds from the state account for response actions at a local-agency-owned or -operated waste management unit if it meets the specified conditions. One of the conditions is:

“[The facility] is classified as a class III waste management unit pursuant to Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Administrative Code.”

The cross-referenced regulatory provisions do not currently relate to a “class III waste management unit.” Repealed Section 2533 was entitled “Class III: Landfills for Nonhazardous Solid Waste.” It appears that the provisions related to Class III landfills are now located in Title 27 of the California Code of Regulations. In particular, Article 3 (commencing with Section

20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California Code of Regulations addresses classification and siting for waste management units, facilities, and disposal sites.

**The staff welcomes comment on this proposed cross-reference update.**

**§ 69075. Limitation on expenditure for natural resources damages prior to September 25, 1981**

69075. The department may not expend funds from the state account for the purposes specified in Section 69450 where the injury, degradation, destruction, or loss to natural resources, or the release of a hazardous substance from which the damages to natural resources resulted, has occurred prior to September 25, 1981.

**Comment.** Section 69075 continues subdivision (e) of former Section 25353 without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155 (“site”), 68165 (“state account”).

**Staff Note.** Section 25353(c) includes a cross-reference to Section 25352.

Section 25352 has been divided into multiple provisions in this recodification. The cross-reference has been updated to refer to only the provisions related to expenditures (subdivisions (a) and (b) of Section 25352, which are proposed for recodification as Section 69450). Subdivision (c) of Section 25352, which will be recodified separately, will be omitted from the cross-reference, as it relates to cost recovery and does not appear relevant.

**The staff welcomes comment on this proposed cross-reference update.**

Article 9. Preliminary Endangerment Assessment

**§ 69100. Required action prior to preliminary endangerment assessment or no further action letter**

69100. (a) The department shall not agree to oversee the preparation of, or to review, a preliminary endangerment assessment for property if action is, or may be, necessary to address a release or threatened release of a hazardous substance, and the department shall not issue a letter stating that no further action is necessary with regard to property, unless the person who made the request does either of the following:

(1) Provides the department with all of the following:

(A) Proof of the identity of all current record owners of fee title to the property and their mailing addresses.

(B) Written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by the requesting person.

(C) An acknowledgment of the receipt of the notice required in subparagraph (B), from the property owners or proof that the requesting person has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

(2) Provides the department with proof of the identity of all current record owners of fee title to the property and proof that the requesting person has made reasonable efforts to locate the property owners and was unable to do so.

1 (b) The department shall take all reasonable steps necessary to accommodate  
2 property owner participation in the site remediation process and shall consider all  
3 input and recommendations received from the owner of property that is the subject  
4 of the proposed action.

5 (c)(1) This section only applies to instances where a person requests the  
6 department to oversee the preparation of, or to review, a preliminary  
7 endangerment assessment, or requests the department to issue a letter stating that  
8 no further action is necessary with regard to property.

9 (2) Nothing in this section imposes a condition upon, limits, or impacts in any  
10 way, the department's authority to compel any potentially responsible party to take  
11 any action in response to a release or threatened release of a hazardous substance  
12 or to recover costs incurred from any potentially responsible party.

13 **Comment.** Section 69100 restates former Section 25355.8 without substantive change.

14 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68095  
15 (“preliminary endangerment assessment”), 68105 (“release”), 68140 (“response”), 68145  
16 (“responsible party”), 68155 (“site”).

17 **Staff Notes. (1)** Section 25355.8(a) has been restated to reduce uses of the term “action” in  
18 different contexts and to correct an apparent error in paragraph (2).

19 The introductory clause to subdivision (a) contains three uses of the term “action,” as indicated  
20 below.

21 “The department shall not agree to oversee the preparation of, or to review, a preliminary  
22 endangerment assessment for property if *action* is, or may be, necessary to address a release or  
23 threatened release of a hazardous substance, and the department shall not issue a letter stating that  
24 no further *action* is necessary with regard to property, unless the person requesting the  
25 department *action* does either of the following...”

26 The first two uses of the term appear to refer to cleanup actions (i.e., a removal or remedial  
27 action). The final use of the term seems to be referring to the act being requested of the  
28 department (i.e., oversight or review of a preliminary endangerment assessment or issuance of a  
29 no further action letter). To avoid these different uses of “action,” the provision has been restated  
30 to replace the final phrase with “unless the person who made the request does either of the  
31 following.”

32 Paragraph (2) appears to be missing an introductory clause specifying that the person must  
33 “provide the department with” the relevant information. In relevant part, Section 25355.8(a)  
34 provides:

35 “(a) The department shall not agree to [take specified actions], unless the person  
36 requesting the department action does either of the following:

37 ...

38 (2) Proof of the identity of all current record owners of fee title to the property and proof  
39 that the requesting person has made reasonable efforts to locate the property owners and was  
40 unable to do so.”

41 The missing clause (“Provides the department with”) has been added to proposed Section  
42 69100. The changes reflected in proposed Section 69100 are intended to be nonsubstantive. **The**  
43 **staff welcomes comment on this proposed restatement.**

44 (2) Subdivision (a) of Section 25355.8 requires a person seeking specified department action to  
45 fulfill one of two conditions relating to the identification and notification of the relevant property  
46 owners. The person must either (1) provide identities and addresses for *all* of the relevant  
47 property owners (and proof of notice or reasonable efforts at notice) OR (2) provide proof that the

1 person made reasonable efforts to find *all* of the relevant property owners and was unable to do  
2 so. The statute does not address a situation where the location of *some*, but not *all* owners can be  
3 found. If the person is able to find some property owners, it seems logical that the property  
4 owners who can be found should be notified. **The staff requests comment on this issue.**

5 (3) Proposed Section 69100(b) requires the department to take steps to accommodate property  
6 owner participation in the site remediation process. By its terms, this subdivision seems to state a  
7 general rule about facilitating property owner participation in the cleanup process. If this is the  
8 case, this provision would be better located elsewhere (perhaps in proposed “Article 1. General  
9 Provisions” of Chapter 5). However, it appears that this seemingly broad rule may have limited  
10 application according to proposed subdivision (c). **The staff welcomes comment on this issue.**

11 (4) Proposed Section 69100(b) relates to property owner participation in the “site remediation  
12 process.” The definition of “remedy” or “remedial action” does not seem to apply to uses of the  
13 term “remediation.” It is unclear whether that definition was intended to apply here or if the term  
14 “remediation” is being used in a general sense. **The staff welcomes comment on this issue.**

15 **§ 69105. Reimbursement of department oversight costs for preliminary endangerment**  
16 **assessment**

17 69105. (a) Except as provided in subdivisions (b) and (c), any potentially  
18 responsible party at a site, or any person who has notified the department of that  
19 person’s intent to undertake removal or remediation at a site, shall reimburse the  
20 department, pursuant to Chapter 6.66 (commencing with Section 25269) of  
21 Division 20, for the costs incurred by the department for its oversight of any  
22 preliminary endangerment assessment at that site.

23 (b) This section does not apply to any notice of intent submitted to the  
24 department prior to July 1, 1998. Any person who submitted a notice of intent  
25 prior to July 1, 1998 shall pay the fee, if not already paid, as required by Section  
26 25343 as it read on December 31, 1997, unless the department and that person  
27 mutually agree to enter into a reimbursement agreement in lieu of any unpaid  
28 portion of the required fee.

29 (c) The changes made in Section 25343 by Chapter 870 of the Statutes of 1997  
30 do not require amendment of, or otherwise affect, any agreement entered into prior  
31 to July 1, 1998, pursuant to which any person has agreed to reimburse the  
32 department for the costs incurred by the department for its oversight of a  
33 preliminary endangerment assessment.

34 **Comment.** Section 69105 continues former Section 25343 without substantive change.

35 See Sections 68050 (“department”), 68085 (“person”), 68095 (“preliminary endangerment  
36 assessment”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

37 **Staff Notes. (1)** Subdivision (a) of Section 25343 uses the term “remediation.” “Remediation” is  
38 not a defined term, but, in this case, appears to be used as a synonym of “remedial action”  
39 (defined in proposed Section 68125). In the staff’s view, replacing the term “remediation” in this  
40 section with “remedial action” would be beneficial and promote consistency. **The staff welcomes**  
41 **comment on this issue.**

42 (2) Subdivisions (b) and (c) relate to certain documents prepared before July 1, 1998. Subdivision  
43 (b) requires that a person who submitted a notice of intent prior to July 1, 1998 pay the fee  
44 required by Section 25343 as it read on December 31, 1997. Subdivision (c) makes clear that any  
45 agreement to pay the department costs of overseeing a preliminary endangerment assessment

1 entered into prior to July 1, 1998 is not affected by changes to Section 25343. These provisions  
2 seem largely transitional, clarifying how the change in this statute should affect ongoing activities  
3 at the time. Since more than 30 years have passed since those statutory changes, it seems likely  
4 that these provisions are now functionally obsolete. For this reason, subdivisions (b) and (c) may  
5 not need to be continued. **The staff welcomes comment on whether either or both of these**  
6 **subdivisions have any continuing effect.**

7 **(3)** Subdivision (b) refers to the fee “as required by this section as it read on December 31, 1997.”  
8 Assuming this provision has continuing effect, it may be helpful to change this language to refer  
9 to the statutory provision last amending the version of Section 25343 that was operative on  
10 December 31, 1997. See 1995 Cal. Stat. ch. 630, § 11. **The staff welcomes comment on**  
11 **whether this would be a helpful change.**

## 12 Article 10. Initiation of Removal or Remedial Actions

### 13 § 69130. Authority to initiate removal or remedial action

14 69130. (a) The director may initiate removal or remedial action pursuant to this  
15 part unless these actions have been taken, or are being taken properly and in a  
16 timely fashion, by any responsible party.

17 (b) A responsible party who fails, as determined by the department in writing, to  
18 comply with an order issued pursuant to subparagraph (A) or (B) of paragraph (1)  
19 of subdivision (a) of Section 69055, or to comply with all of the terms of an  
20 enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1)  
21 of subdivision (a) of Section 69055, shall be deemed, for purposes of subdivision  
22 (a), to have failed to take action properly and in a timely fashion with respect to a  
23 hazardous substance release or a threatened release.

24 **Comment.** Subdivision (a) of Section 69130 continues subdivision (b) of former Section  
25 25355 without substantive change.

26 Subdivision (b) continues subdivision (e) of former Section 25355.5 without substantive  
27 change.

28 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105  
29 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

### 30 § 69135. Actions required prior to initiation of removal or remedial action

31 69135. (a) At least 30 days before initiating removal or remedial actions, the  
32 department shall make a reasonable effort to notify the persons identified by the  
33 department as potentially responsible parties and shall also publish a notification  
34 of this action in a newspaper of general circulation pursuant to the method  
35 specified in Section 6061 of the Government Code. This subdivision does not  
36 apply to actions taken pursuant to Section 68870 or immediate corrective actions  
37 taken pursuant to Section 68875. A responsible party may be held liable pursuant  
38 to this part whether or not the person was given the notice specified in this  
39 subdivision.

40 (b) The department shall notify the owner of the real property of the site of a  
41 hazardous substance release within 30 days after listing a site pursuant to Article 5  
42 (commencing with Section 68760) of Chapter 4, and at least 30 days before

1 initiating a removal or remedial action pursuant to this part, by sending the  
2 notification by certified mail to the person to whom the real property is assessed,  
3 as shown upon the last equalized assessment roll of the county, at the address  
4 shown on the assessment roll. The requirements of this subdivision do not apply to  
5 actions taken pursuant to Section 68870 or to immediate corrective actions taken  
6 pursuant to Section 68875.

7 **Comment.** Section 69135 continues paragraph (c)(1) and subdivision (d) of former Section  
8 25355 without substantive change.

9 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105  
10 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

11 **Staff Notes. (1)** The provisions proposed for recodification in this section refer to “actions taken  
12 pursuant to subdivision (b) of Section 25358.3 ...” These cross-references appear to be  
13 erroneous. Section 25358.3(b) (proposed Section 68650) does not appear to authorize response  
14 actions. Section 25358.3(a) (proposed Section 68870) appears to be the relevant provision for  
15 these cross-references, as Section 25358.3(a) provides for emergency response actions. For this  
16 reason, the cross-references have been updated to refer to proposed Section 68870. **The staff**  
17 **welcomes comment on this proposed cross-reference correction.**

18 **(2)** Proposed Section 69135 also refers to “immediate corrective actions taken pursuant to Section  
19 25354.” Section 25354 is proposed for recodification as multiple sections (proposed Sections  
20 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision  
21 authorizing expenditures for immediate corrective action (proposed Section 68875). The  
22 remaining provisions, which relate to appropriations and the funding of the emergency reserve  
23 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not  
24 appear to be relevant to this cross-reference and will be omitted from the cross-reference. **The**  
25 **staff welcomes comment on this proposed cross-reference update.**

26 **(3)** Section 25355(c)(1), which pertains to notices to potentially responsible parties, cross-  
27 references “this subdivision.” In particular, Section 25355(c)(1) provides that “this subdivision”  
28 does not apply to certain emergency actions and persons who fail to receive the notice specified  
29 by “this subdivision” can still be held liable. Currently, Section 25355(c) has two paragraphs.  
30 Paragraph (2), which is proposed for recodification elsewhere in this draft, relates to voluntary  
31 enforceable agreements for the removal or remedial actions to address certain petroleum releases.  
32 The voluntary agreements do not appear to be relevant to the purposes of the “this subdivision”  
33 cross-references. For this reason, proposed Section 69135 only references the material contained  
34 in paragraph (1) of subdivision (c), as opposed to the entirety of subdivision (c). **The staff**  
35 **welcomes comment on this proposed cross-reference update.**

36 Article 11. Local Government Removal or Remedial Actions

37 § 69160. Prerequisites to local government-initiated removal or remedial actions

38 69160. A city or county may initiate a removal or remedial action for a site  
39 listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4 in  
40 accordance with this article. Except as provided in Section 69175, the city or  
41 county shall, before commencing the removal or remedial action, take all of the  
42 following actions:

43 (a) The city or county shall notify the department of the planned removal or  
44 remedial action. Upon receiving this notification, the department shall make a  
45 reasonable effort to notify any person identified by the department as a potentially

1 responsible party for the site. If a potentially responsible party is taking the  
2 removal or remedial action properly and in a timely fashion, or if a potentially  
3 responsible party will commence the action within 60 days of this notification, the  
4 city or county may not initiate a removal or remedial action pursuant to this  
5 article.

6 (b) If a potentially responsible party for the site has not taken the action  
7 specified in subdivision (a), the city or county shall submit the estimated cost of  
8 the removal or remedial action to the department, which shall, within 30 days after  
9 receiving the estimate, approve or disapprove the reasonableness of the cost  
10 estimate. If the department disagrees with the cost estimate, the city or county and  
11 the department shall, within 30 days, attempt to enter into an agreement  
12 concerning the cost estimate.

13 (c) The city or county shall demonstrate to the department that it has sufficient  
14 funds to carry out the approved removal or remedial action without taking into  
15 account any costs of the action that may be, or have been, paid by a potentially  
16 responsible party.

17 **Comment.** Section 69160 continues subdivision (a) of former Section 25351.2 without  
18 substantive change.

19 See Sections 68050 (“department”), 68085 (“person”), 68125 (“remedy”), 68135 (“remove”),  
20 68145 (“responsible party”), 68155 (“site”).

21 **Staff Note.** Section 25351.2(a) would seem to benefit from a restatement for clarity. This  
22 provision specifies that, prior to initiating a removal or remedial action, a city or county “shall ...  
23 take all of the following actions.” Each listed “action” repeats the phrase “the city or county  
24 shall.” Most importantly, it is not clear whether the listed actions are independent actions or  
25 sequential steps in a process that must be followed. If the latter, then it would be helpful to  
26 rephrase the introductory clause to make clear that the enumerated items are steps in a process.  
27 **The staff welcomes comment on how this provision is intended to operate and whether it is**  
28 **sufficiently clear.**

29 **§ 69165. Local government deemed to be acting in place of department**

30 69165. If the director approves the request of the city or county to initiate a  
31 removal or remedial action and a final remedial action plan has been issued  
32 pursuant to Article 12 (commencing with Section 69190) for the hazardous  
33 substance release site, the city or county shall be deemed to be acting in place of  
34 the department for purposes of implementing the remedial action plan pursuant to  
35 this part.

36 **Comment.** Section 69165 continues subdivision (b) of former Section 25351.2 without  
37 substantive change.

38 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105  
39 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

40 **§ 69170. Department recovery of costs reimbursed to local government**

41 69170. Upon reimbursing a city or county for the costs of a removal or remedial  
42 action, the department shall recover these costs pursuant to **Section 25360.**

1 **Comment.** Section 69170 continues subdivision (c) of former Section 25351.2 without  
2 substantive change.

3 See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

4 **§ 69175. Reimbursement eligibility of local government removal or remedial action costs**

5 69175. (a) In order for a city or county to be reimbursed for the costs of a  
6 removal or remedial action incurred by the city or county from the state account,  
7 the city or county shall obtain the approval of the director before commencing the  
8 removal or remedial action.

9 (b) The director shall grant an approval only when all actions required by law  
10 prior to implementation of a remedial action plan have been taken.

11 **Comment.** Section 69175 continues subdivision (d) of former Section 25351.2 without  
12 substantive change.

13 See Sections 68055 (“director”), 68125 (“remedy”), 68135 (“remove”), 68165 (“state  
14 account”).

15 **Article 12. Planning**

16 **Staff Note.** “Remedial action plan” is a phrase used often in Section 25356.1. This term,  
17 however, is not defined in this law, Section 101 of the federal act, or Section 300.5 of Title 40 of  
18 the Code of Federal Regulations (definitions for the National Contingency Plan).

19 Contrary to what the term seems to imply, a “remedial action plan” does not appear to be  
20 strictly a plan for “remedial action” (defined term in proposed Section 68125). Instead, a  
21 “remedial action plan” appears to be required for a “removal action” that exceeds a certain dollar  
22 threshold. See proposed Section 69225(a).

23 **§ 69190. “State board”**

24 69190. For purposes of this article, “state board” means the State Water  
25 Resources Control Board.

26 **Comment.** Section 69190 continues subdivision (a) of former Section 25356.1 without  
27 substantive change. A definition for “regional board” contained in former Section 25356.1(a) was  
28 not continued, as this term is already defined in Section 68100.

29 **Staff Note.** Subdivision (a) of Section 25356.1 defines two terms, “regional board” and “state  
30 board,” for the purposes of the section.

31 “Regional board” is defined as “a California regional water quality control board.” This term  
32 has already been defined for the part as a whole. Proposed Section 68100 defines “regional  
33 board” for this part as “a California regional water quality control board.” For this reason, the  
34 redundant definition of “regional board” in Section 25356.1(a) was not continued.

35 “State board” is defined as “the State Water Resources Control Board.” However, the term  
36 “state board” is not otherwise used in Section 25356.1. For this reason, the staff is considering  
37 whether the definition of “state board” should be continued. **The staff welcomes comment on  
38 whether the definition of “state board” has any ongoing utility.**

39 **§ 69195. Preparation or approval of plans**

40 69195. Except as provided in Sections 69225 and 69230, the department, or, if  
41 appropriate, the regional board shall prepare or approve remedial action plans for

1 the sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter  
2 4.

3 **Comment.** Section 69195 continues subdivision (b) of former Section 25356.1 without  
4 substantive change.

5 See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68155  
6 (“site”).

7 **Staff Note.** The first clause of subdivision (b) of Section 25356.1 is “[e]xcept as provided in  
8 subdivision (h).” Subdivision (h) is proposed for recodification as three sections (proposed  
9 Sections 69225, 69230, and 69235). One of those provisions, proposed Section 69235, was  
10 omitted from the cross-reference. That section contains only a rule for calculating the costs of a  
11 removal action and does not appear to be relevant to this cross-reference. For this reason, the  
12 cross-reference was updated to refer only to Sections 69225 and 69230. **The staff welcomes  
13 comment on this proposed cross-reference update.**

14 **§ 69200. Request by party for preparation or approval of plan**

15 69200. (a) A potentially responsible party may request the department or the  
16 regional board, when appropriate, to prepare or approve a remedial action plan for  
17 a site not listed pursuant to Article 5 (commencing with Section 68760) of Chapter  
18 4, if the department or the regional board determines that a removal or remedial  
19 action is required to respond to a release of a hazardous substance. The department  
20 or the regional board shall respond to a request to prepare or approve a remedial  
21 action plan within 90 days of receipt.

22 (b) This section does not affect the authority of a regional board to issue and  
23 enforce a cleanup and abatement order pursuant to Section 13304 of the Water  
24 Code or a cease and desist order pursuant to Section 13301 of the Water Code.

25 **Comment.** Section 69200 continues subdivision (c) of former Section 25356.1 without  
26 substantive change.

27 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),  
28 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”), 68145  
29 (“responsible party”), 68155 (“site”).

30 **§ 69205. Standards for plan**

31 69205. All remedial action plans prepared or approved pursuant to this article  
32 shall be based upon Sections 68855 and 68860 and Subpart E of the National Oil  
33 and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et  
34 seq.), as amended, and upon all of the following factors, to the extent that these  
35 factors are consistent with these federal regulations and do not require a less  
36 stringent level of cleanup than these federal regulations:

37 (a) Health and safety risks posed by the conditions at the site. When considering  
38 these risks, the department or the regional board shall consider scientific data and  
39 reports that may have a relationship to the site.

40 (b) The effect of contamination or pollution levels upon present, future, and  
41 probable beneficial uses of contaminated, polluted, or threatened resources.

42 (c) The effect of alternative remedial action measures on the reasonable  
43 availability of groundwater resources for present, future, and probable beneficial

1 uses. The department or the regional board shall consider the extent to which  
2 remedial action measures are available that use, as a principal element, treatment  
3 that significantly reduces the volume, toxicity, or mobility of the hazardous  
4 substances, as opposed to remedial actions that do not use this treatment. The  
5 department or the regional board shall not select remedial action measures that use  
6 offsite transport and disposal of untreated hazardous substances or contaminated  
7 materials if practical and cost-effective treatment technologies are available.

8 (d) Site-specific characteristics, including the potential for offsite migration of  
9 hazardous substances, the surface or subsurface soil, and the hydrogeologic  
10 conditions, as well as preexisting background contamination levels.

11 (e) Cost-effectiveness of alternative remedial action measures. In evaluating the  
12 cost-effectiveness of proposed alternative remedial action measures, the  
13 department or the regional board shall consider, to the extent possible, the total  
14 short-term and long-term costs of these actions and shall use, as a major factor,  
15 whether the deferral of a remedial action will result, or is likely to result, in a rapid  
16 increase in cost or in the hazard to public health or the environment posed by the  
17 site. Land disposal shall not be deemed the most cost-effective measure merely on  
18 the basis of lower short-term cost.

19 (f) The potential environmental impacts of alternative remedial action measures,  
20 including, but not limited to, land disposal of the untreated hazardous substances  
21 as opposed to treatment of the hazardous substances to remove or reduce its  
22 volume, toxicity, or mobility prior to disposal.

23 **Comment.** Section 69205 restates subdivision (d) of former Section 25356.1 without  
24 substantive change.

25 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),  
26 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

27 **Staff Note.** Section 25356.1(d) provides that remedial action plans shall be based on “Section  
28 25350, Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40  
29 C.F.R. 300.400 et seq.), and any amendments thereto.” In proposed Section 69205, the cross-  
30 reference to Section 25350 has been updated and the phrase “and any amendments thereto” has  
31 been replaced with “as amended.” **The staff welcomes any comment on this proposed**  
32 **restatement.**

33 **§ 69210. Content of plan**

34 69210. A remedial action plan prepared pursuant to this article shall include the  
35 basis for the remedial action selected and shall include an evaluation of each  
36 alternative considered and rejected by the department or the regional board for a  
37 particular site. The plan shall include an explanation for rejection of alternative  
38 remedial actions considered but rejected. The plan shall also include an evaluation  
39 of the consistency of the selected remedial action with the requirements of the  
40 federal regulations and the factors specified in Section 69205, if those factors are  
41 not otherwise adequately addressed through compliance with the federal  
42 regulations. The remedial action plan shall also include a nonbinding preliminary  
43 allocation of responsibility among all identifiable potentially responsible parties at

1 a particular site, including those parties that may have been released, or may  
2 otherwise be immune, from liability pursuant to this part or any other provision of  
3 law.

4 **Comment.** Section 69210 continues the four sentences of subdivision (e) of former Section  
5 25356.1 without substantive change.

6 See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68125  
7 (“remedy”), 68145 (“responsible party”), 68155 (“site”).

8 **§ 69215. Public review and comment on plan**

9 69215. (a) Before adopting a final remedial action plan, the department or the  
10 regional board shall prepare or approve a draft remedial action plan and shall do  
11 all of the following:

12 (1) Circulate the draft plan for at least 30 days for public comment.

13 (2) Notify affected local and state agencies of the removal and remedial actions  
14 proposed in the remedial action plan and publish a notice in a newspaper of  
15 general circulation in the area affected by the draft remedial action plan. The  
16 department or the regional board shall also post notices in the location where the  
17 proposed removal or remedial action would be located and shall notify, by direct  
18 mailing, the owners of property contiguous to the site addressed by the plan, as  
19 shown in the latest equalized assessment roll.

20 (3) Hold one or more meetings with the lead and responsible agencies for the  
21 removal and remedial actions, the potentially responsible parties for the removal  
22 and remedial actions, and the interested public, to provide the public with the  
23 information that is necessary to address the issues that concern the public. The  
24 information to be provided shall include an assessment of the degree of  
25 contamination, the characteristics of the hazardous substances, an estimate of the  
26 time required to carry out the removal and remedial actions, and a description of  
27 the proposed removal and remedial actions.

28 (4) Comply with Section 68930.

29 (b) After complying with subdivision (a), the department or the regional board  
30 shall review and consider any public comments, and shall revise the draft plan, if  
31 appropriate. The department or the regional board shall then issue the final  
32 remedial action plan.

33 **Comment.** Section 69215 continues the fifth sentence of subdivision (e), including paragraphs  
34 (e)(1)-(e)(4), of former Section 25356.1 without substantive change. Section 69215 also continues  
35 subdivision (f) of former Section 25356.1 without substantive change.

36 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),  
37 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

38 **Staff Note.** Subdivision (f) of Section 25356.1 requires the department or regional board to  
39 review and consider comments “after complying with subdivision (e).” Subdivision (e) is  
40 proposed for recodification as two separate provisions in this recodification (subdivision (a) of  
41 this proposed section and proposed Section 69210). The cross-reference to “subdivision (e)”  
42 appears to state a timing rule related to the public notice and comment opportunity that is  
43 proposed for recodification as subdivision (a) of this proposed section. The portion of subdivision  
44 (e) in proposed Section 69210 relates to requirements for the substantive contents of a plan. This

1 provision does not appear relevant to the cross-reference and was omitted. For this reason, the  
2 cross-reference in proposed Section 69215 was updated to refer only to “subdivision (a).” **The**  
3 **staff welcomes comment on this proposed cross-reference update.**

4 **§ 69220. Judicial review of plan**

5 69220. (a)(1) A potentially responsible party named in the final remedial action  
6 plan issued by the department or the regional board may seek judicial review of  
7 the final remedial action plan by filing a petition for writ of mandate pursuant to  
8 Section 1085 of the Code of Civil Procedure within 30 days after the final  
9 remedial action plan is issued by the department or the regional board. No action  
10 may be brought by a potentially responsible party to review the final remedial  
11 action plan if the petition for writ of mandate is not filed within 30 days of the date  
12 that the final remedial action plan was issued.

13 (2) Any other person who has the right to seek judicial review of the final  
14 remedial action plan by filing a petition for writ of mandate pursuant to Section  
15 1085 of the Code of Civil Procedure shall do so within one year after the final  
16 remedial action plan is issued. No action may be brought by any other person to  
17 review the final remedial action plan if the petition for writ of mandate is not filed  
18 within one year of the date that the final remedial action plan was issued.

19 (3) The filing of a petition for writ of mandate to review the final remedial  
20 action plan shall not stay any removal or remedial action specified in the final  
21 plan.

22 (b) For purposes of judicial review, the court shall uphold the final remedial  
23 action plan if the plan is based upon substantial evidence available to the  
24 department or the regional board, as the case may be.

25 (c) This section does not prohibit the court from granting any appropriate relief  
26 within its jurisdiction, including, but not limited to, enjoining the expenditure of  
27 funds pursuant to paragraph (2) of subdivision (b) of Section 68305.

28 **Comment.** Paragraph (a)(1) of Section 69220 continues the first and third sentences of  
29 paragraph (1) of subdivision (g) of former Section 25356.1 without substantive change.

30 Paragraph (a)(2) continues the second and fourth sentences of paragraph (1) of subdivision (g)  
31 of former Section 25356.1 without substantive change.

32 Paragraph (a)(3) continues the fifth sentence of paragraph (1) of subdivision (g) of former  
33 Section 25356.1 without substantive change.

34 Subdivision (b) continues paragraph (2) of subdivision (g) of former Section 25356.1 without  
35 substantive change.

36 Subdivision (c) continues paragraph (3) of subdivision (g) of former Section 25356.1 without  
37 substantive change.

38 See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68125  
39 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

40 **§ 69225. Situations in which plan not required**

41 69225. (a) This article does not require the department or a regional board to  
42 prepare a remedial action plan if conditions present at a site present an imminent  
43 or substantial endangerment to the public health and safety or to the environment

1 or, if the department, a regional board, or a responsible party takes a removal  
2 action at a site and the estimated cost of the removal action is less than two million  
3 dollars (\$2,000,000).

4 (b) The department or a regional board shall prepare or approve a removal  
5 action work plan for all sites where a nonemergency removal action is proposed  
6 and where a remedial action plan is not required. For sites where removal actions  
7 are planned and are projected to cost less than two million dollars (\$2,000,000),  
8 the department or a regional board shall make the local community aware of the  
9 hazardous substance release site and shall prepare, or direct the parties responsible  
10 for the removal action to prepare, a community profile report to determine the  
11 level of public interest in the removal action. Based on the level of expressed  
12 interest, the department or regional board shall take appropriate action to keep the  
13 community informed of project activity and to provide opportunities for public  
14 comment that may include conducting a public meeting on proposed removal  
15 actions.

16 (c)(1) A remedial action plan is not required pursuant to Section 69195 if the site  
17 is listed on the National Priorities List by the United States Environmental  
18 Protection Agency pursuant to the federal act, if the department or the regional  
19 board concurs with the remedy selected by the United States Environmental  
20 Protection Agency's record of decision. The department or the regional board may  
21 sign the record of decision issued by the United States Environmental Protection  
22 Agency if the department or the regional board concurs with the remedy selected.

23 (2) Paragraph (1) does not apply to a removal action paid from the state  
24 account.

25 **Comment.** Section 69225 continues paragraphs (1), (2) and (5) of subdivision (h) of former  
26 Section 25356.1 without substantive change.

27 See Sections 68050 ("department"), 68065 ("federal act"), 68075 ("hazardous substance"),  
28 68100 ("regional board"), 68105 ("release"), 68125 ("remedy"), 68130 ("removal action work  
29 plan"), 68135 ("remove"), 68145 ("responsible party"), 68155 ("site"), 68165 ("state account").

30 **Staff Notes.** (1) Section 25356.1(h)(2) refers to the "National Priority List." It appears that the  
31 correct name is the "National Priorities List." This reference has been corrected. This paragraph  
32 also contained several references to the "Environmental Protection Agency," without designating  
33 whether it was the state or federal Environmental Protection Agency. Given the context, it seems  
34 clear that these are references to the federal agency, so these references have been updated to  
35 refer to the "United States Environmental Protection Agency."

36 (2) Paragraph 5 of Section 25356.1(h) contains a reference to "[p]aragraph (2) of this  
37 subdivision." The "of this subdivision" language is unnecessary and counter to standard drafting  
38 practice. That language has not been continued.

39 **§ 69230. Waiver from required standards for plan**

40 69230. The department may waive the requirement that a remedial action plan  
41 meet the requirements specified in Section 69205 if all of the following apply:

1 (a) The responsible party adequately characterizes the hazardous substance  
2 conditions at a site listed pursuant to Article 5 (commencing with Section 68760)  
3 of Chapter 4.

4 (b) The responsible party submits to the department, in a form acceptable to the  
5 department, all of the following:

6 (1) A description of the techniques and methods to be employed in excavating,  
7 storing, handling, transporting, treating, and disposing of materials from the site.

8 (2) A listing of the alternative remedial measures that were considered by the  
9 responsible party in selecting the proposed removal action.

10 (3) A description of methods that will be employed during the removal action to  
11 ensure the health and safety of workers and the public during the removal action.

12 (4) A description of prior removal actions with similar hazardous substances and  
13 with similar public safety and environmental considerations.

14 (c) The department determines that the remedial action plan provides protection  
15 of human health and safety and for the environment at least equivalent to that  
16 which would be provided by a remedial action plan prepared in accordance with  
17 **[Section 69205]**.

18 (d) The total cost of the removal action is less than two million dollars  
19 (\$2,000,000).

20 **Comment.** Section 69230 continues paragraph (3) of subdivision (h) of former Section  
21 25356.1 without substantive change.

22 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68125 (“remedy”), 68135  
23 (“remove”), 68145 (“responsible party”), 68155 (“site”).

24 **Staff Notes. (1)** Section 25356.1(h)(3) allows the department to waive the requirement that a  
25 remedial action plan meet requirements in “subdivision (d)” as long as the specified conditions  
26 apply. One of those conditions, is a determination by the department that the plan is as protective  
27 of health, safety, and the environment as a plan prepared in accordance with “subdivision (c).”  
28 Subdivision (c) does not place conditions on preparation of a plan. This appears to be an  
29 erroneous reference that should refer to “subdivision (d).” For this reason, the cross-reference has  
30 been updated to refer to proposed Section 69205, the provision that would continue the substance  
31 of Section 25356.1(d). **The staff welcomes comment on this proposed correction.**

32 **(2)** Under Section 25356.1(h)(3), one of the necessary conditions for a waiver of the remedial  
33 action plan requirements is that the “total cost of the removal action is less than two million  
34 dollars (\$2,000,000).” However, a remedial action plan does not appear to be required for a  
35 removal action if the total cost falls below this dollar amount. See proposed Section 69225(a). It  
36 is not clear why a waiver of plan requirements would be needed when no plan is required. **The**  
37 **staff welcomes comment on this issue.**

38 **§ 69235. Costs of removal action**

39 69235. For purposes of this article, the cost of a removal action includes the  
40 cleanup or removal of released hazardous substances from the environment or the  
41 taking of other actions that are necessary to prevent, minimize, or mitigate damage  
42 that may otherwise result from a release or threatened release, as further defined  
43 by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

1 **Comment.** Section 69235 restates paragraph (4) of subdivision (h) of former Section 25356.1  
2 without substantive change.

3 See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”), 68135  
4 (“remove”).

5 **Staff Note.** Section 25356.1(h)(4) contains an apparent typographical error and a possibly  
6 incorrect cross-reference to the federal act. That provision provides (with emphasis added):

7 “For purposes of this section, the cost of a removal action includes the cleanup of  
8 removal of released hazardous substances from the environment or the taking of other actions that  
9 are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release  
10 or threatened release, *as further defined by Section 9601 (23) of Title 42 of the United States*  
11 *Code.*”

12 A typographical error in the phrase “the cleanup of removal of released hazardous substances”  
13 has been corrected. The phrase now reads “the cleanup *or* removal of released hazardous  
14 substances.”

15 The form of the cross-reference to the federal act has been standardized. In checking this  
16 cross-reference, the staff found that this refers to the federal act’s definition of “remove.” While  
17 this may have been intended, the placement of this cross-reference suggests that the relevant  
18 definition would be “release,” which is found in Section 101(22). **The staff welcomes comment**  
19 **on whether this provision cross-refers to the appropriate term in the federal act.** If so, it may  
20 be appropriate to move this cross-reference to follow the term “removal.” If not, it may be  
21 appropriate to revise this cross-reference to refer to the definition for “release.”

22 **§ 69240. Application of Water Code provisions**

23 69240. Article 2 (commencing with Section 13320), Article 3 (commencing  
24 with Section 13330), Article 5 (commencing with Section 13350), and Article 6  
25 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code  
26 apply to an action or failure to act by a regional board pursuant to this article.

27 **Comment.** Section 69240 continues subdivision (i) of former Section 25356.1 without  
28 substantive change.

29 See Section 68100 (“regional board”).

30 Article 13. Standards

31 **§ 69260. Standards for response actions**

32 69260. Any response action taken or approved pursuant to this part shall be  
33 based upon, and no less stringent than, all of the following requirements:

34 (a) The requirements established under federal regulation pursuant to Subpart E  
35 of the National Oil and Hazardous Substances Pollution Contingency Plan (40  
36 C.F.R. 300.400 et seq.), as amended.

37 (b) The regulations established pursuant to Division 7 (commencing with  
38 Section 13000) of the Water Code, all applicable water quality control plans  
39 adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing  
40 with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all  
41 applicable state policies for water quality control adopted pursuant to Article 3  
42 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code,  
43 to the extent that the department or the regional board determines that those

1 regulations, plans, and policies do not require a less stringent level of remediation  
2 than the federal regulations specified in subdivision (a) and to the degree that  
3 those regulations, plans, and policies do not authorize decisionmaking procedures  
4 that may result in less stringent response action requirements than those required  
5 by the federal regulations specified in subdivision (a).

6 (c) Any applicable provisions of this part, to the extent those provisions are  
7 consistent with the federal regulations specified in subdivision (a) and do not  
8 require a less stringent level of remediation than, or decisionmaking procedures  
9 that are at variance with, the federal regulations set forth in subdivision (a).

10 **Comment.** Section 69260 continues subdivision (a) of former Section 25356.1.5 without  
11 substantive change.

12 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”).

13 **§ 69265. Standards for risk assessment for response action**

14 69265. (a) Any health or ecological risk assessment prepared in conjunction  
15 with a response action taken or approved pursuant to this part shall be based upon  
16 Subpart E of the National Oil and Hazardous Substances Pollution Contingency  
17 Plan (40 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the  
18 United States Environmental Protection Agency developed pursuant to the federal  
19 act, and the most current sound scientific methods, knowledge, and practices of  
20 public health and environmental professionals who are experienced practitioners  
21 in the fields of epidemiology, risk assessment, environmental contamination,  
22 ecological risk, fate and transport analysis, and toxicology.

23 (b) Risk assessment practices shall include the most current sound scientific  
24 methods for data evaluation, exposure assessment, toxicity assessment, and risk  
25 characterization, documentation of all assumptions, methods, models, and  
26 calculations used in the assessment.

27 (c) Any health risk assessment shall include all of the following:

28 (1) Evaluation of risks posed by acutely toxic hazardous substances based on  
29 levels at which no known or anticipated adverse effects on health will occur, with  
30 an adequate margin of safety.

31 (2) Evaluation of risks posed by carcinogens or other hazardous substances that  
32 may cause chronic disease based on a level that does not pose any significant risk  
33 to health.

34 (3) Consideration of possible synergistic effects resulting from exposure to, or  
35 interaction with, two or more hazardous substances.

36 (4) Consideration of the effect of hazardous substances upon subgroups that  
37 comprise a meaningful portion of the general population, including, but not  
38 limited to, infants, children, pregnant women, the elderly, individuals with a  
39 history of serious illness, or other subpopulations, that are identifiable as being at  
40 greater risk of adverse health effects due to exposure to hazardous substances than  
41 the general population.

1 (5) Consideration of exposure and body burden level that alter physiological  
2 function or structure in a manner that may significantly increase the risk of illness  
3 and of exposure to hazardous substances in all media, including, but not limited to,  
4 exposures in drinking water, food, ambient and indoor air, and soil.

5 **Comment.** Section 69265 continues subdivision (b) of former Section 25356.1.5 without  
6 substantive change.

7 See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68140 (“response”).

8 **§ 69270. Level of hazardous substance that is protective of public health**

9 69270. If currently available scientific data are insufficient to determine the  
10 level of a hazardous substance at which no known or anticipated adverse effects  
11 on health will occur, with an adequate margin of safety, or the level that poses no  
12 significant risk to public health, the risk assessment prepared in conjunction with a  
13 response action taken or approved pursuant to this part shall be based on the level  
14 that is protective of public health, with an adequate margin of safety. This level  
15 shall be based exclusively on public health considerations, shall, to the extent  
16 scientific data are available, take into account the factors set forth in paragraphs  
17 (1) to (5), inclusive, of subdivision (c) of Section 69265, and shall be based on the  
18 most current principles, practices, and methods used by public health professionals  
19 who are experienced practitioners in the fields of epidemiology, risk assessment,  
20 fate and transport analysis, and toxicology.

21 **Comment.** Section 69270 continues subdivision (c) of former Section 25356.1.5 without  
22 substantive change.

23 See Sections 68075 (“hazardous substance”), 68140 (“response”).

24 **§ 69275. Content of exposure assessment**

25 69275. (a) The exposure assessment of any risk assessment prepared in  
26 conjunction with a response action taken or approved pursuant to this part shall  
27 include the development of reasonable maximum estimates of exposure for both  
28 current land use conditions and reasonably foreseeable future land use conditions  
29 at the site.

30 (b) The exposure assessment of any risk assessment prepared in conjunction  
31 with a response action taken or approved pursuant to this part shall include the  
32 development of reasonable maximum estimates of exposure to volatile organic  
33 compounds that may enter structures that are on the site or that are proposed to be  
34 constructed on the site and may cause exposure due to accumulation of those  
35 volatile organic compounds in the indoor air of those structures.

36 **Comment.** Section 69275 continues subdivisions (d) and (e) of former Section 25356.1.5  
37 without substantive change.

38 See Sections 68140 (“response”), 68155 (“site”).

1 Article 14. On-site Hazardous Waste Facility for Response Action

2 **§ 69290. Discretion to exclude from permitting requirements**

3 69290. To the extent consistent with the federal Resource Conservation and  
4 Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department  
5 may exclude any portion of a response action conducted entirely onsite from the  
6 hazardous waste facility permit requirements of Section 25201 if both of the  
7 following apply:

8 (a) The removal or remedial action is carried out pursuant to a removal action  
9 work plan or a remedial action plan prepared pursuant to Article 12 (commencing  
10 with Section 69190).

11 (b) The removal action work plan or the remedial action plan requires that the  
12 response action complies with all laws, rules, regulations, standards, and  
13 requirements, criteria, or limitations applicable to the construction, operation, and  
14 closure of the type of facility at the hazardous substance release site and with any  
15 other condition imposed by the department as necessary to protect public health  
16 and safety and the environment.

17 **Comment.** Section 69290 continues subdivision (a) of former Section 25358.9 without  
18 substantive change.

19 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125  
20 (“remedy”), 68130 (“removal action work plan”), 68135 (“remove”), 68140 (“response”), 68155  
21 (“site”).

22 **§ 69295. Enforcement**

23 69295. (a) The department may enforce in the court for the county in which a  
24 response action exempted pursuant to Section 69290 is located any federal or state  
25 law, rule, regulation, standard, requirements, criteria, or limitation with which the  
26 remedial or removal action is required to comply.

27 (b)(1) Any consent decree entered into pursuant to an enforcement action  
28 authorized by this section shall require the parties to attempt expeditiously to  
29 informally resolve any disagreements concerning the implementation of the  
30 response action with the appropriate federal and state agencies and shall provide  
31 for administrative enforcement.

32 (2) The consent decree shall stipulate that the penalty for violation of the  
33 consent decree shall be an amount not more than twenty-five thousand dollars  
34 (\$25,000) per day, which may be enforced by the state. These penalties do not  
35 impair or affect the authority of the court to order compliance with the specific  
36 terms of the consent decree.

37 **Comment.** Section 69295 continues subdivision (b) of former Section 25358.9 without  
38 substantive change.

39 See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”), 68140  
40 (“response”).

1

## Article 15. Operation and Maintenance

2 **§ 69310. “Small business”**

3 69310. For purposes of this article, “small business” is a business that meets the  
4 requirements set forth in subdivision (d) of Section 14837 of the Government  
5 Code.

6 **Comment.** Section 69310 continues subdivision (f) of former Section 25355.2 without  
7 substantive change.

8 **§ 69315. Financial assurance for operation and maintenance**

9 69315. Except as provided in subdivision (a) of Section 69325, the department  
10 or the regional board shall require any responsible party who is required to comply  
11 with operation and maintenance requirements as part of a response action, to  
12 demonstrate and to maintain financial assurance in accordance with this article.  
13 The responsible party shall demonstrate financial assurance prior to the time that  
14 operation and maintenance activities are initiated and shall maintain it throughout  
15 the period of time necessary to complete all required operation and maintenance  
16 activities.

17 **Comment.** Section 69315 continues subdivision (a) of former Section 25355.2 without  
18 substantive change.

19 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional  
20 board”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

21 **§ 69320. Valid financial assurance mechanisms**

22 69320. (a) For purposes of Section 69315, the responsible party shall  
23 demonstrate and maintain one or more of the financial assurance mechanisms set  
24 forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the  
25 California Code of Regulations.

26 (b) As an alternative to the requirement of subdivision (a), a responsible party  
27 may demonstrate and maintain financial assurance by means of a financial  
28 assurance mechanism other than those specified in subdivision (a), if the  
29 alternative financial assurance mechanism has been submitted to, and approved  
30 by, the department or the regional board as being at least equivalent to the  
31 financial assurance mechanisms specified in subdivision (a). The department or  
32 the regional board shall evaluate the equivalency of the proposed alternative  
33 financial assurance mechanism principally in terms of the certainty of the  
34 availability of funds for required operation and maintenance activities and the  
35 amount of funds that will be made available. The department or the regional board  
36 shall require the responsible party to submit any information necessary to make a  
37 determination as to the equivalency of the proposed alternative financial assurance  
38 mechanism.

39 **Comment.** Section 69320 restates subdivision (b) of former Section 25355.2 without  
40 substantive change. A cross-reference to the California Code of Regulations was corrected to  
41 refer to “subsections” as opposed to “subdivisions.”

1 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional  
2 board”), 68145 (“responsible party”).

3 **Staff Note.** Section 25355.2(b) refers to “a financial assurance mechanism other than those listed  
4 in paragraph (1) [proposed subdivision (a)].” Paragraph (1) does not list financial assurance  
5 mechanisms, but refers to those mechanisms set forth in specified provisions of the California  
6 Code of Regulations. Since paragraph (1) does not “list” financial assurance mechanisms, the  
7 reference has been changed to read: “a financial assurance mechanism other than those *specified*  
8 in [subdivision (a)].” This change is consistent with a subsequent reference to subdivision (a) in  
9 this provision. This change and a correction to the citation to the California Code of Regulations  
10 noted in the Comment are the only language changes made in this provision. **The staff welcomes**  
11 **comment on this proposed restatement.**

12 **§ 69325. Conditions for waiver of financial assurance requirement**

13 69325. (a) The department or the regional board shall waive the financial  
14 assurance required by Section 69315 if the department or the regional board makes  
15 one of the following determinations:

16 (1) The responsible party is a small business and has demonstrated all of the  
17 following:

18 (A) The responsible party cannot qualify for any of the financial assurance  
19 mechanisms set forth in subsections (b), (c), and (d) of Section 66265.143 of Title  
20 22 of the California Code of Regulations.

21 (B) The responsible party financially cannot meet the requirements of subsection  
22 (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

23 (C) The responsible party is not capable of meeting the eligibility requirements  
24 set forth in subsection (e) of Section 66265.143 of Title 22 of the California Code  
25 of Regulations.

26 (2) The responsible party is a small business and has demonstrated that the  
27 responsible party financially is not capable of establishing one of the financial  
28 assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section  
29 66265.143 of Title 22 of the California Code of Regulations while at the same  
30 time financing the operation and maintenance requirements applicable to the site.

31 (3) The responsible party is not separately required to demonstrate and maintain  
32 a financial assurance mechanism for operation and maintenance activities at a site  
33 because of all of the following conditions:

34 (A) The site is a multiple responsible party site.

35 (B) Financial assurance that operation and maintenance activities at the site will  
36 be carried out is demonstrated and maintained by a financial assurance mechanism  
37 established jointly by all, or some, of the responsible parties.

38 (C) The financial assurance mechanism specified in subparagraph (B) meets the  
39 requirements of Sections 69315 and 69320.

40 (4) The responsible party is a federal, state, or local government entity.

41 (b) The department or the regional board shall withdraw a waiver granted  
42 pursuant to paragraph (1) or (2) of subdivision (a) if the department or the regional

1 board determines that the responsible party that obtained the waiver no longer  
 2 meets the eligibility requirements for the waiver.

3 **Comment.** Section 69325 continues subdivisions (c) and (d) of former Section 25355.2  
 4 without substantive change. Cross-references to the California Code of Regulations were  
 5 corrected to refer to “subsections” as opposed to “subdivisions.”

6 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional  
 7 board”), 68145 (“responsible party”), 68155 (“site”), 69310 (“small business”).

8 **§ 69330. Reporting on financial assurance**

9 69330. On or before January 15, 2001, the department shall report to the  
 10 Legislature all of the following:

11 (a) The number of requests the department and the regional boards have  
 12 received for waivers from the financial assurance requirements of this article  
 13 during the period between May 26, 1999, and January 1, 2001.

14 (b) The disposition of the requests that were received and the reasons for  
 15 granting the waivers that were allowed and rejecting the waivers that were  
 16 disallowed.

17 (c) The total number of businesses or other entities that were required by this  
 18 article to demonstrate and maintain financial assurance, the number of businesses  
 19 or other entities that were able to comply with the requirement, the number that  
 20 were unable to comply and the reasons why they could not or did not comply, and  
 21 the history of compliance with this part and Chapter 6.5 (commencing with  
 22 Section 25100) of Division 20 by responsible parties that requested waivers.

23 (d) Financial assurance mechanisms other than the financial assurance  
 24 mechanisms referenced in subdivision (a) of Section 69320 that may be available  
 25 to responsible parties.

26 **Comment.** Section 69330 continues subdivision (e) of former Section 25355.2 without  
 27 substantive change.

28 See Sections 68050 (“department”), 68100 (“regional board”), 68145 (“responsible party”).

29 **Staff Notes. (1)** Section 25355.2(e) requires a report to Legislature “[n]otwithstanding Section  
 30 7550.5 of the Government Code.” Former Government Code Section 7550.5 related to the  
 31 submission of written reports to the Legislature, Governor, or any state legislative or executive  
 32 body. Section 7550.5 did not require the submission of written reports except in certain  
 33 enumerated circumstances; one of those circumstances was that “[t]he Legislature expressly  
 34 provides that, notwithstanding this section, a written report shall be prepared and submitted.” See  
 35 former Gov’t Code § 7550.5(b)(3), as amended by 2005 Cal. Stat. ch. 77, § 13. Government Code  
 36 Section 7550.5 was repealed by its own terms in 2008. See *id.* § 7550.5(g). For this reason, the  
 37 phrase “[n]otwithstanding Section 7550.5 of the Government Code” appears to be obsolete and  
 38 was not continued. **The staff welcomes comment on this proposed change.**

39 **(2)** Section 25355.2(e) requires the department to submit a report to the Legislature “on or before  
 40 January 15, 2001.” Given that this provision appears to relate to a single report due in 2001, it  
 41 seems to be obsolete. **The staff welcomes comment on this issue.**

Article 16. Illegal Drug Lab Cleanup

**Staff Note.** This proposed article contains the material in Section 25354.5, with the exception of a provision focused on the Illegal Drug Lab Cleanup Account. That provision has been recodified as proposed Section 68370 in the chapter for financial provisions. The staff reviewed the references to “this section” contained in proposed Section 25354.5 and generally concluded that proposed Section 68370 was not relevant to the purpose of the cross-reference. Accordingly, the cross-references to “this section” have been updated to refer only to this proposed article (i.e., not proposed Section 68370). See proposed Sections 69350, 69370, 69375, 69385. **The staff welcomes comment on these proposed updates.**

**§ 69350. Expenditures and contracting**

69350. (a) The department may expend funds appropriated from the Illegal Drug Lab Cleanup Account created pursuant to Section 68370 to pay the costs of removal actions required by this article.

(b) 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 to a hazardous substance subject to this article is necessary to remedy or prevent an emergency.

**Comment.** Section 69350 continues the second and third sentences of paragraph (1) of subdivision (b) of former Section 25354.5 without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68125 (“remedy”), 68135 (“remove”).

**§ 69355. Notice to department by law enforcement**

69355. A state or local law enforcement officer or investigator or other law enforcement agency employee who, in the course of an official investigation or enforcement action regarding the manufacture of an illegal controlled substance, comes in contact with, or is aware of, the presence of a substance that the person suspects is a hazardous substance at a site where an illegal controlled substance is or was manufactured, shall notify the department for the purpose of taking removal action, as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance, except for samples required under Section 11479.5 to be kept for evidentiary purposes.

**Comment.** Section 69355 continues subdivision (a) of former Section 25354.5 without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68135 (“remove”), 68155 (“site”).

**Staff Note.** Proposed Section 69355 would appear to benefit from restatement for clarity. To improve readability, it may be helpful to add a defined term, “law enforcement agent.” In addition, the application of the exception in the final clause is unclear. While it seems clear that material required to be kept for evidentiary purposes should not itself be removed, the primary purpose of this provision appears to be a notice obligation for law enforcement agents. If the exception is intended only to avoid evidentiary samples from being subject to removal, it seems that such an exception should be recodified with proposed Section 69360, which obligates the department to take a removal action.

1 Similarly, this proposed section provides that law enforcement must notify the department for  
2 the purpose of taking a removal action “as necessary, to prevent, minimize, or mitigate damage  
3 that might otherwise result from the release or threatened release of the hazardous substance.” For  
4 simplicity, it may be helpful to simply cite to a removal action taken pursuant to proposed Section  
5 69360 and to incorporate this language into proposed Section 69360.

6 **The staff welcomes comment on these issues and whether this provision is sufficiently**  
7 **clear in practice.**

8 **§ 69360. Department obligation upon receipt of notice**

9 69360. Notwithstanding any other provision of law, upon receipt of a  
10 notification pursuant to Section 69355, the department shall take removal action,  
11 as necessary, with respect to a hazardous substance that is an illegal controlled  
12 substance, a precursor of a controlled substance, a material intended to be used in  
13 the unlawful manufacture of a controlled substance, and a container for the  
14 material, a waste material from the unlawful manufacture of a controlled  
15 substance, or any other item contaminated with a hazardous substance used or  
16 intended to be used in the manufacture of a controlled substance.

17 **Comment.** Section 69360 continues the first sentence of paragraph (1) of subdivision (b) of  
18 former Section 25354.5 without substantive change.

19 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68125 (“remedy”), 68135  
20 (“remove”).

21 **§ 69365. Notification of local environmental health officer**

22 69365. The department shall, as soon as the information is available, report the  
23 location of a removal action that will be carried out pursuant to Section 69360, and  
24 the time that the removal action will be carried out, to the local environmental  
25 health officer within whose jurisdiction the removal action will take place, if the  
26 local environmental officer does both of the following:

27 (a) Requests, in writing, that the department report this information to the local  
28 environmental health officer.

29 (b) Provides the department with a single 24-hour telephone number to which  
30 the information can be reported.

31 **Comment.** Section 69365 continues paragraph (2) of subdivision (b) of former Section  
32 25354.5 without substantive change.

33 See Sections 68050 (“department”), 68135 (“remove”).

34 **Staff Note.** Section 25354.5(b)(2) refers to a removal action “pursuant to paragraph (1) [of  
35 subdivision (b)].” Subdivision (b) of Section 25354.5 has been proposed for recodification as two  
36 provisions (proposed Sections 69350 and 69360). Only one of those provisions appears to be  
37 relevant to the cross-reference. Proposed Section 69350, related to expenditures and contracting,  
38 does not appear to be relevant and has been omitted from the cross-reference. For this reason, the  
39 cross-reference has been updated to refer only to proposed Section 69360. **The staff welcomes**  
40 **comment on this proposed cross-reference update.**

41 **§ 69370. Generator of hazardous waste and substances at site**

42 69370. (a) For purposes of Chapter 6.5 (commencing with Section 25100) of  
43 Division 20, Chapter 6.9.1 (commencing with Section 25400.10) of Division 20,

1 or this part, a person who is found to have operated a site for the purpose of  
2 manufacturing an illegal controlled substance or a precursor of an illegal  
3 controlled substance is the generator of a hazardous substance at, or released from,  
4 the site that is subject to removal action pursuant to this article.

5 (b) During the removal action, for purposes of complying with the manifest  
6 requirements in Section 25160, the department, the county health department, the  
7 local environmental health officer, or their designee may sign the hazardous waste  
8 manifest as the generator of the hazardous waste. In carrying out that action, the  
9 department, the county health department, the local environmental health officer,  
10 or their designee shall be considered to have acted in furtherance of their statutory  
11 responsibilities to protect the public health and safety and the environment from  
12 the release, or threatened release, of hazardous substances, and the department, the  
13 county health department, the local environmental health officer, or their designee  
14 is not a responsible party for the release, or threatened release, of the hazardous  
15 substances.

16 (c) The officer, investigator, or agency employee specified in Section 69355 is  
17 not a responsible party for the release, or threatened release, of hazardous  
18 substances at, or released from, the site.

19 **Comment.** Section 69370 continues subdivision (c) of former Section 25354.5 without  
20 substantive change.

21 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105  
22 (“release”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

23 **§ 69375. Regulations**

24 69375. The department may adopt regulations to implement this article in  
25 consultation with appropriate law enforcement and local environmental agencies.

26 **Comment.** Section 69375 continues subdivision (d) of former Section 25354.5 without  
27 substantive change.

28 See Section 68050 (“department”).

29 **§ 69380. Methods, standards, and procedures**

30 69380. (a) The department shall develop sampling and analytical methods for  
31 the collection of methamphetamine residue.

32 (b) The department shall, to the extent funding is available, develop health-  
33 based target remediation standards for iodine, methyl iodide, and phosphine.

34 (c) To the extent that funding is available, the department, using guidance  
35 developed by the Office of Environmental Health Hazard Assessment, may  
36 develop additional health-based target remediation standards for additional  
37 precursors and byproducts of methamphetamine.

38 (d) The department shall adopt investigation and cleanup procedures for use in  
39 the remediation of sites contaminated by the illegal manufacturing of  
40 methamphetamine. The procedures shall ensure that contamination by the illegal  
41 manufacturing of methamphetamine can be remediated to meet the standards

1 adopted pursuant to subdivisions (b) and (c), to protect the health and safety of all  
2 future occupants of the site.

3 (e) The department shall implement this section in accordance with Section  
4 69375.

5 **Comment.** Section 69380 continues subdivision (e) of former Section 25354.5 without  
6 substantive change.

7 See Sections 68050 (“department”), 68155 (“site”).

8 **Staff Note.** Section 25354.5(e)(4) requires the department to adopt investigation and cleanup  
9 procedures “[o]n or before October 1, 2009.” This language specifying the date for adoption of  
10 these procedures seems to be obsolete. The staff proposes deleting the language “[o]n or before  
11 October 1, 2009,” while retaining the substantive requirement that the department adopt the  
12 specified procedures. **The staff welcomes comment on this proposed change.**

13 **§ 69385. Applicability of article contingent on funding**

14 69385. The responsibilities assigned to the department by this article apply only  
15 to the extent that sufficient funding is made available for that purpose.

16 **Comment.** Section 69385 continues subdivision (g) of former Section 25354.5 without  
17 substantive change.

18 See Section 68050 (“department”).

19 Article 17. Judicial Review of Response Actions

20 **§ 69400. Judicial review of response action adequacy**

21 69400. (a) In any judicial action under this part, judicial review of any issues  
22 concerning the adequacy of any response action taken or ordered by the  
23 department shall be limited to the administrative record. Otherwise applicable  
24 principles of administrative law shall govern whether any supplemental materials  
25 may be considered by the court.

26 (b) If the court finds that the selection of the response action was not in  
27 accordance with law, the court shall award only the response costs or damages that  
28 are not inconsistent with the National Contingency Plan, as specified in Part 300  
29 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the  
30 Code of Federal Regulations, and any other relief that is consistent with the  
31 National Contingency Plan.

32 (c) In reviewing an action brought by the department under this part, in which  
33 alleged procedural errors by the department are raised as a defense, the court may  
34 impose costs or damages only if the errors were serious and related to matters of  
35 central relevance to the action, so that the action would have been significantly  
36 changed had the errors not been made.

37 **Comment.** Section 69400 continues former Section 25357.5 without substantive change.

38 See Sections 68050 (“department”), 68140 (“response”).

CHAPTER 6. SITE-SPECIFIC RULES RELATED TO CLEANUP

Article 1. Financial Provisions

§ 69450. Site-specific appropriations for state account monies

69450. (a) Money deposited in the state account may also be appropriated by the Legislature to the department on a specific site basis for the following purposes:

(1) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of any release of a hazardous substance, to the extent the costs are not reimbursed pursuant to the federal act and taking into account processes of natural rehabilitation, restoration, and replacement.

(2) For all costs incurred in assessing short-term and long-term injury to, degradation or destruction of, or any loss of any natural resource resulting from a release of a hazardous substance, to the extent that the costs are not reimbursed pursuant to the federal act.

(b) No costs may be incurred for any release of a hazardous substance from any facility or project pursuant to subdivision (a) for injury, degradation, destruction, or loss of any natural resource where the injury, degradation, destruction, or loss was specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement prepared under the authority of the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), or was identified as a significant environmental effect to the natural resources that cannot be avoided in an environmental impact report prepared pursuant to the California Environmental Quality Act (Division 13 commencing with Section 21000) of the Public Resources Code), and a decision to grant a permit, license, or similar authorization for any facility or project is based upon a consideration of the significant environmental effects to the natural resources, and the facility or project was otherwise operating within the terms of its permit, license, or similar authorization at the time of release.

**Comment.** Section 69450 continues subdivisions (a) and (b) of former Section 25352 without substantive change.

See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”), 68155 (“site”), 68165 (“state account”).

**Staff Notes. (1)** Section 25352(b) precludes incurring certain costs “pursuant to subdivision (a) or this subdivision.” The provision of Section 25352(b) discussing the incurred costs has been proposed for continuation as paragraph (2) of subdivision (a). Thus, all of the material relevant to the cross-reference can be found in proposed Section 69450(a). For this reason, the cross-reference to “this subdivision” has been omitted. **The staff welcomes comment on this proposed cross-reference update.**

**(2)** Subdivision (b) of Section 25352 refers to the “National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.)” This reference was corrected to read “the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)” in proposed Section 69450.

Article 2. Santa Susana Field Laboratory

§ 69465. Legal remedies

69465. Notwithstanding paragraph (1) of subdivision (b) of Section 25187, the department may use any legal remedies available pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20 to compel a responsible party to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site in Ventura County.

**Comment.** Section 69465 restates subdivision (a) of former Section 25359.20 without substantive change.

See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

**Staff Notes. (1)** Section 25359.20(a) cross-refers to “paragraph (1) of subdivision (b) of Section 25187 of the Health and Safety Code.” As the cross-referenced provision is located in the same code, it is unnecessary to provide the code name in the cross-reference. For this reason, the language “of the Health and Safety Code” was not continued.

**(2)** Subdivision (a) allows the department to use specified legal remedies to compel “a responsible party or parties” to take appropriate actions at the site. This provision was restated to eliminate use of the plural and singular form of the word “party.” It does not appear to be necessary to use both the singular and plural forms. Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” Proposed Section 69465 was simplified to use only the singular form in accordance with standard drafting practice.

The changes reflected in proposed Section 69465 are intended to be nonsubstantive. **The staff welcomes any comment on the proposed restatement.**

§ 69470. Response action

69470. (a) A response action taken or approved at the Santa Susana Field Laboratory site shall be conducted in accordance with the provisions of this part.

(b) A response action taken or approved pursuant to this part for the Santa Susana Field Laboratory site shall be based upon, and be no less stringent than, the provisions of **[Article 13 (commencing with Section 69260) of Chapter 5]**.

(1) In calculating the risk, the cumulative risk from radiological and chemical contaminants at the site shall be summed, and the land use assumption shall be either suburban residential or rural residential (agricultural), whichever produces the lower permissible residual concentration for each contaminant.

(2) In the case of radioactive contamination, the department shall use as its risk range point of departure the concentrations in the Preliminary Remediation Goals issued by the Superfund Office of the United States Environmental Protection Agency in effect as of January 1, 2007.

**Comment.** Section 69470 continues subdivisions (b) and (c) of former Section 25359.20 without substantive change.

See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”).

**Staff Note.** Subdivision (c) of Section 25359.20 specifies that a response action for Santa Susana Field Laboratory shall be “based upon, and be no less stringent than, the provisions of Section

1 25356.1.5. Section 25356.1.5 has been proposed for recodification as Article 13 (commencing  
2 with Section 69260) of Chapter 5. It appears that proposed Section 69260 is the only section that  
3 contains standards for a response action. The other sections contain standards for risk assessments  
4 and exposure assessments. It is not clear whether those sections are relevant to this cross-  
5 reference. If not, the staff would propose updating the cross-reference to refer only to Section  
6 69260. **The staff welcomes comment on this issue.**

7 **§ 69475. Land transfers**

8 69475. (a) Notwithstanding any other provision of law regarding transfers of  
9 land, no person or entity shall sell, lease, sublease, or otherwise transfer land  
10 presently or formerly occupied by the Santa Susana Field Laboratory, except as  
11 provided in subdivision (b).

12 (b) As a condition for a sale, lease, sublease, or transfer of land presently or  
13 formerly occupied by the Santa Susana Field Laboratory, the director or the  
14 director's designee shall certify that the land has undergone complete remediation  
15 pursuant to the most protective standards in **[subdivisions (a) to (c), inclusive]**.

16 **Comment.** Section 69475 continues subdivisions (d) and (e) of former Section 25359.20  
17 without substantive change.

18 See Sections 68055 ("director"), 68085 ("person").

19 **Staff Notes. (1)** Subdivision (e) refers to "the Director of the Department of Toxic Substances  
20 Control." The staff believes that this reference was intended to refer to "the Director of Toxic  
21 Substances Control." In the proposed section, the reference has been replaced with the defined  
22 term, "director." In proposed Section 68055, "director" is defined as "the Director of Toxic  
23 Substances Control."

24 **(2)** Subdivision (e) requires the director "or his or her designee" to make a certification prior to a  
25 land transfer. The phrase "his or her" is no longer used in legislative drafting practice. This phrase  
26 has been replaced with "the director's."

27 **(3)** Subdivision (e) requires a certification of remediation pursuant to "the most protective  
28 standards in subdivisions (a) to (c), inclusive." The cited subdivisions have been proposed for  
29 recodification as Sections 69465 and 69470. The cross-reference could simply be updated to refer  
30 to these two proposed sections. However, it is unclear whether this citation is correct, as most of  
31 the material in these proposed sections does not appear to be relevant to this cross-reference.  
32 Subdivision (c) appears to be the only subdivision that itself contains standards, although those  
33 standards appear to be for risk assessment. Subdivision (c) also refers to "the provisions in  
34 Section 25356.1.5," which contains standards for response actions and risk assessments. See  
35 proposed Sections 69260, 69265. **The staff welcomes comment on how the cross-reference to**  
36 **"subdivisions (a) to (c), inclusive" should be updated.**

37 Article 3. Stringfellow Quarry Class I  
38 Hazardous Waste Disposal Site

39 **§ 69490. Use of onsite treatment, storage, transfer, or disposal facility**

40 69490. Any treatment, storage, transfer, or disposal facility built on the  
41 Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the  
42 purpose of a remedial or removal action at that site, shall only be used to treat,  
43 store, transfer, or dispose of hazardous substances removed from that site.

1 **Comment.** Section 69490 continues former Section 25351.7 without substantive change.  
2 See Section 68075 (“hazardous substance”), 68125 (“remedy”), 68135 (“remove”), 68155  
3 (“site”).

4 **§ 69495. Priority of removal and remedial actions**

5 69495. Notwithstanding any other provision of law, including, but not limited  
6 to, Article 5 (commencing with Section 68760) of Chapter 4, the department shall  
7 place the highest priority on taking removal and remedial actions at the  
8 Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote  
9 sufficient resources to accomplish the tasks required by this section.

10 **Comment.** Section 69495 continues former Section 25351.8 without substantive change. And  
11 obsolete cross-reference to Section 25334.5, which has been repealed (see 1999 Cal. Stat. ch. 23,  
12 § 1), was not continued.

13 See Section 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

14 **Staff Note.** Section 25351.8 cross-refers to Section 25334.5. Section 25334.5 has been repealed.  
15 See 1999 Cal. Stat. ch. 23, § 1 (SB 47). Prior to its repeal, Section 25334.5 related to a site-  
16 specific plan for expenditures that would be prepared by the department and included in the  
17 budget. See former Section 25334.5, as amended by 1985 Cal. Stat. ch. 1439, § 1. The staff is not  
18 aware of such a requirement elsewhere in the current law. For this reason, the cross-reference to  
19 Section 25334.5 was not continued.

20 **The staff welcomes comment on this proposed cross-reference update.**

21 CHAPTER 7. ENFORCEMENT

22 Article 1. Noncompliance with Order

23 **§ 69550. Penalty for noncompliance with order**

24 69550. Any person subject to a removal or remedial action order or other order  
25 issued pursuant to Section 68660, 68870, or 69055 who does not comply with that  
26 order without sufficient cause shall be subject to a civil penalty of not more than  
27 twenty-five thousand dollars (\$25,000) for each day of noncompliance. Liability  
28 under this section may be imposed in a civil action or liability may be imposed  
29 administratively pursuant to Section 69590.

30 **Comment.** Section 69550 continues former Section 25359.2 without substantive change.

31 See Sections 68085 (“person”), 68125 (“remedy”), 68135 (“remove”).

32 **Staff Note.** Proposed Section 69550 refers to an order “issued pursuant to Section 25355.5 or  
33 25358.3.” Each of these cross-referenced provisions is discussed in turn below.

34 (1) Section 25355.5 has been proposed for recodification as several provisions (proposed  
35 Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (Section 25355.5(a))  
36 appears to be the only provision that is relevant to this cross-reference, as it is the only provision  
37 that addresses the issuance of orders. For this reason, the cross-reference to Section 25355.5 has  
38 been updated to refer only to Section 69055.

39 **The staff welcomes any comment on this proposed cross-reference update.**

40 (2) Section 25358.3 has been proposed for recodification as several sections (proposed  
41 Sections 68650, 68655, 68660, and 68870). Proposed Sections 68650 and 68655 do not appear to  
42 be relevant to the purposes of this cross-reference, as these provisions do not relate to the  
43 issuance of orders to parties. For this reason, those proposed sections have been omitted from the

1 cross-reference. Accordingly, the cross-reference to Section 25358.3 has been updated to refer to  
2 Sections 68660 and 68870.

3 **The staff welcomes any comment on this proposed cross-reference update.**

4 **§ 69555. Treble damages from noncompliant contribution defendant**

5 69555. (a)(1) A responsible party who has entered into an agreement with the  
6 department and is in compliance with the terms of that agreement, or who is in  
7 compliance with an order issued by the department, may seek, in addition to  
8 contribution, treble damages from any contribution defendant who has failed or  
9 refused to comply with any order or agreement, was named in the order or  
10 agreement, and is subject to contribution.

11 (2) A contribution defendant from whom treble damages are sought in a  
12 contribution action shall not be assessed treble damages by any court where the  
13 contribution defendant, for sufficient cause, as determined by the court, failed to  
14 comply with an agreement or with an order issued by the department, or where the  
15 contribution defendant is an owner of real property who did not generate, treat,  
16 transport, store, or dispose of the hazardous substance on, in, or at the facility  
17 located on that real property, as specified in Sections 101(35) and 107(b) of the  
18 federal act (42 U.S.C. Secs. 9601(35) and 9607(b)), or where the principles of  
19 fundamental fairness would be violated, as determined by the court.

20 (3) A party seeking treble damages pursuant to this section shall show that the  
21 party, the department, or another entity provided notice, by means of personal  
22 service or certified mail, of the order or agreement to the contribution defendant  
23 from whom the party seeks treble damages.

24 (b)(1) One-half of any treble damages awarded pursuant to this section shall be  
25 paid to the department, for deposit in the state account.

26 (2) Nothing in this subdivision affects the rights of any party to seek  
27 contribution pursuant to any other statute or under common law.

28 (c) A contribution defendant from whom treble damages are sought pursuant to  
29 this section shall be deemed to have acted willfully with respect to the conduct that  
30 gave rise to this liability for purposes of Section 533 of the Insurance Code.

31 **Comment.** Section 69555 continues former Section 25359.4.5 without substantive change.

32 See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”),  
33 68145 (“responsible party”), 68165 (“state account”).

34 **Article 2. Response Actions**

35 **§ 69570. Treble damages for failure to provide response action**

36 69570. (a) Any person who is liable for a release, or threat of a release, of  
37 hazardous substances and who fails, without sufficient cause, as determined by the  
38 court, to properly provide a removal or remedial action upon either an order of the  
39 director, pursuant to Section 68870, or an order of the court, pursuant to Section  
40 68660, is liable to the department for damages equal to three times the amount of

1 any costs incurred by the state account pursuant to this part as a result of the  
2 failure to take proper action.

3 (b) No treble damages shall be imposed under this section against an owner of  
4 real property who did not generate, treat, transport, store, or dispose of any  
5 hazardous substance on, in, or at the facility located on that real property, as  
6 specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs.  
7 9601(35) and 9607(b)).

8 **Comment.** Section 69570 restates former Section 25359 without substantive change.

9 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075  
10 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125 (“remedy”), 68135  
11 (“remove”), 68165 (“state account”).

12 **Staff Note.** Proposed Section 69570 refers to an “order of the director or the court, pursuant to  
13 Section 25358.3.” Section 25358.3 has been recodified as several sections (proposed Sections  
14 68650, 68655, 68660, and 68870). Proposed Section 68870 recodifies the portion of Section  
15 25358.3 that relates to the issuance of orders by the director, while proposed Section 68660  
16 recodifies the portion of Section 25358.3 that relates to the issuance of orders by a court. For this  
17 reason, proposed Section 69570 restates the quoted language to read “either an order of the  
18 director, pursuant to Section 68870, or an order of the court, pursuant to Section 68660.” **The**  
19 **staff welcomes comment on this proposed restatement.**

## 20 Article 3. Natural Resources Damages

### 21 § 69580. Prohibition on recovery of damages for certain losses occurring before September 22 25, 1981

23 69580. There shall be no recovery of punitive damages under Section 69570 for  
24 an injury to or loss of natural resources that occurred wholly before September 25,  
25 1981. This section shall not be construed as precluding the recovery of punitive  
26 damages for injury to or loss of natural resources in an action brought pursuant to  
27 any other provision of law.

28 **Comment.** Section 69580 continues former Section 25359.1 without substantive change.

## 29 Article 4. Administrative Process for Penalty Collection

### 30 § 69590. Complaint for penalties

31 69590. (a)(1) The department may issue a complaint to any person subject to a  
32 penalty pursuant to Sections 68680 and 69550.

33 (2) The complaint shall allege the acts or failures to act that constitute a basis for  
34 liability and the amount of the proposed penalty.

35 (3) The complaint shall be served by personal service or certified mail and shall  
36 inform the party so served of the right to a hearing.

37 (b)(1) Any person served with a complaint pursuant to this section may, within  
38 45 days after service of the complaint, request a hearing by filing a notice of  
39 defense with the department. A notice of defense is deemed to be filed within a  
40 45-day period if it is postmarked within the 45-day period.

1 (2) If no notice of defense is filed within 45 days after service of the complaint,  
2 the department shall issue an order setting liability in the amount proposed in the  
3 complaint, unless the department and the party have entered into a settlement  
4 agreement, in which case the department shall issue an order setting liability in the  
5 amount specified in the settlement agreement.

6 (3) Where the party has not filed a notice of defense or where the department  
7 and the party have entered into a settlement agreement, the order shall not be  
8 subject to review by any court or agency.

9 **Comment.** Section 69590 continues subdivision (a) of former Section 25359.3 without  
10 substantive change.

11 See Sections 68050 (“department”), 68085 (“person”).

12 **Staff Note.** Subdivision (a) of Section 25359.3 refers to a person subject to a penalty pursuant to  
13 Section 25359.4. Section 25359.4 has been proposed for recodification as two sections (proposed  
14 Sections 68675 and 68680). Only one of those proposed sections, Section 68680, provides for  
15 penalties. For this reason, the cross-reference to Section 25359.4 has been updated to refer only to  
16 Section 68680.

17 **The staff welcomes comment on this proposed cross-reference update.**

18 **§ 69595. Hearing for penalties**

19 69595. (a) Any hearing required under this article shall be conducted in  
20 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of  
21 Division 3 of Title 2 of the Government Code, and the department shall have all  
22 powers granted by those provisions.

23 (b) In making a determination, the administrative law judge shall consider the  
24 nature, circumstances, extent, and gravity of the violation, the violator’s past and  
25 present efforts to prevent, abate, or clean up conditions posing a threat to the  
26 public health and safety or the environment, the violator’s ability to pay the  
27 proposed penalty, and the prophylactic effect that imposition of the proposed  
28 penalty will have on both the violator and on the regulated community as a whole.

29 **Comment.** Section 69595 continues subdivision (b) of former Section 25359.3 without  
30 substantive change.

31 See Section 68050 (“department”).

32 **§ 69600. Deposit and expenditure of penalties**

33 69600. All penalties collected under this article and Section 69550 shall be  
34 deposited in the state account and shall be available for expenditure by the  
35 department upon appropriation by the Legislature.

36 **Comment.** Section 69600 continues subdivision (c) of former Section 25359.3 without  
37 substantive change.

38 See Sections 68050 (“department”), 68165 (“state account”).

DISPOSITION OF EXISTING LAW

**Note.** This table shows the proposed disposition, as reflected in this staff draft, of provisions in Chapter 6.8 of Division 20 of the Health and Safety Code (§§ 25300-25395.45), as the law existed on January 1, 2019. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

<b>Existing Provision</b>	<b>New Provision</b>	<b>Existing Provision</b>	<b>New Provision</b>
25300.....	68000(a)	25351.5.....	68400
25301.....	68005	25351.7.....	69490
25310.....	68035	25351.8.....	69495
25310.5.....	68040	25352(a), (b).....	69450
25311.....	68045	25353(a), (b), (d), (f).....	69070
25312.....	68050	25353(e).....	69075
25313.....	68055	25353.5.....	68210(a)-(f)
25314.....	68060	25354(a), 1st sent.,	
25315.....	68065	(c), 2nd-3rd sent., (d).....	68240
25316.....	68075(a)	25354(c), 1st sent.....	68580
25317.....	68075(b)	25354(a), 2nd sent., (b).....	68875
25318.5.....	68080	25354.5(f).....	68370
25319.....	68085	25354.5(a).....	69355
25319.1.....	68090	25354.5(b)(1), 2nd and 3rd sent. ....	69350
25319.5.....	68095	25354.5(c).....	69370
25319.6.....	68100	25354.5(d).....	69375
25320.....	68105(a)	25354.5(e).....	69380
25321.....	68105(b)	25354.5(g).....	69385
25322.....	68125	25354.5(b)(2).....	69365
25322.1.....	68115	25354.5(b)(1), 1st sent.....	69360
25322.2.....	68120	25355(a).....	68850
25323.....	68135	25355(b).....	69130(a)
25323.1.....	68130	25355(c)(1), (d).....	69135
25323.3.....	68140	25355(c)(2).....	69005
25323.5.....	68145	25355.2(f).....	69310
25323.9.....	68155	25355.2(a).....	69315
25324(a).....	68165	25355.2(b).....	69320
25325.....	68070	25355.2(c), (d).....	69325
25326.....	68110	25355.2(e).....	69330
25326.3.....	68150	25355.5(b).....	69060
25326.5.....	68160	25355.5(a).....	69055
25327.....	68170	25355.5(c), (d).....	69065
25330.2.....	68265	25355.5(e).....	69130(b)
25330.4.....	68230	25355.6(a).....	68900
25330.5.....	68235	25355.6(b).....	68905
25331.....	68220	25355.6(c), (d).....	68910
25334.7.....	68575	25355.7.....	69000
25337.....	68260	25355.8.....	69100
25342.....	68200	25356(a).....	68765
25343.....	69105	25356(b).....	68760
25350, 1st and 2nd sent.....	68855	25356(d).....	68775
25350, 3rd sent.....	68860	25356(e).....	68795
25351.2(a).....	69160	25356(f).....	68780
25351.2(b).....	69165	25356(g).....	68785
25351.2(c).....	69170	25356(h).....	68790
25351.2(d).....	69175	25356(c).....	68770

<b>Existing Provision</b>	<b>New Provision</b>	<b>Existing Provision</b>	<b>New Provision</b>
25356.1(a) .....	69190	25358.9(a) .....	69290
25356.1(b) .....	69195	25358.9(b) .....	69295
25356.1(c) .....	69200	25359 .....	69570
25356.1(d) .....	69205	25359.1 .....	69580
25356.1(e), 5th sent., (f) .....	69215	25359.2 .....	69550
25356.1(g) .....	69220	25359.20(a) .....	69465
25356.1(h)(1), (2), (5) .....	69225	25359.20(b), (c) .....	69470
25356.1(h)(3) .....	69230	25359.20(d), (e) .....	69475
25356.1(h)(4) .....	69235	25359.3(a) .....	69590
25356.1(i) .....	69240	25359.3(b) .....	69595
25356.1(e), 1st 4 sent. ....	69210	25359.3(c) .....	69600
25356.1.3(d) .....	69035	25359.4(a)-(c) .....	68675
25356.1.3(a) .....	69020	25359.4(d)-(f) .....	68680
25356.1.3(b) .....	69025	25359.4.5 .....	69555
25356.1.3(c) .....	69030	25359.5(a) .....	68720
25356.1.5(a) .....	69260	25359.5(b)-(c) .....	68725
25356.1.5(b) .....	69265	25359.5(e) .....	68730
25356.1.5(c) .....	69270	25359.5(d) .....	68735
25356.1.5(d), (e) .....	69275	25359.5(f) .....	68740
25357 .....	68225	25359.6 .....	68505
25357.5 .....	69400	25359.7(a) .....	68700
25358 .....	68410	25359.7(b) .....	68705
25358.1(a) .....	68435	25366 .....	68185
25358.1(b)-(d) .....	68440	25368 .....	68525
25358.1(j), (k) .....	68445	25368.1 .....	68530
25358.1(e)-(h) .....	68450	25368.2 .....	68535
25358.1(i) .....	68455	25368.3 .....	68540
25358.1(l) .....	68460	25368.4 .....	68545
25358.2(d) .....	68495	25368.5 .....	68550
25358.2(b) .....	68490	25368.6 .....	68555
25358.2(c) .....	68485	25368.7 .....	68560
25358.2(a) .....	68480	25368.8 .....	68565
25358.3(b) .....	68650	25385 .....	68280
25358.3(a) .....	68870	25385.1 .....	68285
25358.3(c)-(d) .....	68655	25385.2 .....	68290
25358.3(e)-(g) .....	68660	25385.4 .....	68295
25358.4 .....	68510	25385.5 .....	68300
25358.5 .....	68880	25385.6 .....	68305
25358.6 .....	68885	25385.7 .....	68310
25358.7 .....	68930	25386 .....	68315
25358.7.1(b) .....	68955	25386.1 .....	68320
25358.7.1(a), 3rd sent. ....	68935	25386.2 .....	68325
25358.7.1(a), 1st and 4th sent. ....	68950	25386.25 .....	68330
25358.7.1(c) .....	68965	25386.3 .....	68335
25358.7.1(d) .....	68970	25386.4 .....	68340
25358.7.1(a), 2nd sent. ....	68960	25386.5 .....	68345
25358.7.2(a), 1st sent., (b)-(d) .....	68420	25395.35 .....	68360
25358.7.2(a), 2nd sent. ....	68925	25395.36 .....	68365
25358.8 .....	68975		

DERIVATION OF NEW LAW

**Note.** This table shows the derivation of each provision in the proposed Hazardous Substance Account Recodification Act of 2020, as reflected in this staff draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

<b>New Provision</b>	<b>Existing Provision</b>	<b>New Provision</b>	<b>Existing Provision</b>
68000(a)	25300	68240	25354(a), 1st sent.,
68000(b)	new		(c), 2nd-3rd sent., (d)
68005	25301	68260	25337
68010	new	68265	25330.2
68015	new	68280	25385
68020	new	68285	25385.1
68025	new	68290	25385.2
68030	new	68295	25385.4
68035	25310	68300	25385.5
68040	25310.5	68305	25385.6
68045	25311	68310	25385.7
68050	25312	68315	25386
68055	25313	68320	25386.1
68060	25314	68325	25386.2
68065	25315	68330	25386.25
68070	25325	68335	25386.3
68075(a)	25316	68340	25386.4
68075(b)	25317	68345	25386.5
68080	25318.5	68360	25395.35
68085	25319	68365	25395.36
68090	25319.1	68370	25354.5(f)
68095	25319.5	68400	25351.5
68100	25319.6	68410	25358
68105(a)	25320	68420	25358.7.2(a), 1st sent., (b)-(d)
68105(b)	25321	68435	25358.1(a)
68110	25326	68440	25358.1(b)-(d)
68115	25322.1	68445	25358.1(j), (k)
68120	25322.2	68450	25358.1(e)-(h)
68125	25322	68455	25358.1(i)
68130	25323.1	68460	25358.1(l)
68135	25323	68480	25358.2(a)
68140	25323.3	68485	25358.2(c)
68145	25323.5	68490	25358.2(b)
68150	25326.3	68495	25358.2(d)
68155	25323.9	68505	25359.6
68160	25326.5	68510	25358.4
68165	25324(a)	68525	25368
68170	25327	68530	25368.1
68185	25366	68535	25368.2
68200	25342	68540	25368.3
68210(a)-(f)	25353.5	68545	25368.4
68210(g)	new	68550	25368.5
68220	25331	68555	25368.6
68225	25357	68560	25368.7
68230	25330.4	68565	25368.8
68235	25330.5	68575	25334.7
		68580	25354(c), 1st sent.

<b>New Provision</b>	<b>Existing Provision</b>	<b>New Provision</b>	<b>Existing Provision</b>
68650.....	25358.3(b)	69130(a).....	25355(b)
68655.....	25358.3(c)-(d)	69130(b).....	25355.5(e)
68660.....	25358.3(e)-(g)	69135.....	25355(c)(1), (d)
68675.....	25359.4(a)-(c)	69160.....	25351.2(a)
68680.....	25359.4(d)-(f)	69165.....	25351.2(b)
68700.....	25359.7(a)	69170.....	25351.2(c)
68705.....	25359.7(b)	69175.....	25351.2(d)
68720.....	25359.5(a)	69190.....	25356.1(a)
68725.....	25359.5(b)-(c)	69195.....	25356.1(b)
68730.....	25359.5(e)	69200.....	25356.1(c)
68735.....	25359.5(d)	69205.....	25356.1(d)
68740.....	25359.5(f)	69210.....	25356.1(e), 1st 4 sent.
68760.....	25356(b)	69215.....	25356.1(e), 5th sent., (f)
68765.....	25356(a)	69220.....	25356.1(g)
68770.....	25356(c)	69225.....	25356.1(h)(1), (2), (5)
68775.....	25356(d)	69230.....	25356.1(h)(3)
68780.....	25356(f)	69235.....	25356.1(h)(4)
68785.....	25356(g)	69240.....	25356.1(i)
68790.....	25356(h)	69260.....	25356.1.5(a)
68795.....	25356(e)	69265.....	25356.1.5(b)
68850.....	25355(a)	69270.....	25356.1.5(c)
68855.....	25350, 1st and 2nd sent.	69275.....	25356.1.5(d), (e)
68860.....	25350, 3rd sent.	69290.....	25358.9(a)
68870.....	25358.3(a)	69295.....	25358.9(b)
68875.....	25354(a), 2nd sent., (b)	69310.....	25355.2(f)
68880.....	25358.5	69315.....	25355.2(a)
68885.....	25358.6	69320.....	25355.2(b)
68900.....	25355.6(a)	69325.....	25355.2(c), (d)
68905.....	25355.6(b)	69330.....	25355.2(e)
68910.....	25355.6(c), (d)	69350.....	25354.5(b)(1), 2nd and 3rd sent.
68925.....	25358.7.2(a), 2nd sent.	69355.....	25354.5(a)
68930.....	25358.7	69360.....	25354.5(b)(1), 1st sent.
68935.....	25358.7.1(a), 3rd sent.	69365.....	25354.5(b)(2)
68950.....	25358.7.1(a), 1st and 4th sent.	69370.....	25354.5(c)
68955.....	25358.7.1(b)	69375.....	25354.5(d)
68960.....	25358.7.1(a), 2nd sent.	69380.....	25354.5(e)
68965.....	25358.7.1(c)	69385.....	25354.5(g)
68970.....	25358.7.1(d)	69400.....	25357.5
68975.....	25358.8	69450.....	25352(a), (b)
69000.....	25355.7	69465.....	25359.20(a)
69005.....	25355(c)(2)	69470.....	25359.20(b), (c)
69020.....	25356.1.3(a)	69475.....	25359.20(d), (e)
69025.....	25356.1.3(b)	69490.....	25351.7
69030.....	25356.1.3(c)	69495.....	25351.8
69035.....	25356.1.3(d)	69550.....	25359.2
69055.....	25355.5(a)	69555.....	25359.4.5
69060.....	25355.5(b)	69570.....	25359
69065.....	25355.5(c), (d)	69580.....	25359.1
69070.....	25353(a), (b), (d), (f)	69590.....	25359.3(a)
69075.....	25353(e)	69595.....	25359.3(b)
69100.....	25355.8	69600.....	25359.3(c)
69105.....	25343		

## SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code, the Legislature also directed the Commission to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” See 2018 Cal. Stat. res. ch. 158. The Legislature’s grant of authority for this project precludes the Commission from making “any substantive changes to the law.” See *id.*

In the course of the Commission’s study of Chapter 6.8, the Commission identified the issues listed below for possible future study. For the most part, the listed issues are relatively minor, clean-up issues, but the issues could not be addressed without risking the possibility of a substantive change. **If any of the listed issues is likely to involve substantial controversy, please notify the Commission.**

- Should the provision that governs the application of certain definitions (continued in proposed Section 68035) be revised to add an express exception to allow for a different meaning when appropriate (e.g., “unless the context requires otherwise”)?
- Should the definition of “release authorized or permitted pursuant to state law” (continued in proposed Section 68110) be restated for clarity?
- Should the definition of “remedy” (continued in proposed Section 68125) be restated for clarity?
- Should the provisions that govern the investigatory powers of the department (continued in proposed Article 4 of Chapter 3) be restated to standardize terms, simplify the provisions, and improve readability?
- Is the use of the undefined term “remediation” problematic, in light of its similarity to the defined terms, “remedy” and “remedial action?”