Memorandum 2019-48

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

In this study, the Commission\(^1\) is undertaking a nonsubstantive reorganization of Chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.\(^2\) The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.\(^3\)

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.**\(^4\)

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). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

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


4. Written comments can be in any form. They should be directed to 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.
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).
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DRAFT LEGISLATION


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

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

PART 1. GENERAL PROVISIONS

PART 2. HAZARDOUS SUBSTANCE ACCOUNT

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

CHAPTER 1. GENERAL PROVISIONS


§ 68000. Short title

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

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

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

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

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

§ 68005. Legislative intent

68005. It is the intent of the Legislature to do all of the following:
(a) Establish a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment.

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

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

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

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

Article 2. Effect of Recodification

§ 68010. Nonsubstantive reform

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

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

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

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

§ 68015. Continuation of existing law

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

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

(c) A reference in a statute or regulation to a provision of this part that is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.
(d) A reference in a regulation to a provision of former Chapter 6.8 (commencing with Section 25300) of Division 20, rather than to the provision of this part that continues the former provision, has no effect on the validity of the regulation.

Comment. Subdivision (a) of Section 68015 is similar to Section 2, which is a standard provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Penal Code §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2. Subdivision (b) is drawn from Government Code Section 9604 and Penal Code Section 16010(b). Subdivision (c) is drawn from Family Code Section 2 and Penal Code Section 16010(c).

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

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

§ 68020. Judicial decision interpreting former law

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

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

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

Comment. Section 68020 is modeled on Penal Code Section 16020. Subdivision (a) makes clear that case law construing a predecessor provision is relevant in construing its successor in the Hazardous Substance Account Recodification Act of 2020. Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.8 (commencing with Section 25300) of Division 20, the Legislature has not taken any position on any case interpreting any of those provisions.

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

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

Staff Note. In another ongoing recodification project, the Commission is proposing to include a section similar to proposed Section 68020 that addresses Attorney General opinions, rather than judicial decisions. The staff considered whether such a provision should be included in this project, as well. The staff searched for, but did not find, Attorney General opinions related to Chapter 6.8. For this reason, this draft does not include a provision about the effect of the recodification on Attorney General opinions. The staff welcomes comment on whether a provision regarding the effect of the recodification on Attorney General opinions should be included in this proposed legislation.
§ 68025. Constitutionality

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

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

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

Comment. Section 68025 is modeled on Penal Code Section 16025. Subdivision (a) makes clear that case law on the constitutionality of a predecessor provision are relevant in determining the constitutionality of its successor in the Hazardous Substance Account Recodification Act of 2020. Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.8 (commencing with Section 25300) of Division 20, the Legislature has not taken any position on the constitutionality of any of those provisions.

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

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

§ 68030. Conforming rule change

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

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

(1) A completed and signed form STD 400.

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

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

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

(d) For the purposes of this section, a “conforming rule change” means a rule change that deletes a reference to a provision of former Chapter 6.8 (commencing with Section 25300) of Division 20 and replaces it with a reference to the provision of this part that continues or restates the former provision. A “rule change” includes a change to the text of a regulation in the California Code of Regulations, a regulation’s citation of authority, or a regulation’s reference.
Article 3. Definitions

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

Comment. Section 68035 continues former Section 25310 without substantive change.

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

In general, the staff is unsure whether this provision provides sufficient clarity as to when the federal definitions apply. The staff welcomes comment on this issue. It seems possible that this would be a topic for which future study would be useful. Depending on the comment received, the Commission may want to consider adding this topic to the list of substantive issues for future study in the Commission’s recommendation.

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

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

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

Comment. Section 68045 continues former Section 25311 without substantive change.

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

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

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

Comment. Section 68055 continues former Section 25313 without substantive change.
§ 68060. “Feasibility study”
68060. “Feasibility study” means the identification and evaluation of technically feasible and effective remedial action alternatives to protect public health and the environment, at a hazardous substance release site, or other activities deemed necessary by the department for the development of a remedial action plan.

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

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

§ 68065. “Federal act”

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

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

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

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

§ 68075. “Hazardous substance”
68075. (a) “Hazardous substance” means:
(1) Any substance designated pursuant to Section 1321(b)(2)(A) of Title 33 of the United States Code.
(2) Any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the federal act (42 U.S.C. Sec. 9602).
(3) Any hazardous waste having the characteristics identified under or listed pursuant to Section 6921 of Title 42 of the United States Code, but not including any waste the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.) has been suspended by act of Congress.
(4) Any toxic pollutant listed under Section 1317(a) of Title 33 of the United States Code.
(5) Any hazardous air pollutant listed under Section 7412 of Title 42 of the United States Code.
(6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to Section 2606 of Title 15 of the United States Code.
(7) Any hazardous waste or extremely hazardous waste as defined by Sections 25117 and 25115, respectively, unless expressly excluded.
(b) “Hazardous substance” does not include:
(1) Petroleum, including crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance in paragraphs
(1) to (6), inclusive, of subdivision (a), and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas usable for fuel).

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

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

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

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

See Section 68065 (“federal act”).

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

Section 25317(a) currently reads as follows:

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

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

§ 68080. “Operation and maintenance”

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

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


§ 68085. “Person”

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

Comment. Section 68085 restates former Section 25319 without substantive change.
In proposed Section 68085, the order of the phrases in the first sentence in the definition of “person” from Section 25319 were changed to improve clarity. Minor changes to the text were made to conform to legislative drafting practices. The text of Section 25319 is as follows:

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

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

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

§ 68090. “Phase I environmental assessment”

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

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

§ 68095. “Preliminary endangerment assessment”

68095. “Preliminary endangerment assessment” means an activity that is performed to determine whether current or past hazardous substance management practices have resulted in a release or threatened release of a hazardous substance that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the department entitled “Preliminary Endangerment Assessment: Guidance Manual,” or as those
guidelines may be amended by the department. A preliminary endangerment assessment includes all of the following activities:

(a) Sampling and analysis of a site.
(b) A preliminary determination of the type and extent of hazardous material contamination of a site.
(c) A preliminary evaluation of the risks the hazardous materials contamination of a site may pose to public health or the environment.

Comment. Section 68095 continues former Section 25319.5 without substantive change. See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155 (“site”).

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

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

§ 68105. “Release”
68105. (a) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.
(b) “Release” does not include any of the following:
(1) Any release that results in exposure to persons solely within a workplace, with respect to a claim those exposed persons may assert against their employer.
(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.
(3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011 et seq.), if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 2210 of Title 42 of the United States Code.
(4) For the purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or any other response action, any release of source, byproduct, or special nuclear material, as those terms are defined in the federal Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011 et seq.), from any processing site designated under Section 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a part of the federal Uranium Mill Tailings Radiation Control Act of 1978.
(5) The normal application of fertilizer, plant growth regulants, and pesticides.

Comment. Subdivision (a) of Section 68105 continues former Section 25320 without substantive change.
Subdivision (b) restates former Section 25321 without substantive change.
See Sections 68065 (“federal act”), 68085 (“person”), 68140 (“response”).

Staff Note. Proposed Section 68105(b) separates the text of Section 25321(c) into two paragraphs ((3) and (4)) for clarity. The proposed language also includes changes to conform to legislative
drafting practices and to correct an apparent error (i.e., an omitted comma). Subdivision (c) of Section 25321 reads as follows:

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

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

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

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

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

§ 68115. “Remedial design”

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

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

§ 68120. “Remedial investigation”

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

Comment. Section 68120 continues former Section 25322.2 without substantive change. See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68155 (“site”).
§ 68125. “Remedy” or “remedial action”

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

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

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

(c) Site operation and maintenance.

Comment. Section 68125 continues former Section 25322 without substantive change. See Sections 68055 (“director”), 68065 (“federal act”), 68075 (“hazardous substance”), 68080 (“operation and maintenance”), 68105 (“release”), 68135 (“remove”), 68155 (“site”).

§ 68130. “Removal action work plan”

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

Comment. Section 68130 continues former Section 25323.1 without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 68135 (“remove”).

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

§ 68135. “Remove” or “removal”

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

Comment. Section 68135 continues former Section 25323 without substantive change. See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”).
§ 68140. “Response,” “respond,” or “response action”

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

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

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

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

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

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

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

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

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

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

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

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

(c) Any person who unknowingly transports hazardous waste to a solid waste facility pursuant to the exemption provided in subdivision (e) of Section 25163 shall not be considered a responsible party for purposes of this part solely because
of the act of transporting the waste. Nothing in this subdivision shall affect the
liability of this person for the person’s negligent acts.

Comment. Section 68145 continues former Section 25323.5 without substantive change.
See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68085
(“person”), 68105 (“release”), 68125 (“remedy”), 68155 (“site”).

§ 68150. “Secretary”
68150. “Secretary” means the Secretary for Environmental Protection.
Comment. Section 68150 continues former Section 25326.3 without substantive change.

§ 68155. “Site”
68155. “Site” has the same meaning as the term “facility” is defined by Section
101(9) of the federal act (42 U.S.C. Sec. 9601(9)).
Comment. Section 68155 continues former Section 25323.9 without substantive change.
See Section 68065 (“federal act”).

§ 68160. “Site cleanup evaluation”
68160. “Site cleanup evaluation” means an evaluation by the department of the
effectiveness of a removal or remedial action conducted by a responsible party, to
reduce or eliminate actual or potential public health and environmental threats
posed by a hazardous substance release site if the action itself is not the subject of
oversight by the department.
Comment. Section 68160 continues former Section 25326.5 without substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125
(“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

§ 68165. “State account”
68165. “State account” means the Toxic Substances Control Account
established pursuant to Section 25173.6.
Comment. Section 68165 continues subdivision (a) of former Section 25324 without
substantive change.

Staff Note. Subdivision (b) of Section 25324 states a substantive rule, rather than a definition:
“(b) Notwithstanding any other provision of this section, any costs incurred and payable
from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site
Remediation Account prior to July 1, 2006, to implement this chapter, shall be recoverable from
the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable
from the state account.”
This subdivision will be recodified with other related provisions in a future draft.

§ 68170. “Tier”
68170. “Tier” means a grouping of hazardous substance release sites that require
removal and remedial actions, that are listed alphabetically, and that are of a
roughly equivalent priority for removal and remedial action.
Comment. Section 68170 continues former Section 25327 without substantive change.
See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

Article 4. Construction of Part

§ 68185. Construction as to liability

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

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

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

Comment. Section 68185 restates former Section 25366 without substantive change. See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68110 (“release authorized or permitted pursuant to state law”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”).

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

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

CHAPTER 2. FINANCIAL PROVISIONS

Article 1. Budget

§ 68200. Items to be scheduled in Budget Act

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

Comment. Section 68200 restates former Section 25342 without substantive change. See Section 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

Staff Note. Proposed Section 68200 restates Section 25342 to clarify this provision. Currently, Section 25342 reads as follows:
“25342. The Director of Finance shall schedule in the annual Budget Act the projects proposed in any fiscal year, that will incur direct costs for removal and remedial actions at hazardous substance release sites.”

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

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

Article 2. Externally-Funded Positions

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

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

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

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

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

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

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

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

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

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

(1) A direct or indirect position that provides oversight and related support of remediation and hazardous substance management at a military base, including a
closed military base, that is funded through an agreement with a party responsible for paying the department’s costs.

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

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

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

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

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

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

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

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

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

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

The changes reflected in proposed Section 68210 are intended to be nonsubstantive. The staff welcomes any comment on the proposed restatement of these subdivisions, as well as the definition in proposed subdivision (g).
Article 3. State Account

§ 68220. Actions involving state account
68220. The state account may sue and be sued in its own name.
Comment. Section 68220 continues former Section 25331 without substantive change. See Section 68165 (“state account”).

§ 68225. Excess expenditures
68225. Expenditures from the state account shall not be made in excess of the total amount of money in the state account at any one time. Expenditures in excess of that amount may be made only when additional money is collected or otherwise added to the state account.
Comment. Section 68225 continues former Section 25357 without substantive change. See Section 68165 (“state account”).

§ 68230. Subaccount for funds for response action at specific site
68230. (a) Notwithstanding any other provision of law, the Controller shall establish a separate subaccount in the state account, for any funds received from a settlement agreement or the General Fund for a removal or remedial action to be performed at a specific site.
(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for those removal or remedial actions are hereby continuously appropriated to the department, without regard to fiscal years, for removal or remedial action at the specific site, and for administrative costs associated with the removal or remedial action at the specific site.
(c) Notwithstanding any other provision of law, money in the subaccount for those removal or remedial actions shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.
(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for removal or remedial action at the specific sites.
(e) At the conclusion of all removal or remedial actions at the specific site, any unexpended funds in any subaccounts established pursuant to this section shall be transferred to the subaccount for site operation and maintenance established pursuant to Section 68235, if necessary, for those activities at the site, or, if not needed for site operation and maintenance at the site, to the state account.
(f) There is hereby created a subaccount in the state account as the successor fund to the Stringfellow Insurance Proceeds Account created pursuant to former Section 25330.6, as amended by Chapter 178 of the Statutes of 2007. All assets,
liabilities, and surplus in the Stringfellow Insurance Proceeds Account shall be transferred to, and become a part of, this subaccount for the Stringfellow Superfund Site in Riverside County, as provided in Section 16346 of the Government Code. All appropriations from the Stringfellow Insurance Proceeds Account, to the extent encumbered, shall continue to be available from the subaccount for expenditure for the same purposes and periods.

Comment. Section 68230 continues former Section 25330.4(a)-(e) and (f)(1) without substantive change. For ease of reference, former paragraph (f)(1)’s reference to “former Section 25330.6, as that section read on January 1, 2013” has been replaced with a reference to the last statute to amend the section prior to that date. Former Section 68230(f)(2) is obsolete and has not been continued. See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”), 68165 (“state account”).

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

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

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

“(2) This subdivision shall become operative on July 1, 2013.”

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

§ 68235. Subaccount for site operation and maintenance

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

(1) Funds received from responsible parties for site operation and maintenance.
(2) Funds received from the federal government pursuant to the federal act for site operation and maintenance.
(3) Funds received from cities, counties, or any other state or local agency for site operation and maintenance.
(4) Funds appropriated from the state account by the Legislature for site operation and maintenance.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for site operation and maintenance are hereby continuously appropriated to the department, without regard to fiscal years, for site operation and maintenance, and for administrative costs associated with site operation and maintenance.
(c) Notwithstanding any other provision of law, money in the subaccount for site operation and maintenance shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

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

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

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

§ 68240. Reserve account for emergencies

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

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

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

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

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

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

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

The internal cross-references in Section 25354 have been updated to refer either to this proposed section or to proposed Section 68875, depending on the purpose of the cross-reference.
For instance, references to “subdivision (a)” within Section 25354 have been updated to refer either to proposed Section 68240(a) (regarding funding the account) or proposed Section 68875(a) (regarding taking corrective action).

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

Article 4. Site Remediation Account

§ 68260. Site Remediation Account

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

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

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

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

**Comment.** Section 68260 continues former Section 25337 without substantive change. See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68080 (“operation and maintenance”), 68135 (“remove”), 68155 (“site”), 68165 (“state account”).

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

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

§ 68265. Encumbrance and disbursement of funds

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

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

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

§ 68290. Application of State General Obligation Bond Law

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

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

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

§ 68295. Creation of Hazardous Substance Cleanup Committee

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

Comment. Section 68295 continues former Section 25385.4 without substantive change.

See Section 68150 (“secretary”).

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

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

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

Comment. Section 68300 restates former Section 25385.5 without substantive change.

See Section 68285 (“committee” and “fund”).
Staff Note. Proposed Section 68300 restates Section 25385.5 to eliminate uses of the singular and plural form of the same word and to make necessary revisions to implement this change. Section 25385.5 reads as follows (with emphasis added):

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

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

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

§ 68305. Authorized uses of funds from bond proceeds

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

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

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

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

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

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


Staff Note. Paragraph (b)(2) of proposed Section 68305 describes costs for which expenditure of bond proceeds funds is authorized. The provision appears to permit expenditures of bond funds in two different situations, i.e., when either “costs are not paid by responsible parties or are reimbursed by the federal act” (emphasis added). Given that, the staff considered whether to separate this provision into two subparagraphs. The staff welcomes comment on whether such a change would be helpful or problematic.
§ 68310. Bonds as general obligations of state

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

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

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

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

§ 68315. Transfers to General Fund

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

Comment. Section 68315 continues former Section 25386 without substantive change.

See Section 68285 (“fund”).

§ 68320. Appropriation from General Fund

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

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

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

Comment. Section 68320 continues former Section 25386.1 without substantive change.
§ 68325. Withdrawals from General Fund

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

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

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

Comment. Section 68325 continues former Section 25386.2 without substantive change. Subdivision designators have been added. See Section 68285 (“board,” “committee,” and “fund”).

§ 68330. Tax-exempt funds

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

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

§ 68335. Determination on issuance of bonds

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

Comment. Section 68335 continues former Section 25386.3 without substantive change. See Section 68285 (“board” and “committee”).
§ 68340. Authority to sell bonds
68340. The committee may authorize the Treasurer to sell all, or any part of, the bonds authorized under this article at the time or times as may be fixed by the Treasurer.

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

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

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

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

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

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

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

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

Article 6. Revolving Loans Fund

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

(a) “Brownfield site” has the same meaning as defined in Section 101 of the federal act (42 U.S.C. Sec. 9601).
(b) “Brownfield law” means the federal Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) as amending the federal act.

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

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

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

See Section 68065 (“federal act”).

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

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

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

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

§ 68365. Revolving Loans Fund

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

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

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

(2) The amounts collected for loan services.

(3) Interest payments.

(4) Principal repayments.

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

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

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

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

(d) Any repayment of fund moneys, including interest payments, and all interest earned on, or accruing to, any moneys in the fund, that are deposited in the fund, as provided in subdivision (b), shall be available, in perpetuity, for expenditure for the purposes and uses authorized by the brownfield law.
Comment. Section 68365 continues former Section 25395.36 without substantive change. Technical changes were made to conform to the standard federal act citation format used in this part.

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

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

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

Article 7. Illegal Drug Lab Cleanup Account

§ 68370. Illegal Drug Lab Cleanup Account

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

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

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

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

CHAPTER 3. GENERAL POWERS AND DUTIES

Article 1. Regulatory Authority

§ 68400. Authority to adopt regulations

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

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

See Section 68050 (“department”).
§ 68410. Obligation to seek federal funds and agreements
68410. The state shall actively seek to obtain all federal funds to which it is entitled under the federal act and shall take all actions necessary to enter into contractual or cooperative agreements under Sections 104(c)(3) and 104(d)(1) of the federal act (42 U.S.C. Sec. 9604(c)(3) and 42 U.S.C. Sec. 9604(d)(1)).

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

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

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

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

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

Comment. Section 68420 continues former Section 25358.7.2, with the exceptions described in this comment, without substantive change. Obsolete language in subdivision (a) about the timing for the establishment of the community service offices is not continued. The second sentence of former Section 25358.7.2(a) is continued elsewhere in this part.
See Sections 68050 (“department”), 68100 (“regional board”).
Staff Notes. (1) The first sentence of subdivision (a) of Section 25358.7.2 provides:

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

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

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

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

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

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

Article 4. Investigatory Powers

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

Similarly, the provisions describe the purposes for which different activities authorized by the article may be undertaken. Overall, proposed Section 68435 provides that the actions in this article may be taken only for the purpose of “determining under this part the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this part.” However, proposed Section 68440(c) indicates that a person required to provide information to the department must allow the department access to the records “for purposes of assisting the department in determining the need for a response action.” And, proposed Section 68460 grants immunity to an authorized person for entering land “for the purpose of taking a
response action pursuant to this part.” The staff was unsure whether the different purposes for different provisions were intended or might be inadvertent.

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

§ 68435. Purpose of investigation

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

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

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

§ 68440. Authority to require person to provide relevant information

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

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

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

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

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

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

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

See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68140 (“response”), 68155 (“site”).
Staff Notes. (1) Section 25358.1(b)(3) contains a reference to “subdivision (e) of Section 104 of the federal act (42 U.S.C. Sec. 9604(e)).” In proposed Section 68440(a)(3), the format of this citation has been standardized in accordance with the predominant form for federal act citations contained in Chapter 6.8.

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

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

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

The staff welcomes comment on these issues.

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

The staff welcomes comment on this issue.

§ 68445. Disclosure of information

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

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

Comment. Section 68445 continues subdivisions (j) and (k) of former Section 25358.1 without substantive change.
§ 68450. Entry, inspection, and sampling of property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Comply with all procedures established pursuant to Section 68490.
(B) Notify the person whose facility is photographed prior to public disclosure of the photographs.

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

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

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

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


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

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

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

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

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

  (1) The property, were it nonresidential, would meet the criteria in paragraphs (1)-(4)

  (2) Hazardous substances have been released onto or under the property

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

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

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

§ 68455. Entry to property without voluntary grant of access

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

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

§ 68460. Immunity for entry and response action

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

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

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

Article 5. Protection of Trade Secrets

§ 68480. “Trade secrets”

68480. “Trade secrets,” as used in this article, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that is not patented, that is known only to certain individuals within a commercial concern who are using it to fabricate, produce, develop, or compound an article of trade or a service having commercial value, and that gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
Comment. Section 68480 continues subdivision (a) of former Section 25358.2 without substantive change.

§ 68485. Identification of trade secret information

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

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

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

§ 68490. Procedures for protection of trade secret information

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

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

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

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

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

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

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

Article 6. Abandoned Sites

§ 68505. Notice regarding abandoned sites

68505. (a) The director shall notify, within 20 working days, each of the appropriate county health officers as to all the potential abandoned sites of which the department has knowledge or that the department is investigating for releases of hazardous substances that may have occurred or might be occurring at abandoned sites. The county health officers may request quarterly updates on the status of the investigations of these sites.
(b) As used in this section, “abandoned site” means an inactive disposal, treatment, or storage facility that cannot, with reasonable effort, be traced to a specific owner, a site whose owner is the subject of an order for relief in bankruptcy, or a location where a hazardous substance has been illegally disposed.

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

Comment. Section 68505 continues former Section 25359.6 without substantive change. See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105 (“release”), 68135 (“remove”), 68155 (“site”).

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

Article 7. Laboratories

§ 68510. Accreditation requirement

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

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

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

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

Article 8. Technology Demonstration Program

§ 68525. Technology demonstration program for treatment technologies

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

**Comment.** Section 68525 continues former Section 25368 without substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125
(“remedy”), 68135 (“remove”), 68530 (“full-scale demonstration” and “treatment technologies”).

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

§ 68530. Definitions

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

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

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

**Comment.** Section 68530 restates former Section 25368.1 without substantive change.
See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135
(“remove”), 68155 (“site”).
Staff Note. Proposed Section 68530(a) restates Section 25368.1 to eliminate the word “thereof.” “Thereof” was replaced with “of these characteristics.” This change is intended to be nonsubstantive. The staff welcomes any comment on this proposed change.

§ 68535. Criteria for selection

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

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

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

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

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

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

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

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

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

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

(1) Responsible parties.

(2) The United States Environmental Protection Agency.

(3) The state account.

Comment. Section 68535 restates former Section 25368.2 without substantive change. See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”), 68530 (“full-scale demonstration”).

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

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

Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” For this reason, it does not appear to be necessary to use both the singular and plural forms of the
same word. Proposed Section 68535 was simplified to use only the singular form in accordance
with standard drafting practice.

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

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

§ 68540. Selection of sites

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

(a) The state’s priority ranking for removal and remedial actions to hazardous
substance release sites adopted pursuant to Article 5 (commencing with Section
68760) of Chapter 4.
(b) The volume and variability of the hazardous substance release at the site.
(c) The availability of data characterizing the hazardous substance release.
(d) The accessibility of the hazardous substance release.
(e) Availability of required utilities.
(f) Support of federal and local governments.
(g) Potential for adverse effects to public health and the environment.

Comment. Section 68540 continues former Section 25368.3 without substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125
(“remedy”), 68135 (“remove”), 68155 (“site”).

§ 68545. Solicitation of proposals

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

(b) Any person, private entity, or public entity may submit an application to the
department in response to the solicitation. The application shall contain a proposed
treatment demonstration plan setting forth how the treatment demonstration
project is to be carried out and any other information that the department may require.

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

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

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

§ 68550. Selection of technology demonstration projects

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

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

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

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

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

§ 68555. Recovery of incremental costs

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

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

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

Staff Note. Section 25368.6 references a hazardous substance release site listed “pursuant to paragraph (2) or (3) of subdivision (b) of Section 25356.” Section 25356(b), which is proposed (with renumbering of the provisions) for recodification in this draft as proposed Section 68520, does not currently have a paragraph (3). However, an earlier version of Section 25356(b) did have
a paragraph (3). See former Section 25356, as amended by 1988 Cal. Stat. ch. 1387, § 6. At that
time, the “list” was significantly different and structured differently. And, it appears that a site
“listed pursuant to paragraph (2) and (3)…” would include only sites where the department (as
opposed to a responsible party) was conducting the response action.
Given the significant changes to the law since this cross-reference was added originally, the
staff is unsure whether this cross-reference can or should be updated to achieve the same
substantive result as the cross-reference did previously. Regardless, this cross-reference is broken
and must be updated in the recodification. The staff invites comment on how this cross-
reference should be revised.

§ 68560. Technology transfer program
68560. (a) The department shall conduct a technology transfer program that
shall include the development, collection, evaluation, coordination, and
dissemination of information relating to the utilization of alternative or innovative
hazardous waste treatment technologies demonstrated pursuant to this article.
(b) The information in subdivision (a) shall include all of the following:
(1) An evaluation of each treatment demonstration project’s efficacy relating to
performance and cost in achieving permanent and significant reduction in risks
from hazardous substance releases.
(2) Documentation of the testing procedures utilized in the project, the data
collected, and the quality assurance and quality control that was conducted.
(3) The technology’s applicability, pretreatment and posttreatment
measurements, and the technology’s advantages or disadvantages compared to
other available technologies.
Comment. Section 68560 restates former Section 25368.7 without substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68530
(“treatment technologies”).

Staff Notes. (1) Proposed Section 68560 restates Section 25368.7 to add subdivisions. Section
25368.7 provides:
“25368.7. The department shall conduct a technology transfer program that shall include
the development, collection, evaluation, coordination, and dissemination of information relating
to the utilization of alternative or innovative hazardous waste treatment technologies
demonstrated pursuant to this article. The information shall include an evaluation of each
treatment demonstration project’s efficacy relating to performance and cost in achieving
permanent and significant reduction in risks from hazardous substance releases. The information
shall also include documentation of the testing procedures utilized in the project, the data
collected, and the quality assurance and quality control which was conducted. The information
shall also include the technology’s applicability, pretreatment and posttreatment measurements,
and the technology’s advantages or disadvantages compared to other available technologies.
The changes reflected in proposed Section 68560 are intended to be nonsubstantive. The staff
welcomes any comment on the proposed restatement.
(2) Proposed Section 68560 uses the term “hazardous waste.” The term “hazardous waste” is not
defined in Chapter 6.8. The provisions of Chapter 6.8 mostly address “hazardous substances.”
And, proposed Section 68560 generally governs technologies used for responding to a “hazardous
substance” release. See, e.g., proposed Sections 68525, 68530, 68535. Given this context, it
seems likely that the use of the term “hazardous waste” in this section should be replaced with
“hazardous substance.” The staff welcomes comment on this issue.
§ 68565. Consideration of cost-effectiveness

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

Comment. Section 68565 continues former Section 25368.8 without substantive change. See Section 68050 ("department"), 68125 ("remedy"), 68155 ("site").

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

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

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

Article 9. Content of Biennial Report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 68575. San Gabriel Valley groundwater sites

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

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

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

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

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

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

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

“10231.5. (a) A bill that, as introduced or amended in either house of the Legislature, would require a state agency to submit a report on any subject to either house of the Legislature generally, a committee or office of either house of the Legislature, or the Legislative Counsel
Bureau shall include a provision that repeals the reporting requirement, or makes the requirement inoperative, no later than a date four years following the date upon which the bill, as enacted, becomes operative or four years after the due date of any report required every four or more years. If the bill requires that the report be submitted to either house of the Legislature generally, it shall also include a provision that requires the report to be submitted pursuant to Section 9795.”

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

§ 68580. Accounting of expenditures from emergency reserve account

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

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

See Section 68050 (“department”).

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

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

CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES

Article 1. General Powers of Director

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

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

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

(b) Undertake those planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations that are necessary or appropriate to plan and direct response actions, to recover the cost of those actions, and to enforce this part.
Comment. Section 68650 continues subdivision (b) of former Section 25358.3 without substantive change.

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

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

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

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

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

   A. The time for appeal has elapsed.
   B. The judgment of conviction has been affirmed on appeal.
   C. Any order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting that person to withdraw the plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

2. The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has violated or failed to comply with this part, Chapter 6.5 (commencing with Section 25100) or Chapter 6.7 (commencing with Section 25280) of Division 20, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the federal act, the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the federal Hazardous Materials Transportation Authorization Act of 1994, as amended (49 U.S.C. Sec. 5101 et seq.), the federal Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation,
transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in subdivision (a) of Section 68075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

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

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

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

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

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

The staff welcomes any comment on these proposed nonsubstantive changes.

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

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

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

(5) Section 25358.3(d)(3) (proposed Section 68655(b)(3)) uses the term “hazardous waste” without reference to an applicable definition. The preceding paragraph also uses the term “hazardous waste,” but refers to a definition in “Section 25117.” It seems likely that the definition of “hazardous waste” in Section 25117 should also apply to the use of the term in paragraph (d)(3). The staff welcomes comment on this issue.
§ 68660. Judicial proceedings

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

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

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

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

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

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

“(e) Whenever there is a release or threatened release of a hazardous substance, the director may request the Attorney General to secure such relief as may be necessary from the responsible party or parties to abate the release or threatened release. The superior court of the county in which the release or threatened release occurs has jurisdiction to grant that relief that the public interest and equities of the case may require to protect the public health and safety and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction.”
Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” For this reason, it does not appear to be necessary to use both the singular and plural forms of the same word. Proposed Section 68660 was simplified to use only the singular form in accordance with standard drafting practice.

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

(2) Section 25358.3(f) refers to an order issued pursuant to Section 25355.5. Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section 25355.5(a)) is the only one of those provisions that addresses the issuance of orders 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. The staff welcomes any comment on this proposed cross-reference update.

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

Article 2. Reporting Requirement

§ 68675. Prohibition and reporting requirement for releases

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

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

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

(2) The release is authorized by state law.

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

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


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

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

(2) Any quantity of a hazardous substance that is not reportable pursuant to paragraph (1), but that may pose a significant threat to public health and safety or to the environment. The department may establish guidelines for determining which releases are reportable under this paragraph.
Comment. Section 68675 continues subdivisions (a)-(c), inclusive, of former Section 25359.4 without substantive change. A cross-reference to Section 25507 has been corrected to refer to Section 25510.

See Sections 68050 ("department"), 68075 ("hazardous substance"), 68085 ("person"), 68105 ("release").

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

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

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

§ 68680. Liability for failure to report

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

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

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

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

See Sections 68050 ("department"), 68075 ("hazardous substance"), 68085 ("person"), 68105 ("release"), 68140 ("response"), 68145 ("responsible party").
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.
(c) A lessee or renter may cure a default under the lessee’s or renter’s lease or rental agreement that resulted from a violation of this section, by promptly commencing and completing the removal of, or taking other appropriate remedial action with respect to, the hazardous substance release. The removal or remedial action shall be conducted in accordance with all applicable laws and regulations and in a manner that is reasonably acceptable to, and that is approved in writing by, the owner or lessor. This subdivision does not relieve the lessee or renter of any liability for actual damages or for any civil penalty for a violation of this section.

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

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

Article 4. Securing Site of Release

§ 68720. Conditions when order to secure site is required

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

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

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

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

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

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

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

§ 68725. Requirements of order to secure site

68725. (a) The order to secure the site shall require, within five days after receiving notification of the order, the posting of the site with signs. The order shall also require, within five days after receiving notification of the order, that the site be enclosed with a fence, unless it is physically and economically infeasible or unless the fencing is unnecessary because it will not alleviate the danger to the public health.
(b) If fencing is ordered, the fences shall be maintained at the site to prevent unauthorized persons from gaining access to the site. The signs shall be maintained and shall meet all of the following requirements:

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

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

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

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

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

Comment. Section 68725 continues subdivisions (b) and (c) of former Section 25359.5 without substantive change. See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68155 (“site”).

§ 68730. Advising agencies on health risks and site requirements

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

Comment. Section 68730 continues subdivision (e) of former Section 25359.5 without substantive change. See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155 (“site”).

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

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

(b) If the property owner fails to secure and post the site, the department or the county health officer shall secure and post the site pursuant to subdivision (a) of Section 68725 within 30 days of the expiration of the five-day period and shall seek recovery of the costs of that securing and posting from the property owner. If the site is an abandoned site, as defined in Section 68505, if the site cannot be traced to a specific owner, or if the owner is the subject of an order for relief in bankruptcy, the department or the county health officer shall secure and post the site, using any source of funds, pursuant to subdivision (a) of Section 68725.
Comment. Section 68735 continues subdivision (d) of former Section 25359.5 without substantive change.

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

§ 68740. Remedies and penalties not exclusive

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

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

Article 5. Listing of Hazardous Substance Release Sites

§ 68760. List of selected hazardous substance release sites

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

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

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

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

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


§ 68765. Criteria for selection of hazardous substance release sites

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

(b) The criteria adopted pursuant to subdivision (a) may include a minimum hazard threshold, below which sites shall not be listed pursuant to this article, if the sites are subject to the authority of the department to order a response action,
or similar action, pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20.

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

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

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

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

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

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

§ 68770. Priority tiers for listed hazardous substance release sites

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

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

1. The site may pose a known or probable threat to public health or safety through direct human contact.
2. The site may pose a substantial probability of explosion or a fire or a significant risk due to hazardous air emissions.
3. The site has a high potential to contaminate or to continue to contaminate groundwater resources that are present or possible future sources of drinking water.
4. There is a risk that the costs of a response action will increase rapidly or risks to human health or safety or the environment will increase significantly if response action is deferred.

(b) “Priority tier two” shall include any site that poses a substantial but less immediate threat to public health or safety or the environment and any site that will require a response action, but presents only a limited and defined threat to human health or safety or the environment. Priority tier two may contain sites previously listed in priority tier one if the department determines that direct threats
to human health or safety have been removed and if physical deterioration of the site has been stabilized so that threats to the environment are not significantly increasing.

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

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

§ 68775. Requirements for listed hazardous substance release sites

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

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

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

§ 68780. Conformance of expenditures with prioritization of sites

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

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

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

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

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

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

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

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


§ 68785. Commencement of response actions at sites

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

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

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

§ 68790. Responsibility for response action compliance

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

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

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

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

§ 68795. Application of administrative rulemaking requirements

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

(b) The adoption of the criteria used by the department pursuant to Section 68760 to determine the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at a site or in a significant increase in risk to human health or safety or the environment is subject
to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

CHAPTER 5. CLEANUP OF HAZARDOUS SUBSTANCE RELEASES


§ 68850. Coordination of response actions by Governor

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

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

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

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

§ 68855. Consistency requirements for response actions

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

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

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

See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68105 (“release”), 68140 (“response”).
Staff Notes. (1) Proposed Section 68855 restates part of Section 25330 to add subdivision designations and eliminate the word “thereof.” “Thereof” was replaced with the phrase “of the response actions.” These changes are intended to be nonsubstantive. **The staff welcomes any comment on the proposed changes.**

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

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

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

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

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

Section 25352 has been divided into multiple provisions in this recodification. The cross-reference to Section 25352 has been updated to refer only to 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.**

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

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

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

§ 68860. No duplication of federal response actions

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

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

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

Article 2. Exigent Actions

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

68870. Whenever the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance, the director may do any or all of the following:
(a) Order any responsible party to take or pay for appropriate removal or
remedial action necessary to protect the public health and safety and the
environment. No order under this section shall be made to an owner of real
property solely on the basis of that ownership as specified in Sections 101(35) and
107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)). The director
shall give the responsible party an opportunity to assert all defenses to the order.
(b) Take or contract for any necessary removal or remedial action.
(c) Request the Attorney General to secure relief as may be necessary from the
responsible party to abate the danger or threat. The superior court of the county in
which the threat or danger occurs shall have jurisdiction to grant the relief the
public interest and equities of the case may require to protect public health and
welfare and the environment. Upon a showing by the department that a release or
threatened release of a hazardous substance has occurred or is occurring, and that
there may be an imminent or substantial endangerment to the public health and
safety or to the environment, the court may grant a temporary restraining order or
a preliminary or permanent injunction pursuant to subdivision (a) of Section
68660.

Comment. Section 68870 restates subdivision (a) of former Section 25358.3 without
substantive change.

See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075
(hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145
(“responsible party”).

Staff Notes. (1) Proposed Section 68870 restates Section 25358.3(a)(1) and (a)(3) to eliminate a
use of the singular and plural form of the same word: “responsible party or parties.”
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 68870 was simplified to use only the singular form in accordance with standard drafting
practice.

Aside from these changes, only two other wording changes were made, both in Section
25358.3(a)(3). Those two changes were replacing a use of the word “which” with “that” and
deleting a use of the word “such.”

The changes reflected in proposed Section 68870 are intended to be nonsubstantive. The staff
welcomes any comment on the proposed restatement.

(2) Section 25358.3(a) specifies that no order “under this section” shall be made to a real property
owner solely on the basis of ownership. Section 25358.3 has been proposed for recodification as
multiple provisions. Proposed Section 68870 continues the only part of Section 25358.3 that
expressly authorizes orders issued by the director to a responsible party. For this reason, the
cross-reference will refer only to “this section” and omit the remainder of Section 25358.3
(proposed for recodification as Article 1 of Chapter 4). The staff welcomes comment on this
proposed treatment of this reference.

(3) Proposed Section 68870(a) precludes an order made to a real property owner “solely on the
basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act…. Those
federal act sections do not directly preclude making an order to a property owner based on
ownership. Rather, these sections provide certain defenses to landowners under specified
situations (e.g., act of God or act of war). If a landowner had a defense, the defense would
presumably be raised in response to an order (and would not preclude issuance of the order). The
staff welcomes comment on whether this provision has caused problems or confusion in practice.

§ 68875. Immediate corrective action

68875. (a) The department shall expend moneys available in the reserve account, established pursuant to subdivision (a) of Section 68240, only for the purpose of taking immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an explosion of, or human exposure to, hazardous substances caused by the release or threatened release of a hazardous substance.

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

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

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

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

Comment. Section 68875 restates the second sentence of subdivision (a) and the whole of subdivision (b) of former Section 25354 without substantive change. See Sections 68050 ("department"), 68075 ("hazardous substance"), 68105 ("release"), 68125 ("remedy").

Staff Note. Section 25354 has been proposed for recodification as multiple provisions. Separating this section into multiple provisions required the addition of a cross-reference to provide context. In subdivision (a), the phrase “established pursuant to subdivision (a) of Section 68240” was added to identify the reserve account. Aside from this change, proposed Section 68875 does not modify the language it contains from Section 25354. The staff welcomes comment on this proposed restatement.

§ 68880. Exemptions for exigent actions

68880. Any removal or remedial action taken or contracted by the department pursuant to Section 68870 or 68875 shall be exempt from all of the following provisions:

(a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.
(c) Section 10295 of the Public Contract Code.

(d) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

Comment. Section 68880 continues former Section 25358.5 without substantive change. See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

Staff Notes. (1) Section 25358.5 provides exemptions for actions taken “pursuant to Section 25354 ....”

Section 25354 has been proposed for restatement as three provisions (proposed Sections 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision authorizing expenditures for immediate corrective action (proposed Section 68875). The remaining provisions, which relate to appropriations and the funding of the emergency reserve account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not appear to be relevant to this cross-reference and will be omitted from the cross-reference.

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

(2) Section 25358(c) cross-refers to several provisions of the Public Contract Code. This cross-reference includes two articles, Articles 4 and 5, of Chapter 2 of Part 2 of Division 2 of that code. One of those articles, Article 5, no longer exists. See 2000 Cal. Stat. ch. 759, § 18 (repealing the heading of Article 5). The provisions of former Article 5 that have not been repealed are now in Article 4, the final section of which is Section 10381 (former Article 5 commenced with Section 10355). For these reasons, the cross-reference to Article 5 was not continued. The staff welcomes comment on this cross-reference update.

§ 68885. Prequalification of bidders for exigent actions

68885. (a) The department may prequalify bidders for remedial or removal actions taken pursuant to Section 68870 or 68875. The department may reject the bid of any prospective bidder that has not been prequalified.

(b) To prequalify bidders, the department shall adopt and apply a uniform system of rating bidders. In order to obtain information for such rating, the department may require from prospective bidders answers to questions, including, but not limited to, questions about the bidder’s financial ability, the bidder’s experience in removal and remedial action involving hazardous substances, the bidder’s past safety record, and the bidder’s past performance on federal, state, or local government projects. The department may also require prospective bidders to submit financial statements.

(c) The department shall utilize the business financial data and information submitted by a bidder pursuant to subdivision (b) only for the purposes of prequalifying bidders pursuant to this section and shall not otherwise disseminate this data or information.

(d) The system of rating bidders may be adopted by the department as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, when these regulations are adopted as emergency regulations pursuant to Section 11349.6 of the Government Code, the regulations shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. It is the intent of the Legislature that
emergency regulations adopted pursuant to this subdivision shall remain in effect
until the regulations are adopted as final regulations, pursuant to Chapter 3.5
(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
Government Code.

Comment. Section 68885 continues former Section 25358.6 without substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68125 (“remedy”), 68135
(“remove”).

Staff Notes. (1) Section 68885 permits prequalification of bidders for action taken “pursuant to
Section 25354 ….” This cross-reference has been updated, as described in Note 1 to proposed
Section 68880. The staff welcomes comment on this proposed cross-reference update.
(2) Subdivision (d) of Section 25358.6 pertains to regulations adopted for rating bidders. This
provision, which was originally adopted in 1983, seems to focus on the adoption of regulations at
that time. It is unclear whether this provision has continuing application. The staff welcomes
comment on this issue.

Article 3. Referral of Site to Department by
State or Regional Water Board

Staff Note. Section 25355.6, which is proposed for recodification in this article, contains several
references to a “California regional water resources control board” or a “California regional water
quality control board.” The staff believes that these references were all intended to refer to a
“California regional water quality control board.” In this proposed article, those references have
all been replaced with the defined term, “regional board.” In proposed Section 68100, “regional
board” is defined as “a California regional water quality control board.”

§ 68900. Referral of sites to department for listing
68900. The State Water Resources Control Board or a regional board that has
jurisdiction over a hazardous substance release site pursuant to Division 7
(commencing with Section 13000) of the Water Code may refer the site to the
department as a candidate for listing pursuant to Article 5 (commencing with
Section 68760) of Chapter 4. After determining that the site meets the criteria
adopted pursuant to Section 68765, the department may place the site on the list of
sites subject to this part and establish its priority ranking pursuant to Article 5
(commencing with Section 68760) of Chapter 4.

Comment. Section 68900 continues subdivision (a) of former Section 25355.6 without
substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
68105 (“release”), 68155 (“site”).

§ 68905. Authority of department at listed, referred site
68905. If a hazardous substance release site is referred to the department and is
listed pursuant to Section 68900, the department may expend money from the state
account for removal or remedial action at the site, upon appropriation by the
Legislature, without first issuing an order or entering into an agreement pursuant
to paragraph (1) of subdivision (a) of Section 69055, if all of the following apply:
(a) The State Water Resources Control Board or a regional board has issued a cease and desist order pursuant to Section 13301 of the Water Code or a cleanup and abatement order pursuant to Section 13304 of the Water Code to the potentially responsible party for the site.

(b) The State Water Resources Control Board or the regional board has made a final finding that the potentially responsible party has not complied with the order issued pursuant to subdivision (a).

(c) The State Water Resources Control Board or the regional board has notified the potentially responsible party of the determination made pursuant to subdivision (b) and that the hazardous substance release site has been referred to the department pursuant to Section 68900.

Comment. Section 68905 continues subdivision (b) of former Section 25355.6 without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

§ 68910. Notice to state or regional board regarding referred site

68910. (a) If a hazardous substance release site is referred to the department pursuant to Section 68900, and the department makes either of the following determinations, the department shall notify the appropriate regional board and the State Water Resources Control Board:

(1) The department determines that the site does not meet the criteria established pursuant to Section 68765 and the site cannot be placed, pursuant to Article 5 (commencing with Section 68760) of Chapter 4, on the list of sites subject to this part.

(2) The department determines that a removal or remedial action at the site will not commence for a period of one year from the date of listing due to a lack of funds or the low priority of the site.

(b) If a regional board or the State Water Resources Control Board receives a notice pursuant to subdivision (a), the regional board or state board may take any further action concerning the hazardous substance release site that the regional board or state board determines to be necessary or feasible, and that is authorized by this part or Division 7 (commencing with Section 13000) of the Water Code.

Comment. Section 68910 continues subdivisions (c) and (d) of former Section 25355.6 without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

Staff Note. Section 25355.6(c)(1) refers to criteria established “pursuant to subdivision (a).” This cross-reference appears to be erroneous, as Section 25355.6(a) does not involve the establishment of criteria. Instead, the correct cross-reference appears to be “subdivision (a) of Section 25356,” which pertains to the criteria for listing sites. That provision would be recodified as proposed Section 68765. Accordingly, proposed Section 68910(a)(1) would cross-refer to “Section 68765,” 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.
(d) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4 with the opportunity to participate in the department’s or regional board’s decisionmaking process regarding that action by taking all of the following actions:

1. Provide access to information that the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:
   
   A. Trade secrets, as defined in Section 68480.
   
   B. Business financial data and information, as specified in subdivision (c) of Section 68885.
   
   C. Information that the department or regional board is prohibited from releasing pursuant to any state or federal law.

2. Provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned activities. The factsheets shall be made available in languages other than English if appropriate.

3. Provide notification, upon request, of any public meetings held by the department or regional board concerning the action.

4. Provide the opportunity to attend and to participate at those public meetings.

5. Based on the results of the baseline community survey, provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(e) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this part and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(f) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this part, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(g) This section does not apply to emergency actions taken pursuant to Section 68875.

Comment. Section 68930 restates former Section 25358.7 without substantive change.

Staff Notes. (1) Subdivision (b) of Section 25358.7 was restated as two subdivisions, subdivisions (b) and (c), in proposed Section 68930. Section 25358.7(b) currently provides:

“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 Section 25356, of the existence of the site and the department’s or regional board’s intention to conduct a response action at the site, and 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. 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.”

The changes reflected in proposed Section 68930 are intended to be nonsubstantive. The staff welcomes comment on the proposed restatement of this provision.

(2) Proposed paragraph (d)(1)(B) excepts “[b]usiness financial data and information, as specified in subdivision (c) of 25358.6” from the information to which the department or regional board must provide access. In updating this cross-reference, the staff reviewed the cross-referenced provision, but was left uncertain of the scope of “business financial data and information.” It is unclear whether this term is sufficiently clear in practice. The staff welcomes comment on this issue.

(3) Subdivision (f) of Section 25358.7 exempts “emergency actions taken pursuant to Section 25354” from the public participation requirements of this section. Section 25354 has been proposed for restatement as three provisions (proposed Sections 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision authorizing expenditures for immediate corrective action (proposed Section 68875). The remaining provisions, which relate to appropriations and the funding of the emergency reserve account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not appear to be relevant to this cross-reference and will be omitted from the cross-reference. The staff welcomes comment on this proposed cross-reference update.

(4) Subdivision (f) of Section 25358.7 exempts “emergency actions taken pursuant to Section 25354” from the public participation requirements of this section.

Chapter 6.8 of Division 20 contains two provisions relating to response actions undertaken in exigent circumstances. See proposed Sections 68870 and 68875. Typically, a provision providing exemptions or special treatment for exigent actions will apply to action taken under either of those provisions. See, e.g., proposed Sections 68880, 69135. However, subdivision (f) only applies to actions taken under one provision. The staff noticed the different treatment, but was unsure why this exemption was more limited. The staff welcomes comment on this issue.

§ 68935. Notice and comment opportunity for local agencies

68935. The department or regional board shall advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment.

Comment. Section 68935 continues the third sentence of subdivision (a) of former Section 25358.7.1 without substantive change.
See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”).

**Staff Notes.** (1) Proposed Section 68935 continues the third sentence of subdivision (a) of Section 25358.7.1. This provision is proposed for recodification separately, as it does not appear to be related to community advisory groups. These groups are the focus of the remainder of Section 25358.7.1. The staff welcomes comment on whether this provision relates to and should be recodified with the provisions on community advisory groups.

(2) This provision originally provided that a “department or regional board shall also advise…” (emphasis added). The word “also” appears to be superfluous and was not continued. The omission of the word “also” is intended to be a nonsubstantive, technical change. This was the only change to the wording of this provision. The staff welcomes any comment on this change.

(3) This provision refers to “planned response actions.” The staff did not find any other uses of this phrase in Chapter 6.8 of Division 20. The staff is not sure whether this phrase is sufficiently clear as to when this duty to advise is triggered. In particular, it is not clear whether a “planned response action” would be a response action for which there is a “response action plan” (see proposed Article 12 in this draft). Or, instead, it may be that a “planned response action” is simply a response action anticipated to occur soon. The staff welcomes comment on this issue.

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**Article 5. Community Advisory Groups**

§ 68950. Establishment of group

68950. (a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community.

(b)(1) If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site, the department or regional board shall assist the petitioners to establish a community advisory group to review the response action at the site.

(2) If the department or regional board, whichever is overseeing a response action, receives a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the legislative body to establish a community advisory group to review the response action at the site.

**Comment.** Section 68950 continues the first sentence and restates the fourth sentence of subdivision (a) of former Section 25358.7.1 without substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68155 (“site”).

**Staff Note.** The fourth sentence of Section 25358.7.1 has been restated for clarity. That provision currently provides:

“If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.”

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The changes reflected in proposed Section 68950(b) are intended to be nonsubstantive. The staff welcomes comment on the proposed restatement of this provision.

§ 68955. Composition of group
68955. To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:
(a) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.
(b) Individuals from the local business community.
(c) Local political or government agency representatives.
(d) Local citizen, civic, environmental, or public interest group members residing in the community.
Comment. Section 68955 continues subdivision (b) of former Section 25358.7.1 without substantive change. See Sections 68075 (“hazardous substance”), 68085 (“person”), 68100 (“regional board”), 68105 (“release”), 68140 (“response”), 68155 (“site”).

§ 68960. Communication with group
68960. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory group.
Comment. Section 68960 continues the second sentence of subdivision (a) of former Section 25358.7.1 without substantive change. See Sections 68050 (“department”), 68100 (“regional board”).

Staff Note. Section 25358.7.1(a) specifies that the department or regional board “shall regularly communicate … with the community advisory committee” (emphasis added). Otherwise, this section uses the term “community advisory group.” It seems likely that the use of “committee” was an error, as the term “community advisory committee” is not used elsewhere. For this reason, proposed Section 68960 replaces “community advisory committee” with “community advisory group.” The staff welcomes comment on this proposed correction.

§ 68965. Participation in group meetings
68965. The following entities may participate in community advisory group meetings in order to provide information and technical expertise:
(a) The department or regional boards.
(b) Representatives of local environmental regulatory agencies.
(c) The potentially responsible parties or other persons who are conducting the response action.
Comment. Section 68965 continues subdivision (c) of former Section 25358.7.1 without substantive change. See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68140 (“response”), 68145 (“responsible party”).
§ 68970. Relationship with other public participation provisions

68970. (a) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 68930.

(b) Nothing in [this article] shall affect the status of any citizen advisory group formed before [May 26, 1999], a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

Comment. Section 68970 continues subdivision (d) of former Section 25358.7.1 without substantive change.

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

Staff Note. (1) Subdivision (b) of proposed Section 68970 appears to be stating a transitional rule addressing different types of community groups that may have been in existence when this section was enacted. As discussed in Note #2 below, this provision was enacted in 1999. It is unclear whether this rule has ongoing utility and needs to be continued. The staff welcomes comment on this issue.

(2) Section 25358.7.1(d) provides, in part, that nothing in “this section” affects the status of certain specified boards or a citizen advisory group formed before the enactment of “this section.” The proposed updates to these cross-references are described below. The cross-references were treated differently because the first is a reference to the substantive contents of the section, while the second is a reference to the section’s date of enactment.

For the reference to the substantive contents of the section, Section 25358.7.1 has been proposed for recodification as several sections in this article. Rather than referring to the five sections in this article that continue Section 25358.7.1, it seems simpler to update the cross-reference simply refer to “this article” as a whole.

In addition to the sections continuing Section 25358.7.1, this article also includes a provision continuing Section 25358.8. Expanding the cross-reference to include this provision appears to be nonsubstantive, as it appears that nothing in Section 25358.8 affects the status of a citizen advisory group formed before the enactment of Section 25358.7.1, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board. The staff welcomes comment on this proposed cross-reference update.

For the cross-reference to the enactment date, it appears that this section was added in 1999. See 1999 Cal. Stat. ch. 23, § 2 (SB 47). The bill adding this section was urgency legislation and was enacted on May 26, 1999. For this reason, the phrase “before the enactment of this section” was replaced with “before May 26, 1999.” The staff welcomes comment on this proposed update.

§ 68975. Technical assistance grants for group

68975. A community advisory group established pursuant to Section 68950 may request, in writing, and a potentially responsible party may fund, a technical assistance grant for a site, for the purpose of providing technical assistance to the community advisory group.

Comment. Section 68975 restates former Section 25358.8 without substantive change.

See Sections 68145 (“responsible party”), 68155 (“site”).

Staff Notes. (1) Proposed Section 68975 restates Section 25358.8 to eliminate a use of the singular and plural form of the same word: “potentially responsible party or parties.”

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 68975 was simplified to use only the singular form in accordance with standard drafting practice.

Aside from this change, the only other change to this section was the addition of a comma after the word “site.”

The changes reflected in proposed Section 68975 are intended to be nonsubstantive. The staff welcomes any comment on the proposed restatement.

(2) Section 25358.8 refers to “[a] community advisory group established pursuant to Section 25358.7.1.” Section 25358.7.1 is proposed for recodification as several sections in this proposed article. The cross-reference has been updated to refer only to proposed Section 68950, which relates to the establishment of a community advisory group. The remaining provisions of Section 25358.7.1 do not seem to relate to the purpose of this cross-reference. The staff welcomes comment on this proposed cross-reference update.

Article 6. Oversight and Review of Responsible Party Actions

§ 69000. Policies and procedures for oversight by department or state board

69000. The department and the State Water Resources Control Board concurrently shall establish policies and procedures consistent with this part that the department’s representatives shall follow in overseeing and supervising the activities of responsible parties who are carrying out the investigation of, and taking removal or remedial actions at, hazardous substance release sites. The policies and procedures shall be consistent with the policies and procedures established pursuant to Section 13307 of the Water Code, and shall include, but are not limited to, all of the following:

(a) The procedures the department will follow in making decisions as to when a potentially responsible party may be required to undertake an investigation to determine if a hazardous substance release has occurred.

(b) Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and groundwater contamination at a site.

(c) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination and carrying out removal or remedial actions.

(d) Policies for determining reasonable schedules for investigation and removal or remedial action at a site. The policies shall recognize the dangers to public health and the environment posed by a release and the need to mitigate those dangers, while taking into account, to the extent possible, the financial and technical resources available to a responsible party.

Comment. Section 69000 continues former Section 25355.7 without substantive change.

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

§ 69005. Voluntary enforceable agreements for actions at petroleum release sites

69005. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 68075, any person may voluntarily enter into an enforceable agreement with the department pursuant to this section that allows removal or remedial actions to be conducted under the oversight of the department at sites with petroleum releases
from sources other than underground storage tanks, as defined in Section 25299.24.

(b) If the department determines that there may be an adverse impact to water quality as a result of a petroleum release, the department shall notify the appropriate regional board prior to entering into the enforceable agreement pursuant to this section. The department may enter into an enforceable agreement pursuant to this section unless, within 60 days of the notification provided by the department, the regional board provides the department with a written notice that the regional board will assume oversight responsibility for the removal or remedial action.

(c) Agreements entered into pursuant to this section shall provide that the party will reimburse the department for all costs incurred including, but not limited to, oversight costs pursuant to the enforceable agreement associated with the performance of the removal or remedial actions and Chapter 6.66 (commencing with Section 25269) of Division 20.

Comment. Section 69005 restates paragraph (c)(2) of former Section 25355 without substantive change. See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

Staff Notes. (1) Section 25355(c)(2)(A) allows a person to enter a voluntary agreement pursuant to “this subdivision.” The remainder of subdivision (c) (proposed Section 69135(a)) obligates the department to, before undertaking a remedial or removal action, make an effort to notify potentially responsible parties and publish notice in a newspaper. That provision does not appear to be relevant to the entry into a voluntary agreement for department oversight of a removal or remedial action at a petroleum release site. For this reason, it appears appropriate to update the cross-reference to refer only to “this section,” which continues paragraph (2) of subdivision (c). The staff welcomes comment on this proposed cross-reference change.

(2) Section 25355(c)(2) is not consistent in its references to which provision authorizes enforceable agreements. The reference either points to the subdivision as a whole (see Note #1, above), the paragraph as a whole, or only subparagraph (A). For consistency, these references have all been updated to refer to “this section” (which continues paragraph (2) of Section 25355(c)). The staff welcomes comment on the proposed restatement of these cross-references.

Article 7. Orders to Potentially Responsible Parties

§ 69020. Issuance of orders

69020. In exercising its authority at a hazardous substance release site pursuant to Sections 68870 or 69055, the department shall issue orders to the largest manageable number of potentially responsible parties after considering all of the following:

(a) The adequacy of the evidence of each potentially responsible party’s liability.

(b) The financial viability of each potentially responsible party.
(c) The relationship or contribution of each potentially responsible party to the release, or threat of release, of hazardous substances at the site.
(d) The resources available to the department.

Comment. Section 69020 continues subdivision (a) of former Section 25356.1.3 without substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68145 (“responsible party”), 68155 (“site”).

Staff Notes. (1) This provision focuses on orders issued by the department in its exercise of authority at a hazardous substance release site. One of the cross-referenced provisions, Section 25358.3, focuses on authority of the director, as opposed to the department. The staff welcomes comment on whether this discrepancy has caused any problems in practice.
(2) Subdivision (a) of Section 25356.1.3 refers to the department exercising its authority pursuant to “subdivision (a) of Section 25355.5 or 25358.3.” The staff understands this cross-reference to refer to subdivision (a) of Section 25355.5 or subdivision (a) of Section 25358.3. The cross-reference has been updated to refer to the proposed sections recodifying those subdivisions. The staff welcomes comment on this proposed cross-reference update.

§ 69025. Meeting with potentially responsible parties
69025. The department shall schedule a meeting pursuant to Section 25269.5 and notify all identified potentially responsible parties of the date, time, and location of the meeting.

Comment. Section 69025 continues subdivision (b) of former Section 25356.1.3 without substantive change.
See Sections 68050 (“department”), 68145 (“responsible party”).

§ 69030. Request for issuance of order to potentially responsible party
69030. (a) A person issued an order pursuant to Section 68870 or 69055 may identify additional potentially responsible parties for the site to which the order is applicable and may request the department to issue an order to those parties. The request shall include, with appropriate documentation, the factual and legal basis for identifying those parties as potentially responsible parties for the site.
(b) The department shall review the request and accompanying information and, within a reasonable period of time, determine if there is a factual and legal basis for identifying other persons as potentially responsible parties, and notify the person that made the request of the action the department will take in response to the request.

Comment. Section 69030 continues subdivision (c) of former Section 25356.1.3 without substantive change.
See Sections 68050 (“department”), 68085 (“person”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

Staff Note. Proposed Section 69030(a) governs a request made by “[a] person issued an order pursuant to Section 25355.5 or 25358.3.” Each of these cross referenced sections is discussed in turn below.
(1) Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section 25355.5(a)) is the only one of those provisions that addresses the issuance of orders 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. The staff
welcomes any comment on this proposed cross-reference update.

(2) Section 25358.3 has been proposed for recodification as several sections (proposed
Sections 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section
25358.3(a)) is the only provision that addresses the department’s issuance of orders to parties and,
thus, appears to be the only provision that is relevant to this cross-reference. Proposed Section
68660 relates to relief sought in court, in which case the court would be the one to issue orders.
However, it does not appear that court orders would be subject to the rule contained in proposed
Section 69030. For this reason, the cross-reference to Section 25358.3 has been updated to refer
only to Section 68870. The staff welcomes any comment on this proposed cross-reference
update.

§ 69035. Determination not subject to judicial review

69035. Any determination made by the department regarding the largest
manageable number of potentially responsible parties or the identification of other
persons as potentially responsible parties pursuant to this article is not subject to
judicial review. This section does not affect the rights of any potentially
responsible party or the department under any other provision of this part.

Comment. Section 69035 continues subdivision (d) of former Section 25356.1.3 without
substantive change.

See Sections 68050 (“department”), 68085 (“person”), 68145 (“responsible party”).

Article 8. Expenditures

§ 69055. Required actions before expenditures by department at listed site

69055. (a) Except as provided in Sections 69060 and 69065, no money shall be
expended from the state account for removal or remedial actions on any site
selected for inclusion on the list established pursuant to Article 5 (commencing
with Section 68760) of Chapter 4, unless the department first takes both of the
following actions:

(1) The department issues one of the following orders or enters into the
following agreement:

(A) The department issues an order specifying a schedule for compliance or
correction pursuant to Section 25187.

(B) The department issues an order establishing a schedule for removing or
remedying the release of a hazardous substance at the site, or for correcting the
conditions that threaten the release of a hazardous substance. The order shall
include, but is not limited to, requiring specific dates by which necessary
corrective actions shall be taken to remove the threat of a release, or dates by
which the nature and extent of a release shall be determined and the site
adequately characterized, a remedial action plan shall be prepared, the remedial
action plan shall be submitted to the department for approval, and a removal or
remedial action shall be completed.
(C) The department enters into an enforceable agreement with a potentially responsible party for the site that requires the party to take necessary corrective action to remove the threat of the release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

(2) The department determines, in writing, that the potentially responsible party or parties for the hazardous substance release site have not complied with all of the terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before the department determines that a potentially responsible party is not in compliance with the order or agreement, the department shall give the potentially responsible party written notice of the proposed determination and an opportunity to correct the noncompliance or show why the order should be modified. After the department has made the final determination that a potentially responsible party is not in compliance with the order or agreement, the department may expend money from the state account for a removal or remedial action.

(b) Any enforceable agreement entered into pursuant to this section may provide for the execution and recording of a written instrument that imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of the site. The instrument shall provide that the easement, covenant, restriction, or servitude, or combination thereof, as appropriate, is subject to the variance or removal procedures specified in Sections 25223 and 25224. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section and recorded so as to provide constructive notice runs with the land from the date of recordation, is binding upon all of the owners of the land, their heirs, successors, and assigns, and the agents, employees, or lessees of the owners, heirs, successors, and assigns, and is enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20.

Comment. Section 69055 continues subdivision (a) of former Section 25355.5 without substantive change. An undesignated paragraph in former Section 25355.5(a)(1)(C) has been recodified as subdivision (b) of this section.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

Staff Notes. (1) Subdivision (a) of Section 25355.5 is cited in other provisions of this proposed part, seemingly for authority for the department to enter into certain agreements or issue certain orders. See, e.g., proposed Sections 69020, 69065, 69070. While the department’s authority to issue the orders and enter the agreements is clearly implied by this section, this section pertains to expenditures by the department. In the staff’s view, the department’s authority regarding the orders and agreements could be stated more directly and more clearly. While there seems to be no question that this provision indirectly provides the department with necessary authority for the orders and agreements, drafting a provision that provides the authority directly poses a risk of
substantive change. The staff welcomes comment on whether addition of a provision directly
authorizing the department to issue orders (described in proposed Section 69055(a)(1)(B))
and enter agreements (described in proposed Section 69055(a)(1)(C)) would be a helpful
addition. If so, this issue could be added to the list of substantive issues for possible future study
that will be included in the Commission’s recommendation.

(2) Section 25355.5(a)(1)(C) contains an undesignated paragraph. The language in that paragraph,
which relates to land use restrictions contained in an enforceable agreement, is continued as
proposed Section 69055(b). However, given that the subject matter of this provision is only
indirectly related to the topic addressed by this proposed article (“Expenditures”), this location
does not seem to be a good fit. At this point, the staff has not identified a more appropriate
location for this provision. The staff welcomes comment on the placement of this provision.

(3) The undesignated paragraph in Section 25355.5(a)(1)(C) relates to an “enforceable agreement
entered into pursuant to this section.” Section 25355.5 is proposed for recodification as several
sections (proposed Sections 69055, 69060, 69065, and 69130(b)). This proposed section contains
the only provision that discusses entering into an enforceable agreement. For this reason, the
references to “this section” have not been adjusted to refer to the other proposed sections that
recodify Section 25355.5, as they do not appear to be relevant. The staff welcomes comment on
this proposed cross-reference update.

(4) Section 25355.5(a)(1)(C) refers to “to the variance or removal procedures specified in
Sections 25233 and 25234.” The cross-referenced sections do not currently exist. They were
repealed in 2012. See 2012 Cal. Stat. ch. 39. It appears that the substance of these provisions was
continued in Sections 25223 and 25224. See 2012 Cal. Stat. ch. 39, § 75 (amending a different
cross-reference to Sections 25233 and 25234 to instead cross-refer to Sections 25223 and 25224).
In proposed Section 69055, the cross-reference has been updated to refer to Sections 25223 and
25224. The staff welcomes comment on this proposed cross-reference correction.

§ 69060. Conditions where required actions not applicable for expenditure

69060. Section 69055 does not apply, and money from the state account shall be
available, upon appropriation by the Legislature, for removal or remedial actions,
if any of the following conditions apply:

(a) The department, after a reasonable effort, is unable to identify a potentially
responsible party for the hazardous substance release site.

(b) The department determines that immediate corrective action is necessary, as
provided in Section 68875.

(c) The director determines that removal or remedial action at a site is necessary
because there may be an imminent and substantial endangerment to the public
health or welfare or to the environment.

Comment. Section 69060 restates subdivision (b) of former Section 25355.5 without
substantive change.

See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105
(“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”),
68165 (“state account”).

Staff Notes. (1) Section 25355.5(b)(1) permits expenditures where the department is unable to
identify “a potential responsible party.” This seems to be an error, as it is the only use of this
phrase in Chapter 6.8. The correct phrase appears to be “a potentially responsible party,” a phrase
that is used repeatedly in Chapter 6.8. For this reason, the provision has been restated to refer to
“a potentially responsible party.” This change is intended to be nonsubstantive. The staff
welcomes comment on this proposed correction.
Section 25355.5(b)(2) permits expenditures if “immediate corrective action is necessary, as provided in Section 25354.”

Section 25354 is proposed for recodification as multiple sections (proposed Sections 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision authorizing expenditures for immediate corrective action (proposed Section 68875). The remaining provisions, which relate to appropriations and the funding of the emergency reserve account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not appear to be relevant to this cross-reference and will be omitted from the cross-reference.

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

Section 25355.5(b)(3) involves action taken in a situation of “imminent and substantial endangerment to the public health or welfare or to the environment.” Proposed Section 68870 appears to be the authority for the director to act when “there may be an imminent or substantial endangerment to the public health or welfare or to the environment.” For this reason, it would seem helpful to include a cross-reference to proposed Section 68870 here. The staff welcomes comment on this issue.

§ 69065. Authorized expenditures

69065. (a) Notwithstanding Section 69055, the department may expend funds, upon appropriation by the Legislature, from the state account to conduct activities necessary to verify that an uncontrolled release of hazardous substances has occurred at a suspected hazardous substance release site, to issue an order or enter into an enforceable agreement pursuant to paragraph (1) of subdivision (a) of Section 69055, and to review, comment upon, and approve or disapprove remedial action plans submitted by potentially responsible parties subject to the orders or the enforceable agreement.

(b) Notwithstanding Section 69055, the department may expend funds, upon appropriation by the Legislature, from the state account, to provide for oversight of removal and remedial actions, or, if the site is also listed on the National Priorities List by the United States Environmental Protection Agency pursuant to the federal act, to provide the state’s share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

Comment. Section 69065 continues subdivision (c) and restates subdivision (d) of former Section 25355.5 without substantive change.

See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

Staff Note. Subdivision (d) of Section 25355.5 was restated for clarity and to correct an apparent error. Currently, that subdivision states:

“(d) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the state account, to provide for oversight of removal and remedial actions, or, if the site is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3)) [Section 104(c)(3)], to provide the state’s share of a removal or remedial action.”

Section 104(c)(3) of the federal act does not appear to provide for any list or listing of sites. Instead, Section 104 conditions the federal government’s authority to conduct remedial actions (pursuant to that section) at a site on whether the state in which the site is located has provided certain assurances in a contract or cooperative agreement. One of the assurances a state must provide is expressly financial:
“...[T]he State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof.”

Thus, the citation to Section 104 appears to be misplaced, as it relates to the state’s share of a removal or remedial action. This issue could be addressed by moving this citation to the end of the subdivision to read: “…the state’s share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).”

In addition, the reference to a site “listed on the federal act” appears to be erroneous. The staff understands that sites are not listed in the federal act. The staff believes that this should be a reference to the federal National Priorities List (authorized by Section 105(a)(8)(B)). For information on the National Priorities List (NPL), see https://www.epa.gov/superfund/superfund-national-priorities-list-npl. The National Priorities List is also cited in proposed Section 69225 in this draft. The staff used that citation as a model for drafting the citation in this proposed provision.

The changes reflected in proposed Section 69065 are intended to be nonsubstantive. The staff welcomes comment on this proposed restatement.

§ 69070. Limitations on expenditures for sites owned or operated by federal, state, or local governments or agencies

69070. (a) Except as provided in subdivision (b), the department may not expend funds from the state account for a removal or remedial action with respect to a hazardous substance release site owned or operated by the federal government or a state or local agency at the time of disposal to the extent that the federal government or the state or local agency would otherwise be liable for the costs of that action, except that the department may expend those funds, upon appropriation by the Legislature, to oversee the carrying out of a removal or remedial action at the site by another party.

(b) Except as provided in subdivision (d), the department may expend funds from the state account, upon appropriation by the Legislature, to take a removal or remedial action at a hazardous substance release site that was owned or operated by a local agency at the time of release, if all of the following requirements are met:

(1) The department has substantial evidence that a local agency is not the only responsible party for the site.

(2) The department has issued a cleanup order to, or entered into an enforceable agreement with, the local agency pursuant to Section 69055 and has made a final determination that the local agency is not in compliance with the order or enforceable agreement.

(c) If a local agency is identified as a potentially responsible party in a remedial action plan prepared pursuant to Article 12 (commencing with Section 69190), and the department expends funds pursuant to this part to pay for the local agency’s share of the removal and remedial action, the expenditure of these funds shall be 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(e) 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.
(b) The department shall take all reasonable steps necessary to accommodate property owner participation in the site remediation process and shall consider all input and recommendations received from the owner of property that is the subject of the proposed action.

(c)(1) This section only applies to instances where a person requests the department to oversee the preparation of, or to review, a preliminary endangerment assessment, or requests the department to issue a letter stating that no further action is necessary with regard to property.

(2) Nothing in this section imposes a condition upon, limits, or impacts in any way, the department’s authority to compel any potentially responsible party to take any action in response to a release or threatened release of a hazardous substance or to recover costs incurred from any potentially responsible party.

Comment. Section 69100 restates former Section 25355.8 without substantive change.


Staff Notes. (1) Section 25355.8(a) has been restated to reduce uses of the term “action” in different contexts and to correct an apparent error in paragraph (2).

The introductory clause to subdivision (a) contains three uses of the term “action,” as indicated below.

“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 requesting the department action does either of the following…”

The first two uses of the term appear to refer to cleanup actions (i.e., a removal or remedial action). The final use of the term seems to be referring to the act being requested of the department (i.e., oversight or review of a preliminary endangerment assessment or issuance of a no further action letter). To avoid these different uses of “action,” the provision has been restated to replace the final phrase with “unless the person who made the request does either of the following.”

Paragraph (2) appears to be missing an introductory clause specifying that the person must “provide the department with” the relevant information. In relevant part, Section 25355.8(a) provides:

“(a) The department shall not agree to [take specified actions], unless the person requesting the department action does either of the following:

(2) 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.”

The missing clause (“Provides the department with”) has been added to proposed Section 69100. The changes reflected in proposed Section 69100 are intended to be nonsubstantive. The staff welcomes comment on this proposed restatement.

(2) Subdivision (a) of Section 25355.8 requires a person seeking specified department action to fulfill one of two conditions relating to the identification and notification of the relevant property owners. The person must either (1) provide identities and addresses for all of the relevant property owners (and proof of notice or reasonable efforts at notice) OR (2) provide proof that the
person made reasonable efforts to find all of the relevant property owners and was unable to do so. The statute does not address a situation where the location of some, but not all, owners can be found. If the person is able to find some property owners, it seems logical that the property owners who can be found should be notified. The staff requests comment on this issue.

(3) Proposed Section 69100(b) requires the department to take steps to accommodate property owner participation in the site remediation process. By its terms, this subdivision seems to state a general rule about facilitating property owner participation in the cleanup process. If this is the case, this provision would be better located elsewhere (perhaps in proposed “Article 1. General Provisions” of Chapter 5). However, it appears that this seemingly broad rule may have limited application according to proposed subdivision (c). The staff welcomes comment on this issue.

(4) Proposed Section 69100(b) relates to property owner participation in the “site remediation process.” The definition of “remedy” or “remedial action” does not seem to apply to uses of the term “remediation.” It is unclear whether that definition was intended to apply here or if the term “remediation” is being used in a general sense. The staff welcomes comment on this issue.

§ 69105. Reimbursement of department oversight costs for preliminary endangerment assessment

69105. (a) Except as provided in subdivisions (b) and (c), any potentially responsible party at a site, or any person who has notified the department of that person’s intent to undertake removal or remediation at a site, shall reimburse the department, pursuant to Chapter 6.66 (commencing with Section 25269) of Division 20, for the costs incurred by the department for its oversight of any preliminary endangerment assessment at that site.

(b) This section does not apply to any notice of intent submitted to the department prior to July 1, 1998. Any person who submitted a notice of intent prior to July 1, 1998 shall pay the fee, if not already paid, as required by Section 25343 as it read on December 31, 1997, unless the department and that person mutually agree to enter into a reimbursement agreement in lieu of any unpaid portion of the required fee.

(c) The changes made in Section 25343 by Chapter 870 of the Statutes of 1997 do not require amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the costs incurred by the department for its oversight of a preliminary endangerment assessment.

Comment. Section 69105 continues former Section 25343 without substantive change.

See Sections 68050 (“department”), 68085 (“person”), 68095 (“preliminary endangerment assessment”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

Staff Notes. (1) Subdivision (a) of Section 25343 uses the term “remediation.” “Remediation” is not a defined term, but, in this case, appears to be used as a synonym of “remedial action” (defined in proposed Section 68125). In the staff’s view, replacing the term “remediation” in this section with “remedial action” would be beneficial and promote consistency. The staff welcomes comment on this issue.

(2) Subdivisions (b) and (c) relate to certain documents prepared before July 1, 1998. Subdivision (b) requires that a person who submitted a notice of intent prior to July 1, 1998 pay the fee required by Section 25343 as it read on December 31, 1997. Subdivision (c) makes clear that any agreement to pay the department costs of overseeing a preliminary endangerment assessment
entered into prior to July 1, 1998 is not affected by changes to Section 25343. These provisions seem largely transitional, clarifying how the change in this statute should affect ongoing activities at the time. Since more than 30 years have passed since those statutory changes, it seems likely that these provisions are now functionally obsolete. For this reason, subdivisions (b) and (c) may not need to be continued. The staff welcomes comment on whether either or both of these subdivisions have any continuing effect.

(3) Subdivision (b) refers to the fee “as required by this section as it read on December 31, 1997.” Assuming this provision has continuing effect, it may be helpful to change this language to refer to the statutory provision last amending the version of Section 25343 that was operative on December 31, 1997. See 1995 Cal. Stat. ch. 630, § 11. The staff welcomes comment on whether this would be a helpful change.

Article 10. Initiation of Removal or Remedial Actions

§ 69130. Authority to initiate removal or remedial action

69130. (a) The director may initiate removal or remedial action pursuant to this part unless these actions have been taken, or are being taken properly and in a timely fashion, by any responsible party.

(b) A responsible party who fails, as determined by the department in writing, to comply with an order issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) of Section 69055, or to comply with all of the terms of an enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 69055, shall be deemed, for purposes of subdivision (a), to have failed to take action properly and in a timely fashion with respect to a hazardous substance release or a threatened release.

Comment. Subdivision (a) of Section 69130 continues subdivision (b) of former Section 25355 without substantive change.

Subdivision (b) continues subdivision (e) of former Section 25355.5 without substantive change.

See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

§ 69135. Actions required prior to initiation of removal or remedial action

69135. (a) At least 30 days before initiating removal or remedial actions, the department shall make a reasonable effort to notify the persons identified by the department as potentially responsible parties and shall also publish a notification of this action in a newspaper of general circulation pursuant to the method specified in Section 6061 of the Government Code. This subdivision does not apply to actions taken pursuant to Section 68870 or immediate corrective actions taken pursuant to Section 68875. A responsible party may be held liable pursuant to this part whether or not the person was given the notice specified in this subdivision.

(b) The department shall notify the owner of the real property of the site of a hazardous substance release within 30 days after listing a site pursuant to Article 5 (commencing with Section 68760) of Chapter 4, and at least 30 days before
initiating a removal or remedial action pursuant to this part, by sending the
notification by certified mail to the person to whom the real property is assessed,
as shown upon the last equalized assessment roll of the county, at the address
shown on the assessment roll. The requirements of this subdivision do not apply to
actions taken pursuant to Section 68870 or to immediate corrective actions taken
pursuant to Section 68875.

Comment. Section 69135 continues paragraph (c)(1) and subdivision (d) of former Section
25355 without substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105
(“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

Staff Notes. (1) The provisions proposed for recodification in this section refer to “actions taken
pursuant to subdivision (b) of Section 25358.3 ….” These cross-references appear to be
erroneous. Section 25358.3(b) (proposed Section 68650) does not appear to authorize response
actions. Section 25358.3(a) (proposed Section 68870) appears to be the relevant provision for
these cross-references, as Section 25358.3(a) provides for emergency response actions. For this
reason, the cross-references have been updated to refer to proposed Section 68870. The staff
welcomes comment on this proposed cross-reference correction.

(2) Proposed Section 69135 also refers to “immediate corrective actions taken pursuant to Section
25354.” Section 25354 is proposed for recodification as multiple sections (proposed Sections
68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision
authorizing expenditures for immediate corrective action (proposed Section 68875). The
remaining provisions, which relate to appropriations and the funding of the emergency reserve
account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
appear to be relevant to this cross-reference and will be omitted from the cross-reference. The staff
welcomes comment on this proposed cross-reference update.

(3) Section 25355(c)(1), which pertains to notices to potentially responsible parties, cross-
references “this subdivision.” In particular, Section 25355(c)(1) provides that “this subdivision”
does not apply to certain emergency actions and persons who fail to receive the notice specified
by “this subdivision” can still be held liable. Currently, Section 25355(c) has two paragraphs.
Paragraph (2), which is proposed for recodification elsewhere in this draft, relates to voluntary
enforceable agreements for the removal or remedial actions to address certain petroleum releases.
The voluntary agreements do not appear to be relevant to the purposes of the “this subdivision”
cross-references. For this reason, proposed Section 69135 only references the material contained
in paragraph (1) of subdivision (c), as opposed to the entirety of subdivision (c). The staff
welcomes comment on this proposed cross-reference update.

Article 11. Local Government Removal or Remedial Actions

§ 69160. Prerequisites to local government-initiated removal or remedial actions

69160. A city or county may initiate a removal or remedial action for a site
listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4 in
accordance with this article. Except as provided in Section 69175, the city or
county shall, before commencing the removal or remedial action, take all of the
following actions:

(a) The city or county shall notify the department of the planned removal or
remedial action. Upon receiving this notification, the department shall make a
reasonable effort to notify any person identified by the department as a potentially
responsible party for the site. If a potentially responsible party is taking the removal or remedial action properly and in a timely fashion, or if a potentially responsible party will commence the action within 60 days of this notification, the city or county may not initiate a removal or remedial action pursuant to this article.

(b) If a potentially responsible party for the site has not taken the action specified in subdivision (a), the city or county shall submit the estimated cost of the removal or remedial action to the department, which shall, within 30 days after receiving the estimate, approve or disapprove the reasonableness of the cost estimate. If the department disagrees with the cost estimate, the city or county and the department shall, within 30 days, attempt to enter into an agreement concerning the cost estimate.

(c) The city or county shall demonstrate to the department that it has sufficient funds to carry out the approved removal or remedial action without taking into account any costs of the action that may be, or have been, paid by a potentially responsible party.

Comment. Section 69160 continues subdivision (a) of former Section 25351.2 without substantive change. See Sections 68050 (“department”), 68085 (“person”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

Staff Note. Section 25351.2(a) would seem to benefit from a restatement for clarity. This provision specifies that, prior to initiating a removal or remedial action, a city or county “shall … take all of the following actions.” Each listed “action” repeats the phrase “the city or county shall.” Most importantly, it is not clear whether the listed actions are independent actions or sequential steps in a process that must be followed. If the latter, then it would be helpful to rephrase the introductory clause to make clear that the enumerated items are steps in a process. The staff welcomes comment on how this provision is intended to operate and whether it is sufficiently clear.

§ 69165. Local government deemed to be acting in place of department

69165. If the director approves the request of the city or county to initiate a removal or remedial action and a final remedial action plan has been issued pursuant to Article 12 (commencing with Section 69190) for the hazardous substance release site, the city or county shall be deemed to be acting in place of the department for purposes of implementing the remedial action plan pursuant to this part.

Comment. Section 69165 continues subdivision (b) of former Section 25351.2 without substantive change. See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

§ 69170. Department recovery of costs reimbursed to local government

69170. Upon reimbursing a city or county for the costs of a removal or remedial action, the department shall recover these costs pursuant to Section 25360.
Comment. Section 69170 continues subdivision (c) of former Section 25351.2 without substantive change. See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

§ 69175. Reimbursement eligibility of local government removal or remedial action costs

69175. (a) In order for a city or county to be reimbursed for the costs of a removal or remedial action incurred by the city or county from the state account, the city or county shall obtain the approval of the director before commencing the removal or remedial action.

(b) The director shall grant an approval only when all actions required by law prior to implementation of a remedial action plan have been taken.

Comment. Section 69175 continues subdivision (d) of former Section 25351.2 without substantive change. See Sections 68055 (“director”), 68125 (“remedy”), 68135 (“remove”), 68165 (“state account”).

Article 12. Planning

Staff Note. “Remedial action plan” is a phrase used often in Section 25356.1. This term, however, is not defined in this law, Section 101 of the federal act, or Section 300.5 of Title 40 of the Code of Federal Regulations (definitions for the National Contingency Plan).

Contrary to what the term seems to imply, a “remedial action plan” does not appear to be strictly a plan for “remedial action” (defined term in proposed Section 68125). Instead, a “remedial action plan” appears to be required for a “removal action” that exceeds a certain dollar threshold. See proposed Section 69225(a).

§ 69190. “State board”

69190. For purposes of this article, “state board” means the State Water Resources Control Board.

Comment. Section 69190 continues subdivision (a) of former Section 25356.1 without substantive change. A definition for “regional board” contained in former Section 25356.1(a) was not continued, as this term is already defined in Section 68100.

Staff Note. Subdivision (a) of Section 25356.1 defines two terms, “regional board” and “state board,” for the purposes of the section.

“Regional board” is defined as “a California regional water quality control board.” This term has already been defined for the part as a whole. Proposed Section 68100 defines “regional board” for this part as “a California regional water quality control board.” For this reason, the redundant definition of “regional board” in Section 25356.1(a) was not continued.

“State board” is defined as “the State Water Resources Control Board.” However, the term “state board” is not otherwise used in Section 25356.1. For this reason, the staff is considering whether the definition of “state board” should be continued. The staff welcomes comment on whether the definition of “state board” has any ongoing utility.

§ 69195. Preparation or approval of plans

69195. Except as provided in Sections 69225 and 69230, the department, or, if appropriate, the regional board shall prepare or approve remedial action plans for
the sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4.

Comment. Section 69195 continues subdivision (b) of former Section 25356.1 without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68155 (“site”).

Staff Note. The first clause of subdivision (b) of Section 25356.1 is “[e]xcept as provided in subdivision (h).” Subdivision (h) is proposed for recodification as three sections (proposed Sections 69225, 69230, and 69235). One of those provisions, proposed Section 69235, was omitted from the cross-reference. That section contains only a rule for calculating the costs of a removal action and does not appear to be relevant to this cross-reference. For this reason, the cross-reference was updated to refer only to Sections 69225 and 69230. The staff welcomes comment on this proposed cross-reference update.

§ 69200. Request by party for preparation or approval of plan

69200. (a) A potentially responsible party may request the department or the regional board, when appropriate, to prepare or approve a remedial action plan for a site not listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4, if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the regional board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt.

(b) This section does not affect the authority of a regional board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

Comment. Section 69200 continues subdivision (c) of former Section 25356.1 without substantive change. See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

§ 69205. Standards for plan

69205. All remedial action plans prepared or approved pursuant to this article shall be based upon Sections 68855 and 68860 and Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(a) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional board shall consider scientific data and reports that may have a relationship to the site.

(b) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(c) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial
uses. The department or the regional board shall consider the extent to which remedial action measures are available that use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions that do not use this treatment. The department or the regional board shall not select remedial action measures that use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(d) Site-specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(e) Cost-effectiveness of alternative remedial action measures. In evaluating the cost-effectiveness of proposed alternative remedial action measures, the department or the regional board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(f) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

Comment. Section 69205 restates subdivision (d) of former Section 25356.1 without substantive change. See Sections 68050 ("department"), 68075 ("hazardous substance"), 68100 ("regional board"), 68125 ("remedy"), 68135 ("remove"), 68155 ("site").

Staff Note. Section 25356.1(d) provides that remedial action plans shall be based on “Section 25350, Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), and any amendments thereto.” In proposed Section 69205, the cross-reference to Section 25350 has been updated and the phrase “and any amendments thereto” has been replaced with “as amended.” The staff welcomes any comment on this proposed restatement.

§ 69210. Content of plan

69210. A remedial action plan prepared pursuant to this article shall include the basis for the remedial action selected and shall include an evaluation of each alternative considered and rejected by the department or the regional board for a particular site. The plan shall include an explanation for rejection of alternative remedial actions considered but rejected. The plan shall also include an evaluation of the consistency of the selected remedial action with the requirements of the federal regulations and the factors specified in Section 69205, if those factors are not otherwise adequately addressed through compliance with the federal regulations. The remedial action plan shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at
a particular site, including those parties that may have been released, or may
otherwise be immune, from liability pursuant to this part or any other provision of
law.

Comment. Section 69210 continues the four sentences of subdivision (e) of former Section
25356.1 without substantive change.
See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68125
(“remedy”), 68145 (“responsible party”), 68155 (“site”).

§ 69215. Public review and comment on plan

69215. (a) Before adopting a final remedial action plan, the department or the
regional board shall prepare or approve a draft remedial action plan and shall do
all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions
proposed in the remedial action plan and publish a notice in a newspaper of
general circulation in the area affected by the draft remedial action plan. The
department or the regional board shall also post notices in the location where the
proposed removal or remedial action would be located and shall notify, by direct
mailing, the owners of property contiguous to the site addressed by the plan, as
shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the
removal and remedial actions, the potentially responsible parties for the removal
and remedial actions, and the interested public, to provide the public with the
information that is necessary to address the issues that concern the public. The
information to be provided shall include an assessment of the degree of
contamination, the characteristics of the hazardous substances, an estimate of the
time required to carry out the removal and remedial actions, and a description of
the proposed removal and remedial actions.

(4) Comply with Section 68930.

(b) After complying with subdivision (a), the department or the regional board
shall review and consider any public comments, and shall revise the draft plan, if
appropriate. The department or the regional board shall then issue the final
remedial action plan.

Comment. Section 69215 continues the fifth sentence of subdivision (e), including paragraphs
(e)(1)-(e)(4), of former Section 25356.1 without substantive change. Section 69215 also continues
subdivision (f) of former Section 25356.1 without substantive change.
See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

Staff Note. Subdivision (f) of Section 25356.1 requires the department or regional board to
review and consider comments “after complying with subdivision (e).” Subdivision (e) is
proposed for recodification as two separate provisions in this recodification (subdivision (a) of
this proposed section and proposed Section 69210). The cross-reference to “subdivision (e)”
appears to state a timing rule related to the public notice and comment opportunity that is
proposed for recodification as subdivision (a) of this proposed section. The portion of subdivision
(e) in proposed Section 69210 relates to requirements for the substantive contents of a plan. This
provision does not appear relevant to the cross-reference and was omitted. For this reason, the
cross-reference in proposed Section 69215 was updated to refer only to “subdivision (a).” The
staff welcomes comment on this proposed cross-reference update.

§ 69220. Judicial review of plan

69220. (a)(1) A potentially responsible party named in the final remedial action
plan issued by the department or the regional board may seek judicial review of
the final remedial action plan by filing a petition for writ of mandate pursuant to
Section 1085 of the Code of Civil Procedure within 30 days after the final
remedial action plan is issued by the department or the regional board. No action
may be brought by a potentially responsible party to review the final remedial
action plan if the petition for writ of mandate is not filed within 30 days of the date
that the final remedial action plan was issued.

(2) Any other person who has the right to seek judicial review of the final
remedial action plan by filing a petition for writ of mandate pursuant to Section
1085 of the Code of Civil Procedure shall do so within one year after the final
remedial action plan is issued. No action may be brought by any other person to
review the final remedial action plan if the petition for writ of mandate is not filed
within one year of the date that the final remedial action plan was issued.

(3) The filing of a petition for writ of mandate to review the final remedial
action plan shall not stay any removal or remedial action specified in the final
plan.

(b) For purposes of judicial review, the court shall uphold the final remedial
action plan if the plan is based upon substantial evidence available to the
department or the regional board, as the case may be.

(c) This section does not prohibit the court from granting any appropriate relief
within its jurisdiction, including, but not limited to, enjoining the expenditure of
funds pursuant to paragraph (2) of subdivision (b) of Section 68305.

Comment. Paragraph (a)(1) of Section 69220 continues the first and third sentences of
paragraph (1) of subdivision (g) of former Section 25356.1 without substantive change.
Paragraph (a)(2) continues the second and fourth sentences of paragraph (1) of subdivision (g)
of former Section 25356.1 without substantive change.
Paragraph (a)(3) continues the fifth sentence of paragraph (1) of subdivision (g) of former
Section 25356.1 without substantive change.
Subdivision (b) continues paragraph (2) of subdivision (g) of former Section 25356.1 without
substantive change.
Subdivision (c) continues paragraph (3) of subdivision (g) of former Section 25356.1 without
substantive change.

See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68125
(“remedy”), 68135 (“remove”), 68145 (“responsible party”).

§ 69225. Situations in which plan not required

69225. (a) This article does not require the department or a regional board to
prepare a remedial action plan if conditions present at a site present an imminent
or substantial endangerment to the public health and safety or to the environment
or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than two million dollars ($2,000,000).

(b) The department or a regional board shall prepare or approve a removal action work plan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than two million dollars ($2,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment that may include conducting a public meeting on proposed removal actions.

(c)(1) A remedial action plan is not required pursuant to Section 69195 if the site is listed on the National Priorities List by the United States Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the United States Environmental Protection Agency’s record of decision. The department or the regional board may sign the record of decision issued by the United States Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(2) Paragraph (1) does not apply to a removal action paid from the state account.

Comment. Section 69225 continues paragraphs (1), (2) and (5) of subdivision (h) of former Section 25356.1 without substantive change.

See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”), 68100 (“regional board”), 68105 (“release”), 68125 (“remedy”), 68130 (“removal action work plan”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

[Staff Notes. (1) Section 25356.1(h)(2) refers to the “National Priority List.” It appears that the correct name is the “National Priorities List.” This reference has been corrected. This paragraph also contained several references to the “Environmental Protection Agency,” without designating whether it was the state or federal Environmental Protection Agency. Given the context, it seems clear that these are references to the federal agency, so these references have been updated to refer to the “United States Environmental Protection Agency.” (2) Paragraph 5 of Section 25356.1(h) contains a reference to “[p]aragraph (2) of this subdivision.” The “of this subdivision” language is unnecessary and counter to standard drafting practice. That language has not been continued.]

§ 69230. Waiver from required standards for plan

69230. The department may waive the requirement that a remedial action plan meet the requirements specified in Section 69205 if all of the following apply:
(a) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4.

(b) The responsible party submits to the department, in a form acceptable to the department, all of the following:

1. A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.
2. A listing of the alternative remedial measures that were considered by the responsible party in selecting the proposed removal action.
3. A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.
4. A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(c) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with [Section 69205].

(d) The total cost of the removal action is less than two million dollars ($2,000,000).

Comment. Section 69230 continues paragraph (3) of subdivision (h) of former Section 25356.1 without substantive change.

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

Staff Notes. (1) Section 25356.1(h)(3) allows the department to waive the requirement that a remedial action plan meet requirements in “subdivision (d)” as long as the specified conditions apply. One of those conditions, is a determination by the department that the plan is as protective of health, safety, and the environment as a plan prepared in accordance with “subdivision (c).” Subdivision (c) does not place conditions on preparation of a plan. This appears to be an erroneous reference that should refer to “subdivision (d).” For this reason, the cross-reference has been updated to refer to proposed Section 69205, the provision that would continue the substance of Section 25356.1(d). The staff welcomes comment on this proposed correction.

(2) Under Section 25356.1(h)(3), one of the necessary conditions for a waiver of the remedial action plan requirements is that the “total cost of the removal action is less than two million dollars ($2,000,000).” However, a remedial action plan does not appear to be required for a removal action if the total cost falls below this dollar amount. See proposed Section 69225(a). It is not clear why a waiver of plan requirements would be needed when no plan is required. The staff welcomes comment on this issue.

§ 69235. Costs of removal action

69235. For purposes of this article, the cost of a removal action includes the cleanup or removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).
Comment. Section 69235 restates paragraph (4) of subdivision (h) of former Section 25356.1 without substantive change.

See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”), 68135 (“remove”).

Staff Note. Section 25356.1(h)(4) contains an apparent typographical error and a possibly incorrect cross-reference to the federal act. That provision provides (with emphasis added):

“For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 9601 (23) of Title 42 of the United States Code.”

A typographical error in the phrase “the cleanup of removal of released hazardous substances” has been corrected. The phrase now reads “the cleanup or removal of released hazardous substances.”

The form of the cross-reference to the federal act has been standardized. In checking this cross-reference, the staff found that this refers to the federal act’s definition of “remove.” While this may have been intended, the placement of this cross-reference suggests that the relevant definition would be “release,” which is found in Section 101(22). The staff welcomes comment on whether this provision cross-refers to the appropriate term in the federal act. If so, it may be appropriate to move this cross-reference to follow the term “removal.” If not, it may be appropriate to revise this cross-reference to refer to the definition for “release.”

§ 69240. Application of Water Code provisions

69240. Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to an action or failure to act by a regional board pursuant to this article.

Comment. Section 69240 continues subdivision (i) of former Section 25356.1 without substantive change.

See Section 68100 (“regional board”).

Article 13. Standards

§ 69260. Standards for response actions

69260. Any response action taken or approved pursuant to this part shall be based upon, and no less stringent than, all of the following requirements:

(a) The requirements established under federal regulation pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended.

(b) The regulations established pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent that the department or the regional board determines that those
regulations, plans, and policies do not require a less stringent level of remediation
than the federal regulations specified in subdivision (a) and to the degree that
those regulations, plans, and policies do not authorize decisionmaking procedures
that may result in less stringent response action requirements than those required
by the federal regulations specified in subdivision (a).

(c) Any applicable provisions of this part, to the extent those provisions are
consistent with the federal regulations specified in subdivision (a) and do not
require a less stringent level of remediation than, or decisionmaking procedures
that are at variance with, the federal regulations set forth in subdivision (a).

Comment. Section 69260 continues subdivision (a) of former Section 25356.1.5 without
substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”).

§ 69265. Standards for risk assessment for response action

69265. (a) Any health or ecological risk assessment prepared in conjunction
with a response action taken or approved pursuant to this part shall be based upon
Subpart E of the National Oil and Hazardous Substances Pollution Contingency
Plan (40 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the
United States Environmental Protection Agency developed pursuant to the federal
act, and the most current sound scientific methods, knowledge, and practices of
public health and environmental professionals who are experienced practitioners
in the fields of epidemiology, risk assessment, environmental contamination,
ecological risk, fate and transport analysis, and toxicology.

(b) Risk assessment practices shall include the most current sound scientific
methods for data evaluation, exposure assessment, toxicity assessment, and risk
characterization, documentation of all assumptions, methods, models, and
calculations used in the assessment.

(c) Any health risk assessment shall include all of the following:

1) Evaluation of risks posed by acutely toxic hazardous substances based on
levels at which no known or anticipated adverse effects on health will occur, with
an adequate margin of safety.

2) Evaluation of risks posed by carcinogens or other hazardous substances that
may cause chronic disease based on a level that does not pose any significant risk
to health.

3) Consideration of possible synergistic effects resulting from exposure to, or
interaction with, two or more hazardous substances.

4) Consideration of the effect of hazardous substances upon subgroups that
comprise a meaningful portion of the general population, including, but not
limited to, infants, children, pregnant women, the elderly, individuals with a
history of serious illness, or other subpopulations, that are identifiable as being at
greater risk of adverse health effects due to exposure to hazardous substances than
the general population.
(5) Consideration of exposure and body burden level that alter physiological function or structure in a manner that may significantly increase the risk of illness and of exposure to hazardous substances in all media, including, but not limited to, exposures in drinking water, food, ambient and indoor air, and soil.

**Comment.** Section 69265 continues subdivision (b) of former Section 25356.1.5 without substantive change.

See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68140 (“response”).

§ 69270. Level of hazardous substance that is protective of public health

69270. If currently available scientific data are insufficient to determine the level of a hazardous substance at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall be based on the level that is protective of public health, with an adequate margin of safety. This level shall be based exclusively on public health considerations, shall, to the extent scientific data are available, take into account the factors set forth in paragraphs (1) to (5), inclusive, of subdivision (c) of Section 69265, and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, fate and transport analysis, and toxicology.

**Comment.** Section 69270 continues subdivision (c) of former Section 25356.1.5 without substantive change.

See Sections 68075 (“hazardous substance”), 68140 (“response”).

§ 69275. Content of exposure assessment

69275. (a) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

(b) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this part shall include the development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and may cause exposure due to accumulation of those volatile organic compounds in the indoor air of those structures.

**Comment.** Section 69275 continues subdivisions (d) and (e) of former Section 25356.1.5 without substantive change.

See Sections 68140 (“response”), 68155 (“site”).
Article 14. On-site Hazardous Waste Facility for Response Action

§ 69290. Discretion to exclude from permitting requirements

69290. To the extent consistent with the federal Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude any portion of a response action conducted entirely onsite from the hazardous waste facility permit requirements of Section 25201 if both of the following apply:

(a) The removal or remedial action is carried out pursuant to a removal action work plan or a remedial action plan prepared pursuant to Article 12 (commencing with Section 69190).

(b) The removal action work plan or the remedial action plan requires that the response action complies with all laws, rules, regulations, standards, and requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the hazardous substance release site and with any other condition imposed by the department as necessary to protect public health and safety and the environment.

Comment. Section 69290 continues subdivision (a) of former Section 25358.9 without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68130 (“removal action work plan”), 68135 (“remove”), 68140 (“response”), 68155 (“site”).

§ 69295. Enforcement

69295. (a) The department may enforce in the court for the county in which a response action exempted pursuant to Section 69290 is located any federal or state law, rule, regulation, standard, requirements, criteria, or limitation with which the remedial or removal action is required to comply.

(b)(1) Any consent decree entered into pursuant to an enforcement action authorized by this section shall require the parties to attempt expeditiously to informally resolve any disagreements concerning the implementation of the response action with the appropriate federal and state agencies and shall provide for administrative enforcement.

(2) The consent decree shall stipulate that the penalty for violation of the consent decree shall be an amount not more than twenty-five thousand dollars ($25,000) per day, which may be enforced by the state. These penalties do not impair or affect the authority of the court to order compliance with the specific terms of the consent decree.

Comment. Section 69295 continues subdivision (b) of former Section 25358.9 without substantive change.

See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”).
Article 15. Operation and Maintenance

§ 69310. “Small business”
69310. For purposes of this article, “small business” is a business that meets the requirements set forth in subdivision (d) of Section 14837 of the Government Code.

Comment. Section 69310 continues subdivision (f) of former Section 25355.2 without substantive change.

§ 69315. Financial assurance for operation and maintenance
69315. Except as provided in subdivision (a) of Section 69325, the department or the regional board shall require any responsible party who is required to comply with operation and maintenance requirements as part of a response action, to demonstrate and to maintain financial assurance in accordance with this article. The responsible party shall demonstrate financial assurance prior to the time that operation and maintenance activities are initiated and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities.

Comment. Section 69315 continues subdivision (a) of former Section 25355.2 without substantive change.

See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional board”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

§ 69320. Valid financial assurance mechanisms
69320. (a) For purposes of Section 69315, the responsible party shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

(b) As an alternative to the requirement of subdivision (a), a responsible party may demonstrate and maintain financial assurance by means of a financial assurance mechanism other than those specified in subdivision (a), if the alternative financial assurance mechanism has been submitted to, and approved by, the department or the regional board as being at least equivalent to the financial assurance mechanisms specified in subdivision (a). The department or the regional board shall evaluate the equivalency of the proposed alternative financial assurance mechanism principally in terms of the certainty of the availability of funds for required operation and maintenance activities and the amount of funds that will be made available. The department or the regional board shall require the responsible party to submit any information necessary to make a determination as to the equivalency of the proposed alternative financial assurance mechanism.

Comment. Section 69320 restates subdivision (b) of former Section 25355.2 without substantive change. A cross-reference to the California Code of Regulations was corrected to refer to “subsections” as opposed to “subdivisions.”
Section 25355.2(b) refers to “a financial assurance mechanism other than those listed in paragraph (1) [proposed subdivision (a)].” Paragraph (1) does not list financial assurance mechanisms, but refers to those mechanisms set forth in specified provisions of the California Code of Regulations. Since paragraph (1) does not “list” financial assurance mechanisms, the reference has been changed to read: “a financial assurance mechanism other than those specified in subdivision (a).” This change is consistent with a subsequent reference to subdivision (a) in this provision. This change and a correction to the citation to the California Code of Regulations noted in the Comment are the only language changes made in this provision. The staff welcomes comment on this proposed restatement.

§ 69325. Conditions for waiver of financial assurance requirement

69325. (a) The department or the regional board shall waive the financial assurance required by Section 69315 if the department or the regional board makes one of the following determinations:

(1) The responsible party is a small business and has demonstrated all of the following:

(A) The responsible party cannot qualify for any of the financial assurance mechanisms set forth in subsections (b), (c), and (d) of Section 66265.143 of Title 22 of the California Code of Regulations.

(B) The responsible party financially cannot meet the requirements of subsection (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

(C) The responsible party is not capable of meeting the eligibility requirements set forth in subsection (e) of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) The responsible party is a small business and has demonstrated that the responsible party financially is not capable of establishing one of the financial assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations while at the same time financing the operation and maintenance requirements applicable to the site.

(3) The responsible party is not separately required to demonstrate and maintain a financial assurance mechanism for operation and maintenance activities at a site because of all of the following conditions:

(A) The site is a multiple responsible party site.

(B) Financial assurance that operation and maintenance activities at the site will be carried out is demonstrated and maintained by a financial assurance mechanism established jointly by all, or some, of the responsible parties.

(C) The financial assurance mechanism specified in subparagraph (B) meets the requirements of Sections 69315 and 69320.

(4) The responsible party is a federal, state, or local government entity.

(b) The department or the regional board shall withdraw a waiver granted pursuant to paragraph (1) or (2) of subdivision (a) if the department or the regional board...
board determines that the responsible party that obtained the waiver no longer meets the eligibility requirements for the waiver.

Comment. Section 69325 continues subdivisions (c) and (d) of former Section 25355.2 without substantive change. Cross-references to the California Code of Regulations were corrected to refer to “subsections” as opposed to “subdivisions.” See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional board”), 68145 (“responsible party”), 68155 (“site”), 69310 (“small business”).

§ 69330. Reporting on financial assurance
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69330. On or before January 15, 2001, the department shall report to the Legislature all of the following:
(a) The number of requests the department and the regional boards have received for waivers from the financial assurance requirements of this article during the period between May 26, 1999, and January 1, 2001.
(b) The disposition of the requests that were received and the reasons for granting the waivers that were allowed and rejecting the waivers that were disallowed.
(c) The total number of businesses or other entities that were required by this article to demonstrate and maintain financial assurance, the number of businesses or other entities that were able to comply with the requirement, the number that were unable to comply and the reasons why they could not or did not comply, and the history of compliance with this part and Chapter 6.5 (commencing with Section 25100) of Division 20 by responsible parties that requested waivers.
(d) Financial assurance mechanisms other than the financial assurance mechanisms referenced in subdivision (a) of Section 69320 that may be available to responsible parties.

Comment. Section 69330 continues subdivision (e) of former Section 25355.2 without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 68145 (“responsible party”).

Staff Notes. (1) Section 25355.2(e) requires a report to Legislature “[n]otwithstanding Section 7550.5 of the Government Code.” Former Government Code Section 7550.5 related to the submission of written reports to the Legislature, Governor, or any state legislative or executive body. Section 7550.5 did not require the submission of written reports except in certain enumerated circumstances; one of those circumstances was that “[t]he Legislature expressly provides that, notwithstanding this section, a written report shall be prepared and submitted.” See former Gov’t Code § 7550.5(b)(3), as amended by 2005 Cal. Stat. ch. 77, § 13. Government Code Section 7550.5 was repealed by its own terms in 2008. See id. § 7550.5(g). For this reason, the phrase “[n]otwithstanding Section 7550.5 of the Government Code” appears to be obsolete and was not continued. The staff welcomes comment on this proposed change.

(2) Section 25355.2(e) requires the department to submit a report to the Legislature “on or before January 15, 2001.” Given that this provision appears to relate to a single report due in 2001, it 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.
Similarly, this proposed section provides that law enforcement must notify the department for the purpose of taking a removal action “as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance.” For simplicity, it may be helpful to simply cite to a removal action taken pursuant to proposed Section 69360 and to incorporate this language into proposed Section 69360.

The staff welcomes comment on these issues and whether this provision is sufficiently clear in practice.

§ 69360. Department obligation upon receipt of notice

69360. Notwithstanding any other provision of law, upon receipt of a notification pursuant to Section 69355, the department shall take removal action, as necessary, with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance, and a container for the material, a waste material from the unlawful manufacture of a controlled substance, or any other item contaminated with a hazardous substance used or intended to be used in the manufacture of a controlled substance.

Comment. Section 69360 continues the first sentence 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”).

§ 69365. Notification of local environmental health officer

69365. The department shall, as soon as the information is available, report the location of a removal action that will be carried out pursuant to Section 69360, and the time that the removal action will be carried out, to the local environmental health officer within whose jurisdiction the removal action will take place, if the local environmental officer does both of the following:

(a) Requests, in writing, that the department report this information to the local environmental health officer.

(b) Provides the department with a single 24-hour telephone number to which the information can be reported.

Comment. Section 69365 continues paragraph (2) of subdivision (b) of former Section 25354.5 without substantive change.

See Sections 68050 (“department”), 68135 (“remove”).

Staff Note. Section 25354.5(b)(2) refers to a removal action “pursuant to paragraph (1) [of subdivision (b)].” Subdivision (b) of Section 25354.5 has been proposed for recodification as two provisions (proposed Sections 69350 and 69360). Only one of those provisions appears to be relevant to the cross-reference. Proposed Section 69350, related to expenditures and contracting, does not appear to be relevant and has been omitted from the cross-reference. For this reason, the cross-reference has been updated to refer only to proposed Section 69360. The staff welcomes comment on this proposed cross-reference update.

§ 69370. Generator of hazardous waste and substances at site

69370. (a) For purposes of Chapter 6.5 (commencing with Section 25100) of Division 20, Chapter 6.9.1 (commencing with Section 25400.10) of Division 20,
or this part, a person who is found to have operated a site for the purpose of manufacturing an illegal controlled substance or a precursor of an illegal controlled substance is the generator of a hazardous substance at, or released from, the site that is subject to removal action pursuant to this article.

(b) During the removal action, for purposes of complying with the manifest requirements in Section 25160, the department, the county health department, the local environmental health officer, or their designee may sign the hazardous waste manifest as the generator of the hazardous waste. In carrying out that action, the department, the county health department, the local environmental health officer, or their designee shall be considered to have acted in furtherance of their statutory responsibilities to protect the public health and safety and the environment from the release, or threatened release, of hazardous substances, and the department, the county health department, the local environmental health officer, or their designee is not a responsible party for the release, or threatened release, of the hazardous substances.

(c) The officer, investigator, or agency employee specified in Section 69355 is not a responsible party for the release, or threatened release, of hazardous substances at, or released from, the site.

Comment. Section 69370 continues subdivision (c) of former Section 25354.5 without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

§ 69375. Regulations
69375. The department may adopt regulations to implement this article in consultation with appropriate law enforcement and local environmental agencies.

Comment. Section 69375 continues subdivision (d) of former Section 25354.5 without substantive change.

See Section 68050 (“department”).

§ 69380. Methods, standards, and procedures
69380. (a) The department shall develop sampling and analytical methods for the collection of methamphetamine residue.

(b) The department shall, to the extent funding is available, develop health-based target remediation standards for iodine, methyl iodide, and phosphine.

(c) To the extent that funding is available, the department, using guidance developed by the Office of Environmental Health Hazard Assessment, may develop additional health-based target remediation standards for additional precursors and byproducts of methamphetamine.

(d) The department shall adopt investigation and cleanup procedures for use in the remediation of sites contaminated by the illegal manufacturing of methamphetamine. The procedures shall ensure that contamination by the illegal manufacturing of methamphetamine can be remediated to meet the standards
adopted pursuant to subdivisions (b) and (c), to protect the health and safety of all future occupants of the site.

(e) The department shall implement this section in accordance with Section 69375.

Comment. Section 69380 continues subdivision (e) of former Section 25354.5 without substantive change.

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

Staff Note. Section 25354.5(e)(4) requires the department to adopt investigation and cleanup procedures “[o]n or before October 1, 2009.” This language specifying the date for adoption of these procedures seems to be obsolete. The staff proposes deleting the language “[o]n or before October 1, 2009,” while retaining the substantive requirement that the department adopt the specified procedures. The staff welcomes comment on this proposed change.

§ 69385. Applicability of article contingent on funding

69385. The responsibilities assigned to the department by this article apply only to the extent that sufficient funding is made available for that purpose.

Comment. Section 69385 continues subdivision (g) of former Section 25354.5 without substantive change.

See Section 68050 (“department”).

Article 17. Judicial Review of Response Actions

§ 69400. Judicial review of response action adequacy

69400. (a) In any judicial action under this part, judicial review of any issues concerning the adequacy of any response action taken or ordered by the department shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(b) If the court finds that the selection of the response action was not in accordance with law, the court shall award only the response costs or damages that are not inconsistent with the National Contingency Plan, as specified in Part 300 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, and any other relief that is consistent with the National Contingency Plan.

(c) In reviewing an action brought by the department under this part, in which alleged procedural errors by the department are raised as a defense, the court may impose costs or damages only if the errors were serious and related to matters of central relevance to the action, so that the action would have been significantly changed had the errors not been made.

Comment. Section 69400 continues former Section 25357.5 without substantive change.

See Sections 68050 (“department”), 68140 (“response”).
CHAPTER 6. SITE-SPECIFIC RULES RELATED TO CLEANUP


§ 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.

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...
69475. Land transfers

(a) Notwithstanding any other provision of law regarding transfers of land, no person or entity shall sell, lease, sublease, or otherwise transfer land presently or formerly occupied by the Santa Susana Field Laboratory, except as provided in subdivision (b).

(b) As a condition for a sale, lease, sublease, or transfer of land presently or formerly occupied by the Santa Susana Field Laboratory, the director or the director’s designee shall certify that the land has undergone complete remediation pursuant to the most protective standards in [subdivisions (a) to (c), inclusive].

Comment. Section 69475 continues subdivisions (d) and (e) of former Section 25359.20 without substantive change.

See Sections 68055 (“director”), 68085 (“person”).

Staff Notes. (1) Subdivision (e) refers to “the Director of the Department of Toxic Substances Control.” The staff believes that this reference was intended to refer to “the Director of Toxic Substances Control.” In the proposed section, the reference has been replaced with the defined term, “director.” In proposed Section 68055, “director” is defined as “the Director of Toxic Substances Control.”

(2) Subdivision (e) requires the director “or his or her designee” to make a certification prior to a land transfer. The phrase “his or her” is no longer used in legislative drafting practice. This phrase has been replaced with “the director’s.”

(3) Subdivision (e) requires a certification of remediation pursuant to “the most protective standards in subdivisions (a) to (c), inclusive.” The cited subdivisions have been proposed for recodification as Sections 69465 and 69470. The cross-reference could simply be updated to refer to these two proposed sections. However, it is unclear whether this citation is correct, as most of the material in these proposed sections does not appear to be relevant to this cross-reference. Subdivision (c) appears to be the only subdivision that itself contains standards, although those standards appear to be for risk assessment. Subdivision (c) also refers to “the provisions in Section 25356.1.5,” which contains standards for response actions and risk assessments. See proposed Sections 69260, 69265. The staff welcomes comment on how the cross-reference to “subdivisions (a) to (c), inclusive” should be updated.

Article 3. Stringfellow Quarry Class I Hazardous Waste Disposal Site

69490. Use of onsite treatment, storage, transfer, or disposal facility

Any treatment, storage, transfer, or disposal facility built on the Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the purpose of a remedial or removal action at that site, shall only be used to treat, store, transfer, or dispose of hazardous substances removed from that site.
Comment. Section 69490 continues former Section 25351.7 without substantive change. See Section 68075 (“hazardous substance”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

§ 69495. Priority of removal and remedial actions

69495. Notwithstanding any other provision of law, including, but not limited to, Article 5 (commencing with Section 68760) of Chapter 4, the department shall place the highest priority on taking removal and remedial actions at the Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote sufficient resources to accomplish the tasks required by this section.

Comment. Section 69495 continues former Section 25351.8 without substantive change. And obsolete cross-reference to Section 25334.5, which has been repealed (see 1999 Cal. Stat. ch. 23, § 1), was not continued. See Section 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

Staff Note. Section 25351.8 cross-refers to Section 25334.5. Section 25334.5 has been repealed. See 1999 Cal. Stat. ch. 23, § 1 (SB 47). Prior to its repeal, Section 25334.5 related to a site-specific plan for expenditures that would be prepared by the department and included in the budget. See former Section 25334.5, as amended by 1985 Cal. Stat. ch. 1439, § 1. The staff is not aware of such a requirement elsewhere in the current law. For this reason, the cross-reference to Section 25334.5 was not continued.

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

CHAPTER 7. ENFORCEMENT

Article 1. Noncompliance with Order

§ 69550. Penalty for noncompliance with order

69550. Any person subject to a removal or remedial action order or other order issued pursuant to Section 68660, 68870, or 69055 who does not comply with that order without sufficient cause shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance. Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 69590.

Comment. Section 69550 continues former Section 25359.2 without substantive change. See Sections 68085 (“person”), 68125 (“remedy”), 68135 (“remove”).

Staff Note. Proposed Section 69550 refers to an order “issued pursuant to Section 25355.5 or 25358.3.” Each of these cross-referenced provisions is discussed in turn below.

(1) Section 25355.5 has been proposed for recodification as several provisions (proposed Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (Section 25355.5(a)) appears to be the only provision that is relevant to this cross-reference, as it is the only provision that addresses the issuance of orders. For this reason, the cross-reference to Section 25355.5 has been updated to refer only to Section 69055.

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

(2) Section 25358.3 has been proposed for recodification as several sections (proposed Sections 68650, 68655, 68660, and 68870). Proposed Sections 68650 and 68655 do not appear to be relevant to the purposes of this cross-reference, as these provisions do not relate to the issuance of orders to parties. For this reason, those proposed sections have been omitted from the
cross-reference. Accordingly, the cross-reference to Section 25358.3 has been updated to refer to Sections 68660 and 68870.

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

§ 69555. Treble damages from noncompliant contribution defendant

69555. (a)(1) A responsible party who has entered into an agreement with the department and is in compliance with the terms of that agreement, or who is in compliance with an order issued by the department, may seek, in addition to contribution, treble damages from any contribution defendant who has failed or refused to comply with any order or agreement, was named in the order or agreement, and is subject to contribution.

(2) A contribution defendant from whom treble damages are sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the contribution defendant is an owner of real property who did not generate, treat, transport, store, or dispose of the hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)), or where the principles of fundamental fairness would be violated, as determined by the court.

(3) A party seeking treble damages pursuant to this section shall show that the party, the department, or another entity provided notice, by means of personal service or certified mail, of the order or agreement to the contribution defendant from whom the party seeks treble damages.

(b)(1) One-half of any treble damages awarded pursuant to this section shall be paid to the department, for deposit in the state account.

(2) Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) A contribution defendant from whom treble damages are sought pursuant to this section shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

Comment. Section 69555 continues former Section 25359.4.5 without substantive change. See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”), 68145 (“responsible party”), 68165 (“state account”).

Article 2. Response Actions

§ 69570. Treble damages for failure to provide response action

69570. (a) Any person who is liable for a release, or threat of a release, of hazardous substances and who fails, without sufficient cause, as determined by the court, to properly provide a removal or remedial action upon either an order of the director, pursuant to Section 68870, or an order of the court, pursuant to Section 68660, is liable to the department for damages equal to three times the amount of
any costs incurred by the state account pursuant to this part as a result of the failure to take proper action.

(b) No treble damages shall be imposed under this section against an owner of real property who did not generate, treat, transport, store, or dispose of any hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

Comment. Section 69570 restates former Section 25359 without substantive change.

See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68165 (“state account”).

Staff Note. Proposed Section 69570 refers to an “order of the director or the court, pursuant to Section 25358.3.” Section 25358.3 has been recodified as several sections (proposed Sections 68650, 68655, 68660, and 68870). Proposed Section 68870 recodifies the portion of Section 25358.3 that relates to the issuance of orders by the director, while proposed Section 68660 recodifies the portion of Section 25358.3 that relates to the issuance of orders by a court. For this reason, proposed Section 69570 restates the quoted language to read “either an order of the director, pursuant to Section 68870, or an order of the court, pursuant to Section 68660.” The staff welcomes comment on this proposed restatement.

Article 3. Natural Resources Damages

§ 69580. Prohibition on recovery of damages for certain losses occurring before September 25, 1981

69580. There shall be no recovery of punitive damages under Section 69570 for an injury to or loss of natural resources that occurred wholly before September 25, 1981. This section shall not be construed as precluding the recovery of punitive damages for injury to or loss of natural resources in an action brought pursuant to any other provision of law.

Comment. Section 69580 continues former Section 25359.1 without substantive change.

Article 4. Administrative Process for Penalty Collection

§ 69590. Complaint for penalties

69590. (a)(1) The department may issue a complaint to any person subject to a penalty pursuant to Sections 68680 and 69550.

   (2) The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed penalty.

   (3) The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing.

   (b)(1) Any person served with a complaint pursuant to this section may, within 45 days after service of the complaint, request a hearing by filing a notice of defense with the department. A notice of defense is deemed to be filed within a 45-day period if it is postmarked within the 45-day period.
(2) If no notice of defense is filed within 45 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint, unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement.

(3) Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

Comment. Section 69590 continues subdivision (a) of former Section 25359.3 without substantive change. See Sections 68050 (“department”), 68085 (“person”).

Staff Note. Subdivision (a) of Section 25359.3 refers to a person subject to a penalty pursuant to Section 25359.4. Section 25359.4 has been proposed for recodification as two sections (proposed Sections 68675 and 68680). Only one of those proposed sections, Section 68680, provides for penalties. For this reason, the cross-reference to Section 25359.4 has been updated to refer only to Section 68680.

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

§ 69595. Hearing for penalties

69595. (a) Any hearing required under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all powers granted by those provisions.

(b) In making a determination, the administrative law judge shall consider the nature, circumstances, extent, and gravity of the violation, the violator’s past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety or the environment, the violator’s ability to pay the proposed penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

Comment. Section 69595 continues subdivision (b) of former Section 25359.3 without substantive change. See Section 68050 (“department”).

§ 69600. Deposit and expenditure of penalties

69600. All penalties collected under this article and Section 69550 shall be deposited in the state account and shall be available for expenditure by the department upon appropriation by the Legislature.

Comment. Section 69600 continues subdivision (c) of former Section 25359.3 without substantive change. 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.

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**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.

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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?”