

Memorandum 2019-61

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

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

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 9 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 that they might have. **Comments on any aspect of the draft are welcome.**⁴

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

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

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

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

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 November 21, 2019), which will be open to the public. The agenda is available at http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

IMPLEMENTATION ISSUES

At the Commission's September meeting, the Commission approved changes to the Staff Note and Comment practices for this study.⁵ Those changes have been incorporated into the attached cumulative draft.

One of the changes that the Commission approved was to the language used in Notes on cross-reference updates. Rather than specifically request public comment on those updates, the Notes would instead state that the updates are presumed to be correct unless we receive comment suggesting otherwise. This was intended to ease the burden on reviewers, by eliminating any suggestion that the Commission is requesting an affirmative comment on every Note. If a reviewer agrees with the proposed revision, no comment is required.

Consistent with that approach, the staff used the same language in Notes on other presumptively correct minor technical revisions.

Respectfully submitted,

Kristin Burford
Staff Counsel

5. Minutes (Sept. 2019), p. 4.

CUMULATIVE PRELIMINARY DRAFT
FOR DIVISION 45

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

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

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

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

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

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

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

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

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

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

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DRAFT LEGISLATION

1 **Health & Safety Code §§ 68000-[6XXXX] (added). Hazardous substance response**
2 SEC. ____. Division 45 (commencing with Section 68000) is added to the Health
3 and Safety Code, to read:

4 DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

5 PART 1. GENERAL PROVISIONS [RESERVED]

6 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

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

12 CHAPTER 1. GENERAL PROVISIONS

13 Article 1. Preliminary Provisions

14 § 68000. Short title

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

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

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

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

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

31 § 68005. Legislative intent

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

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

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

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

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

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

13 Article 2. Effect of Recodification

14 § 68010. Nonsubstantive reform

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

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

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

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

31 § 68015. Continuation of existing law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§ 68025. Constitutionality**

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

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

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

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

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

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

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

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

23 **§ 68030. Conforming rule change**

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

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

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

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

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

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

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

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

3 Article 3. Definitions

4 **§ 68035. Applicable definitions**

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

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

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

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

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

26 **§ 68040. “Agency”**

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

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

29 **§ 68045. “Contract competitor”**

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

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

34 **§ 68050. “Department”**

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

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

37 **§ 68055. “Director”**

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

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

1 **§ 68060. “Feasibility study”**

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

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

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

9 **§ 68065. “Federal act”**

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

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

14 **§ 68070. “Federally permitted release”**

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

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

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

19 **§ 68075. “Hazardous substance”**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 See Section 68065 (“federal act”).

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

15 Section 25317(a) currently reads as follows:

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

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

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

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

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

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

35 **§ 68085. “Person”**

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

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

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

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

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

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

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

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

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

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

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

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

3 (a) Sampling and analysis of a site.

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

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

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

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

11 **§ 68100. “Regional board”**

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

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

15 **§ 68105. “Release”**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **§ 68115. “Remedial design”**

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

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

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

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

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

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

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

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

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

15 (c) Site operation and maintenance.

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

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

19 § 68130. “Removal action work plan”

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

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

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

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

32 § 68135. “Remove” or “removal”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **§ 68150. “Secretary”**

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

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

9 **§ 68155. “Site”**

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

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

13 See Section 68065 (“federal act”).

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

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

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

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

23 **§ 68165. “State account”**

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

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

27 **§ 68170. “Tier”**

28 68170. “Tier” means a grouping of hazardous substance release sites that require
29 removal and remedial actions, that are listed alphabetically, and that are of a
30 roughly equivalent priority for removal and remedial action.

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

32 See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135
33 (“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 69650, 69665, and 69670 and Articles 3 (commencing with Section 69700) and 5 (commencing with 69760) of Chapter 8, 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:

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

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

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

11 Article 2. Externally-Funded Positions

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **Comment.** Section 68210 restates former Section 25353.5 without substantive change.
6 See Sections 68050 (“department”), 68075 (“hazardous substance”).

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

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

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

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

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

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

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

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

1 Article 3. State Account

2 § 68220. Actions involving state account

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

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

6 § 68225. Excess expenditures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 Subdivision (b) continues former Section 25354(c), with the exception of the first sentence.

34 Subdivision (c) continues former Section 25354(d).

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

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

42 The internal cross-references in Section 25354 have been updated to refer either to this
43 proposed section or to proposed Section 68875, depending on the purpose of the cross-reference.
44 For instance, references to “subdivision (a)” within Section 25354 have been updated to refer

1 either to proposed Section 68240(a) (regarding funding the account) or proposed Section
2 68875(a) (regarding taking corrective action).

3 These changes are all intended to be nonsubstantive. **Absent comment on this issue, these**
4 **proposed updates will be presumed correct.**

5 Article 4. Site Remediation Account

6 § 68260. Site Remediation Account

7 68260. (a) There is in the General Fund the Site Remediation Account, which
8 shall be administered by the director. The account shall be funded by money
9 transferred from the state account, upon appropriation by the Legislature.
10 Consistent with the requirements of Section 114(c) of the federal act (42 U.S.C.
11 Sec. 9614(c)), the moneys in the account may be expended by the department,
12 upon appropriation by the Legislature, for direct site remediation costs.

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

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

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

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

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

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

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

34 § 68265. Encumbrance and disbursement of funds

35 68265. Funds in the Site Remediation Account appropriated for removal or
36 remedial action pursuant to this part are available for encumbrance for three fiscal
37 years subsequent to the fiscal year in which the funds are appropriated and are
38 available for disbursement in liquidation of encumbrances pursuant to Section
39 16304.1 of the Government Code.

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

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

Article 5. Hazardous Substance Cleanup Bond Act of 1984

§ 68280. Short title

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

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

§ 68285. Definitions

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

(a) “Board” means the department.

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

(c) “Director” means the director.

(d) “Fund” means the state account.

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

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

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

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

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

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

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

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

...

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

...”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 **Comment.** Section 68300 restates former Section 25385.5 without substantive change. This
40 section was restated to singularize the phrases, “debt or debts” and “liability or liabilities.” These
41 are nonsubstantive changes. See Section 13.

42 See Section 68285 (“committee” and “fund”).

1 § 68305. Authorized uses of funds from bond proceeds

2 68305. (a) The moneys in the state account that are the proceeds of bonds issued
3 and sold pursuant to this article may be used, upon appropriation by the
4 Legislature, for the purposes specified in this section.

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

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

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

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

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

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

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

32 § 68310. Bonds as general obligations of state

33 68310. (a) All bonds authorized by this article, which are sold and delivered as
34 provided in this article, constitute valid and legally binding general obligations of
35 the State of California, and the full faith and credit of the State of California are
36 hereby pledged for the punctual payment of both the principal of and the interest
37 on the bonds.

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

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

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

6 **§ 68315. Transfers to General Fund**

7 68315. Notwithstanding Section 68345, the money deposited in the fund is
8 available for transfer to the General Fund if money was deposited in the fund
9 pursuant to any provision of law requiring repayments to the state for assistance
10 financed by the proceeds of the bonds issued pursuant to this article. When
11 transferred to the General Fund, that money shall be applied as a reimbursement to
12 the General Fund for the principal and interest payments on the bonds that have
13 been paid from the General Fund.

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

16 **§ 68320. Appropriation from General Fund**

17 68320. There is hereby appropriated from the General Fund in the State
18 Treasury, for the purpose of this article, an amount equal to the sum of all of the
19 following:

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

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

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

27 **§ 68325. Withdrawals from General Fund**

28 68325. (a) For the purpose of carrying out this article, the Director of Finance
29 may, by executive order, authorize the withdrawal from the General Fund of
30 amounts not to exceed the amount of the unsold bonds that the committee has, by
31 resolution, authorized to be sold for the purpose of carrying out this article.

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

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

37 **Comment.** Section 68325 continues former Section 25386.2 without substantive change.
38 See Section 68285 (“board,” “committee,” and “fund”).

1 **§ 68330. Tax-exempt funds**

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

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

16 **§ 68335. Determination on issuance of bonds**

17 68335. Upon the request of the board, and supported by a statement of the
18 proposed actions to be taken pursuant to Section 68305, the committee shall
19 determine whether it is necessary or desirable to issue any bonds authorized
20 pursuant to this article in order to take these actions, and if so, the amount of
21 bonds that should be issued and sold. Successive issues of bonds may be
22 authorized and sold to take these actions progressively, and it is not necessary that
23 all of the bonds authorized by this article to be issued are sold at any one time.

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

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

26 **§ 68340. Authority to sell bonds**

27 68340. The committee may authorize the Treasurer to sell all, or any part of, the
28 bonds authorized under this article at the time or times as may be fixed by the
29 Treasurer.

30 **Comment.** Section 68340 continues former Section 25386.4 without substantive change.

31 See Section 68285 (“committee”).

32 **§ 68345. Uses of bond proceeds**

33 68345. Except as provided in Section 68315, all proceeds from the sale of
34 bonds, except those derived from premiums and accrued interest, are available for
35 the purposes specified in Section 68305, but are not available for transfer to the
36 General Fund to pay the principal of, and interest on, the bonds.

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

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

4 “25386.5. Except as provided in **subdivision (c) of Section 25385.3** and Section 25386,
5 all proceeds from the sale of bonds, except those derived from premiums and accrued interest, are
6 available for the purposes specified in Section 25385.6, but are not available for transfer to the
7 General Fund to pay the principal of, and interest on, the bonds.”

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

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

22 **The staff welcomes comment on whether the cross-reference to “subdivision (c) of Section**
23 **25385.3” is indeed obsolete and, if so, whether the proposed deletion of the cross-reference**
24 **raises any concerns.**

25 Article 6. Revolving Loans Fund

26 § 68360. Definitions

27 68360. Unless the context otherwise requires, the following definitions govern
28 the construction of this article:

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

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

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

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

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

39 See Section 68065 (“federal act”).

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

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

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

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

6 **§ 68365. Revolving Loans Fund**

7 68365. (a) The Revolving Loans Fund is hereby created in the State Treasury.
8 Notwithstanding Section 13340 of the Government Code, all moneys in the fund
9 shall be continuously appropriated, without regard to fiscal year, to the department
10 for expenditure in accordance with this part. The department is the state agency
11 responsible for administering the fund.

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

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

15 (2) The amounts collected for loan services.

16 (3) Interest payments.

17 (4) Principal repayments.

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

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

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

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

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

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

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

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

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

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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 former Section 25354.5(f) 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. **Absent comment, this proposed reference update will be presumed correct.**

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”).

Article 2. Federal Assistance

§ 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”).

Article 3. Public Outreach

§ 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 Section 70025, 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 Chapter 9 (commencing with Section 70000) 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

1 of community service offices. For this reason, the cross-reference was not changed to refer to the
2 other proposed section recodifying Section 25358.7.2 (proposed Section 68925).

3 **(3)** The second sentence of Section 25358.7.2(b) refers to a community advisory group
4 “established pursuant to Section 25358.7.1.” Section 25358.7.1 has been proposed for
5 recodification as several sections (proposed Sections 68935, 68950, 68955, 68960, 68965,
6 68970). Only one of those sections, proposed Section 68950, pertains to the establishment of
7 community advisory groups and appears to be relevant for this cross-reference. For this reason,
8 the cross-reference has been updated to refer only to proposed Section 68950. **Absent comment,**
9 **this proposed cross-reference update will be presumed correct.**

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

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

18 Article 4. Investigatory Powers

19 § 68435. Purpose of investigation

20 68435. The department, a representative of the department, or any person
21 designated by the director may take the actions specified in this article only if
22 there is a reasonable basis to believe that there has been or may be a release or
23 threatened release of a hazardous substance, and only for the purpose of
24 determining under this part the need for a response action, the choosing or taking
25 of a response action, or otherwise for the purpose of enforcing this part.

26 **Comment.** Section 68435 continues former Section 25358.1(a) without substantive change.

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

29 § 68440. Authority to require person to provide relevant information

30 68440. (a) Any officer or employee of the department, a representative of the
31 director, or a person designated by the director may require any person who has or
32 may have information relevant to any of the following matters to furnish the
33 information, upon reasonable notice:

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

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

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

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

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

6 **Comment.** Section 68440 continues former Section 25358.1(b)-(d) without substantive
 7 change. Technical changes were made to conform to the standard federal act citation format used
 8 in this part.

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

12 **Staff Notes. (1)** Proposed Section 68440(c) provides that a person required to provide
 13 information *shall* allow access to records “pursuant to Section 68455.” Proposed Section 68455
 14 applies when the department is denied access to property. That section requires the department to
 15 obtain an inspection warrant (pursuant to Title 13 of Part 3 of the Code of Civil Procedure),
 16 unless it is an emergency.

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

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

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

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

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

39 **§ 68445. Disclosure of information**

40 68445. (a) The department may disclose information submitted pursuant to this
 41 article to authorized representatives, contractors, or other governmental agencies
 42 only in connection with the department’s responsibilities pursuant to this part. The
 43 department shall establish procedures to ensure that information submitted
 44 pursuant to this article is used only in connection with these responsibilities and is
 45 not otherwise disseminated without the consent of the person who provided the
 46 information to the department.

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

7 **Comment.** Section 68445 continues former Section 25358.1(j) and (k) without substantive
8 change.

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

10 **§ 68450. Entry, inspection, and sampling of property**

11 68450. (a) Any officer or employee of the department, representative of the
12 director, or person designated by the director may, in accordance with Section
13 68455, enter, at reasonable times, any of the following properties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **Comment.** Section 68450 continues former Section 25358.1(e)–(h) without substantive
25 change.

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

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

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

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

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

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

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

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

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

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

25 § 68455. Entry to property without voluntary grant of access

26 68455. If the owner or the owner’s authorized representative does not
27 voluntarily grant access to a place, establishment, or property pursuant to this
28 article, the officer, employee, representative, or designee shall first obtain a
29 warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the
30 Code of Civil Procedure. However, if there is an emergency posing an immediate
31 threat to public health and safety, the officer, employee, representative, or
32 designee may enter the place, establishment, or property without the consent of the
33 owner or owner’s authorized representative and without the issuance of a warrant.

34 **Comment.** Section 68455 continues former Section 25358.1(i) without substantive change.

35 § 68460. Immunity for entry and response action

36 68460. The department, and any person authorized by the department to enter
37 upon any lands for the purpose of taking a response action pursuant to this part,
38 shall not be held liable, in either a civil or criminal proceeding, for trespass or for
39 any other acts that are necessary to carry out the response action.

40 **Comment.** Section 68460 continues former Section 25358.1(l) without substantive change.

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

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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 former Section 25358.2(a) 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 former Section 25358.2(c) 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 former Section 25358.2(b) 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 former Section 25358.2(d) 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

1 Resources Control Board is the agency authorized to accredit laboratories under that article. See
2 Section 100825(c)(1), (4), (11), (12).

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

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

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

18 Article 8. Technology Demonstration Program

19 § 68525. Technology demonstration program for treatment technologies

20 68525. Notwithstanding Section 69055, the department shall carry out a
21 program of full-scale demonstrations to evaluate treatment technologies that can
22 be safely utilized for removal and remedial actions to hazardous substance
23 releases.

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

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

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

35 § 68530. Definitions

36 68530. For the purposes of this article, the following definitions apply:

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

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

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

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

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

12 **§ 68535. Criteria for selection**

13 68535. The department shall select technology demonstration projects to be
14 evaluated pursuant to this article using criteria that include, at a minimum, all of
15 the following requirements:

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

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

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

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

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

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

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

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

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

34 (1) Responsible parties.

35 (2) The United States Environmental Protection Agency.

36 (3) The state account.

37 **Comment.** Section 68535 restates former Section 25368.2 without substantive change. This
38 section was restated to singularize the phrase “technology or technologies.” This is a
39 nonsubstantive change. See Section 13.

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

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

9 **§ 68540. Selection of sites**

10 68540. The department shall identify hazardous substance release sites, listed
11 pursuant to Article 5 (commencing with Section 68760) of Chapter 4, that are
12 particularly well-suited for technology demonstration projects. In identifying
13 hazardous substance release sites, the department shall consider, at a minimum, all
14 of the following:

15 (a) The state’s priority ranking for removal and remedial actions to hazardous
16 substance release sites adopted pursuant to Article 5 (commencing with Section
17 68760) of Chapter 4.

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

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

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

21 (e) Availability of required utilities.

22 (f) Support of federal and local governments.

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

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

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

27 **§ 68545. Solicitation of proposals**

28 68545. (a) The department shall annually, on or before July 1, publish a
29 solicitation for proposals to conduct treatment demonstration projects that utilize
30 technologies that are at a stage of development suitable for full-scale
31 demonstrations at hazardous substance release sites. The solicitation notice shall
32 prescribe information to be included in the proposal, including technical and
33 economic data derived from the applicant’s own research and development efforts,
34 and any other information that may be prescribed by the department to assess the
35 technology’s potential and safety and the types of removal or remedial action to
36 which it may be applicable.

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

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

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

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

9 **§ 68550. Selection of technology demonstration projects**

10 68550. (a) On or before January 1, after reviewing all proposals submitted
11 pursuant to Section 68545, the department shall annually select at least two
12 treatment demonstration projects, to be commenced during that calendar year,
13 using, at a minimum, the criteria specified in Section 68535.

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

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

22 **Comment.** Section 68550 continues former Section 25368.5 without substantive change.
23 See Sections 68050 (“department”), 68085 (“person”).

24 **§ 68555. Recovery of incremental costs**

25 68555. Notwithstanding Section 69650, if the department determines that using
26 an alternative treatment technology to conduct a removal or remedial action at a
27 hazardous substance release site listed pursuant to **[paragraph (2) or (3) of**
28 **subdivision (b) of Section 25356]** would be more costly than another available
29 and feasible removal or remedial action method that would also achieve
30 satisfactory results, the department may determine not to attempt to recover from
31 the liable person the incremental costs of the removal or remedial action
32 attributable to the alternative treatment technology.

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

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

37 **Staff Note.** Section 25368.6 references a hazardous substance release site listed “pursuant to
38 paragraph (2) or (3) of subdivision (b) of Section 25356.” Section 25356(b), which is proposed
39 (with renumbering of the provisions) for recodification in this draft as proposed Section 68520,
40 does not currently have a paragraph (3). However, an earlier version of Section 25356(b) did have
41 a paragraph (3). See former Section 25356, as amended by 1988 Cal Stat. ch. 1387, § 6. At that
42 time, the “list” was significantly different and structured differently. And, it appears that a site
43 “listed pursuant to paragraph (2) and (3)...” would include only sites where the department (as
44 opposed to a responsible party) was conducting the response action.

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

6 **§ 68560. Technology transfer program**

7 68560. (a) The department shall conduct a technology transfer program that
8 shall include the development, collection, evaluation, coordination, and
9 dissemination of information relating to the utilization of alternative or innovative
10 hazardous waste treatment technologies demonstrated pursuant to this article.

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

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

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

17 (3) The technology’s applicability, pretreatment and posttreatment
18 measurements, and the technology’s advantages or disadvantages compared to
19 other available technologies.

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

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

23 **Staff Notes. (1)** Proposed Section 68560 restates Section 25368.7 to add subdivisions. Section
24 25368.7 provides:

25 “25368.7. The department shall conduct a technology transfer program that shall include
26 the development, collection, evaluation, coordination, and dissemination of information relating
27 to the utilization of alternative or innovative hazardous waste treatment technologies
28 demonstrated pursuant to this article. The information shall include an evaluation of each
29 treatment demonstration project’s efficacy relating to performance and cost in achieving
30 permanent and significant reduction in risks from hazardous substance releases. The information
31 shall also include documentation of the testing procedures utilized in the project, the data
32 collected, and the quality assurance and quality control which was conducted. The information
33 shall also include the technology’s applicability, pretreatment and posttreatment measurements,
34 and the technology’s advantages or disadvantages compared to other available technologies.

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

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

1 § 68565. Consideration of cost-effectiveness

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

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

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

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

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

22 Article 9. Content of Biennial Report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **§ 68575. San Gabriel Valley groundwater sites**

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

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

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

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

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

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

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

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

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

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

14 **§ 68580. Accounting of expenditures from emergency reserve account**

15 68580. The department shall include in the biennial report specified in Section
16 25178 an accounting of the moneys expended pursuant to Section 68875.

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

19 See Section 68050 (“department”).

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

26 For this reason, the cross-reference has been updated to refer to proposed Section 68875. This
27 change is intended to be nonsubstantive. **Absent comment, the proposed update to this
28 reference will be presumed correct.**

29 CHAPTER 4. RELEASES OF HAZARDOUS SUBSTANCES

30 Article 1. General Powers of Director

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

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

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

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

1 **Comment.** Section 68650 continues former Section 25358.3(b) without substantive change.
2 See Sections 68055 (“director”), 68075 (“hazardous substance”), 68105 (“release”), 68140
3 (“response”).

4 **§ 68655. Authority to take or contract for response or other authorized actions**

5 68655. (a) Whenever there is a release or threatened release of a hazardous
6 substance into the environment, the director may take or contract for any
7 necessary removal or remedial action and may take or contract for any actions
8 authorized by Section 68650, in compliance with the provisions of this part,
9 including, but not limited to, subdivision (a) of Section 69130.

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

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

24 (A) The time for appeal has elapsed.

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

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

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

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

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

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

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

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

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

25 **Absent comment, these proposed nonsubstantive changes will be presumed correct.**

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

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

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

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

1 § 68660. Judicial proceedings

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

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

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

28 **Comment.** Section 68660 restates former Section 25358.3 without substantive change.

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

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

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

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

1 same word. Proposed Section 68660 was simplified to use only the singular form in accordance
2 with standard drafting practice.

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

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

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

15 Article 2. Reporting Requirement

16 § 68675. Prohibition and reporting requirement for releases

17 68675. (a) A person shall not release, or allow or cause a release of, a reportable
18 quantity of a hazardous substance into the environment that is not authorized or
19 permitted pursuant to state law.

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

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

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

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

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

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

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

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

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

40 **Comment.** Section 68675 continues subdivisions (a)-(c), inclusive, of former Section
41 25359.4(a)-(c) without substantive change. A cross-reference to Section 25507 has been corrected
42 to refer to Section 25510.

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

3 **Staff Note.** Proposed Section 68675(b)(3) pertains to a release that “requires immediate reporting
4 to the Office of Emergency Services...pursuant to Section 25507.” The cross-reference to Section
5 25507 appears to be inapt. Section 25507 governs which businesses are required to implement a
6 business plan for emergency response for hazardous material releases. Another section in the
7 same article, Section 25510, pertains to immediate reporting of hazardous material releases.
8 Section 25510 provides, in part:

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

17 The cross-reference has been updated to refer to Section 25510 in proposed Section 68675.
18 **Absent comment, the proposed correction to this cross-reference will be presumed correct.**

19 **§ 68680. Liability for failure to report**

20 68680. (a) The owner of property on which a reportable release has occurred and
21 any person who releases, or causes a reportable release and who fails to make the
22 written report required by subdivision (b) of Section 68675, shall be liable for a
23 penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate
24 violation and for each day that a violation continues. Each day on which the
25 released hazardous substance remains is a separate violation unless the person has
26 either filed the report or is in compliance with an order issued by a local, state, or
27 federal agency with regard to the release.

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

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

35 **Comment.** Section 68680 continues former Section 25359.4(d)-(f) without substantive change.
36 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105
37 (“release”), 68140 (“response”), 68145 (“responsible party”).

38 **Article 3. Disclosure Requirement**

39 **§ 68700. Disclosure requirement for property owner**

40 68700. Any owner of nonresidential real property who knows, or has reasonable
41 cause to believe, that any release of hazardous substance has come to be located
42 on or beneath that real property shall, prior to the sale, lease, or rental of the real

1 property by that owner, give written notice of that condition to the buyer, lessee,
2 or renter of the real property. Failure of the owner to provide written notice when
3 required by this section to the buyer, lessee, or renter shall subject the owner to
4 actual damages and any other remedies provided by law. In addition, where the
5 owner has actual knowledge of the presence of any release of a material amount of
6 a hazardous substance and knowingly and willfully fails to provide written notice
7 to the buyer, lessee, or renter, as required by this section, the owner is liable for a
8 civil penalty not to exceed five thousand dollars (\$5,000) for each separate
9 violation.

10 **Comment.** Section 68700 continues former Section 25359.7(a) without substantive change.
11 See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”).

12 **§ 68705. Disclosure requirement for lessee or renter**

13 68705. Any lessee or renter of real property who knows or has reasonable cause
14 to believe that any release of a hazardous substance has come or will come to be
15 located on or beneath that real property shall, within a reasonable period of time,
16 either prior to the release or following the discovery by the lessee or renter of the
17 presence or believed presence of the hazardous substance release, give written
18 notice of that condition to the owner of the real property or to the lessor under the
19 lessee’s or renter’s lease or rental agreement.

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

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

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

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

35 (c) A lessee or renter may cure a default under the lessee’s or renter’s lease or
36 rental agreement that resulted from a violation of this section, by promptly
37 commencing and completing the removal of, or taking other appropriate remedial
38 action with respect to, the hazardous substance release. The removal or remedial
39 action shall be conducted in accordance with all applicable laws and regulations
40 and in a manner that is reasonably acceptable to, and that is approved in writing
41 by, the owner or lessor. This subdivision does not relieve the lessee or renter of

1 any liability for actual damages or for any civil penalty for a violation of this
2 section.

3 **Comment.** Section 68705 continues former Section 25359.7(b) without substantive change.
4 See Sections 68075 (“hazardous substance”), 68105 (“release”), 68125 (“remedy”), 68135
5 (“remove”).

6 Article 4. Securing Site of Release

7 **§ 68720. Conditions when order to secure site is required**

8 68720. After making a determination, based upon a preliminary site assessment
9 that there has been a release of a hazardous substance on, under, or into the land
10 on a site, the department or a county health officer shall order the property owner
11 to secure the site if all of the following conditions apply to that site:

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

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

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

17 **Comment.** Section 68720 continues former Section 25359.5(a) without substantive change.
18 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155
19 (“site”).

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

26 **§ 68725. Requirements of order to secure site**

27 68725. (a) The order to secure the site shall require, within five days after
28 receiving notification of the order, the posting of the site with signs. The order
29 shall also require, within five days after receiving notification of the order, that the
30 site be enclosed with a fence, unless it is physically and economically infeasible or
31 unless the fencing is unnecessary because it will not alleviate the danger to the
32 public health.

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

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

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

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

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

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

9 **Comment.** Section 68725 continues former Section 25359.5(b) and (c) without substantive
10 change.

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

13 **§ 68730. Advising agencies on health risks and site requirements**

14 68730. The department or the county health officer shall advise other agencies
15 on the public health risks and the need for fencing and posting of sites when those
16 agencies confirm the release of a hazardous substance pursuant to Section 68720.

17 **Comment.** Section 68730 continues former Section 25359.5(e) without substantive change.

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

20 **§ 68735. Penalty for failure to comply with order to secure site**

21 68735. (a) A property owner who fails to comply with an order of the
22 department or the county health officer is subject to a civil penalty of up to
23 twenty-five thousand dollars (\$25,000). In determining the amount of a civil
24 penalty to be imposed, the court shall consider all relevant circumstances,
25 including, but not limited to, the economic assets of the property owner and
26 whether the property owner has acted in good faith.

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

35 **Comment.** Section 68735 continues former Section 25359.5(d) without substantive change.

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

37 **§ 68740. Remedies and penalties not exclusive**

38 68740. The remedies and penalties specified in this article and Section 68505
39 are in addition to, and do not affect, any other remedies, enforcement actions,
40 requirements, or penalties otherwise authorized by law.

41 **Comment.** Section 68740 continues former Section 25359.5(f) 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 former Section 25356(b) without substantive change.

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

§ 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 former Section 25356(a) 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

1 fire or explosion, and toxic hazards, and shall also include the criteria established pursuant to
2 Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)).”

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

5 **(2)** The cross-reference to the federal act in the last sentence of proposed Section 68765(a) has
6 been corrected. The existing cross-reference refers to “Section 105(8) of the federal act (42
7 U.S.C. Sec. 9605(8)).” This cross-reference is missing a subdivision designation. Only
8 subdivision (a) of Section 105 has a paragraph 8. For this reason, the cross-reference was
9 corrected to refer to “Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).” **Absent
10 comment, this proposed correction will be presumed correct.**

11 **§ 68770. Priority tiers for listed hazardous substance release sites**

12 68770. The department shall assign each site listed pursuant to Section 68760 to
13 one of the following priority tiers for the purpose of informing the public of the
14 relative hazard of listed sites:

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

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

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

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

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

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

36 **Comment.** Section 68770 continues former Section 25356(c) without substantive change.

37 See Sections 68050 (“department”), 68135 (“remove”), 68140 (“response”), 68155 (“site”),
38 68170 (“tier”).

39 **§ 68775. Requirements for listed hazardous substance release sites**

40 68775. Hazardous substance release sites listed by the department pursuant to
41 Section 68760 are subject to this part and all actions carried out in response to
42 hazardous substance releases or threatened releases at listed sites shall comply

1 with the procedures, standards, and other requirements set forth in this part or
2 established pursuant to the requirements of this part.

3 **Comment.** Section 68775 continues former Section 25356(d) without substantive change.

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

6 **§ 68780. Conformance of expenditures with prioritization of sites**

7 68780. (a) Except as provided in subdivision (b), the department shall expend all
8 funds appropriated to the department for any response action pursuant to this part,
9 and shall take all response action pursuant to this part, in conformance with the
10 assignment of sites to priority tiers pursuant to Section 68770.

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

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

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

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

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

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

32 **Comment.** Section 68780 continues former Section 25356(f) without substantive change.

33 See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”),
34 68085 (“person”), 68105 (“release”), 68140 (“response”), 68145 (“responsible party”), 68155
35 (“site”), 68170 (“tier”).

36 **§ 68785. Commencement of response actions at sites**

37 68785. This article does not require the department to characterize every site
38 listed pursuant to Section 68760 before the department begins response actions at
39 those sites.

40 **Comment.** Section 68785 continues former Section 25356(g) without substantive change.

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

1 § 68790. Responsibility for response action compliance

2 68790. The department, or, if appropriate, the regional board, is the state agency
3 with sole responsibility for ensuring that required action in response to a
4 hazardous substance release or threatened release at a listed site is carried out in
5 compliance with the procedures, standards, and other requirements set forth in this
6 part, and shall, as appropriate, coordinate the involvement of interested or affected
7 agencies in the response action.

8 **Comment.** Section 68790 continues former Section 25356(h) without substantive change.

9 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
10 68105 (“release”), 68140 (“response”), 68155 (“site”).

11 **Staff Note.** Section 25356(h) refers to the “California regional water quality board.” It appears
12 that this provision should instead refer to the “California regional water quality *control* board.”
13 Proposed Section 68790 replaces the phrase with the “regional board.” In proposed Section
14 68100, “regional board” is defined as “a California regional water quality control board.”

15 § 68795. Application of administrative rulemaking requirements

16 68795. (a) The adoption of the minimum hazard threshold pursuant to
17 subdivision (b) of Section 68765, the department’s development and publication
18 of the list of sites pursuant to Section 68760, and the assignment of sites to a tier
19 pursuant to Section 68770, including the classification of a site as within a
20 minimum threshold pursuant to Section 68770, are not subject to Chapter 3.5
21 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
22 Government Code.

23 (b) The adoption of the criteria used by the department pursuant to Section
24 68760 to determine the extent to which deferral of a response action at a site will
25 result, or is likely to result, in a rapid increase in response costs at a site or in a
26 significant increase in risk to human health or safety or the environment is subject
27 to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2
28 of the Government Code.

29 **Comment.** Section 68795 continues former Section 25356(e) without substantive change.

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

31 CHAPTER 5. CLEANUP OF HAZARDOUS SUBSTANCE RELEASES

32 Article 1. General Provisions

33 § 68850. Coordination of response actions by Governor

34 68850. The Governor is responsible for the coordination of all state response
35 actions for sites identified in Article 5 (commencing with Section 68760) of
36 Chapter 4 in order to assure the maximum use of available federal funds.

37 **Comment.** Section 68850 continues former Section 25355(a) without substantive change.

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

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

8 **§ 68855. Consistency requirements for response actions**

9 68855. (a) For response actions taken pursuant to the federal act, only those
10 costs for actions that are consistent with the priorities, guidelines, criteria, and
11 regulations contained in the national contingency plan, as revised and republished
12 pursuant to Section 105 of the federal act (42 U.S.C. Sec. 9605), shall qualify for
13 appropriation by the Legislature and expenditure by the director pursuant to
14 Sections 68240, 68875, and 69450.

15 (b) For response actions not taken pursuant to the federal act or for response
16 actions taken that are not specifically addressed by the priorities, guidelines,
17 criteria, and regulations contained in the national contingency plan, as revised and
18 republished, the costs of the response actions shall also qualify for appropriation
19 by the Legislature and expenditure by the department pursuant to Sections 68240,
20 68875, and 69450 provided they are, to the maximum extent possible, consistent
21 with the priorities, guidelines, criteria, and regulations contained in the national
22 contingency plan for similar releases, situations, or events.

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

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

27 **Staff Notes. (1)** Proposed Section 68855 restates part of Section 25330 to add subdivision
28 designations and eliminate the word “thereof.” “Thereof” was replaced with the phrase “of the
29 response actions.” These changes are intended to be nonsubstantive. **Absent comment, the**
30 **proposed changes will be presumed correct.**

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

39 **(3)** Section 25350 refers to expenditures pursuant to three specified sections, including Section
40 25351.

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

44 **Absent comment, this proposed cross-reference update will be presumed correct.**

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

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

6 **Absent comment, this proposed cross-reference update will be presumed correct.**

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

8 Section 25354 has been proposed for recodification as three sections (proposed Sections
9 68240, 68580, and 68875). One of those sections, proposed Section 68580, was omitted from this
10 cross-reference, as it contains only a reporting requirement and does not appear to be relevant for
11 this cross-reference.

12 **Absent comment, this proposed cross-reference update will be presumed correct.**

13 **§ 68860. No duplication of federal response actions**

14 68860. No response actions taken pursuant to this part by the department or
15 regional or local agencies shall duplicate federal response actions.

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

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

19 **Article 2. Exigent Actions**

20 **§ 68870. Powers of director to address imminent or substantial endangerment**

21 68870. Whenever the director determines that there may be an imminent or
22 substantial endangerment to the public health or welfare or to the environment,
23 because of a release or a threatened release of a hazardous substance, the director
24 may do any or all of the following:

25 (a) Order any responsible party to take or pay for appropriate removal or
26 remedial action necessary to protect the public health and safety and the
27 environment. No order under this section shall be made to an owner of real
28 property solely on the basis of that ownership as specified in Sections 101(35) and
29 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)). The director
30 shall give the responsible party an opportunity to assert all defenses to the order.

31 (b) Take or contract for any necessary removal or remedial action.

32 (c) Request the Attorney General to secure relief as may be necessary from the
33 responsible party to abate the danger or threat. The superior court of the county in
34 which the threat or danger occurs shall have jurisdiction to grant the relief the
35 public interest and equities of the case may require to protect public health and
36 welfare and the environment. Upon a showing by the department that a release or
37 threatened release of a hazardous substance has occurred or is occurring, and that
38 there may be an imminent or substantial endangerment to the public health and
39 safety or to the environment, the court may grant a temporary restraining order or
40 a preliminary or permanent injunction pursuant to subdivision (a) of Section
41 68660.

1 **Comment.** Section 68870 restates former Section 25358.3(a) without substantive change. This
2 provision was restated to singularize the phrase “party or parties.” This is a nonsubstantive
3 change. See Section 13.

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

7 **Staff Notes. (1)** Section 25358.3(a) specifies that no order “under this section” shall be made to a
8 real property owner solely on the basis of ownership. Section 25358.3 has been proposed for
9 recodification as multiple provisions. Proposed Section 68870 continues the only part of Section
10 25358.3 that expressly authorizes orders issued by the director to a responsible party. For this
11 reason, the cross-reference will refer only to “this section” and omit the remainder of Section
12 25358.3 (proposed for recodification as Article 1 of Chapter 4). **Absent comment, the proposed**
13 **treatment of this reference will be presumed correct.**

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

22 **§ 68875. Immediate corrective action**

23 68875. (a) The department shall expend moneys available in the reserve
24 account, established pursuant to subdivision (a) of Section 68240, only for the
25 purpose of taking immediate corrective action necessary to remedy or prevent an
26 emergency resulting from a fire or an explosion of, or human exposure to,
27 hazardous substances caused by the release or threatened release of a hazardous
28 substance.

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

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

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

40 (4) If the department finds that the corrective action includes the relocation of
41 individuals, the department may contract with those individuals for out-of-pocket
42 expenses incurred in moving for an amount of not more than one thousand dollars
43 (\$1,000).

44 **Comment.** Section 68875 restates the second sentence of former Section 25354(a) and the
45 whole of former Section 25354(b) without substantive change.

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

3 **Staff Note.** Section 25354 has been proposed for recodification as multiple provisions. Separating
4 this section into multiple provisions required the addition of a cross-reference to provide context.
5 In subdivision (a), the phrase “established pursuant to subdivision (a) of Section 68240” was
6 added to identify the reserve account. Aside from this change, proposed Section 68875 does not
7 modify the language it contains from Section 25354. **Absent comment, this proposed**
8 **restatement will be presumed correct.**

9 **§ 68880. Exemptions for exigent actions**

10 68880. Any removal or remedial action taken or contracted by the department
11 pursuant to Section 68870 or 68875 shall be exempt from all of the following
12 provisions:

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

15 (b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the
16 Government Code.

17 (c) Section 10295 of the Public Contract Code.

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

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

22 **Staff Notes. (1)** Section 25358.5 provides exemptions for actions taken “pursuant to Section
23 25354”

24 Section 25354 has been proposed for restatement as three provisions (proposed Sections
25 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision
26 authorizing expenditures for immediate corrective action (proposed Section 68875). The
27 remaining provisions, which relate to appropriations and the funding of the emergency reserve
28 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
29 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

30 **Absent comment, this proposed cross-reference update will be presumed correct.**

31 **(2)** Section 25358(c) cross-refers to several provisions of the Public Contract Code. This cross-
32 reference includes two articles, Articles 4 and 5, of Chapter 2 of Part 2 of Division 2 of that code.
33 One of those articles, Article 5, no longer exists. See 2000 Cal. Stat. ch. 759, § 18 (repealing the
34 heading of Article 5). The provisions of former Article 5 that have not been repealed are now in
35 Article 4, the final section of which is Section 10381 (former Article 5 commenced with Section
36 10355). For these reasons, the cross-reference to Article 5 was not continued. **Absent comment,**
37 **this cross-reference update will be presumed correct.**

38 **§ 68885. Prequalification of bidders for exigent actions**

39 68885. (a) The department may prequalify bidders for remedial or removal
40 actions taken pursuant to Section 68870 or 68875. The department may reject the
41 bid of any prospective bidder that has not been prequalified.

42 (b) To prequalify bidders, the department shall adopt and apply a uniform
43 system of rating bidders. In order to obtain information for such rating, the
44 department may require from prospective bidders answers to questions, including,

1 but not limited to, questions about the bidder’s financial ability, the bidder’s
2 experience in removal and remedial action involving hazardous substances, the
3 bidder’s past safety record, and the bidder’s past performance on federal, state, or
4 local government projects. The department may also require prospective bidders to
5 submit financial statements.

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

10 (d) The system of rating bidders may be adopted by the department as
11 emergency regulations in accordance with Chapter 3.5 (commencing with Section
12 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for
13 purposes of that chapter, when these regulations are adopted as emergency
14 regulations pursuant to Section 11349.6 of the Government Code, the regulations
15 shall be deemed to be necessary for the immediate preservation of the public
16 peace, health and safety, and general welfare. It is the intent of the Legislature that
17 emergency regulations adopted pursuant to this subdivision shall remain in effect
18 until the regulations are adopted as final regulations, pursuant to Chapter 3.5
19 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
20 Government Code.

21 **Comment.** Section 68885 continues former Section 25358.6 without substantive change.

22 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68125 (“remedy”), 68135
23 (“remove”).

24 **Staff Notes. (1)** Section 68885 permits prequalification of bidders for action taken “pursuant to
25 Section 25354 ...” This cross-reference has been updated, as described in Note #1 to proposed
26 Section 68880. **Absent comment, this proposed cross-reference update will be presumed**
27 **correct.**

28 **(2)** Subdivision (d) of Section 25358.6 pertains to regulations adopted for rating bidders. This
29 provision, which was originally adopted in 1983, seems to focus on the adoption of regulations at
30 that time. It is unclear whether this provision has continuing application. **The staff welcomes**
31 **comment on this issue.**

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

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

40 **§ 68900. Referral of sites to department for listing**

41 68900. The State Water Resources Control Board or a regional board that has
42 jurisdiction over a hazardous substance release site pursuant to Division 7

1 (commencing with Section 13000) of the Water Code may refer the site to the
2 department as a candidate for listing pursuant to Article 5 (commencing with
3 Section 68760) of Chapter 4. After determining that the site meets the criteria
4 adopted pursuant to Section 68765, the department may place the site on the list of
5 sites subject to this part and establish its priority ranking pursuant to Article 5
6 (commencing with Section 68760) of Chapter 4.

7 **Comment.** Section 68900 continues former Section 25355.6(a) without substantive change.

8 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
9 68105 (“release”), 68155 (“site”).

10 **§ 68905. Authority of department at listed, referred site**

11 68905. If a hazardous substance release site is referred to the department and is
12 listed pursuant to Section 68900, the department may expend money from the state
13 account for removal or remedial action at the site, upon appropriation by the
14 Legislature, without first issuing an order or entering into an agreement pursuant
15 to paragraph (1) of subdivision (a) of Section 69055, if all of the following apply:

16 (a) The State Water Resources Control Board or a regional board has issued
17 either a cease and desist order pursuant to Section 13301 of the Water Code or a
18 cleanup and abatement order pursuant to Section 13304 of the Water Code to the
19 potentially responsible party for the site.

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

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

27 **Comment.** Section 68905 continues former Section 25355.6(b) without substantive change.

28 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
29 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155
30 (“site”), 68165 (“state account”).

31 **§ 68910. Notice to state or regional board regarding referred site**

32 68910. (a) If a hazardous substance release site is referred to the department
33 pursuant to Section 68900, and the department makes either of the following
34 determinations, the department shall notify the appropriate regional board and the
35 State Water Resources Control Board:

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

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

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

6 **Comment.** Section 68910 continues former Section 25355.6(c) and (d) without substantive
7 change.

8 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
9 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

10 **Staff Note.** Section 25355.6(c)(1) refers to criteria established “pursuant to subdivision (a).” This
11 cross-reference appears to be erroneous, as Section 25355.6(a) does not involve the establishment
12 of criteria. Instead, the correct cross-reference appears to be “subdivision (a) of Section 25356,”
13 which pertains to the criteria for listing sites. That provision would be recodified as proposed
14 Section 68765. Accordingly, proposed Section 68910(a)(1) would cross-refer to “Section 68765,”
15 as shown above. **Absent comment, this proposed cross-reference correction will be presumed**
16 **correct.**

17 Article 4. Public Participation

18 § 68925. Role of community service offices

19 68925. With regard to sites listed pursuant to Article 5 (commencing with
20 Section 68760) of Chapter 4 where the department or regional board is taking
21 action to investigate or remediate the site, the community service offices shall
22 facilitate communication between the department or regional board, the
23 responsible parties, and the affected community, including any community
24 advisory group that may have been formed in the community where the hazardous
25 substance release site is located.

26 **Comment.** Section 68925 restates the second sentence of former Section 25358.7.2(a) without
27 substantive change.

28 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
29 68105 (“release”), 68145 (“responsible party”), 68155 (“site”).

30 **Staff Note.** The second sentence of Section 25358.7.2(a) describes the role of the “community
31 assistance offices.” This section also establishes “community service offices.” See proposed
32 Section 68420. The staff found no other references to a “community assistance office” in the
33 Health and Safety Code. It appears that the reference to “community assistance offices” is an
34 error and this provision should apply to “community service offices.” For this reason, proposed
35 Section 68925 replaces the term “community assistance offices” with “community service
36 offices.” **Absent comment, this proposed correction will be presumed correct.**

37 § 68930. Department or regional board facilitation of public participation in response 38 actions

39 68930. (a) The department or the regional board, as appropriate, shall take the
40 actions specified in this section to provide an opportunity for meaningful public
41 participation in response actions undertaken for sites listed pursuant to Article 5
42 (commencing with Section 68760) of Chapter 4.

1 (b) The department, or the regional board, as appropriate, shall inform the
2 public, and in particular, persons living in close proximity to a hazardous
3 substance release site listed pursuant to Article 5 (commencing with Section
4 68760) of Chapter 4, of the existence of the site and the department's or regional
5 board's intention to conduct a response action at the site.

6 (c)(1) The department shall conduct a baseline community survey to determine
7 the level of public interest and desire for involvement in the department's or
8 regional board's activities, and to solicit concerns and information regarding the
9 site from the affected community.

10 (2) Based on the results of the baseline survey, the department or regional board
11 shall develop a public participation plan that shall establish appropriate
12 communication and outreach measures commensurate with the level of interest
13 expressed by survey respondents. The public participation plan shall be updated as
14 necessary to reflect any significant changes in the degree of public interest as the
15 site investigation and cleanup process moves toward completion.

16 (d) The department or regional board shall provide any person affected by a
17 response action undertaken for sites listed pursuant to Article 5 (commencing with
18 Section 68760) of Chapter 4 with the opportunity to participate in the department's
19 or regional board's decisionmaking process regarding that action by taking all of
20 the following actions:

21 (1) Provide access to information that the department or regional board is
22 required to release pursuant to the California Public Records Act (Chapter 3.5
23 (commencing with Section 6250) of Division 7 of Title 1 of the Government
24 Code), relating to the action, except for the following:

25 (A) Trade secrets, as defined in Section 68480.

26 (B) Business financial data and information, as specified in subdivision (c) of
27 Section 68885.

28 (C) Information that the department or regional board is prohibited from
29 releasing pursuant to any state or federal law.

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

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

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

39 (5) Based on the results of the baseline community survey, provide opportunities
40 for public involvement at key stages of the response action process, including the
41 health risk assessment, the preliminary assessment, the site inspection, the
42 remedial investigation, and the feasibility study stages of the process. If the
43 department or regional board determines that public meetings or other

1 opportunities for public comment are not appropriate at any of the stages listed in
 2 this section, the department or regional board shall provide notice of that decision
 3 to the affected community.

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

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

13 (g) This section does not apply to emergency actions taken pursuant to Section
 14 68875.

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

16 See Sections 68050 (“department”), 68060 (“feasibility study”), 68075 (“hazardous
 17 substance”), 68085 (“person”), 68100 (“regional board”), 68105 (“release”), 68120 (“remedial
 18 investigation”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”), 68145 (“responsible
 19 party”), 68155 (“site”).

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

22 “The department, or the regional board, as appropriate, shall inform the public, and in
 23 particular, persons living in close proximity to a hazardous substance release site listed pursuant
 24 to Section 25356, of the existence of the site and the department’s or regional board’s intention to
 25 conduct a response action at the site, and shall conduct a baseline community survey to determine
 26 the level of public interest and desire for involvement in the department’s or regional board’s
 27 activities, and to solicit concerns and information regarding the site from the affected community.
 28 Based on the results of the baseline survey, the department or regional board shall develop a
 29 public participation plan that shall establish appropriate communication and outreach measures
 30 commensurate with the level of interest expressed by survey respondents. The public
 31 participation plan shall be updated as necessary to reflect any significant changes in the degree of
 32 public interest as the site investigation and cleanup process moves toward completion.”

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

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

41 (3) Subdivision (f) of Section 25358.7 exempts “emergency actions taken pursuant to Section
 42 25354” from the public participation requirements of this section.

43 Section 25354 has been proposed for restatement as three provisions (proposed Sections
 44 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision
 45 authorizing expenditures for immediate corrective action (proposed Section 68875). The
 46 remaining provisions, which relate to appropriations and the funding of the emergency reserve

1 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
2 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

3 **Absent comment, this proposed cross-reference update will be presumed correct.**

4 (4) Subdivision (f) of Section 25358.7 exempts “emergency actions taken pursuant to Section
5 25354” from the public participation requirements of this section.

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

12 **§ 68935. Notice and comment opportunity for local agencies**

13 68935. The department or regional board shall advise local environmental
14 regulatory agencies and other appropriate local agencies of planned response
15 actions and provide opportunities for review and comment.

16 **Comment.** Section 68935 continues the third sentence of former Section 25358.7.1(a) without
17 substantive change.

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

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

24 (2) This provision originally provided that a “department or regional board shall *also* advise...”
25 (emphasis added). The word “also” appears to be superfluous and was not continued. The
26 omission of the word “also” is intended to be a nonsubstantive, technical change. This was the
27 only change to the wording of this provision. **Absent comment, this proposed change will be
28 presumed correct.**

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

35 Article 5. Community Advisory Groups

36 **§ 68950. Establishment of group**

37 68950. (a) At each site, a community advisory group may be established by the
38 affected community to review any response action and comment on the response
39 action to be conducted in that community.

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

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

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

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

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

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

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

20 **§ 68955. Composition of group**

21 68955. To the extent possible, the composition of each community advisory
22 group shall reflect the composition of the affected community and the diversity of
23 interests of the community by including all of the following types of individuals
24 on the community advisory group:

25 (a) Persons owning or residing on property located near the hazardous substance
26 release site or in an adjacent community, or other persons who may be directly
27 affected by the response action.

28 (b) Individuals from the local business community.

29 (c) Local political or government agency representatives.

30 (d) Local citizen, civic, environmental, or public interest group members
31 residing in the community.

32 **Comment.** Section 68955 continues former Section 25358.7.1(b) without substantive change.

33 See Sections 68075 (“hazardous substance”), 68085 (“person”), 68100 (“regional board”),
34 68105 (“release”), 68140 (“response”), 68155 (“site”).

35 **§ 68960. Communication with group**

36 68960. The department or regional board shall regularly communicate, and
37 confer as appropriate, with the community advisory group.

38 **Comment.** Section 68960 continues the second sentence of former Section 25358.7.1(a)
39 without substantive change.

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

41 **Staff Note.** Section 25358.7.1(a) specifies that the department or regional board “shall regularly
42 communicate ... with the community advisory *committee*” (emphasis added). Otherwise, this
43 section uses the term “community advisory group.” It seems likely that the use of “committee”

1 was an error, as the term “community advisory committee” is not used elsewhere. For this reason,
2 proposed Section 68960 replaces “community advisory committee” with “community advisory
3 group.” **Absent comment, this proposed correction will be presumed correct.**

4 **§ 68965. Participation in group meetings**

5 68965. The following entities may participate in community advisory group
6 meetings in order to provide information and technical expertise:

- 7 (a) The department or regional boards.
- 8 (b) Representatives of local environmental regulatory agencies.
- 9 (c) The potentially responsible parties or other persons who are conducting the
10 response action.

11 **Comment.** Section 68965 continues former Section 25358.7.1(c) without substantive change.
12 See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68140
13 (“response”), 68145 (“responsible party”).

14 **§ 68970. Relationship with other public participation provisions**

15 68970. (a) The existence of a community advisory group shall not diminish any
16 other obligation of the department or regional board with respect to public
17 participation requirements specified in Section 68930.

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

21 **Comment.** Section 68970 continues former Section 25358.7.1(d) without substantive change.
22 See Sections 68050 (“department”), 68100 (“regional board”).

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

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

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

37 In addition to the sections continuing Section 25358.7.1, this article also includes a provision
38 continuing Section 25358.8. Expanding the cross-reference to include this provision appears to be
39 nonsubstantive, as it appears that nothing in Section 25358.8 affects the status of a citizen
40 advisory group formed before the enactment of Section 25358.7.1, a federal Department of
41 Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board. **Absent**
42 **comment, this proposed cross-reference update will be presumed correct.**

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

1 was replaced with “before May 26, 1999.” **Absent comment, this proposed update will be**
2 **presumed correct.**

3 **§ 68975. Technical assistance grants for group**

4 68975. A community advisory group established pursuant to Section 68950 may
5 request, in writing, and a potentially responsible party may fund, a technical
6 assistance grant for a site, for the purpose of providing technical assistance to the
7 community advisory group.

8 **Comment.** Section 68975 restates former Section 25358.8 without substantive change. This
9 provision was restated to singularize the phrase “party or parties.” This is a nonsubstantive
10 change. See Section 13.

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

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

18 Article 6. Oversight and Review of Responsible Party Actions

19 **§ 69000. Policies and procedures for oversight by department or state board**

20 69000. The department and the State Water Resources Control Board
21 concurrently shall establish policies and procedures consistent with this part that
22 the department’s representatives shall follow in overseeing and supervising the
23 activities of responsible parties who are carrying out the investigation of, and
24 taking removal or remedial actions at, hazardous substance release sites. The
25 policies and procedures shall be consistent with the policies and procedures
26 established pursuant to Section 13307 of the Water Code, and shall include, but
27 are not limited to, all of the following:

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

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

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

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

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

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

1 § 69005. Voluntary enforceable agreements for actions at petroleum release sites

2 69005. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 68075,
3 any person may voluntarily enter into an enforceable agreement with the
4 department pursuant to [this section] that allows removal or remedial actions to be
5 conducted under the oversight of the department at sites with petroleum releases
6 from sources other than underground storage tanks, as defined in Section
7 25299.24.

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

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

21 **Comment.** Section 69005 restates former Section 25355(c)(2) without substantive change.

22 See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68105
23 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

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

32 **(2)** Section 25355(c)(2) is not consistent in its references to which provision authorizes
33 enforceable agreements. The reference either points to the subdivision as a whole (see Note #1,
34 above), the paragraph as a whole, or only subparagraph (A). For consistency, these references
35 have all been updated to refer to “this section” (which continues paragraph (2) of Section
36 25355(c)). **Absent comment, the proposed restatement of these cross-references will be
37 presumed correct.**

38 Article 7. Orders to Potentially Responsible Parties

39 § 69020. Issuance of orders

40 69020. In exercising its authority at a hazardous substance release site pursuant
41 to Sections 68870 or 69055, the department shall issue orders to the largest
42 manageable number of potentially responsible parties after considering all of the
43 following:

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

3 (b) The financial viability of each potentially responsible party.

4 (c) The relationship or contribution of each potentially responsible party to the
5 release, or threat of release, of hazardous substances at the site.

6 (d) The resources available to the department.

7 **Comment.** Section 69020 continues former Section 25356.1.3(a) without substantive change.

8 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68145
9 (“responsible party”), 68155 (“site”).

10 **Staff Notes. (1)** This provision focuses on orders issued by the department in its exercise of
11 authority at a hazardous substance release site. One of the cross-referenced provisions, Section
12 25358.3, focuses on authority of the director, as opposed to the department. **The staff welcomes**
13 **comment on whether this discrepancy has caused any problems in practice.**

14 **(2)** Subdivision (a) of Section 25356.1.3 refers to the department exercising its authority pursuant
15 to “subdivision (a) of Section 25355.5 or 25358.3.” The staff understands this cross-reference to
16 refer to subdivision (a) of Section 25355.5 or subdivision (a) of Section 25358.3. The cross-
17 reference has been updated to refer to the proposed sections recodifying those subdivisions.

18 **Absent comment, this proposed cross-reference update will be presumed correct.**

19 **§ 69025. Meeting with potentially responsible parties**

20 69025. The department shall schedule a meeting pursuant to Section 25269.5
21 and notify all identified potentially responsible parties of the date, time, and
22 location of the meeting.

23 **Comment.** Section 69025 continues former Section 25356.1.3(b) without substantive change.

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

25 **§ 69030. Request for issuance of order to potentially responsible party**

26 69030. (a) A person issued an order pursuant to Section 68870 or 69055 may
27 identify additional potentially responsible parties for the site to which the order is
28 applicable and may request the department to issue an order to those parties. The
29 request shall include, with appropriate documentation, the factual and legal basis
30 for identifying those parties as potentially responsible parties for the site.

31 (b) The department shall review the request and accompanying information and,
32 within a reasonable period of time, determine if there is a factual and legal basis
33 for identifying other persons as potentially responsible parties, and notify the
34 person that made the request of the action the department will take in response to
35 the request.

36 **Comment.** Section 69030 continues former Section 25356.1.3(c) without substantive change.

37 See Sections 68050 (“department”), 68085 (“person”), 68140 (“response”), 68145
38 (“responsible party”), 68155 (“site”).

39 **Staff Notes.** Proposed Section 69030(a) governs a request made by “[a] person issued an order
40 pursuant to Section 25355.5 or 25358.3.” Each of these cross referenced sections is discussed in
41 turn below.

42 **(1)** Section 25355.5 has been proposed for recodification as multiple sections (proposed
43 Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section

1 25355.5(a) is the only one of those provisions that addresses the issuance of orders and, thus,
2 appears to be the only provision relevant to this cross-reference. For this reason, the cross-
3 reference to Section 25355.5 has been updated to refer only to Section 69055. **Absent comment,**
4 **this proposed cross-reference update will be presumed correct.**

5 (2) Section 25358.3 has been proposed for recodification as several sections (proposed
6 Sections 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section
7 25358.3(a)) is the only provision that addresses the department’s issuance of orders to parties and,
8 thus, appears to be the only provision that is relevant to this cross-reference. Proposed Section
9 68660 relates to relief sought in court, in which case the court would be the one to issue orders.
10 However, it does not appear that court orders would be subject to the rule contained in proposed
11 Section 69030. For this reason, the cross-reference to Section 25358.3 has been updated to refer
12 only to Section 68870. **Absent comment, this proposed cross-reference update will be**
13 **presumed correct.**

14 **§ 69035. Determination not subject to judicial review**

15 69035. Any determination made by the department regarding the largest
16 manageable number of potentially responsible parties or the identification of other
17 persons as potentially responsible parties pursuant to this article is not subject to
18 judicial review. This section does not affect the rights of any potentially
19 responsible party or the department under any other provision of this part.

20 **Comment.** Section 69035 continues former Section 25356.1.3(d) without substantive change.
21 See Sections 68050 (“department”), 68085 (“person”), 68145 (“responsible party”).

22 Article 8. Expenditures

23 **§ 69055. Required actions before expenditures by department at listed site**

24 69055. (a) Except as provided in Sections 69060 and 69065, no money shall be
25 expended from the state account for removal or remedial actions on any site
26 selected for inclusion on the list established pursuant to Article 5 (commencing
27 with Section 68760) of Chapter 4, unless the department first takes both of the
28 following actions:

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

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

33 (B) The department issues an order establishing a schedule for removing or
34 remedying the release of a hazardous substance at the site, or for correcting the
35 conditions that threaten the release of a hazardous substance. The order shall
36 include, but is not limited to, requiring specific dates by which necessary
37 corrective actions shall be taken to remove the threat of a release, or dates by
38 which the nature and extent of a release shall be determined and the site
39 adequately characterized, a remedial action plan shall be prepared, the remedial
40 action plan shall be submitted to the department for approval, and a removal or
41 remedial action shall be completed.

1 (C) The department enters into an enforceable agreement with a potentially
2 responsible party for the site that requires the party to take necessary corrective
3 action to remove the threat of the release, or to determine the nature and extent of
4 the release and adequately characterize the site, prepare a remedial action plan,
5 and complete the necessary removal or remedial actions, as required in the
6 approved remedial action plan.

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

18 (b) Any enforceable agreement entered into pursuant to this section may provide
19 for the execution and recording of a written instrument that imposes an easement,
20 covenant, restriction, or servitude, or combination thereof, as appropriate, upon the
21 present and future uses of the site. The instrument shall provide that the easement,
22 covenant, restriction, or servitude, or combination thereof, as appropriate, is
23 subject to the variance or removal procedures specified in Sections 25223 and
24 25224. Notwithstanding any other provision of law, an easement, covenant,
25 restriction, or servitude, or any combination thereof, as appropriate, executed
26 pursuant to this section and recorded so as to provide constructive notice runs with
27 the land from the date of recordation, is binding upon all of the owners of the land,
28 their heirs, successors, and assignees, and the agents, employees, or lessees of the
29 owners, heirs, successors, and assignees, and is enforceable by the department
30 pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division
31 20.

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

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

38 **Staff Notes.** (1) Subdivision (a) of Section 25355.5 is cited in other provisions of this proposed
39 part, seemingly for authority for the department to enter into certain agreements or issue certain
40 orders. See, e.g., proposed Sections 69020, 69065, 69070. While the department’s authority to
41 issue the orders and enter the agreements is clearly implied by this section, this section pertains to
42 expenditures by the department. In the staff’s view, the department’s authority regarding the
43 orders and agreements could be stated more directly and more clearly. While there seems to be no
44 question that this provision indirectly provides the department with necessary authority for the
45 orders and agreements, drafting a provision that provides the authority directly poses a risk of

1 substantive change. **The staff welcomes comment on whether addition of a provision directly**
 2 **authorizing the department to issue orders (described in proposed Section 69055(a)(1)(B))**
 3 **and enter agreements (described in proposed Section 69055(a)(1)(C)) would be a helpful**
 4 **addition.** If so, this issue could be added to the list of substantive issues for possible future study
 5 that will be included in the Commission’s recommendation.

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

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

19 (4) Section 25355.5(a)(1)(C) refers to “to the variance or removal procedures specified in
 20 Sections 25233 and 25234.” The cross-referenced sections do not currently exist. They were
 21 repealed in 2012. See 2012 Cal. Stat. ch. 39. It appears that the substance of these provisions was
 22 continued in Sections 25223 and 25224. See 2012 Cal. Stat. ch. 39, § 75 (amending a different
 23 cross-reference to Sections 25233 and 25234 to instead cross-refer to Sections 25223 and 25224).
 24 In proposed Section 69055, the cross-reference has been updated to refer to Sections 25223 and
 25 25224. **The staff welcomes comment on this proposed cross-reference correction.**

26 **§ 69060. Conditions where required actions not applicable for expenditure**

27 69060. Section 69055 does not apply, and money from the state account shall be
 28 available, upon appropriation by the Legislature, for removal or remedial actions,
 29 if any of the following conditions apply:

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

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

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

37 **Comment.** Section 69060 restates former Section 25355.5(b) without substantive change.

38 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105
 39 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”),
 40 68165 (“state account”).

41 **Staff Notes.** (1) Section 25355.5(b)(1) permits expenditures where the department is unable to
 42 identify “a potential responsible party.” This seems to be an error, as it is the only use of this
 43 phrase in Chapter 6.8. The correct phrase appears to be “a *potentially* responsible party,” a phrase
 44 that is used repeatedly in Chapter 6.8. For this reason, the provision has been restated to refer to
 45 “a potentially responsible party.” This change is intended to be nonsubstantive. **Absent**
 46 **comment, this proposed correction will be presumed correct.**

1 (2) Section 25355.5(b)(2) permits expenditures if “immediate corrective action is necessary, as
2 provided in Section 25354.”

3 Section 25354 is proposed for recodification as multiple sections (proposed Sections 68240,
4 68580, and 68875). This cross-reference has been updated to refer only to the provision
5 authorizing expenditures for immediate corrective action (proposed Section 68875). The
6 remaining provisions, which relate to appropriations and the funding of the emergency reserve
7 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
8 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

9 **Absent comment, this proposed cross-reference update will be presumed correct.**

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

16 **§ 69065. Authorized expenditures**

17 69065. (a) Notwithstanding Section 69055, the department may expend funds,
18 upon appropriation by the Legislature, from the state account to conduct activities
19 necessary to verify that an uncontrolled release of hazardous substances has
20 occurred at a suspected hazardous substance release site, to issue an order or enter
21 into an enforceable agreement pursuant to paragraph (1) of subdivision (a) of
22 Section 69055, and to review, comment upon, and approve or disapprove remedial
23 action plans submitted by potentially responsible parties subject to the orders or
24 the enforceable agreement.

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

31 **Comment.** Section 69065 continues former Section 25355.5(c) and restates former Section
32 25355.5(d) without substantive change.

33 See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”),
34 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155
35 (“site”), 68165 (“state account”).

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

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

42 Section 104(c)(3) of the federal act does not appear to provide for any list or listing of sites.
43 Instead, Section 104 conditions the federal government’s authority to conduct remedial actions
44 (pursuant to that section) at a site on whether the state in which the site is located has provided
45 certain assurances in a contract or cooperative agreement. One of the assurances a state must
46 provide is expressly financial:

1 “...[T]he State will pay or assure payment of (i) 10 per centum of the costs of the
2 remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater
3 amount as the President may determine appropriate, taking into account the degree of
4 responsibility of the State or political subdivision, of any sums expended in response to a release
5 at a facility that was owned at the time of any disposal of hazardous substances therein by the
6 State or a political subdivision thereof.”

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

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

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

20 **§ 69070. Limitations on expenditures for sites owned or operated by federal, state, or local**
21 **governments or agencies**

22 69070. (a) Except as provided in subdivision (b), the department may not
23 expend funds from the state account for a removal or remedial action with respect
24 to a hazardous substance release site owned or operated by the federal government
25 or a state or local agency at the time of disposal to the extent that the federal
26 government or the state or local agency would otherwise be liable for the costs of
27 that action, except that the department may expend those funds, upon
28 appropriation by the Legislature, to oversee the carrying out of a removal or
29 remedial action at the site by another party.

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

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

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

41 (c) If a local agency is identified as a potentially responsible party in a remedial
42 action plan prepared pursuant to Article 12 (commencing with Section 69190), and
43 the department expends funds pursuant to this part to pay for the local agency’s
44 share of the removal and remedial action, the expenditure of these funds shall be
45 deemed to be a loan from the state to the local agency. If the department

determines that the local agency is not making adequate progress toward repaying the loan made pursuant to this section, the State Board of Equalization shall, upon notice by the department, withhold the unpaid amount of the loan, in increments from the sales and use tax transmittals made pursuant to Section 7204 of the Revenue and Taxation Code, to the city or county in which the local agency is located. The State Board of Equalization shall structure the amounts to be withheld so that complete repayment of the loan, together with interest and administrative charges, occurs within five years after a local agency has been notified by the department of the amount that it owes. The State Board of Equalization shall deposit any funds withheld pursuant to this section into the state account.

(d) The department may not expend funds from the state account for a removal or remedial action at any waste management unit owned or operated by a local agency if it meets both of the following conditions:

(1) It is classified as a class III waste management unit pursuant to Article 3 (commencing with Section 20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California Code of Regulations.

(2) It was in operation on or after January 1, 1988.

Comment. Section 69070 continues former Section 25353, with the exception of subdivisions (c) and (e), without substantive change. An obsolete cross-reference to the California Administrative Code in paragraph (d)(1) has been updated to refer to the relevant provisions of the California Code of Regulations.

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

Staff Notes. (1) The introductory clause of subdivision (a) of Section 25353 is missing a word. Proposed Section 69070(a) has been corrected to read “[e]xcept as provided in *subdivision (b)*” (added word in italics).

(2) Proposed Section 69070(b)(2) relates to issuance of a cleanup order or entry into an enforceable agreement “pursuant to Section 25355.5.” Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). With the exception of proposed Section 69055, all of the proposed Sections were omitted from this cross-reference, as they do not appear relevant. Proposed Section 69055 (Section 25355.5(a)) is the only provision that addresses the issuance of orders and entry into enforceable agreements and, thus, appears to be the only provision relevant to this cross-reference. For this reason, the cross-reference to Section 25355.5 has been updated to refer only to Section 69055. **Absent comment, this proposed cross-reference update will be presumed correct.**

(3) Proposed Section 69070(d) 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

1 27 of the California Code of Regulations. In particular, Article 3 (commencing with Section
2 20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California
3 Code of Regulations addresses classification and siting for waste management units, facilities,
4 and disposal sites.

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

6 **§ 69075. Limitation on expenditure for natural resources damages prior to September 25,**
7 **1981**

8 69075. The department may not expend funds from the state account for the
9 purposes specified in Section 69450 where the injury, degradation, destruction, or
10 loss to natural resources, or the release of a hazardous substance from which the
11 damages to natural resources resulted, has occurred prior to September 25, 1981.

12 **Comment.** Section 69075 continues former Section 25353(e) without substantive change.

13 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155
14 (“site”), 68165 (“state account”).

15 **Staff Note.** Section 25353(c) includes a cross-reference to Section 25352.

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

21 **Absent comment, this proposed cross-reference update will be presumed correct.**

22 Article 9. Preliminary Endangerment Assessment

23 **§ 69100. Required action prior to preliminary endangerment assessment or no further**
24 **action letter**

25 69100. (a) The department shall not agree to oversee the preparation of, or to
26 review, a preliminary endangerment assessment for property if action is, or may
27 be, necessary to address a release or threatened release of a hazardous substance,
28 and the department shall not issue a letter stating that no further action is necessary
29 with regard to property, unless the person who made the request does either of the
30 following:

31 (1) Provides the department with all of the following:

32 (A) Proof of the identity of all current record owners of fee title to the property
33 and their mailing addresses.

34 (B) Written evidence that the owners of record have been sent a notice that
35 describes the actions completed or proposed by the requesting person.

36 (C) An acknowledgment of the receipt of the notice required in subparagraph
37 (B), from the property owners or proof that the requesting person has made
38 reasonable efforts to deliver the notice to the property owner and was unable to do
39 so.

40 (2) Provides the department with proof of the identity of all current record
41 owners of fee title to the property and proof that the requesting person has made
42 reasonable efforts to locate the property owners and was unable to do so.

1 (b) The department shall take all reasonable steps necessary to accommodate
2 property owner participation in the site remediation process and shall consider all
3 input and recommendations received from the owner of property that is the subject
4 of the proposed action.

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

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

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

14 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68095
15 (“preliminary endangerment assessment”), 68105 (“release”), 68140 (“response”), 68145
16 (“responsible party”), 68155 (“site”).

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

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

21 “The department shall not agree to oversee the preparation of, or to review, a preliminary
22 endangerment assessment for property if *action* is, or may be, necessary to address a release or
23 threatened release of a hazardous substance, and the department shall not issue a letter stating that
24 no further *action* is necessary with regard to property, unless the person requesting the
25 department *action* does either of the following...”

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

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

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

37 ...

38 (2) Proof of the identity of all current record owners of fee title to the property and proof
39 that the requesting person has made reasonable efforts to locate the property owners and was
40 unable to do so.”

41 The missing clause (“Provides the department with”) has been added to proposed Section
42 69100. The changes reflected in proposed Section 69100 are intended to be nonsubstantive.
43 **Absent comment, this proposed restatement will be presumed correct.**

44 (2) Subdivision (a) of Section 25355.8 requires a person seeking specified department action to
45 fulfill one of two conditions relating to the identification and notification of the relevant property
46 owners. The person must either (1) provide identities and addresses for *all* of the relevant
47 property owners (and proof of notice or reasonable efforts at notice) OR (2) provide proof that the

1 person made reasonable efforts to find *all* of the relevant property owners and was unable to do
2 so. The statute does not address a situation where the location of *some*, but not *all* owners can be
3 found. If the person is able to find some property owners, it seems logical that the property
4 owners who can be found should be notified. **The staff requests comment on this issue.**

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

11 **§ 69105. Reimbursement of department oversight costs for preliminary endangerment**
12 **assessment**

13 69105. (a) Except as provided in subdivisions (b) and (c), any potentially
14 responsible party at a site, or any person who has notified the department of that
15 person’s intent to undertake removal or remediation at a site, shall reimburse the
16 department, pursuant to Chapter 6.66 (commencing with Section 25269) of
17 Division 20, for the costs incurred by the department for its oversight of any
18 preliminary endangerment assessment at that site.

19 (b) This section does not apply to any notice of intent submitted to the
20 department prior to July 1, 1998. Any person who submitted a notice of intent
21 prior to July 1, 1998 shall pay the fee, if not already paid, as required by Section
22 25343 as it read on December 31, 1997, unless the department and that person
23 mutually agree to enter into a reimbursement agreement in lieu of any unpaid
24 portion of the required fee.

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

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

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

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

43 (2) Subdivision (b) refers to the fee “as required by this section as it read on December 31, 1997.”
44 Assuming this provision has continuing effect, it may be helpful to change this language to refer
45 to the statutory provision last amending the version of Section 25343 that was operative on

1 December 31, 1997. See 1995 Cal. Stat. ch. 630, § 11. **The staff welcomes comment on**
2 **whether this would be a helpful change.**

3 Article 10. Initiation of Removal or Remedial Actions

4 **§ 69130. Authority to initiate removal or remedial action**

5 69130. (a) The director may initiate removal or remedial action pursuant to this
6 part unless these actions have been taken, or are being taken properly and in a
7 timely fashion, by any responsible party.

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

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

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

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

20 **§ 69135. Actions required prior to initiation of removal or remedial action**

21 69135. (a) At least 30 days before initiating removal or remedial actions, the
22 department shall make a reasonable effort to notify the persons identified by the
23 department as potentially responsible parties and shall also publish a notification
24 of this action in a newspaper of general circulation pursuant to the method
25 specified in Section 6061 of the Government Code. This subdivision does not
26 apply to actions taken pursuant to Section 68870 or immediate corrective actions
27 taken pursuant to Section 68875. A responsible party may be held liable pursuant
28 to this part whether or not the person was given the notice specified in this
29 subdivision.

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

39 **Comment.** Section 69135 continues former Section 25355(c)(1) and (d) without substantive
40 change.

1 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105
2 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

3 **Staff Notes. (1)** The provisions proposed for recodification in this section refer to “actions taken
4 pursuant to subdivision (b) of Section 25358.3 ...” These cross-references appear to be
5 erroneous. Section 25358.3(b) (proposed Section 68650) does not appear to authorize response
6 actions. Section 25358.3(a) (proposed Section 68870) appears to be the relevant provision for
7 these cross-references, as Section 25358.3(a) provides for emergency response actions. For this
8 reason, the cross-references have been updated to refer to proposed Section 68870. **Absent**
9 **comment, this proposed cross-reference correction will be presumed correct.**

10 **(2)** Proposed Section 69135 also refers to “immediate corrective actions taken pursuant to Section
11 25354.” Section 25354 is proposed for recodification as multiple sections (proposed Sections
12 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision
13 authorizing expenditures for immediate corrective action (proposed Section 68875). The
14 remaining provisions, which relate to appropriations and the funding of the emergency reserve
15 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
16 appear to be relevant to this cross-reference and will be omitted from the cross-reference. **Absent**
17 **comment, this proposed cross-reference update will be presumed correct.**

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

28 Article 11. Local Government Removal or Remedial Actions

29 § 69160. Prerequisites to local government-initiated removal or remedial actions

30 69160. A city or county may initiate a removal or remedial action for a site
31 listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4 in
32 accordance with this article. Except as provided in Section 69175, the city or
33 county shall, before commencing the removal or remedial action, take all of the
34 following actions:

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

43 (b) If a potentially responsible party for the site has not taken the action
44 specified in subdivision (a), the city or county shall submit the estimated cost of
45 the removal or remedial action to the department, which shall, within 30 days after

1 receiving the estimate, approve or disapprove the reasonableness of the cost
2 estimate. If the department disagrees with the cost estimate, the city or county and
3 the department shall, within 30 days, attempt to enter into an agreement
4 concerning the cost estimate.

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

9 **Comment.** Section 69160 continues former Section 25351.2(a) without substantive change.

10 See Sections 68050 (“department”), 68085 (“person”), 68125 (“remedy”), 68135 (“remove”),
11 68145 (“responsible party”), 68155 (“site”).

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

20 **§ 69165. Local government deemed to be acting in place of department**

21 69165. If the director approves the request of the city or county to initiate a
22 removal or remedial action and a final remedial action plan has been issued
23 pursuant to Article 12 (commencing with Section 69190) for the hazardous
24 substance release site, the city or county shall be deemed to be acting in place of
25 the department for purposes of implementing the remedial action plan pursuant to
26 this part.

27 **Comment.** Section 69165 continues former Section 25351.2(b) without substantive change.

28 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68105
29 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

30 **§ 69170. Department recovery of costs reimbursed to local government**

31 69170. Upon reimbursing a city or county for the costs of a removal or remedial
32 action, the department shall recover these costs pursuant to Section 69650.

33 **Comment.** Section 69170 continues former Section 25351.2(c) without substantive change.

34 See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

35 **§ 69175. Reimbursement eligibility of local government removal or remedial action costs**

36 69175. (a) In order for a city or county to be reimbursed for the costs of a
37 removal or remedial action incurred by the city or county from the state account,
38 the city or county shall obtain the approval of the director before commencing the
39 removal or remedial action.

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

42 **Comment.** Section 69175 continues former Section 25351.2(d) without substantive change.

1 See Sections 68055 (“director”), 68125 (“remedy”), 68135 (“remove”), 68165 (“state
2 account”).

3 Article 12. Planning

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

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

11 § 69190. “State board”

12 69190. For purposes of this article, “state board” means the State Water
13 Resources Control Board.

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

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

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

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

27 § 69195. Preparation or approval of plans

28 69195. Except as provided in Sections 69225 and 69230, the department, or, if
29 appropriate, the regional board shall prepare or approve remedial action plans for
30 the sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter
31 4.

32 **Comment.** Section 69195 continues former Section 25356.1(b) without substantive change.

33 See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68155
34 (“site”).

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

1 **§ 69200. Request by party for preparation or approval of plan**

2 69200. (a) A potentially responsible party may request the department or the
3 regional board, when appropriate, to prepare or approve a remedial action plan for
4 a site not listed pursuant to Article 5 (commencing with Section 68760) of Chapter
5 4, if the department or the regional board determines that a removal or remedial
6 action is required to respond to a release of a hazardous substance. The department
7 or the regional board shall respond to a request to prepare or approve a remedial
8 action plan within 90 days of receipt.

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

12 **Comment.** Section 69200 continues former Section 25356.1(c) without substantive change.

13 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
14 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”), 68145
15 (“responsible party”), 68155 (“site”).

16 **§ 69205. Standards for plan**

17 69205. All remedial action plans prepared or approved pursuant to this article
18 shall be based upon Sections 68855 and 68860 and Subpart E of the National Oil
19 and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et
20 seq.), as amended, and upon all of the following factors, to the extent that these
21 factors are consistent with these federal regulations and do not require a less
22 stringent level of cleanup than these federal regulations:

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

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

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

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

40 (e) Cost-effectiveness of alternative remedial action measures. In evaluating the
41 cost-effectiveness of proposed alternative remedial action measures, the
42 department or the regional board shall consider, to the extent possible, the total

1 short-term and long-term costs of these actions and shall use, as a major factor,
2 whether the deferral of a remedial action will result, or is likely to result, in a rapid
3 increase in cost or in the hazard to public health or the environment posed by the
4 site. Land disposal shall not be deemed the most cost-effective measure merely on
5 the basis of lower short-term cost.

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

10 **Comment.** Section 69205 restates former Section 25356.1(d) without substantive change.

11 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
12 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

13 **Staff Note.** Section 25356.1(d) provides that remedial action plans shall be based on “Section
14 25350, Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40
15 C.F.R. 300.400 et seq.), and any amendments thereto.” In proposed Section 69205, the cross-
16 reference to Section 25350 has been updated and the phrase “and any amendments thereto” has
17 been replaced with “as amended.” **Absent comment, this proposed restatement will be**
18 **presumed correct.**

19 **§ 69210. Content of plan**

20 69210. A remedial action plan prepared pursuant to this article shall include the
21 basis for the remedial action selected and shall include an evaluation of each
22 alternative considered and rejected by the department or the regional board for a
23 particular site. The plan shall include an explanation for rejection of alternative
24 remedial actions considered but rejected. The plan shall also include an evaluation
25 of the consistency of the selected remedial action with the requirements of the
26 federal regulations and the factors specified in Section 69205, if those factors are
27 not otherwise adequately addressed through compliance with the federal
28 regulations. The remedial action plan shall also include a nonbinding preliminary
29 allocation of responsibility among all identifiable potentially responsible parties at
30 a particular site, including those parties that may have been released, or may
31 otherwise be immune, from liability pursuant to this part or any other provision of
32 law.

33 **Comment.** Section 69210 continues the four sentences of former Section 25356.1(e) without
34 substantive change.

35 See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68125
36 (“remedy”), 68145 (“responsible party”), 68155 (“site”).

37 **§ 69215. Public review and comment on plan**

38 69215. (a) Before adopting a final remedial action plan, the department or the
39 regional board shall prepare or approve a draft remedial action plan and shall do
40 all of the following:

- 41 (1) Circulate the draft plan for at least 30 days for public comment.

1 (2) Notify affected local and state agencies of the removal and remedial actions
2 proposed in the remedial action plan and publish a notice in a newspaper of
3 general circulation in the area affected by the draft remedial action plan. The
4 department or the regional board shall also post notices in the location where the
5 proposed removal or remedial action would be located and shall notify, by direct
6 mailing, the owners of property contiguous to the site addressed by the plan, as
7 shown in the latest equalized assessment roll.

8 (3) Hold one or more meetings with the lead and responsible agencies for the
9 removal and remedial actions, the potentially responsible parties for the removal
10 and remedial actions, and the interested public, to provide the public with the
11 information that is necessary to address the issues that concern the public. The
12 information to be provided shall include an assessment of the degree of
13 contamination, the characteristics of the hazardous substances, an estimate of the
14 time required to carry out the removal and remedial actions, and a description of
15 the proposed removal and remedial actions.

16 (4) Comply with Section 68930.

17 (b) After complying with subdivision (a), the department or the regional board
18 shall review and consider any public comments, and shall revise the draft plan, if
19 appropriate. The department or the regional board shall then issue the final
20 remedial action plan.

21 **Comment.** Section 69215 continues the fifth sentence of former Section 25356.1(e), including
22 paragraphs (e)(1)-(e)(4), inclusive, without substantive change. Section 69215 also continues
23 former Section 25356.1(f) without substantive change.

24 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
25 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

26 **Staff Note.** Subdivision (f) of Section 25356.1 requires the department or regional board to
27 review and consider comments “after complying with subdivision (e).” Subdivision (e) is
28 proposed for recodification as two separate provisions in this recodification (subdivision (a) of
29 this proposed section and proposed Section 69210). The cross-reference to “subdivision (e)”
30 appears to state a timing rule related to the public notice and comment opportunity that is
31 proposed for recodification as subdivision (a) of this proposed section. The portion of subdivision
32 (e) in proposed Section 69210 relates to requirements for the substantive contents of a plan. This
33 provision does not appear relevant to the cross-reference and was omitted. For this reason, the
34 cross-reference in proposed Section 69215 was updated to refer only to “subdivision (a).” **Absent**
35 **comment, this proposed cross-reference update will be presumed correct.**

36 **§ 69220. Judicial review of plan**

37 69220. (a)(1) A potentially responsible party named in the final remedial action
38 plan issued by the department or the regional board may seek judicial review of
39 the final remedial action plan by filing a petition for writ of mandate pursuant to
40 Section 1085 of the Code of Civil Procedure within 30 days after the final
41 remedial action plan is issued by the department or the regional board. No action
42 may be brought by a potentially responsible party to review the final remedial
43 action plan if the petition for writ of mandate is not filed within 30 days of the date
44 that the final remedial action plan was issued.

1 (2) Any other person who has the right to seek judicial review of the final
2 remedial action plan by filing a petition for writ of mandate pursuant to Section
3 1085 of the Code of Civil Procedure shall do so within one year after the final
4 remedial action plan is issued. No action may be brought by any other person to
5 review the final remedial action plan if the petition for writ of mandate is not filed
6 within one year of the date that the final remedial action plan was issued.

7 (3) The filing of a petition for writ of mandate to review the final remedial
8 action plan shall not stay any removal or remedial action specified in the final
9 plan.

10 (b) For purposes of judicial review, the court shall uphold the final remedial
11 action plan if the plan is based upon substantial evidence available to the
12 department or the regional board, as the case may be.

13 (c) This section does not prohibit the court from granting any appropriate relief
14 within its jurisdiction, including, but not limited to, enjoining the expenditure of
15 funds pursuant to paragraph (2) of subdivision (b) of Section 68305.

16 **Comment.** Paragraph (a)(1) of Section 69220 continues the first and third sentences of former
17 Section 25356.1(g)(1) without substantive change.

18 Paragraph (a)(2) continues the second and fourth sentences of former Section 25356.1(g)(1)
19 without substantive change.

20 Paragraph (a)(3) continues the fifth sentence of former Section 25356.1(g)(1) without
21 substantive change.

22 Subdivision (b) continues former Section 25356.1(g)(2) without substantive change.

23 Subdivision (c) continues former Section 25356.1(g)(3) without substantive change.

24 See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68125
25 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

26 § 69225. Situations in which plan not required

27 69225. (a) This article does not require the department or a regional board to
28 prepare a remedial action plan if conditions present at a site present an imminent
29 or substantial endangerment to the public health and safety or to the environment
30 or, if the department, a regional board, or a responsible party takes a removal
31 action at a site and the estimated cost of the removal action is less than two million
32 dollars (\$2,000,000).

33 (b) The department or a regional board shall prepare or approve a removal
34 action work plan for all sites where a nonemergency removal action is proposed
35 and where a remedial action plan is not required. For sites where removal actions
36 are planned and are projected to cost less than two million dollars (\$2,000,000),
37 the department or a regional board shall make the local community aware of the
38 hazardous substance release site and shall prepare, or direct the parties responsible
39 for the removal action to prepare, a community profile report to determine the
40 level of public interest in the removal action. Based on the level of expressed
41 interest, the department or regional board shall take appropriate action to keep the
42 community informed of project activity and to provide opportunities for public
43 comment that may include conducting a public meeting on proposed removal
44 actions.

1 (c)(1) A remedial action plan is not required pursuant to Section 69195 if the site
2 is listed on the National Priorities List by the United States Environmental
3 Protection Agency pursuant to the federal act, if the department or the regional
4 board concurs with the remedy selected by the United States Environmental
5 Protection Agency’s record of decision. The department or the regional board may
6 sign the record of decision issued by the United States Environmental Protection
7 Agency if the department or the regional board concurs with the remedy selected.

8 (2) Paragraph (1) does not apply to a removal action paid from the state
9 account.

10 **Comment.** Section 69225 continues former Section 25356.1(h)(1), (2), and (5) without
11 substantive change.

12 See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”),
13 68100 (“regional board”), 68105 (“release”), 68125 (“remedy”), 68130 (“removal action work
14 plan”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

15 **Staff Notes. (1)** Section 25356.1(h)(2) refers to the “National Priority List.” It appears that the
16 correct name is the “National Priorities List.” This reference has been corrected. This paragraph
17 also contained several references to the “Environmental Protection Agency,” without designating
18 whether it was the state or federal Environmental Protection Agency. Given the context, it seems
19 clear that these are references to the federal agency, so these references have been updated to
20 refer to the “United States Environmental Protection Agency.” **Absent comment, these**
21 **proposed changes will be presumed correct.**

22 **(2)** Paragraph 5 of Section 25356.1(h) contains a reference to “[p]aragraph (2) of this
23 subdivision.” The “of this subdivision” language is unnecessary and counter to standard drafting
24 practice. That language has not been continued.

25 **§ 69230. Waiver from required standards for plan**

26 69230. The department may waive the requirement that a remedial action plan
27 meet the requirements specified in Section 69205 if all of the following apply:

28 (a) The responsible party adequately characterizes the hazardous substance
29 conditions at a site listed pursuant to Article 5 (commencing with Section 68760)
30 of Chapter 4.

31 (b) The responsible party submits to the department, in a form acceptable to the
32 department, all of the following:

33 (1) A description of the techniques and methods to be employed in excavating,
34 storing, handling, transporting, treating, and disposing of materials from the site.

35 (2) A listing of the alternative remedial measures that were considered by the
36 responsible party in selecting the proposed removal action.

37 (3) A description of methods that will be employed during the removal action to
38 ensure the health and safety of workers and the public during the removal action.

39 (4) A description of prior removal actions with similar hazardous substances and
40 with similar public safety and environmental considerations.

41 (c) The department determines that the remedial action plan provides protection
42 of human health and safety and for the environment at least equivalent to that
43 which would be provided by a remedial action plan prepared in accordance with
44 **[Section 69205].**

1 (d) The total cost of the removal action is less than two million dollars
 2 (\$2,000,000).

3 **Comment.** Section 69230 continues former Section 25356.1(h)(3) without substantive change.
 4 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68125 (“remedy”), 68135
 5 (“remove”), 68145 (“responsible party”), 68155 (“site”).

6 **Staff Notes. (1)** Section 25356.1(h)(3) allows the department to waive the requirement that a
 7 remedial action plan meet requirements in “subdivision (d)” as long as the specified conditions
 8 apply. One of those conditions, is a determination by the department that the plan is as protective
 9 of health, safety, and the environment as a plan prepared in accordance with “subdivision (c).”
 10 Subdivision (c) does not place conditions on preparation of a plan. This appears to be an
 11 erroneous reference that should refer to “subdivision (d).” For this reason, the cross-reference has
 12 been updated to refer to proposed Section 69205, the provision that would continue the substance
 13 of Section 25356.1(d). **Absent comment, this proposed correction will be presumed correct.**

14 **(2)** Under Section 25356.1(h)(3), one of the necessary conditions for a waiver of the remedial
 15 action plan requirements is that the “total cost of the removal action is less than two million
 16 dollars (\$2,000,000).” However, a remedial action plan does not appear to be required for a
 17 removal action if the total cost falls below this dollar amount. See proposed Section 69225(a). It
 18 is not clear why a waiver of plan requirements would be needed when no plan is required. **The**
 19 **staff welcomes comment on this issue.**

20 **§ 69235. Costs of removal action**

21 69235. For purposes of this article, the cost of a removal action includes the
 22 cleanup or removal of released hazardous substances from the environment or the
 23 taking of other actions that are necessary to prevent, minimize, or mitigate damage
 24 that may otherwise result from a release or threatened release, as further defined
 25 by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

26 **Comment.** Section 69235 restates former Section 25356.1(h)(4) without substantive change.
 27 See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”), 68135
 28 (“remove”).

29 **Staff Note.** Section 25356.1(h)(4) contains an apparent typographical error and a possibly
 30 incorrect cross-reference to the federal act. That provision provides (with emphasis added):

31 “For purposes of this section, the cost of a removal action includes the cleanup *of*
 32 removal of released hazardous substances from the environment or the taking of other actions that
 33 are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release
 34 or threatened release, *as further defined by Section 9601 (23) of Title 42 of the United States*
 35 *Code.*”

36 A typographical error in the phrase “the cleanup of removal of released hazardous substances”
 37 has been corrected. The phrase now reads “the cleanup *or* removal of released hazardous
 38 substances.”

39 The form of the cross-reference to the federal act has been standardized. In checking this
 40 cross-reference, the staff found that this refers to the federal act’s definition of “remove.” While
 41 this may have been intended, the placement of this cross-reference suggests that the relevant
 42 definition would be “release,” which is found in Section 101(22). **The staff welcomes comment**
 43 **on whether this provision cross-refers to the appropriate term in the federal act.** If so, it may
 44 be appropriate to move this cross-reference to follow the term “removal.” If not, it may be
 45 appropriate to revise this cross-reference to refer to the definition for “release.”

1 in the fields of epidemiology, risk assessment, environmental contamination,
2 ecological risk, fate and transport analysis, and toxicology.

3 (b) Risk assessment practices shall include the most current sound scientific
4 methods for data evaluation, exposure assessment, toxicity assessment, and risk
5 characterization, documentation of all assumptions, methods, models, and
6 calculations used in the assessment.

7 (c) Any health risk assessment shall include all of the following:

8 (1) Evaluation of risks posed by acutely toxic hazardous substances based on
9 levels at which no known or anticipated adverse effects on health will occur, with
10 an adequate margin of safety.

11 (2) Evaluation of risks posed by carcinogens or other hazardous substances that
12 may cause chronic disease based on a level that does not pose any significant risk
13 to health.

14 (3) Consideration of possible synergistic effects resulting from exposure to, or
15 interaction with, two or more hazardous substances.

16 (4) Consideration of the effect of hazardous substances upon subgroups that
17 comprise a meaningful portion of the general population, including, but not
18 limited to, infants, children, pregnant women, the elderly, individuals with a
19 history of serious illness, or other subpopulations, that are identifiable as being at
20 greater risk of adverse health effects due to exposure to hazardous substances than
21 the general population.

22 (5) Consideration of exposure and body burden level that alter physiological
23 function or structure in a manner that may significantly increase the risk of illness
24 and of exposure to hazardous substances in all media, including, but not limited to,
25 exposures in drinking water, food, ambient and indoor air, and soil.

26 **Comment.** Section 69265 continues former Section 25356.1.5(b) without substantive change.
27 See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68140 (“response”).

28 **§ 69270. Level of hazardous substance that is protective of public health**

29 69270. If currently available scientific data are insufficient to determine the
30 level of a hazardous substance at which no known or anticipated adverse effects
31 on health will occur, with an adequate margin of safety, or the level that poses no
32 significant risk to public health, the risk assessment prepared in conjunction with a
33 response action taken or approved pursuant to this part shall be based on the level
34 that is protective of public health, with an adequate margin of safety. This level
35 shall be based exclusively on public health considerations, shall, to the extent
36 scientific data are available, take into account the factors set forth in paragraphs
37 (1) to (5), inclusive, of subdivision (c) of Section 69265, and shall be based on the
38 most current principles, practices, and methods used by public health professionals
39 who are experienced practitioners in the fields of epidemiology, risk assessment,
40 fate and transport analysis, and toxicology.

41 **Comment.** Section 69270 continues former Section 25356.1.5(c) without substantive change.
42 See Sections 68075 (“hazardous substance”), 68140 (“response”).

1 **§ 69275. Content of exposure assessment**

2 69275. (a) The exposure assessment of any risk assessment prepared in
3 conjunction with a response action taken or approved pursuant to this part shall
4 include the development of reasonable maximum estimates of exposure for both
5 current land use conditions and reasonably foreseeable future land use conditions
6 at the site.

7 (b) The exposure assessment of any risk assessment prepared in conjunction
8 with a response action taken or approved pursuant to this part shall include the
9 development of reasonable maximum estimates of exposure to volatile organic
10 compounds that may enter structures that are on the site or that are proposed to be
11 constructed on the site and may cause exposure due to accumulation of those
12 volatile organic compounds in the indoor air of those structures.

13 **Comment.** Section 69275 continues former Section 25356.1.5(d) and (e) without substantive
14 change.

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

16 Article 14. On-site Hazardous Waste Facility for Response Action

17 **§ 69290. Discretion to exclude from permitting requirements**

18 69290. To the extent consistent with the federal Resource Conservation and
19 Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department
20 may exclude any portion of a response action conducted entirely onsite from the
21 hazardous waste facility permit requirements of Section 25201 if both of the
22 following apply:

23 (a) The removal or remedial action is carried out pursuant to a removal action
24 work plan or a remedial action plan prepared pursuant to Article 12 (commencing
25 with Section 69190).

26 (b) The removal action work plan or the remedial action plan requires that the
27 response action complies with all laws, rules, regulations, standards, and
28 requirements, criteria, or limitations applicable to the construction, operation, and
29 closure of the type of facility at the hazardous substance release site and with any
30 other condition imposed by the department as necessary to protect public health
31 and safety and the environment.

32 **Comment.** Section 69290 continues former Section 25358.9(a) without substantive change.

33 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125
34 (“remedy”), 68130 (“removal action work plan”), 68135 (“remove”), 68140 (“response”), 68155
35 (“site”).

36 **§ 69295. Enforcement**

37 69295. (a) The department may enforce in the court for the county in which a
38 response action exempted pursuant to Section 69290 is located any federal or state
39 law, rule, regulation, standard, requirements, criteria, or limitation with which the
40 remedial or removal action is required to comply.

1 (b)(1) Any consent decree entered into pursuant to an enforcement action
2 authorized by this section shall require the parties to attempt expeditiously to
3 informally resolve any disagreements concerning the implementation of the
4 response action with the appropriate federal and state agencies and shall provide
5 for administrative enforcement.

6 (2) The consent decree shall stipulate that the penalty for violation of the
7 consent decree shall be an amount not more than twenty-five thousand dollars
8 (\$25,000) per day, which may be enforced by the state. These penalties do not
9 impair or affect the authority of the court to order compliance with the specific
10 terms of the consent decree.

11 **Comment.** Section 69295 continues former Section 25358.9(b) without substantive change.
12 See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”), 68140
13 (“response”).

14 Article 15. Operation and Maintenance

15 § 69310. “Small business”

16 69310. For purposes of this article, “small business” is a business that meets the
17 requirements set forth in subdivision (d) of Section 14837 of the Government
18 Code.

19 **Comment.** Section 69310 continues former Section 25355.2(f) without substantive change.

20 § 69315. Financial assurance for operation and maintenance

21 69315. Except as provided in subdivision (a) of Section 69325, the department
22 or the regional board shall require any responsible party who is required to comply
23 with operation and maintenance requirements as part of a response action, to
24 demonstrate and to maintain financial assurance in accordance with this article.
25 The responsible party shall demonstrate financial assurance prior to the time that
26 operation and maintenance activities are initiated and shall maintain it throughout
27 the period of time necessary to complete all required operation and maintenance
28 activities.

29 **Comment.** Section 69315 continues former Section 25355.2(a) without substantive change.
30 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional
31 board”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

32 § 69320. Valid financial assurance mechanisms

33 69320. (a) For purposes of Section 69315, the responsible party shall
34 demonstrate and maintain one or more of the financial assurance mechanisms set
35 forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the
36 California Code of Regulations.

37 (b) As an alternative to the requirement of subdivision (a), a responsible party
38 may demonstrate and maintain financial assurance by means of a financial
39 assurance mechanism other than those specified in subdivision (a), if the

1 alternative financial assurance mechanism has been submitted to, and approved
2 by, the department or the regional board as being at least equivalent to the
3 financial assurance mechanisms specified in subdivision (a). The department or
4 the regional board shall evaluate the equivalency of the proposed alternative
5 financial assurance mechanism principally in terms of the certainty of the
6 availability of funds for required operation and maintenance activities and the
7 amount of funds that will be made available. The department or the regional board
8 shall require the responsible party to submit any information necessary to make a
9 determination as to the equivalency of the proposed alternative financial assurance
10 mechanism.

11 **Comment.** Section 69320 restates former Section 25355.2(b) without substantive change. A
12 cross-reference to the California Code of Regulations was corrected to refer to “subsections” as
13 opposed to “subdivisions.”

14 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional
15 board”), 68145 (“responsible party”).

16 **Staff Note.** Section 25355.2(b) refers to “a financial assurance mechanism other than those listed
17 in paragraph (1) [proposed subdivision (a)].” Paragraph (1) does not list financial assurance
18 mechanisms, but refers to those mechanisms set forth in specified provisions of the California
19 Code of Regulations. Since paragraph (1) does not “list” financial assurance mechanisms, the
20 reference has been changed to read: “a financial assurance mechanism other than those *specified*
21 in [subdivision (a)].” This change is consistent with a subsequent reference to subdivision (a) in
22 this provision. This change and a correction to the citation to the California Code of Regulations
23 noted in the Comment are the only language changes made in this provision. **The staff welcomes
24 comment on this proposed restatement.**

25 **§ 69325. Conditions for waiver of financial assurance requirement**

26 69325. (a) The department or the regional board shall waive the financial
27 assurance required by Section 69315 if the department or the regional board makes
28 one of the following determinations:

29 (1) The responsible party is a small business and has demonstrated all of the
30 following:

31 (A) The responsible party cannot qualify for any of the financial assurance
32 mechanisms set forth in subsections (b), (c), and (d) of Section 66265.143 of Title
33 22 of the California Code of Regulations.

34 (B) The responsible party financially cannot meet the requirements of subsection
35 (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

36 (C) The responsible party is not capable of meeting the eligibility requirements
37 set forth in subsection (e) of Section 66265.143 of Title 22 of the California Code
38 of Regulations.

39 (2) The responsible party is a small business and has demonstrated that the
40 responsible party financially is not capable of establishing one of the financial
41 assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section
42 66265.143 of Title 22 of the California Code of Regulations while at the same
43 time financing the operation and maintenance requirements applicable to the site.

1 (3) The responsible party is not separately required to demonstrate and maintain
2 a financial assurance mechanism for operation and maintenance activities at a site
3 because of all of the following conditions:

4 (A) The site is a multiple responsible party site.

5 (B) Financial assurance that operation and maintenance activities at the site will
6 be carried out is demonstrated and maintained by a financial assurance mechanism
7 established jointly by all, or some, of the responsible parties.

8 (C) The financial assurance mechanism specified in subparagraph (B) meets the
9 requirements of Sections 69315 and 69320.

10 (4) The responsible party is a federal, state, or local government entity.

11 (b) The department or the regional board shall withdraw a waiver granted
12 pursuant to paragraph (1) or (2) of subdivision (a) if the department or the regional
13 board determines that the responsible party that obtained the waiver no longer
14 meets the eligibility requirements for the waiver.

15 **Comment.** Section 69325 continues former Section 25355.2(c) and (d) without substantive
16 change. Cross-references to the California Code of Regulations were corrected to refer to
17 “subsections” as opposed to “subdivisions.”

18 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional
19 board”), 68145 (“responsible party”), 68155 (“site”), 69310 (“small business”).

20 **§ 69330. Reporting on financial assurance**

21 69330. On or before January 15, 2001, the department shall report to the
22 Legislature all of the following:

23 (a) The number of requests the department and the regional boards have
24 received for waivers from the financial assurance requirements of this article
25 during the period between May 26, 1999, and January 1, 2001.

26 (b) The disposition of the requests that were received and the reasons for
27 granting the waivers that were allowed and rejecting the waivers that were
28 disallowed.

29 (c) The total number of businesses or other entities that were required by this
30 article to demonstrate and maintain financial assurance, the number of businesses
31 or other entities that were able to comply with the requirement, the number that
32 were unable to comply and the reasons why they could not or did not comply, and
33 the history of compliance with this part and Chapter 6.5 (commencing with
34 Section 25100) of Division 20 by responsible parties that requested waivers.

35 (d) Financial assurance mechanisms other than the financial assurance
36 mechanisms referenced in subdivision (a) of Section 69320 that may be available
37 to responsible parties.

38 **Comment.** Section 69330 continues former Section 25355.2(e) without substantive change.

39 See Sections 68050 (“department”), 68100 (“regional board”), 68145 (“responsible party”).

40 **Staff Notes. (1)** Section 25355.2(e) requires a report to Legislature “[n]otwithstanding Section
41 7550.5 of the Government Code.” Former Government Code Section 7550.5 related to the
42 submission of written reports to the Legislature, Governor, or any state legislative or executive
43 body. Section 7550.5 did not require the submission of written reports except in certain

1 enumerated circumstances; one of those circumstances was that “[t]he Legislature expressly
2 provides that, notwithstanding this section, a written report shall be prepared and submitted.” See
3 former Gov’t Code § 7550.5(b)(3), as amended by 2005 Cal. Stat. ch. 77, § 13. Government Code
4 Section 7550.5 was repealed by its own terms in 2008. See *id.* § 7550.5(g). For this reason, the
5 phrase “[n]otwithstanding Section 7550.5 of the Government Code” appears to be obsolete and
6 was not continued. **The staff welcomes comment on this proposed change.**

7 **(2)** Section 25355.2(e) requires the department to submit a report to the Legislature “on or before
8 January 15, 2001.” Given that this provision appears to relate to a single report due in 2001, it
9 seems to be obsolete. **The staff welcomes comment on this issue.**

10 Article 16. Illegal Drug Lab Cleanup

11 **Staff Note.** This proposed article contains the material in Section 25354.5, with the exception of a
12 provision focused on the Illegal Drug Lab Cleanup Account. That provision has been recodified
13 as proposed Section 68370 in the chapter for financial provisions. The staff reviewed the
14 references to “this section” contained in proposed Section 25354.5 and generally concluded that
15 proposed Section 68370 was not relevant to the purpose of the cross-reference. Accordingly, the
16 cross-references to “this section” have been updated to refer only to this proposed article (i.e., not
17 proposed Section 68370). See proposed Sections 69350, 69370, 69375, 69385. **Absent comment,**
18 **these proposed updates will be presumed correct.**

19 § 69350. Expenditures and contracting

20 69350. (a) The department may expend funds appropriated from the Illegal Drug
21 Lab Cleanup Account created pursuant to Section 68370 to pay the costs of
22 removal actions required by this article.

23 (b) The department may enter into oral contracts, not to exceed ten thousand
24 dollars (\$10,000) in obligation, when, in the judgment of the department,
25 immediate corrective action to a hazardous substance subject to this article is
26 necessary to remedy or prevent an emergency.

27 **Comment.** Section 69350 continues the second and third sentences of former Section
28 25354.5(b)(1) without substantive change.

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

31 § 69355. Notice to department by law enforcement

32 69355. A state or local law enforcement officer or investigator or other law
33 enforcement agency employee who, in the course of an official investigation or
34 enforcement action regarding the manufacture of an illegal controlled substance,
35 comes in contact with, or is aware of, the presence of a substance that the person
36 suspects is a hazardous substance at a site where an illegal controlled substance is
37 or was manufactured, shall notify the department for the purpose of taking
38 removal action, as necessary, to prevent, minimize, or mitigate damage that might
39 otherwise result from the release or threatened release of the hazardous substance,
40 except for samples required under Section 11479.5 to be kept for evidentiary
41 purposes.

42 **Comment.** Section 69355 continues former Section 25354.5(a) without substantive change.

1 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105
2 (“release”), 68135 (“remove”), 68155 (“site”).

3 **Staff Note.** Proposed Section 69355 would appear to benefit from restatement for clarity.

4 To improve readability, it may be helpful to add a defined term, “law enforcement agent.”

5 In addition, the application of the exception in the final clause is unclear. While it seems clear
6 that material required to be kept for evidentiary purposes should not itself be removed, the
7 primary purpose of this provision appears to be a notice obligation for law enforcement agents. If
8 the exception is intended only to avoid evidentiary samples from being subject to removal, it
9 seems that such an exception should be recodified with proposed Section 69360, which obligates
10 the department to take a removal action.

11 Similarly, this proposed section provides that law enforcement must notify the department for
12 the purpose of taking a removal action “as necessary, to prevent, minimize, or mitigate damage
13 that might otherwise result from the release or threatened release of the hazardous substance.” For
14 simplicity, it may be helpful to simply cite to a removal action taken pursuant to proposed Section
15 69360 and to incorporate this language into proposed Section 69360.

16 **The staff welcomes comment on these issues and whether this provision is sufficiently**
17 **clear in practice.**

18 **§ 69360. Department obligation upon receipt of notice**

19 69360. Notwithstanding any other provision of law, upon receipt of a
20 notification pursuant to Section 69355, the department shall take removal action,
21 as necessary, with respect to a hazardous substance that is an illegal controlled
22 substance, a precursor of a controlled substance, a material intended to be used in
23 the unlawful manufacture of a controlled substance, and a container for the
24 material, a waste material from the unlawful manufacture of a controlled
25 substance, or any other item contaminated with a hazardous substance used or
26 intended to be used in the manufacture of a controlled substance.

27 **Comment.** Section 69360 continues former Section 25354.5(b)(1) without substantive change.

28 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68125 (“remedy”), 68135
29 (“remove”).

30 **§ 69365. Notification of local environmental health officer**

31 69365. The department shall, as soon as the information is available, report the
32 location of a removal action that will be carried out pursuant to Section 69360, and
33 the time that the removal action will be carried out, to the local environmental
34 health officer within whose jurisdiction the removal action will take place, if the
35 local environmental officer does both of the following:

36 (a) Requests, in writing, that the department report this information to the local
37 environmental health officer.

38 (b) Provides the department with a single 24-hour telephone number to which
39 the information can be reported.

40 **Comment.** Section 69365 continues former Section 25354.5(b)(2) without substantive change.

41 See Sections 68050 (“department”), 68135 (“remove”).

42 **Staff Note.** Section 25354.5(b)(2) refers to a removal action “pursuant to paragraph (1) [of
43 subdivision (b)].” Subdivision (b) of Section 25354.5 has been proposed for recodification as two
44 provisions (proposed Sections 69350 and 69360). Only one of those provisions appears to be

1 relevant to the cross-reference. Proposed Section 69350, related to expenditures and contracting,
2 does not appear to be relevant and has been omitted from the cross-reference. For this reason, the
3 cross-reference has been updated to refer only to proposed Section 69360. **Absent comment, this**
4 **proposed cross-reference update will be presumed correct.**

5 **§ 69370. Generator of hazardous waste and substances at site**

6 69370. (a) For purposes of Chapter 6.5 (commencing with Section 25100) of
7 Division 20, Chapter 6.9.1 (commencing with Section 25400.10) of Division 20,
8 or this part, a person who is found to have operated a site for the purpose of
9 manufacturing an illegal controlled substance or a precursor of an illegal
10 controlled substance is the generator of a hazardous substance at, or released from,
11 the site that is subject to removal action pursuant to this article.

12 (b) During the removal action, for purposes of complying with the manifest
13 requirements in Section 25160, the department, the county health department, the
14 local environmental health officer, or their designee may sign the hazardous waste
15 manifest as the generator of the hazardous waste. In carrying out that action, the
16 department, the county health department, the local environmental health officer,
17 or their designee shall be considered to have acted in furtherance of their statutory
18 responsibilities to protect the public health and safety and the environment from
19 the release, or threatened release, of hazardous substances, and the department, the
20 county health department, the local environmental health officer, or their designee
21 is not a responsible party for the release, or threatened release, of the hazardous
22 substances.

23 (c) The officer, investigator, or agency employee specified in Section 69355 is
24 not a responsible party for the release, or threatened release, of hazardous
25 substances at, or released from, the site.

26 **Comment.** Section 69370 continues former Section 25354.5(c) without substantive change.

27 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105
28 (“release”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

29 **§ 69375. Regulations**

30 69375. The department may adopt regulations to implement this article in
31 consultation with appropriate law enforcement and local environmental agencies.

32 **Comment.** Section 69375 continues former Section 25354.5(d) without substantive change.

33 See Section 68050 (“department”).

34 **§ 69380. Methods, standards, and procedures**

35 69380. (a) The department shall develop sampling and analytical methods for
36 the collection of methamphetamine residue.

37 (b) The department shall, to the extent funding is available, develop health-
38 based target remediation standards for iodine, methyl iodide, and phosphine.

39 (c) To the extent that funding is available, the department, using guidance
40 developed by the Office of Environmental Health Hazard Assessment, may

1 develop additional health-based target remediation standards for additional
2 precursors and byproducts of methamphetamine.

3 (d) The department shall adopt investigation and cleanup procedures for use in
4 the remediation of sites contaminated by the illegal manufacturing of
5 methamphetamine. The procedures shall ensure that contamination by the illegal
6 manufacturing of methamphetamine can be remediated to meet the standards
7 adopted pursuant to subdivisions (b) and (c), to protect the health and safety of all
8 future occupants of the site.

9 (e) The department shall implement this section in accordance with Section
10 69375.

11 **Comment.** Section 69380 continues former Section 25354.5(e) without substantive change.
12 See Sections 68050 (“department”), 68155 (“site”).

13 **Staff Note.** Section 25354.5(e)(4) requires the department to adopt investigation and cleanup
14 procedures “[o]n or before October 1, 2009.” This language specifying the date for adoption of
15 these procedures seems to be obsolete. The staff proposes deleting the language “[o]n or before
16 October 1, 2009,” while retaining the substantive requirement that the department adopt the
17 specified procedures. **The staff welcomes comment on this proposed change.**

18 **§ 69385. Applicability of article contingent on funding**

19 69385. The responsibilities assigned to the department by this article apply only
20 to the extent that sufficient funding is made available for that purpose.

21 **Comment.** Section 69385 continues former Section 25354.5(g) without substantive change.
22 See Section 68050 (“department”).

23 **Article 17. Judicial Review of Response Actions**

24 **§ 69400. Judicial review of response action adequacy**

25 69400. (a) In any judicial action under this part, judicial review of any issues
26 concerning the adequacy of any response action taken or ordered by the
27 department shall be limited to the administrative record. Otherwise applicable
28 principles of administrative law shall govern whether any supplemental materials
29 may be considered by the court.

30 (b) If the court finds that the selection of the response action was not in
31 accordance with law, the court shall award only the response costs or damages that
32 are not inconsistent with the National Contingency Plan, as specified in Part 300
33 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the
34 Code of Federal Regulations, and any other relief that is consistent with the
35 National Contingency Plan.

36 (c) In reviewing an action brought by the department under this part, in which
37 alleged procedural errors by the department are raised as a defense, the court may
38 impose costs or damages only if the errors were serious and related to matters of
39 central relevance to the action, so that the action would have been significantly
40 changed had the errors not been made.

1 **Comment.** Section 69400 continues former Section 25357.5 without substantive change.
2 See Sections 68050 (“department”), 68140 (“response”).

3 CHAPTER 6. SITE-SPECIFIC RULES RELATED TO CLEANUP

4 Article 1. Financial Provisions

5 **§ 69450. Site-specific appropriations for state account monies**

6 69450. (a) Money deposited in the state account may also be appropriated by the
7 Legislature to the department on a specific site basis for the following purposes:

8 (1) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the
9 equivalent of, any natural resource injured, degraded, destroyed, or lost as a result
10 of any release of a hazardous substance, to the extent the costs are not reimbursed
11 pursuant to the federal act and taking into account processes of natural
12 rehabilitation, restoration, and replacement.

13 (2) For all costs incurred in assessing short-term and long-term injury to,
14 degradation or destruction of, or any loss of any natural resource resulting from a
15 release of a hazardous substance, to the extent that the costs are not reimbursed
16 pursuant to the federal act.

17 (b) No costs may be incurred for any release of a hazardous substance from any
18 facility or project pursuant to subdivision (a) for injury, degradation, destruction,
19 or loss of any natural resource where the injury, degradation, destruction, or loss
20 was specifically identified as an irreversible and irretrievable commitment of
21 natural resources in an environmental impact statement prepared under the
22 authority of the federal National Environmental Policy Act of 1969 (42 U.S.C.
23 Sec. 4321 et seq.), or was identified as a significant environmental effect to the
24 natural resources that cannot be avoided in an environmental impact report
25 prepared pursuant to the California Environmental Quality Act (Division 13
26 commencing with Section 21000) of the Public Resources Code), and a decision
27 to grant a permit, license, or similar authorization for any facility or project is
28 based upon a consideration of the significant environmental effects to the natural
29 resources, and the facility or project was otherwise operating within the terms of
30 its permit, license, or similar authorization at the time of release.

31 **Comment.** Section 69450 continues former Section 25352(a) and (b) without substantive
32 change.

33 See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”),
34 68105 (“release”), 68155 (“site”), 68165 (“state account”).

35 **Staff Notes. (1)** Section 25352(b) precludes incurring certain costs “pursuant to subdivision (a) or
36 this subdivision.” The provision of Section 25352(b) discussing the incurred costs has been
37 proposed for continuation as paragraph (2) of subdivision (a). Thus, all of the material relevant to
38 the cross-reference can be found in proposed Section 69450(a). For this reason, the cross-
39 reference to “this subdivision” has been omitted. **Absent comment, this proposed cross-**
40 **reference update will be presumed correct.**

(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 former Section 25359.20(a) without substantive change. This provision was restated to singularize the phrase “party or parties.” This is a nonsubstantive change. See Section 13.

See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

Staff Note. 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.

§ 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 former Section 25359.20(b) and (c) 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 25356.1.5. Section 25356.1.5 has been proposed for recodification as Article 13 (commencing with Section 69260) of Chapter 5. It appears that proposed Section 69260 is the only section that contains standards for a response action. The other sections contain standards for risk assessments

1 and exposure assessments. It is not clear whether those sections are relevant to this cross-
2 reference. If not, the staff would propose updating the cross-reference to refer only to Section
3 69260. **The staff welcomes comment on this issue.**

4 **§ 69475. Land transfers**

5 69475. (a) Notwithstanding any other provision of law regarding transfers of
6 land, no person or entity shall sell, lease, sublease, or otherwise transfer land
7 presently or formerly occupied by the Santa Susana Field Laboratory, except as
8 provided in subdivision (b).

9 (b) As a condition for a sale, lease, sublease, or transfer of land presently or
10 formerly occupied by the Santa Susana Field Laboratory, the director or the
11 director’s designee shall certify that the land has undergone complete remediation
12 pursuant to the most protective standards in [**subdivisions (a) to (c), inclusive**].

13 **Comment.** Section 69475 continues former Section 25359.20(d) and (e) without substantive
14 change.

15 See Sections 68055 (“director”), 68085 (“person”).

16 **Staff Notes. (1)** Subdivision (e) refers to “the Director of the Department of Toxic Substances
17 Control.” The staff believes that this reference was intended to refer to “the Director of Toxic
18 Substances Control.” In the proposed section, the reference has been replaced with the defined
19 term, “director.” In proposed Section 68055, “director” is defined as “the Director of Toxic
20 Substances Control.”

21 **(2)** Subdivision (e) requires the director “or his or her designee” to make a certification prior to a
22 land transfer. The phrase “his or her” is no longer used in legislative drafting practice. This phrase
23 has been replaced with “the director’s.”

24 **(3)** Subdivision (e) requires a certification of remediation pursuant to “the most protective
25 standards in subdivisions (a) to (c), inclusive.” The cited subdivisions have been proposed for
26 recodification as Sections 69465 and 69470. The cross-reference could simply be updated to refer
27 to these two proposed sections. However, it is unclear whether this citation is correct, as most of
28 the material in these proposed sections does not appear to be relevant to this cross-reference.
29 Subdivision (c) appears to be the only subdivision that itself contains standards, although those
30 standards appear to be for risk assessment. Subdivision (c) also refers to “the provisions in
31 Section 25356.1.5,” which contains standards for response actions and risk assessments. See
32 proposed Sections 69260, 69265. **The staff welcomes comment on how the cross-reference to**
33 **“subdivisions (a) to (c), inclusive” should be updated.**

34 Article 3. Stringfellow Quarry Class I
35 Hazardous Waste Disposal Site

36 **§ 69490. Use of onsite treatment, storage, transfer, or disposal facility**

37 69490. Any treatment, storage, transfer, or disposal facility built on the
38 Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the
39 purpose of a remedial or removal action at that site, shall only be used to treat,
40 store, transfer, or dispose of hazardous substances removed from that site.

41 **Comment.** Section 69490 continues former Section 25351.7 without substantive change.

42 See Section 68075 (“hazardous substance”), 68125 (“remedy”), 68135 (“remove”), 68155
43 (“site”).

1 § 69495. Priority of removal and remedial actions

2 69495. Notwithstanding any other provision of law, including, but not limited
3 to, Article 5 (commencing with Section 68760) of Chapter 4, the department shall
4 place the highest priority on taking removal and remedial actions at the
5 Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote
6 sufficient resources to accomplish the tasks required by this section.

7 **Comment.** Section 69495 continues former Section 25351.8 without substantive change. And
8 obsolete cross-reference to Section 25334.5, which has been repealed (see 1999 Cal. Stat. ch. 23,
9 § 1), was not continued.

10 See Section 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

11 **Staff Note.** Section 25351.8 cross-refers to Section 25334.5. Section 25334.5 has been repealed.
12 See 1999 Cal. Stat. ch. 23, § 1 (SB 47). Prior to its repeal, Section 25334.5 related to a site-
13 specific plan for expenditures that would be prepared by the department and included in the
14 budget. See former Section 25334.5, as amended by 1985 Cal. Stat. ch. 1439, § 1. The staff is not
15 aware of such a requirement elsewhere in the current law. For this reason, the cross-reference to
16 Section 25334.5 was not continued.

17 **Absent comment, this proposed cross-reference update will be presumed correct.**

18 CHAPTER 7. ENFORCEMENT

19 Article 1. Noncompliance with Order

20 § 69550. Penalty for noncompliance with order

21 69550. Any person subject to a removal or remedial action order or other order
22 issued pursuant to Section 68660, 68870, or 69055 who does not comply with that
23 order without sufficient cause shall be subject to a civil penalty of not more than
24 twenty-five thousand dollars (\$25,000) for each day of noncompliance. Liability
25 under this section may be imposed in a civil action or liability may be imposed
26 administratively pursuant to Section 69590.

27 **Comment.** Section 69550 continues former Section 25359.2 without substantive change.

28 See Sections 68085 (“person”), 68125 (“remedy”), 68135 (“remove”).

29 **Staff Notes.** Proposed Section 69550 refers to an order “issued pursuant to Section 25355.5 or
30 25358.3.” Each of these cross-referenced provisions is discussed in turn below.

31 (1) Section 25355.5 has been proposed for recodification as several provisions (proposed
32 Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (Section 25355.5(a))
33 appears to be the only provision that is relevant to this cross-reference, as it is the only provision
34 that addresses the issuance of orders. For this reason, the cross-reference to Section 25355.5 has
35 been updated to refer only to Section 69055.

36 **Absent comment, this proposed cross-reference update will be presumed correct.**

37 (2) Section 25358.3 has been proposed for recodification as several sections (proposed
38 Sections 68650, 68655, 68660, and 68870). Proposed Sections 68650 and 68655 do not appear to
39 be relevant to the purposes of this cross-reference, as these provisions do not relate to the
40 issuance of orders to parties. For this reason, those proposed sections have been omitted from the
41 cross-reference. Accordingly, the cross-reference to Section 25358.3 has been updated to refer to
42 Sections 68660 and 68870.

43 **Absent comment, this proposed cross-reference update will be presumed correct.**

1 hazardous substance on, in, or at the facility located on that real property, as
2 specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs.
3 9601(35) and 9607(b)).

4 **Comment.** Section 69570 restates former Section 25359 without substantive change.

5 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075
6 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125 (“remedy”), 68135
7 (“remove”), 68165 (“state account”).

8 **Staff Note.** Proposed Section 69570 refers to an “order of the director or the court, pursuant to
9 Section 25358.3.” Section 25358.3 has been recodified as several sections (proposed Sections
10 68650, 68655, 68660, and 68870). Proposed Section 68870 recodifies the portion of Section
11 25358.3 that relates to the issuance of orders by the director, while proposed Section 68660
12 recodifies the portion of Section 25358.3 that relates to the issuance of orders by a court. For this
13 reason, proposed Section 69570 restates the quoted language to read “either an order of the
14 director, pursuant to Section 68870, or an order of the court, pursuant to Section 68660.” **Absent
15 comment, this proposed restatement will be presumed correct.**

16 Article 3. Natural Resources Damages

17 § 69580. Prohibition on recovery of damages for certain losses occurring before September 18 25, 1981

19 69580. There shall be no recovery of punitive damages under Section 69570 for
20 an injury to or loss of natural resources that occurred wholly before September 25,
21 1981. This section shall not be construed as precluding the recovery of punitive
22 damages for injury to or loss of natural resources in an action brought pursuant to
23 any other provision of law.

24 **Comment.** Section 69580 continues former Section 25359.1 without substantive change.

25 Article 4. Administrative Process for Penalty Collection

26 § 69590. Complaint for penalties

27 69590. (a)(1) The department may issue a complaint to any person subject to a
28 penalty pursuant to Sections 68680 and 69550.

29 (2) The complaint shall allege the acts or failures to act that constitute a basis for
30 liability and the amount of the proposed penalty.

31 (3) The complaint shall be served by personal service or certified mail and shall
32 inform the party so served of the right to a hearing.

33 (b)(1) Any person served with a complaint pursuant to this section may, within
34 45 days after service of the complaint, request a hearing by filing a notice of
35 defense with the department. A notice of defense is deemed to be filed within a
36 45-day period if it is postmarked within the 45-day period.

37 (2) If no notice of defense is filed within 45 days after service of the complaint,
38 the department shall issue an order setting liability in the amount proposed in the
39 complaint, unless the department and the party have entered into a settlement

1 agreement, in which case the department shall issue an order setting liability in the
2 amount specified in the settlement agreement.

3 (3) Where the party has not filed a notice of defense or where the department
4 and the party have entered into a settlement agreement, the order shall not be
5 subject to review by any court or agency.

6 **Comment.** Section 69590 continues former Section 25359.3(a) without substantive change.
7 See Sections 68050 (“department”), 68085 (“person”).

8 **Staff Note.** Subdivision (a) of Section 25359.3 refers to a person subject to a penalty pursuant to
9 Section 25359.4. Section 25359.4 has been proposed for recodification as two sections (proposed
10 Sections 68675 and 68680). Only one of those proposed sections, Section 68680, provides for
11 penalties. For this reason, the cross-reference to Section 25359.4 has been updated to refer only to
12 Section 68680.

13 **Absent comment, this proposed cross-reference update will be presumed correct.**

14 **§ 69595. Hearing for penalties**

15 69595. (a) Any hearing required under this article shall be conducted in
16 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code, and the department shall have all
18 powers granted by those provisions.

19 (b) In making a determination, the administrative law judge shall consider the
20 nature, circumstances, extent, and gravity of the violation, the violator’s past and
21 present efforts to prevent, abate, or clean up conditions posing a threat to the
22 public health and safety or the environment, the violator’s ability to pay the
23 proposed penalty, and the prophylactic effect that imposition of the proposed
24 penalty will have on both the violator and on the regulated community as a whole.

25 **Comment.** Section 69595 continues former Section 25359.3(b) without substantive change.
26 See Section 68050 (“department”).

27 **§ 69600. Deposit and expenditure of penalties**

28 69600. All penalties collected under this article and Section 69550 shall be
29 deposited in the state account and shall be available for expenditure by the
30 department upon appropriation by the Legislature.

31 **Comment.** Section 69600 continues former Section 25359.3(c) without substantive change.
32 See Sections 68050 (“department”), 68165 (“state account”).

33 CHAPTER 8. COST RECOVERY

34 Article 1. General Provisions

35 **§ 69650. Recovery of costs generally**

36 69650. (a) A cost incurred by the department or regional board in carrying out or
37 overseeing a response or a corrective action under this part or Chapter 6.5
38 (commencing with Section 25100) of Division 20 shall be recoverable pursuant to

1 state or federal law by the Attorney General, upon the request of the department or
2 regional board, from the liable person.

3 (b) The amount of response or corrective action costs incurred by the department
4 or regional board shall be recoverable at the discretion of the department or
5 regional board, either in a separate action or by way of intervention as of right in
6 an action for contribution or indemnity.

7 (c) The amount of any response or corrective action costs that may be recovered
8 pursuant to this section shall include interest on any amount paid.

9 (d) A person who is liable for response or corrective action costs incurred at a
10 site shall have the liability reduced by any reimbursements that were paid by that
11 person for that site pursuant to Section 69105.

12 (e) Nothing in this section deprives a party of any defense that the party may
13 have.

14 (f) Moneys recovered by the Attorney General pursuant to this section shall be
15 deposited in the state account.

16 **Comment.** Section 69650 restates former Section 25360 without substantive change. This
17 provision was restated to singularize the phrase “liable person or persons.” This is a
18 nonsubstantive change. See Section 13.

19 See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68140
20 (“response”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”).

21 **§ 69655. Interest on liability to department**

22 69655. (a)(1) Until June 30, 2021, except as provided in subdivision (b), a
23 monetary obligation to the department pursuant to this part or Chapter 6.5
24 (commencing with Section 25100) of Division 20 shall be subject to interest from
25 the date of the demand at an interest rate of 7 percent per annum.

26 (2) Commencing July 1, 2021, except as provided in subdivision (b), a monetary
27 obligation to the department pursuant to this part or Chapter 6.5 (commencing
28 with Section 25100) of Division 20 shall be subject to interest from the date of the
29 demand at an interest rate of 10 percent per annum, except that, for obligations of
30 local governments, the interest rate shall be 7 percent per annum.

31 (b)(1) The department shall waive the interest described in subdivision (a) if the
32 obligation is satisfied within 60 days from the date of invoice.

33 (2) If, within 45 days of receiving an invoice, the liable person provides written
34 notice to the department in accordance with its invoice dispute resolution
35 procedures disputing in good faith the monetary obligation specified in the
36 invoice, or a portion thereof, the department shall waive the interest until the
37 dispute is resolved.

38 **Comment.** Section 69655 restates former Section 25360.1 without substantive change. This
39 provision was restated to singularize the phrase “liable person or persons.” This is a
40 nonsubstantive change. See Section 13.

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

1 § 69660. Judgment not bar to future action

2 69660. The entry of judgment against any party to the action shall not be
3 deemed to bar any future action by the state account against any person who is
4 later discovered to be potentially liable for costs and expenditures paid by the state
5 account.

6 **Comment.** Section 69660 continues former Section 25365 without substantive change.
7 See Section 68085 (“person”), 68165 (“state account”).

8 § 69665. Strict liability

9 69665. The standard of liability for costs recoverable pursuant to this part is
10 strict liability.

11 **Comment.** Section 69665 continues former Section 25363(c) without substantive change.

12 § 69670. Contribution and indemnity

13 69670. (a) A person who has incurred response or corrective action costs in
14 accordance with this part, Chapter 6.5 (commencing with Section 25100) of
15 Division 20, or the federal act may seek contribution or indemnity from any
16 person who is liable pursuant to this part.

17 (b) An action to enforce a claim may be brought as a cross-complaint by any
18 defendant in an action brought pursuant to Section 69650 or this section, or in a
19 separate action after the person seeking contribution or indemnity has paid
20 response or corrective action costs in accordance with this part, Chapter 6.5
21 (commencing with Section 25100) of Division 20, or the federal act.

22 (c) A plaintiff or cross-complainant seeking contribution or indemnity shall give
23 written notice to the director upon filing an action or cross-complaint under this
24 section.

25 (d) In resolving claims for contribution or indemnity, the court may allocate
26 costs among liable parties using appropriate equitable factors.

27 **Comment.** Section 69670 continues former Section 25363(d) without substantive change.
28 See Sections 68055 (“director”), 68065 (“federal act”), 68085 (“person”), 68140 (“response”).

29 **Staff Notes. (1)** Section 25363(d) refers to actions or cross-complaints brought pursuant to “this
30 section.” Section 25363 has been recodified as an article, however this proposed section appears
31 to contain all of the provisions of Section 25363 that authorize bringing an action or cross-
32 complaint. Thus, the remainder of the article does not appear to be relevant to this reference and
33 has been omitted. **Absent comment, the proposed treatment of the reference to “this section”**
34 **will be presumed correct.**

35 **(2)** The final sentence of Section 25363(d) uses the term “liable parties.” This term is similar to
36 the defined terms, “liable person” and “responsible party.” However, the definition applicable to
37 those terms does not appear to apply to the term “liable parties.” The staff is unsure whether the
38 definition was intended to apply to this term. **The staff welcomes comment on this issue.**

Article 2. Recovery of Specific Costs or Funds

§ 69680. Recovery of costs incurred and payable prior to July 1, 2006

69680. Notwithstanding any provision of Section 68165, 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 part, shall be recoverable from the liable person pursuant to Section 69650 as if the costs were incurred and payable from the state account.

Comment. Section 69680 restates former Section 25324(b) without substantive change. This provision was restated to singularize the phrase “liable person or persons.” This is a nonsubstantive change. See Section 13.

See Sections 68145 (“responsible party”), 68165 (“state account”).

Staff Notes. (1) The introductory clause of Section 25324(b) includes a reference to “any other provision of this section.” Section 25324 only has two subdivisions. This reference has been updated to refer to Section 68165, which continues the other subdivision (subdivision (a)) of Section 25324. **Absent comment, the proposed update to this reference will be presumed correct.**

(2) This provision appears to be stating a transitional rule for the recovery of costs originally paid out of accounts that no longer exist (as of July 1, 2006). Given that over a decade has passed since these accounts were consolidated, the staff is unsure whether this provision has ongoing utility. **The staff welcomes comment on this issue.**

§ 69685. Recovery for natural resource damages

69685. Notwithstanding [Section 25355], the Governor, or the authorized representative of the state, shall act on behalf of the public as trustee of the natural resources to recover costs expended pursuant to Section 69450.

Comment. Section 69685 continues former Section 25352(c) without substantive change.

Staff Note. Section 25352(c) requires the Governor or authorized state representative to recover certain costs “[n]otwithstanding Section 25355.” Section 25355 is proposed for recodification as multiple sections (proposed Sections 68850, 69005, 69130(a), and 69135). It is unclear which provisions of Section 25355 are relevant to this cross-reference, as none appear to limit or place conditions on the recovery of funds. Proposed Section 69135 requires the department to make a reasonable effort to notify potentially responsible parties before undertaking a response action, but expressly provides that “[a] responsible party may be held liable pursuant to this part whether or not the person was given the notice ...” **The staff welcomes comment on how this cross-reference should be updated.**

§ 69690. Recovery of funds expended at sites owned or operated by federal, state, or local governments or agencies

69690. The department shall recover any funds expended pursuant to subdivision (a) or (b) of Section 69070 to the maximum possible extent pursuant to Section 69650.

Comment. Section 69690 continues former Section 25353(c) without substantive change.

See Section 68050 (“department”).

Article 3. Parties

§ 69700. State account

69700. The state account shall be a party in any action for recovery of costs or expenditures under this part incurred from the state account.

Comment. Section 69700 continues former Section 25361(a) without substantive change. See Sections 68165 (“state account”).

§ 69705. State account as party to recover costs in an action for penalties

69705. (a) In the event a district attorney or a city attorney has brought an action for civil or criminal penalties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 against any person for the violation of any provision of that chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, adopted, or executed thereunder, and the department has expended moneys from the state account pursuant to Section 68875 for immediate corrective action in response to a release, or threatened release, of a hazardous substance that has resulted, in whole or in part, from the person’s acts or omissions, the state account may be made a party to that action for the purpose of recovering the costs against that person.

(b)(1) If the state account is made a party to the action, the Attorney General shall represent the state account for the purpose of recovering the moneys expended from the account.

(2) Notwithstanding any other provision of law, and under terms that the Attorney General and the department deem appropriate, the Attorney General may delegate the authority to recover the costs to the district attorney or city attorney who has brought the action pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20.

(c) The failure to seek the recovery of moneys expended from the state account as part of the action brought pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 does not foreclose the Attorney General from recovering the moneys in a separate action.

Comment. Section 69705 continues former Section 25361(b) without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68140 (“response”), 68165 (“state account”).

Staff Note. Proposed Section 69705(a) refers to moneys expended “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. **Absent comment on this issue, this proposed cross-reference update will be presumed correct.**

1 § 69710. Joinder of potentially liable person

2 69710. Upon motion and sufficient showing by any party, the court shall join to
3 the action any person who may be liable for costs or expenditures of the type
4 recoverable under this part.

5 **Comment.** Section 69710 continues former Section 25362 without substantive change.
6 See Section 68085 (“person”).

7 Article 4. Timing

8 § 69725. Commencement prior to expiration of limitations period

9 69725. An action may be commenced under Section 69650 or 69685 at any time
10 prior to expiration of the applicable limitations period provided for by this article.

11 **Comment.** Section 69725 continues former Section 25360.4(d) without substantive change.

12 § 69730. Cost recovery actions

13 69730. (a)(1) Except as provided in paragraph (2) and subdivision (b), an action
14 under Section 69650 for the recovery of costs incurred by the department or a
15 regional board in carrying out or overseeing a response or corrective action
16 pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division
17 20, or as otherwise authorized by law, shall be commenced within three years after
18 completion of all response or corrective actions has been certified by the
19 department or a regional board.

20 (2) If operation and maintenance is required as part of the response or corrective
21 action, the action for recovery of costs incurred by the department or a regional
22 board shall be commenced within three years after completion of operation and
23 maintenance has been certified by the department or a regional board.

24 (b) No action described in subdivision (a) may be brought that, as of December
25 31, 2015, had not been commenced by the department within three years after the
26 certification of the completion of the removal or remedial action.

27 **Comment.** Section 69730 continues former Section 25360.4(a) without substantive change.

28 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional
29 board”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”).

30 **Staff Note.** Section 25360.4(a)(2) pertains to an action “that, as of December 31, 2015, had not
31 been commenced ... within three years” after the cleanup was certified complete. This appears to
32 be a transitional provision. **The staff welcomes comment on whether this provision has**
33 **ongoing utility.**

34 § 69735. Recovery actions for natural resources damages

35 69735. An action under Section 69685 for costs incurred by the department for
36 the purposes specified in Section 69450 shall be commenced within three years
37 after certification by the department of the completion of the activities authorized
38 under Section 69450.

39 **Comment.** Section 69735 continues former Section 25360.4(b) without substantive change.

40 See Section 68050 (“department”).

1 **§ 69740. Reserved and continuing jurisdiction**

2 69740. (a)(1) In an action described in Section 69730 or 69735 for recovery of
3 response or corrective action costs, oversight costs, or damages, where the court
4 has entered a judgment for past costs or damages, the court shall also enter an
5 order reserving jurisdiction over the case and the court shall have continuing
6 jurisdiction to determine any future liability and the amount of the future liability.

7 (2) The department or regional board may immediately enforce the judgment for
8 past costs and damages.

9 (b) The department or the regional board may apply for a court judgment for
10 further costs and damages that have been incurred during the response or
11 corrective action, operation and maintenance, or during the performance of the
12 activities authorized by Section 69450, but the application shall be made not later
13 than three years after the certification of completion of the response or corrective
14 action, operation and maintenance, or activities authorized pursuant to Section
15 69450.

16 **Comment.** Section 69740 continues former Section 25360.4(c) without substantive change.

17 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional
18 board”), 68140 (“response”).

19 **Staff Note.** Section 25360.4(c) refers to activities authorized pursuant to Section 25352.

20 Section 25352 has been divided into multiple provisions in this recodification (proposed
21 Sections 69450 and 69685). The cross-reference to Section 25352 has been updated to refer only
22 to the provisions allowing expenditures for repairing natural resource damages (subdivisions (a)
23 and (b) of Section 25352, which are proposed for recodification as Section 69450). Subdivision
24 (c) of Section 25352 is omitted from the cross-reference, as it relates to cost recovery and does
25 not appear relevant.

26 **Absent comment on this issue, this proposed cross-reference update will be presumed**
27 **correct.**

28 **§ 69745. Article inapplicable to cost recovery under Water Code**

29 69745. This article does not apply to a cost recovery action brought by a
30 regional board under the Water Code.

31 **Comment.** Section 69745 continues former Section 25360.4(e) without substantive change.

32 See Section 68100 (“regional board”).

33 **Article 5. Scope of Liability**

34 **§ 69760. Determination of party’s liability**

35 69760. (a) Except as provided in Section 69765, a party found liable for costs
36 recoverable under this part who establishes by a preponderance of the evidence
37 that only a portion of those costs are attributable to that party’s actions shall be
38 required to pay only for that portion.

39 (b) Except as provided in Section 69765, if the trier of fact finds the evidence
40 insufficient to establish each party’s portion of costs under subdivision (a), the

1 court shall apportion those costs, to the extent practicable, according to equitable
2 principles, among the defendants.

3 **Comment.** Section 69760 continues former Section 25363(a) and (b) without substantive
4 change.

5 **§ 69765. Contractor liability**

6 69765. Notwithstanding this part, a response action contractor who is found
7 liable for any costs recoverable under this part and who establishes by a
8 preponderance of the evidence that only a portion of those costs are attributable to
9 the response action contractor's actions shall be required to pay only that portion
10 of the costs attributable to the response action contractor's actions.

11 **Comment.** Section 69765 continues former Section 25363(e) without substantive change.
12 See Section 68140 ("response").

13 **Article 6. Liability of Residential Property Owner**

14 **§ 69780. Definitions**

15 69780. For purposes of this article, the following definitions apply:

16 (a) "Owner" means either (1) the owner of property who occupies a single-
17 family residence or one-half of a duplex constructed on the property, or (2) the
18 owner of common areas within a residential common interest development who
19 owns those common areas for the benefit of the residential homeowners. This
20 subdivision does not include the developer of the common interest development.

21 (b) "Property" means either (1) real property of five acres or less that is zoned
22 for, and on which has been constructed, a single-family residence, or (2) common
23 areas within a residential common interest development.

24 **Comment.** Section 69780 continues former Section 25360.2(a) without substantive change.

25 **§ 69785. Relation to other law**

26 69785. Notwithstanding any other provision of this part, this article governs
27 liability pursuant to this part for an owner of property.

28 **Comment.** Section 69785 continues former Section 25360.2(e) without substantive change.
29 Redundant language citing to the applicable definitions was not continued.

30 See Section 69780 ("owner," "property").

31 **§ 69790. Presumption**

32 69790. (a) Notwithstanding any other provision of this part, an owner of
33 property that is the site of a hazardous substance release is presumed to have no
34 liability pursuant to this part for either of the following:

35 (1) A hazardous substance release that has occurred on the property.

36 (2) A release of a hazardous substance to groundwater underlying the property if
37 the release occurred at a site other than the property.

38 (b) The presumption may be rebutted as provided in Section 69800.

1 **Comment.** Section 69790 continues former Section 25360.2(b) without substantive change.
2 See Sections 68075 (“hazardous substance”), 68105 (“release”), 68155 (“site”), 69780
3 (“owner,” “property”).

4 **§ 69795. Certification required to bring action**

5 69795. An action for recovery of costs or expenditures incurred from the state
6 account pursuant to this part in response to a hazardous substance release may not
7 be brought against an owner of property unless the department first certifies that,
8 in the opinion of the department, one of the following applies:

9 (a) The hazardous substance release that occurred on the property occurred after
10 the owner acquired the property.

11 (b) The hazardous substance release that occurred on the property occurred
12 before the owner acquired the property and at the time of acquisition the owner
13 knew or had reason to know of the hazardous substance release.

14 (c) The owner of property where there has been a release of a hazardous
15 substance to groundwater underlying the property took, or is taking, one or more
16 of the following actions:

17 (1) Caused or contributed to a release of a hazardous substance to the
18 groundwater.

19 (2) Fails to provide the department, or its authorized representative, with access
20 to the property.

21 (3) Interferes with response action activities.

22 **Comment.** Section 69795 continues former Section 25360.2(c) without substantive change.
23 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140
24 (“response”), 68165 (“state account”), 69780 (“owner,” “property”).

25 **§ 69800. Rebuttal of presumption**

26 69800. In an action brought against an owner of property to recover costs or
27 expenditures incurred from the state account pursuant to this part in response to a
28 hazardous substance release, the presumption established in Section 69790 may be
29 rebutted if it is established by a preponderance of the evidence that the facts upon
30 which the department made the certification pursuant to subdivision (a), (b), or (c)
31 of Section 69795 are true.

32 **Comment.** Section 69800 continues former Section 25360.2(d) without substantive change.
33 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140
34 (“response”), 68165 (“state account”), 69780 (“owner,” “property”).

35 **Article 7. Liability of Easement Holder or Special District**

36 **§ 69810. Definitions**

37 69810. For the purposes of this article, the following terms have the following
38 meaning:

39 (a) “Easement” means a conservation easement, as defined in Section 815.1 of
40 the Civil Code.

1 (b) “Environmental assessment” means an investigation of real property,
2 conducted by an independent qualified environmental consultant, to discover the
3 presence or likely presence of a release or a threat of a release of a hazardous
4 substance at, on, to, or from the real property. An environmental assessment shall
5 include, but is not limited to, an investigation of the historical use of the real
6 property, any prior releases, records, consultant reports and regulatory agency
7 correspondence, a visual survey of the real property, and, if warranted, sampling
8 and analytical testing.

9 (c) “Owner” means either of the following:

10 (1) An independent special district, as defined in Section 56044 of the
11 Government Code.

12 (2) An entity or organization that holds an easement.

13 (d) “Property” means either of the following:

14 (1) Real property acquired by a special district by means of a gift or donation for
15 which an environmental assessment was completed prior to the transfer or
16 conveyance of the real property to the special district.

17 (2) An easement for which an environmental assessment was completed prior to
18 the transfer or conveyance of the easement to an entity or organization authorized
19 to accept the easement pursuant to Section 815.3 of the Civil Code.

20 **Comment.** Section 69810 continues former Section 25360.3(a) without substantive change.
21 See Sections 68075 (“hazardous substance”), 68105 (“release”).

22 § 69815. Application

23 69815. (a) Notwithstanding any other provision of this part, this article governs
24 liability pursuant to this part for an owner of property.

25 (b) This article is applicable only to property that is acquired by the owner on or
26 after January 1, 1995.

27 **Comment.** Section 69815 continues former Section 25360.3(d) and (e) without substantive
28 change. Redundant language citing to the applicable definitions was not continued.

29 See Section 69810 (“owner,” “property”).

30 § 69820. Presumption

31 69820. (a) Notwithstanding any other provision of this part, if an environmental
32 assessment of property discovers no evidence of the presence or likely presence of
33 a release or a threat of a release of a hazardous substance, and a hazardous
34 substance release is subsequently discovered on, to, or from that property, the
35 owner of that property is entitled to a rebuttable presumption, affecting the burden
36 of producing evidence, that the owner is not a liable person or responsible party
37 for purposes of this part. An owner is entitled to this presumption whether the
38 action is brought by the state or by a private party seeking contribution or
39 indemnification.

40 (b) In an action brought against an owner of property to recover costs or
41 expenditures incurred from the state account pursuant to this part in response to a

1 hazardous substance release, the presumption may be rebutted if it is established
2 by a preponderance of the evidence that the facts upon which the department made
3 the certification pursuant to subdivision (a), (b), (c), or (d) of Section 69825 are
4 true.

5 **Comment.** Section 69820 continues former Section 25360.3(b) without substantive change.

6 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140
7 (“response”), 68145 (“responsible party”), 68165 (“state account”), 69810 (“environmental
8 assessment,” “owner,” “property”).

9 **§ 69825. Certification required to bring action**

10 69825. An action for recovery of costs or expenditures incurred from the state
11 account pursuant to this part in response to a hazardous substance release shall not
12 be brought against an owner of property unless the department first certifies that,
13 as found by the department, one of the following situations applies:

14 (a) The hazardous substance release occurred on or after the date that the owner
15 acquired the property.

16 (b) The hazardous substance release occurred before the date that the owner
17 acquired the property and, at the time of the acquisition, the owner knew, or had
18 reason to know, of the hazardous substance release.

19 (c) The environmental assessment applicable to the property was not properly
20 carried out, was fraudulently completed, or involves the negligent or intentional
21 nondisclosure of information.

22 (d) The hazardous substance release was discovered on or after the date of
23 acquisition and the owner failed to exercise due care with respect to the release,
24 taking into consideration the characteristics of the hazardous substance in light of
25 all relevant facts and circumstances.

26 **Comment.** Section 69825 continues former Section 25360.3(c) without substantive change.

27 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140
28 (“response”), 68165 (“state account”), 69810 (“environmental assessment,” “owner,” “property”).

29 **Article 8. Liability of Operator for Household Hazardous Waste or**
30 **Used Oil Collection Program**

31 **§ 69840. “Household hazardous waste collection program”**

32 69840. For purposes of this article, “household hazardous waste collection
33 program” means a program or facility, specified in Section 25218.1, in which
34 hazardous wastes from households and conditionally exempt small quantity
35 generators are collected and ultimately transferred to an authorized hazardous
36 waste treatment, storage, or disposal facility.

37 **Comment.** Section 69840 continues former Section 25366.5(b) without substantive change.

38 **§ 69845. Limitation on liability of HHW or used oil collection programs**

39 69845. A public agency operating a household hazardous waste collection
40 program or a person operating a household hazardous waste collection program

1 under a written agreement with a public agency, or, for material received from the
2 public as used oil, a person operating a certified used oil collection center as
3 provided in Section 48660 of the Public Resources Code, shall not be held liable
4 in a cost recovery action brought pursuant to Section 69650, including, but not
5 limited to, an action to recover the fees imposed by Section 69105 or an action
6 brought pursuant to Section 69670, for waste that has been properly handled and
7 transported to an authorized hazardous waste treatment, storage, or disposal
8 facility at a location other than that of the collection program.

9 **Comment.** Section 69845 continues former Section 25366.5(a) without substantive change.
10 See Section 68085 (“person”), 69840 (“household hazardous waste collection program”).

11 **§ 69850. Effect on state or federal law obligations or liabilities**

12 69850. Except as provided in Section 69845, this article does not affect or
13 modify the obligations or liabilities of a person imposed pursuant to state or
14 federal law.

15 **Comment.** Section 69850 continues former Section 25366.5(c) without substantive change.
16 See Section 68085 (“person”).

17 **Article 9. Liability Agreements**

18 **§ 69860. Agreement not effective to transfer liability for recoverable costs or expenditures**

19 69860. Except as provided in Article 10, no indemnification, hold harmless,
20 conveyance, or similar agreement shall be effective to transfer any liability for
21 cost or expenditures recoverable under this part. This section shall not bar any
22 agreement to insure, hold harmless, or indemnify a party to the agreement for any
23 costs or expenditures under this part.

24 **Comment.** Section 69860 continues former Section 25364 without substantive change.

25 **§ 69865. Effect of repeal of Section 25364.6**

26 69865. The repeal of Section 25364.6, pursuant to Chapter 1226 of the Statutes
27 of 1998, shall not affect any indemnity provided pursuant to that section for any
28 cause of action brought because of any act or omission that occurred before the
29 repeal of that section.

30 **Comment.** Section 69865 restates former Section 25364.7 without substantive change. The
31 cross-reference to the “repeal of Section 25364.6” has been updated to refer to the legislation that
32 repealed the provision. See 1998 Cal. Stat. ch. 1226, § 1. The verb “occur” was made past tense,
33 as all of the relevant acts or omissions would have happened prior to the repeal of former Section
34 25364.6.

35 **Article 10. Former Kaiser Steel Corporation Steel Mill Site**

36 **§ 69875. Definitions**

37 69875. For purposes of this article, the following definitions shall apply:

1 (a) “Affiliate” means any entity that directly, or indirectly through one or more
2 intermediaries, controls, is controlled by, or is under common control with, the
3 responsible party owner. For purposes of this subdivision, “control” means the
4 possession, direct or indirect, of the power to direct or cause the direction of the
5 management and policies of an entity, or ownership of shares or interests in the
6 entity possessing more than 50 percent of the voting power.

7 (b) “Qualified independent consultant” means either a geologist who is
8 registered pursuant to Section 7850 of the Business and Professions Code or a
9 professional engineer who is registered pursuant to Section 6762 of the Business
10 and Professions Code.

11 (c) “Responsible party owner” means the owner of all or part of the site on
12 January 1, 1993, or if all or a part of the site is transferred to a joint venture
13 formed for purposes of development of the site, the owner of the site immediately
14 prior to that transfer.

15 (d) “Site” means the site of the former Kaiser Steel Corporation steel mill
16 located near the City of Fontana.

17 **Comment.** Section 69875 continues former Section 25364.1(a) without substantive change.
18 See Section 68155 (“site”).

19 **Staff Note.** Section 25364.1(a)(4) defines the term “site.” “Site” is defined for the entire part in
20 proposed Section 68155. **The staff welcomes comment on whether the two definitions of**
21 **“site” have caused problems in practice.**

22 **§ 69880. Authority of director to release specified persons from liability**

23 69880. Notwithstanding any other provision of law, except as provided in
24 Sections 69885 and 69890, the director may release from liability under this part
25 or Chapter 6.5 (commencing with Section 25100) of Division 20, and from
26 liability for any claims of the state for recovery of response costs under the federal
27 act, any of the following persons, with regard to a removal or remedial action at
28 the site:

29 (a) Any person who provides financing for all, or a substantial part of, the costs
30 of performing a removal or remedial action at the site pursuant to a remedial
31 action plan prepared by a qualified independent consultant and issued by the
32 department pursuant to Section 69210 and subdivision (a) of Section 69215,
33 except that the release from liability shall not release the person providing this
34 financing from liability for any hazardous substance release or threatened release
35 resulting from that person’s exercise of decisionmaking control over the
36 performance of the removal or remedial action while the responsible party owner
37 remains in possession of the site.

38 (b) Any person who enters into an agreement with the responsible party owner
39 to provide development services for the development of all, or a part of, the site,
40 including a developer, who becomes a partner in a joint venture partnership with
41 the responsible party owner, if the joint venture is formed for purposes of the
42 development of the site and legal title to the site is transferred by the responsible

1 party owner to the joint venture. If a release from liability is granted to a developer
2 pursuant to this subdivision and the legal title to the site is transferred by the
3 responsible party owner to a joint venture between the developer and the
4 responsible party owner of the site, the responsible party owner shall not be
5 relieved of liability under this part.

6 (c) Any person who acquires an ownership or leasehold interest in all or a part
7 of the site after performance of the removal or remedial action specified in the
8 remedial action plan for the site, or part of the site, has been completed to the
9 satisfaction of the department.

10 **Comment.** Section 69880 continues former Section 25364.1(b) without substantive change.

11 See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075
12 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125 (“remedy”), 68135
13 (“remove”), 68140 (“response”), 68155 (“site”), 69875 (“qualified independent consultant,”
14 “responsible party owner,” “site”).

15 **§ 69885. Conditions required for release to be granted**

16 69885. A release from liability shall not be granted pursuant to Section 69880
17 unless all of the following conditions are met:

18 (a) A responsible party owner has entered into a stipulated settlement of an order
19 issued by the department pursuant to Section 25187, 68870, or 69055 to perform
20 the removal or remedial action at the site in accordance with the remedial action
21 plan and has arranged financing, contingent only upon obtaining releases from
22 potential liability pursuant to Section 69880, for the costs of performing the
23 removal or remedial action.

24 (b) A responsible party owner agrees to pay all applicable oversight fees
25 required by Section 69105 and to pay any additional costs that are recoverable
26 pursuant to Section 69650.

27 (c) No person to be released from liability pursuant to Section 69880 is a
28 responsible party or an affiliate of a responsible party, with respect to any
29 hazardous substance release existing at the site at the time the release from
30 liability is granted.

31 (d) The stipulated settlement requires the responsible party owner to provide
32 irrevocable financial assurances for full performance of the remedial action plan.
33 The financial assurances may consist of one or more of the financial assurance
34 instruments described in Section 66264.143 of Title 22 of the California Code of
35 Regulations. Upon the approval of the department, the forms of these instruments
36 may be revised as appropriate to apply to the costs of performing the removal or
37 remedial action specified in the remedial action plan.

38 (e) The director finds that the release from liability to be granted will promote
39 the purposes and goals of this part and encourage private investment in property
40 that is in need of remediation.

41 **Comment.** Section 69885 continues former Section 25364.1(c) without substantive change.

1 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68085
2 (“person”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible
3 party”), 68155 (“site”), 69875 (“affiliate,” “responsible party owner,” “site”).

4 **Staff Notes. (1)** Section 25364.1(c) refers to an order issued pursuant to Section 25355.5.
5 Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections
6 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section
7 25355.5(a)) is the only one of those provisions that addresses the issuance of orders and, thus,
8 appears to be the only provision relevant to this cross-reference. For this reason, the cross-
9 reference to Section 25355.5 has been updated to refer only to Section 69055. **Unless the**
10 **Commission receives comment suggesting otherwise, this proposed cross-reference update**
11 **will be presumed correct.**

12 **(2)** Section 25364.1(c) also refers to an order issued pursuant to Section 25358.3. Section
13 25358.3 has been proposed for recodification as multiple sections (proposed Sections 68650,
14 68655, 68660, and 68870). Proposed Section 68870 is the only of those sections that expressly
15 authorizes orders issued by the director to a responsible party. For this reason, the cross-reference
16 to Section 25358.3 has been updated to refer only to Section 68870. **Absent comment on this**
17 **issue, this proposed cross-reference update will be presumed correct.**

18 **§ 69890. Limitations on release from liability**

19 69890. Notwithstanding any other provision of this article, a release from
20 liability granted pursuant to Section 69880 shall not extend to any of the
21 following:

22 (a)(1) Any person who was a responsible party for a hazardous substance release
23 existing at the site before the release from liability was granted

24 (2) Any entity that is an affiliate of a responsible party described in paragraph
25 (1).

26 (b) Any contractor who prepares the remedial action plan or performs the
27 removal or remedial action provided for in the remedial action plan.

28 (c) Any person who obtains a release pursuant to Section 69880 by fraud or
29 negligent or intentional nondisclosure or misrepresentation.

30 (d) Any liability for a release or threatened release of a hazardous substance first
31 deposited at the site by a person released from liability pursuant to Section 69880
32 after the release from liability is granted.

33 **Comment.** Section 69890 restates former Section 25364.1(e) without substantive change.

34 See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125
35 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 69875 (“affiliate,”
36 “site”).

37 **Staff Note.** Proposed Section 69890(a) restates part of Section 25364.1(e) Currently, the
38 relevant provision, which describes a person to whom a release from liability shall not extend,
39 provides:

40 Any person who was a responsible party for a hazardous substance release existing at the site
41 before the release from liability was granted, and any entity which is an affiliate of such a
42 responsible party.

43 The provision was restated to eliminate uses of the words “such” and “which.” This restatement
44 is intended to be nonsubstantive. **Absent comment, this proposed restatement will be**
45 **presumed correct.**

1 **§ 69895. Required content of release from liability**

2 69895. Any release from liability granted by the director pursuant to this article
3 shall contain the following provision: “If, for any reason, the responsible party
4 does not complete the removal or remedial action, this release does not extend to
5 any subsequent actions or activities performed by the released party that
6 exacerbate the conditions at the site.”

7 **Comment.** Section 69895 continues former Section 25364.1(f) without substantive change.

8 See Sections 68055 (“director”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”),
9 68145 (“responsible party”), 68155 (“site”), 69875 (“site”).

10 **§ 69900. Subdivision of site to facilitate or secure financing for removal or remedial action**

11 69900. The site may be subdivided to create subdivided parcels of land, pursuant
12 to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title
13 7 of the Government Code), in order to facilitate removal or remedial action at the
14 site, secure financing for removal or remedial action, or secure financing for
15 development that would generate funds for removal or remedial action at the site.

16 **Comment.** Section 69900 continues former Section 25364.1(d) without substantive change.

17 See Sections 68125 (“remedy”), 68135 (“remove”), 68155 (“site”), 69875 (“site”).

18 **Article 11. Costs Incurred at BKK Landfill Site**

19 **§ 69910. Contribution towards liability**

20 69910. (a) Notwithstanding any other provision of this chapter, the costs
21 incurred by a state agency to take a hazardous substance response action at the
22 BKK Landfills Site in West Covina shall be deemed to be a contribution towards
23 any potential liability for response costs or damages imposed pursuant to state law
24 upon a state agency that arranged for the disposal or treatment of a hazardous
25 substance at that site.

26 (b) The Legislature declares its intent that the costs incurred by a state agency to
27 take action in response to a hazardous substance release at the BKK Landfills Site
28 in West Covina shall be deemed to be a contribution towards any potential liability
29 for response costs or damages imposed pursuant to the federal act upon a state
30 agency that arranged for the disposal or treatment of a hazardous substance at that
31 site.

32 **Comment.** Section 69910 continues former Section 25363.5 without substantive change.

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

35 **Staff Note.** The introductory clause of Section 25363.5, “[n]otwithstanding any other provision
36 of this article,” is referencing Article 6 (“Recovery Actions”) of Chapter 6.8. Nearly all of the
37 material in that article is proposed for recodification in this proposed chapter, with a few
38 exceptions. See, e.g., proposed Section 68185. In addition, some provisions that were originally
39 located elsewhere have been proposed for inclusion in this chapter. See, e.g., proposed Section
40 69680. These minor adjustments to the content do not appear to have a substantive effect on this
41 reference. For this reason, the reference has been updated to refer to “this chapter.” This update is

1 intended to be nonsubstantive. **Absent comment on this issue, this cross-reference update will**
2 **be presumed correct.**

3 Article 12. Settlement

4 § 69920. Settlement involving minor portion of response costs

5 69920. (a) The department shall, if it determines that it is practicable and in the
6 public interest, propose a final administrative or judicial expedited settlement with
7 potentially responsible parties if the settlement involves only a minor portion of
8 the response costs at a site and, if in the judgment of the department, either of the
9 following conditions are met:

10 (1) The amount of hazardous substances and the toxic or other hazardous effects
11 of the hazardous substances contributed by the potentially responsible party to the
12 site are minimal in comparison to the amount and effects of other hazardous
13 substances at the site.

14 (2) The potentially responsible party is the owner of the real property on or in
15 which the site is located, did not conduct or permit the generation, transportation,
16 storage, treatment, or disposal of any hazardous substance at the site, and did not
17 contribute to the release or threat of release of a hazardous substance at the site
18 through any act or omission. This paragraph does not apply if the potentially
19 responsible party, at the time of the purchase of the real property, knew or should
20 have known that the property was used for the generation, transportation, storage,
21 treatment, or disposal of any hazardous substance.

22 (b) A party who has resolved its liability to the state under this section shall not
23 be liable for claims for contribution regarding matters addressed in the settlement.
24 A settlement under this section does not discharge any of the other potentially
25 responsible parties unless its terms so provide, but it reduces the potential liability
26 of the others by the amount of the settlement.

27 (c) Any person who enters into a settlement under this section shall provide any
28 information relevant to the administration of this part that is requested by the
29 department. In order to obtain the contribution protection provided by subdivision
30 (b), a potentially responsible party participating in a de minimis settlement shall
31 certify that it has responded fully and accurately to all of the department's requests
32 for information, and that it has provided all of the relevant documents pertaining to
33 the site to the department.

34 (d) Nothing in this section shall be construed to affect the authority of the
35 department or regional board to reach settlements with other potentially
36 responsible parties under this part.

37 **Comment.** Section 69920 restates former Section 25360.6 without substantive change. For
38 consistency, the term "site" was substituted for the term "facility." See Section 68155 ("site" has
39 the same meaning as "facility" in federal act); see also Section 68035 (definitions in federal act
40 apply to terms used in this part).

41 See Sections 68050 ("department"), 68075 ("hazardous substance"), 68085 ("person"), 68100
42 ("regional board"), 68105 ("release"), 68140 ("response"), 68145 ("responsible party").

1 **Staff Note.** Section 25360.6 allows for settlement of a minor portion of response costs at a
2 “facility.” “Facility” is defined in the federal act. See 42 U.S.C. § 9601(9); see also proposed
3 Section 68035. Proposed Section 68155 defines “site” as having “the same meaning as the term
4 “facility” is defined by Section 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).” Typically, the
5 provisions of this part use the term “site.” For consistency, the term “facility” in this section was
6 replaced with “site.” This is intended to be a nonsubstantive change. **The staff welcomes
7 comment on this proposed restatement.**

8 Article 13. Liens

9 **Staff Note.** Section 25365.6(a) provides that a lien arises when response action costs are
10 incurred by “the department or regional board.” However, subdivisions (b) and (c) of Section
11 25356.6 refer only to the department as the lienholder. It is unclear whether the department would
12 necessarily be the lienholder if a lien is imposed pursuant to these provisions, particularly in a
13 situation where the regional board incurred the costs. **The staff welcomes comment on this
14 issue.**

15 **§ 69935. Lien on real property**

16 69935. (a)(1) Any costs or damages incurred by the department or regional
17 board pursuant to this part constitutes a claim and lien upon the real property
18 owned by the responsible party that is subject to, or affected by, the removal and
19 remedial action.

20 (2) The lien provided by this article shall continue until the liability for these
21 costs or damages, or a judgment against the responsible party, is satisfied.
22 However, if it is determined by the court that the judgment against the responsible
23 party will not be satisfied, the department may exercise its rights under the lien.

24 (b) This lien shall attach regardless of whether the responsible party is insolvent.

25 (c) A lien established by this article shall be subject to the notice and hearing
26 procedures required by due process of the law and shall arise at the time costs are
27 first incurred by the department or regional board with respect to a response action
28 at the site.

29 **Comment.** Section 69935 continues former Section 25365.6(a) and (c) without substantive
30 change.

31 See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68135
32 (“remove”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

33 **§ 69940. Force and effect of lien**

34 69940. The lien imposed by this article shall have the force and effect of, and
35 the priority of, a judgment lien upon its recordation in the county in which the
36 property subject to the lien is located.

37 **Comment.** Section 69940 continues the first sentence of former Section 25365.6(d) without
38 substantive change.

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

1 § 69945. Contents of lien

2 69945. (a) The lien shall contain the legal description of the real property, the
3 assessor’s parcel number, and the name of the owner of record, as shown on the
4 latest equalized assessment roll.

5 (b) The lien shall also contain a legal description of the property that is the site
6 of the hazardous substance release, the assessor’s parcel number for that property,
7 and the name of the owner of record, as shown on the latest equalized assessment
8 roll, of that property.

9 **Comment.** Section 69945 continues the second and third sentences of former Section
10 25365.6(d) without substantive change.

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

12 § 69950. Department not responsible party due to lien

13 69950. The department shall not be considered a responsible party for a
14 hazardous substance release site because a claim and lien is imposed pursuant to
15 this article.

16 **Comment.** Section 69950 continues former Section 25365.6(b) without substantive change.

17 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68145
18 (“responsible party”), 68155 (“site”).

19 § 69955. Deposit of funds recovered

20 69955. All funds recovered pursuant to this article shall be deposited in the state
21 account.

22 **Comment.** Section 69955 continues former Section 25365.6(e) without substantive change.

23 See Section 68165 (“state account”).

24 CHAPTER 9. ORPHAN SHARE REIMBURSEMENT

25 Article 1. General Provisions

26 § 70000. Definitions

27 70000. For purposes of this chapter, the following definitions shall apply:

28 (a) “Fund” means the Orphan Share Reimbursement Trust Fund established
29 pursuant to Section 70020.

30 (b) “Orphan share” means the share of liability for the costs of response action
31 that is attributable to the activities of persons who are defunct or insolvent, as
32 determined pursuant to Section 70070.

33 **Comment.** Section 70000 continues former Section 25390 without substantive change.

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

35 **Staff Note.** Section 25390(a) cross-references Section 25390.3 for the establishment of the
36 Orphan Share Reimbursement Trust Fund. Section 25390.3 has been proposed for recodification
37 as multiple provisions (proposed Sections 70020 and 70025). The cross-reference has been
38 updated to refer only to Section 70020, which contains the provision establishing the fund.

1 **Absent comment on this issue, this proposed cross-reference update will be presumed**
2 **correct.**

3 **§ 70005. Legislative findings and declarations**

4 70005. The Legislature finds and declares all of the following:

5 (a) This chapter, which establishes an Orphan Share Reimbursement Trust Fund,
6 operates in conjunction with the federal liability scheme under the federal act as in
7 effect on July 1, 1998, for the recovery of response costs expended by government
8 agencies.

9 (b) Under federal liability, at sites where there are insolvent or defunct parties
10 that cannot contribute to the cost of cleanup, viable responsible parties pay the
11 share of liability for that cleanup that may be attributable to insolvent and defunct
12 parties.

13 (c) The Orphan Share Reimbursement Trust Fund is created to mitigate the
14 payment of an insolvent or defunct party's liability share by viable responsible
15 parties, to the extent money in the fund is available, and to encourage responsible
16 parties to quickly and efficiently remediate contamination.

17 **Comment.** Section 70005 continues former Section 25390.1 without substantive change.

18 See Sections 68065 ("federal act"), 68140 ("response"), 68145 ("responsible party"), 68155
19 ("site"), 70000 ("fund").

20 **§ 70010. Effect of chapter**

21 70010. (a) This chapter does not prohibit, and is not intended to prohibit, the
22 department, the regional board, or the Attorney General from pursuing any
23 existing legal, equitable, or administrative remedies, pursuant to federal or state
24 law, against any potentially responsible party.

25 (b) No liability or obligation is imposed upon the state pursuant to this chapter,
26 and the state shall not incur a liability or obligation beyond the payment of claims
27 pursuant to this chapter, to the extent that money is available and has been
28 allocated by the administrator under subdivision (a) of Section 70050. No legal
29 action may be brought against the Orphan Share Reimbursement Trust Fund in its
30 own name.

31 **Comment.** Section 70010 continues former Section 25390.2 without substantive change.

32 See Sections 68050 ("department"), 68100 ("regional board"), 68125 ("remedy"), 68145
33 ("responsible party").

34 **Article 2. Orphan Share Reimbursement Trust Fund**

35 **§ 70020. Creation, administration, and funding of Orphan Share Reimbursement Trust**
36 **Fund**

37 70020. (a) The Orphan Share Reimbursement Trust Fund is hereby created in
38 the State Treasury.

39 (b) The administrator of the fund may expend the money deposited in the fund
40 as provided in this chapter, upon appropriation by the Legislature. The

1 administrator of the fund shall act in a fiduciary capacity, shall prudently
2 administer the fund, and shall protect the fund from any unreasonable or
3 unjustified claims, including any unreasonable or unjustified determinations of the
4 orphan share percentage.

5 (c) If an appropriation from the General Fund is made to the fund in any fiscal
6 year and an amount greater than five million dollars (\$5,000,000) in unexpended
7 funds, beyond any amount approved by the administrator of the fund to pay claims
8 pursuant to this chapter from that General Fund appropriation, remain in the fund
9 at the end of that fiscal year, and if the department determines that additional
10 funding for orphan sites beyond that appropriated from the state account is
11 required for the next fiscal year, the administrator may expend the amount in
12 excess of five million dollars (\$5,000,000) from the General Fund appropriation to
13 pay for response costs incurred by the department or the regional boards under this
14 part at sites listed pursuant to Article 5 (commencing with Section 68760) of
15 Chapter 4 where no viable responsible parties exist.

16 **Comment.** Section 70020 continues former Section 25390.3(a), (b), and (d) without
17 substantive change.

18 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68145
19 (“responsible party”), 68155 (“site”), 68165 (“state account”), 70000 (“fund,” “orphan share”).

20 **Staff Note.** Section 25390.3(d) refers to the “Toxic Substances Control Account.” In the
21 proposed section, this reference was replaced with the defined term, “state account.” See
22 proposed Section 68165.

23 **§ 70025. Permissible expenditures**

24 70025. Except as provided in subdivision (b) of Section 68420 and subdivision
25 (c) of Section 70020, the administrator of the fund may expend the money in the
26 fund for all of the following purposes:

27 (a) To pay claims for reimbursement of all, or any part of, the orphan share at a
28 site paid by the responsible party filed pursuant to Sections 70040, 70045, and
29 70050.

30 (b) For the costs of implementing this chapter.

31 (c) To pay the reasonable costs of the department and the regional board for
32 performance of its duties under this chapter, including, but not limited to, its
33 participation in the orphan share determination process set forth in Section 70070,
34 unless those costs are paid by a potentially responsible party under an agreement
35 specified in subdivision (c) of Section 70040. The expenditures from the fund for
36 purposes of this subdivision shall not exceed 5 percent of the total amount
37 appropriated from the fund in the annual Budget Act for purposes of this section
38 for that fiscal year.

39 (d) To pay the portion of costs attributable to the orphan share incurred by the
40 department and the regional boards to oversee actions of potentially responsible
41 parties, unless those costs are paid by a potentially responsible party under an
42 agreement specified in subdivision (c) of Section 70040.

1 **Comment.** Section 70025 continues former Section 25390.3(c) without substantive change.
2 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68145
3 (“responsible party”), 68155 (“site”), 70000 (“fund,” “orphan share”).

4 Article 3. Claims for Orphan Share Reimbursement

5 **§ 70040. Persons who may file claim**

6 70040. A potentially responsible party may file a claim pursuant to subdivision
7 (a) of Section 70025 only if all of the following apply:

8 (a) The site is listed pursuant to Article 5 (commencing with Section 68760) of
9 Chapter 4.

10 (b) The department or the regional board has approved a final remedy for the
11 site under Article 12 (commencing with Section 69190) of Chapter 5.

12 (c) The department and the potentially responsible party have entered into a
13 written, enforceable cleanup agreement or order embodied in a consent order
14 issued pursuant to Section 68870 or 69055, or the regional board and the
15 potentially responsible party have entered into a written, enforceable cleanup
16 agreement or order that provides for the completion of all response actions
17 necessary at the site, conducted pursuant to this part and under the oversight and at
18 the direction of the department or the regional board. The agreement shall provide
19 for the payment by the potentially responsible party of the department’s or the
20 regional board’s response costs.

21 (d) The potentially responsible party demonstrates, and the department or the
22 regional board finds, that the potentially responsible party has and will have
23 sufficient financial resources to complete all required response actions.

24 (e) The potentially responsible party is in compliance with the agreement
25 provided in subdivision (c), and with any other applicable order or agreement
26 pertaining to the potentially responsible party’s obligations with respect to the site.

27 (f) The potentially responsible party has prepared and provided the information
28 required under subdivision (b) of Section 70070.

29 (g) The claim for reimbursement is for the costs incurred for response actions
30 that were subject to the oversight and approval of the department or the regional
31 board.

32 **Comment.** Section 70040 continues former Section 25390.4(a) without substantive change.
33 See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68140
34 (“response”), 68145 (“responsible party”), 68155 (“site”).

35 **Staff Notes.** Section 25390.4(a) refers to “the department and the potentially responsible party”
36 entering an “enforceable cleanup agreement or order... issued pursuant to Section 25355.5 or
37 25358.3.” Each of these cross-referenced provisions is discussed in turn below.

38 (1) Section 25355.5 has been proposed for recodification as multiple sections (proposed Sections
39 69055, 69060, 69065, and 69130(b)). With the exception of proposed Section 69055, all of the
40 proposed Sections were omitted from this cross-reference, as they do not appear relevant.
41 Proposed Section 69055 (Section 25355.5(a)) is the only provision that addresses the issuance of
42 orders and entry into enforceable agreements and, thus, appears to be the only provision relevant
43 to this cross-reference. For this reason, the cross-reference to Section 25355.5 has been updated

1 to refer only to Section 69055. **Absent comment on this issue, this proposed cross-reference**
2 **update will be presumed correct.**

3 (2) Section 25358.3 has been proposed for recodification as several sections (proposed Sections
4 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section 25358.3(a))
5 is the only provision that addresses the department’s issuance of orders to parties and, thus,
6 appears to be the only provision that is relevant to this cross-reference. Proposed Section 68660
7 relates to relief sought in court, in which case the court would be the one to issue orders.
8 However, this provision does not appear to encompass court orders. For this reason, the cross-
9 reference to Section 25358.3 has been updated to refer only to Section 68870. **Absent comment**
10 **on this issue, this proposed cross-reference update will be presumed correct.**

11 **§ 70045. Forms and procedures for claims**

12 70045. The administrator of the fund shall prescribe appropriate application
13 forms and procedures for claims filed pursuant to subdivision (a) of Section 70025
14 that shall include all of the following:

15 (a) Requirements that the claimant provide, at a minimum, all of the following
16 documentation:

17 (1) A sworn verification of the claim to the best of the information known to the
18 claimant or within the claimant’s possession or control.

19 (2) All records and information pertaining to the site and relevant to the
20 ownership, operation, or control of the site, or to the ownership, possession,
21 generation, treatment, transportation, storage or disposal of a hazardous substance,
22 pollutant, or contaminant at or in connection with the site, within the possession or
23 control of the claimant, including, but not limited to, the information specified in
24 subdivision (a) of Section 68440.

25 (3) Certification of all response costs that have been, or will be, incurred at the
26 site by the potentially responsible party, and an estimate of the total cost of
27 completion of the approved final remedy at the site.

28 (b) Procedures specifying that claims shall be filed only at the two following
29 specific time periods during the performance of a response action:

30 (1) After the final remedy is selected under Article 12 (commencing with
31 Section 69190) of Chapter 5.

32 (2) After the department or the regional board determines that the response
33 action is complete. The department or the regional board shall not include
34 operation and maintenance activities in determining whether the response action is
35 complete under this paragraph.

36 **Comment.** Section 70045 continues former Section 25390.4(b) without substantive change.

37 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
38 68125 (“remedy”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 70000
39 (“fund”).

40 **§ 70050. Payment of claims**

41 70050. (a) The administrator of the fund shall annually, on a fiscal year basis,
42 pay claims for reimbursement from the fund filed by potentially responsible

1 parties under subdivision (a) of Section 70025, in accordance with the following
2 procedures:

3 (1) Claims for funds available during each fiscal year shall be filed with the
4 administrator by July 30 of that fiscal year.

5 (2) For sites with multiple responsible parties, all potentially responsible parties
6 that have entered into the cleanup agreement specified in subdivision (c) of
7 Section 70040 shall file a single claim.

8 (3)(A) The administrator shall allocate the money available in the fund for the
9 fiscal year among the claims filed by the July 30 deadline. The allocation shall be
10 based on the determination of the orphan share percentage at the facility under the
11 process set forth in Section 70070, the long-term financial stability and short-term
12 resources available in the fund, and the administrator's fiduciary duty with respect
13 to the fund. Except as provided in subparagraph (B), the administrator shall pay
14 claims for funds in the order in which they are received.

15 (B) Notwithstanding subparagraph (A), if an appropriation from the General
16 Fund is made to the fund in any fiscal year, the administrator may alter the order
17 of payment of claims required by subparagraph (A) by using funds appropriated
18 from the General Fund to pay claims based on the threat to public health or the
19 environment posed by a site or the need to improve economic and environmental
20 conditions in redeveloping communities.

21 (4) The total amount allocated to any one site shall not exceed 10 percent of the
22 total amount available each fiscal year in the fund. If, due to this limit or to the
23 unavailability of funds, a claimant receives only partial or no reimbursement of the
24 orphan share paid by that claimant, the claim shall be paid in the following fiscal
25 year and shall be given priority over all claims filed after the claim was initially
26 received, subject to the discretion of the administrator set forth in paragraph (3).

27 (5) The administrator's proposed allocation shall be subject to public review and
28 comment for 30 days.

29 (b) The state and the fund have no obligation to provide full reimbursement to a
30 claimant. The fund shall be allocated at the discretion of the administrator, subject
31 to the requirements of this chapter. In enacting this chapter, the Legislature intends
32 that claimants be reimbursed only to the extent that money is available in the fund
33 and is allocated to the claimant by the administrator.

34 **Comment.** Section 70050 continues former Section 25390.4(c) and (d) without substantive
35 change.

36 See Sections 68145 ("responsible party"), 68155 ("site"), 70000 ("fund," "orphan share").

37 **§ 70055. Sites for which claims not permitted**

38 70055. A claim for reimbursement under subdivision (a) of Section 70025 shall
39 not be filed for any of the following:

40 (a) Sites listed on the National Priorities List pursuant to the federal act (42
41 U.S.C. Sec. 9605(a)(8)(B)).

1 (b) Sites remediated pursuant to former Chapter 6.85 (commencing with Section
2 25396) of Division 20.

3 (c) Sites, or portions of sites, for which the potentially responsible party has
4 agreed to take all response action required by the department or the regional board
5 at the site, and that agreement is embodied in a written, enforceable settlement
6 agreement, including, but not limited to, a judicial consent decree, entered into
7 prior to January 1, 1999.

8 (d) Sites, or portions of sites, that have been fully remediated for which the
9 department or the regional board has determined that the response action is
10 complete prior to January 1, 1999. The department or the regional board shall not
11 include operation and maintenance activities in determining whether the response
12 action is complete under this section.

13 **Comment.** Section 70055 continues former Section 25390.7 without substantive change.

14 See Sections 68050 (“department”), 68065 (“federal act”), 68080 (“operation and
15 maintenance”), 68100 (“regional board”), 68140 (“response”), 68145 (“responsible party”),
16 68155 (“site”).

17 Article 4. Determination of Orphan Share

18 § 70070. Manner for determination

19 70070. For the purposes of this chapter, the orphan share shall be determined in
20 the following manner:

21 (a) The orphan share shall be expressed as a percentage in multiples of five, up
22 to, and, including, but not greater than, 75 percent.

23 (b) The potentially responsible party filing a claim for reimbursement of the
24 orphan share shall provide the administrator of the fund with a written potentially
25 responsible party search report that shall include a list of all potentially responsible
26 parties identified for the site, the factual and legal basis for identifying those
27 parties, and a proposed orphan share percentage. The potentially responsible party
28 shall also provide the administrator with the factual documentation necessary to
29 support the proposed orphan share percentage.

30 (c) Upon receipt of the information required by subdivision (b), the
31 administrator of the fund shall invite all identified potentially responsible parties
32 and the department and the regional board to submit any additional information
33 relating to the proposed orphan share percentage or to the list of identified
34 potentially responsible parties.

35 (d) The administrator of the fund, in consultation with the department or the
36 regional board, shall determine a final orphan share percentage based on the
37 volume, toxicity, and difficulty of removal of the contaminants contributed to the
38 site by the party responsible for the orphan share. The administrator shall
39 determine the orphan share timely and efficiently and is not required to precisely
40 determine all relevant factors, as long as the determination is generally equitable.
41 In addition, the administrator may consider the results of any apportionment or

1 allocation conducted by voluntary arbitration or mediation or by a civil action filed
2 by a potentially responsible party, or any other apportionment or allocation
3 decision that is helpful when determining the orphan share percentage.

4 (e) A potentially responsible party shall not assert, and the administrator of the
5 fund shall not determine, that the orphan share percentage includes the share of
6 liability attributable to a potentially responsible party's acts that occurred before
7 January 1, 1982, unless that share of responsibility is attributable to a person who
8 is defunct or insolvent.

9 (f) In determining the orphan share percentage under this section, the
10 administrator of the fund may perform any of the activities authorized in
11 subdivisions (a) and (c) of Section 68440.

12 (g) The administrator of the fund shall issue all orphan share percentage
13 determinations in writing, with notification to all appropriate parties. The decision
14 of the administrator with respect to either apportionment or payment of claims is a
15 final agency action for the purposes of judicial review of the decision by any party
16 to the proceedings resulting in the decision; however, judicial review of the
17 administrator's decision is limited to a showing of fraud by a party submitting
18 information under **[this subdivision]**. The administrator shall be represented by
19 the Attorney General in any action brought under this chapter.

20 **Comment.** Section 70070 restates former Section 25390.5 without substantive change. This
21 provision was restated to singularize the phrase "party or parties." This is a nonsubstantive
22 change. See Section 13. An erroneous reference to "subdivision (a)" in subdivision (c) was
23 corrected to refer to "subdivision (b)."

24 See Sections 68050 ("department"), 68085 ("person"), 68100 ("regional board"), 68135
25 ("remove"), 68145 ("responsible party"), 68155 ("site"), 70000 ("fund," "orphan share").

26 **Staff Notes. (1)** Section 25390.5(c) requires the fund administrator to take specified action after
27 "receipt of the information required by subdivision (a)." Subdivision (a) simply states a rule for
28 the orphan share percentage to be expressed as a multiple of five. It appears that this should refer
29 to the information required by subdivision (b), which specifies what information a party filing a
30 reimbursement claim must submit. The reference has been corrected accordingly, and refers now
31 to "information required by subdivision (b)." See proposed Section 70070(c). **Absent comment**
32 **on this issue, this correction will be presumed correct.**

33 **(2)** Section 25380.5(g) limits judicial review to a showing of fraud by a party submitting
34 information under "this subdivision." This reference appears to be erroneous, as subdivision (g)
35 does not provide for a party to submit information. It is unclear whether this reference should be
36 revised to refer to the section as a whole or some subset of the section. **The staff welcomes**
37 **comment on how this reference should be corrected.**

38 Article 5. Enforcement and Cost Recovery

39 § 70080. Recovery of costs paid from fund

40 70080. Any costs paid from the fund pursuant to subdivisions (a) and (d) of
41 Section 70025 shall be recoverable by the Attorney General, at the request of the
42 administrator of the fund, from any liable person who has not entered into, or is
43 not in compliance with, a written cleanup agreement entered into pursuant to

1 subdivision (c) of Section 70040 that provides for the completion of all response
2 actions necessary at the site under the oversight and at the direction of the
3 department or the regional board.

4 **Comment.** Section 70080 restates former Section 25390.6(a) without substantive change. This
5 provision was restated to singularize the phrase “person or persons.” This is a nonsubstantive
6 change. See Section 13.

7 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68145
8 (“responsible party”), 68155 (“site”), 70000 (“fund”).

9 **§ 70085. Penalty for withholding information or submitting false information**

10 70085. Any potentially responsible party who withholds information required to
11 be submitted under [**this section or Section 70080**], or who submits false
12 information, is subject to a civil penalty of up to twenty-five thousand dollars
13 (\$25,000) for each piece of information withheld or for each piece of false
14 information submitted.

15 **Comment.** Section 70085 continues former Section 25390.6(b) without substantive change.

16 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68145
17 (“responsible party”), 68155 (“site”).

18 **Staff Note.** Section 25390.6(b) establishes a civil penalty for a party who withholds information
19 “required to be submitted under this section.” Section 25390.6 has been proposed for
20 recodification as two sections (this proposed section and proposed Section 70080). The cross-
21 reference (in bold, bracketed text) was updated to refer to both of these proposed sections.
22 However, nothing in existing Section 25390.6 appears to require a party to submit information. It
23 is unclear what the intended application of this rule should be. **The staff welcomes comment on**
24 **this issue.**

25 **§ 70090. Lien for incurred costs**

26 70090. (a) Any costs incurred and payable from the fund by the administrator
27 pursuant to this chapter shall constitute a claim and lien upon the real property
28 owned by a responsible party that is subject to, or affected by, a response action. A
29 lien established by this subdivision shall have all of the following properties:

30 (1) The lien shall not exceed the increase in fair market value of the site
31 attributable to the response action at the time of a subsequent sale or other
32 disposition of the site.

33 (2) The lien shall attach regardless of whether the responsible party property
34 owner is solvent.

35 (3) The lien shall arise at the time costs to the fund are first incurred by the
36 administrator.

37 (4) The lien shall be subject to the notice and hearing procedures that due
38 process of the law requires.

39 (b) Neither the administrator of the fund nor the fund shall be considered a
40 responsible party for a hazardous substance release site because a claim and lien is
41 imposed pursuant to this section.

1 (c)(1) The lien imposed by this section shall have the force and effect of, and the
2 priority of, a judgment lien upon its recordation in the county in which the
3 property subject to the lien is located.

4 (2) The lien shall contain the legal description of the property, the assessor’s
5 parcel number, and the name of the owner of record, as shown on the latest
6 equalized assessment roll. The lien shall also contain a legal description of the
7 property that is the site of the hazardous substance release, the assessor’s parcel
8 number for that property, and the name of the owner of record, as shown on the
9 latest equalized assessment roll, of that property.

10 (d) All funds recovered pursuant to this section shall be deposited in the fund.

11 **Comment.** Section 70090 continues former Section 25390.8 without substantive change.

12 See Sections 68075 (“hazardous substance”), 68105 (“release”), 68140 (“response”), 68145
13 (“responsible party”), 68155 (“site”), 70000 (“fund”).

14 **Staff Note.** Section 25390.8(d) governs the deposit of all funds recovered pursuant to “this
15 subdivision.” However, subdivision (d) does not otherwise provide for fund recovery. In a very
16 similar section governing other liens, the provision refers to funds recovered pursuant to “this
17 section.” See Section 25365.6. It appears that the reference to “this subdivision” should refer to
18 the section as a whole. For this reason, the reference has been updated to refer to “this section.”
19 **Absent comment on this issue, this reference correction will be presumed correct.**

20 Article 6. Operative Date

21 § 70100. Operative date

22 70100. (a) This chapter shall become operative on the operative date of the
23 statute that does either, or both, of the following:

24 (1) Appropriates funds to the fund to implement this chapter.

25 (2) Establishes a revenue source for the fund.

26 (b) Notwithstanding subdivision (a), the operation of this chapter shall be
27 suspended during any fiscal year in which both no funds are appropriated to the
28 fund to implement this chapter and no revenue source for the fund is operative.

29 **Comment.** Section 70100 continues former Section 25390.9 without substantive change.

30 See Section 70000 (“fund”).

31 **Staff Note.** Section 25390.9(a) provides that this law becomes operative “on the operative date
32 of a statute” that meets at least one of specified conditions. **The staff welcomes input on
33 whether the specified conditions have been met such that this law is operative.** If this law is
34 operative, subdivision (a) would appear to be obsolete and should not be continued.

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.

Existing Provision	New Provision	Existing Provision	New Provision
25300	68000(a)	25351.2(d)	69175
25301	68005	25351.5	68400
25310	68035	25351.7	69490
25310.5	68040	25351.8	69495
25311	68045	25352(a), (b)	69450
25312	68050	25352(c)	69685
25313	68055	25353(a), (b), (d), (f)	69070
25314	68060	25353(e)	69075
25315	68065	25353(c)	69690
25316	68075(a)	25353.5	68210(a)-(f)
25317	68075(b)	25354(a), 1st sent.,	
25318.5	68080	(c), 2nd-3rd sent., (d)	68240
25319	68085	25354(c), 1st sent.	68580
25319.1	68090	25354(a), 2nd sent., (b)	68875
25319.5	68095	25354.5(f)	68370
25319.6	68100	25354.5(a)	69355
25320	68105(a)	25354.5(b)(1), 2nd and 3rd sent.	69350
25321	68105(b)	25354.5(c)	69370
25322	68125	25354.5(d)	69375
25322.1	68115	25354.5(e)	69380
25322.2	68120	25354.5(g)	69385
25323	68135	25354.5(b)(2)	69365
25323.1	68130	25354.5(b)(1), 1st sent.	69360
25323.3	68140	25355(a)	68850
25323.5	68145	25355(b)	69130(a)
25323.9	68155	25355(c)(1), (d)	69135
25324(a)	68165	25355(c)(2)	69005
25324(b)	69680	25355.2(f)	69310
25325	68070	25355.2(a)	69315
25326	68110	25355.2(b)	69320
25326.3	68150	25355.2(c), (d)	69325
25326.5	68160	25355.2(e)	69330
25327	68170	25355.5(b)	69060
25330.2	68265	25355.5(a)	69055
25330.4	68230	25355.5(c), (d)	69065
25330.5	68235	25355.5(e)	69130(b)
25331	68220	25355.6(a)	68900
25334.7	68575	25355.6(b)	68905
25337	68260	25355.6(c), (d)	68910
25342	68200	25355.7	69000
25343	69105	25355.8	69100
25350, 1st and 2nd sent.	68855	25356(a)	68765
25350, 3rd sent.	68860	25356(b)	68760
25351.2(a)	69160	25356(d)	68775
25351.2(b)	69165	25356(e)	68795
25351.2(c)	69170	25356(f)	68780

Existing Provision	New Provision	Existing Provision	New Provision
25356(g)	68785	25359.1	69580
25356(h)	68790	25359.2	69550
25356(c)	68770	25359.20(a).....	69465
25356.1(a)	69190	25359.20(b), (c)	69470
25356.1(b)	69195	25359.20(d), (e)	69475
25356.1(c)	69200	25359.3(a).....	69590
25356.1(d)	69205	25359.3(b)	69595
25356.1(e), 5th sent., (f).....	69215	25359.3(c).....	69600
25356.1(g)	69220	25359.4(a)-(c)	68675
25356.1(h)(1), (2), (5)	69225	25359.4(d)-(f)	68680
25356.1(h)(3)	69230	25359.4.5	69555
25356.1(h)(4)	69235	25359.5(a).....	68720
25356.1(i)	69240	25359.5(b)-(c).....	68725
25356.1(e), 1st 4 sent.	69210	25359.5(e).....	68730
25356.1.3(d)	69035	25359.5(d)	68735
25356.1.3(a)	69020	25359.5(f)	68740
25356.1.3(b)	69025	25359.6	68505
25356.1.3(c)	69030	25359.7(a).....	68700
25356.1.5(a)	69260	25359.7(b)	68705
25356.1.5(b)	69265	25360	69650
25356.1.5(c)	69270	25360.1	69655
25356.1.5(d), (e).....	69275	25360.2(d)	69800
25357	68225	25360.2(a).....	69780
25357.5	69400	25360.2(e).....	69785
25358	68410	25360.2(b)	69790
25358.1(a)	68435	25360.2(c).....	69795
25358.1(b)-(d)	68440	25360.3(a).....	69810
25358.1(j), (k)	68445	25360.3(d), (e)	69815
25358.1(e)-(h)	68450	25360.3(b)	69820
25358.1(i)	68455	25360.3(c).....	69825
25358.1(l)	68460	25360.4(e).....	69745
25358.2(d)	68495	25360.4(d)	69725
25358.2(b)	68490	25360.4(a).....	69730
25358.2(c)	68485	25360.4(b)	69735
25358.2(a)	68480	25360.4(c).....	69740
25358.3(b)	68650	25360.6	69920
25358.3(a)	68870	25361(b)	69705
25358.3(c)-(d)	68655	25361(a).....	69700
25358.3(e)-(g)	68660	25362	69710
25358.4.....	68510	25363(e).....	69765
25358.5.....	68880	25363(c).....	69665
25358.6.....	68885	25363(d)	69670
25358.7.....	68930	25363(a), (b)	69760
25358.7.1(b)	68955	25363.5	69910
25358.7.1(a), 3rd sent.	68935	25364	69860
25358.7.1(a), 1st and 4th sent.	68950	25364.1(d)	69900
25358.7.1(c)	68965	25364.1(f)	69895
25358.7.1(d)	68970	25364.1(e).....	69890
25358.7.1(a), 2nd sent.	68960	25364.1(c).....	69885
25358.7.2(a), 1st sent., (b)-(d)	68420	25364.1(b)	69880
25358.7.2(a), 2nd sent.	68925	25364.1(a).....	69875
25358.8.....	68975	25364.7	69865
25358.9(a)	69290	25365	69660
25358.9(b)	69295	25365.6(a), (c)	69935
25359.....	69570	25365.6(d), 2nd and 3rd sent.	69945

Existing Provision	New Provision	Existing Provision	New Provision
25365.6(d), 1st sent.	69940	25386.1	68320
25365.6(b)	69950	25386.2	68325
25365.6(e)	69955	25386.25	68330
25366	68185	25386.3	68335
25366.5(a)	69845	25386.4	68340
25366.5(b)	69840	25386.5	68345
25366.5(c)	69850	25390	70000
25368	68525	25390.1	70005
25368.1	68530	25390.2	70010
25368.2	68535	25390.3(c)	70025
25368.3	68540	25390.3(a), (b), (d)	70020
25368.4	68545	25390.4(b)	70045
25368.5	68550	25390.4(a)	70040
25368.6	68555	25390.4(c), (d)	70050
25368.7	68560	25390.5	70070
25368.8	68565	25390.6(b)	70085
25385	68280	25390.6(a)	70080
25385.1	68285	25390.7	70055
25385.2	68290	25390.8	70090
25385.4	68295	25390.9	70100
25385.5	68300	25395.35	68360
25385.6	68305	25395.36	68365
25385.7	68310		
25386	68315		

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.

New Provision	Existing Provision	New Provision	Existing Provision
68000(a)	25300		
68000(b)	new	68240	
68005	2530125354(a), 1st sent., (c), 2nd-3rd sent., (d)	
68010	new	68260	25337
68015	new	68265	25330.2
68020	new	68280	25385
68025	new	68285	25385.1
68030	new	68290	25385.2
68035	25310	68295	25385.4
68040	25310.5	68300	25385.5
68045	25311	68305	25385.6
68050	25312	68310	25385.7
68055	25313	68315	25386
68060	25314	68320	25386.1
68065	25315	68325	25386.2
68070	25325	68330	25386.25
68075(a)	25316	68335	25386.3
68075(b)	25317	68340	25386.4
68080	25318.5	68345	25386.5
68085	25319	68360	25395.35
68090	25319.1	68365	25395.36
68095	25319.5	68370	25354.5(f)
68100	25319.6	68400	25351.5
68105(a)	25320	68410	25358
68105(b)	25321	68420	25358.7.2(a), 1st sent., (b)-(d)
68110	25326	68435	25358.1(a)
68115	25322.1	68440	25358.1(b)-(d)
68120	25322.2	68445	25358.1(j), (k)
68125	25322	68450	25358.1(e)-(h)
68130	25323.1	68455	25358.1(i)
68135	25323	68460	25358.1(l)
68140	25323.3	68480	25358.2(a)
68145	25323.5	68485	25358.2(c)
68150	25326.3	68490	25358.2(b)
68155	25323.9	68495	25358.2(d)
68160	25326.5	68505	25359.6
68165	25324(a)	68510	25358.4
68170	25327	68525	25368
68185	25366	68530	25368.1
68200	25342	68535	25368.2
68210(a)-(f)	25353.5	68540	25368.3
68210(g)	new	68545	25368.4
68220	25331	68550	25368.5
68225	25357	68555	25368.6
68230	25330.4	68560	25368.7
68235	25330.5	68565	25368.8

New Provision	Existing Provision	New Provision	Existing Provision
68575	25334.7	69130(b)	25355.5(e)
68580	25354(c), 1st sent.	69135	25355(c)(1), (d)
68650	25358.3(b)	69160	25351.2(a)
68655	25358.3(c)-(d)	69165	25351.2(b)
68660	25358.3(e)-(g)	69170	25351.2(c)
68675	25359.4(a)-(c)	69175	25351.2(d)
68680	25359.4(d)-(f)	69190	25356.1(a)
68700	25359.7(a)	69195	25356.1(b)
68705	25359.7(b)	69200	25356.1(c)
68720	25359.5(a)	69205	25356.1(d)
68725	25359.5(b)-(c)	69210	25356.1(e), 1st 4 sent.
68730	25359.5(e)	69215	25356.1(e), 5th sent., (f)
68735	25359.5(d)	69220	25356.1(g)
68740	25359.5(f)	69225	25356.1(h)(1), (2), (5)
68760	25356(b)	69230	25356.1(h)(3)
68765	25356(a)	69235	25356.1(h)(4)
68770	25356(c)	69240	25356.1(i)
68775	25356(d)	69260	25356.1.5(a)
68780	25356(f)	69265	25356.1.5(b)
68785	25356(g)	69270	25356.1.5(c)
68790	25356(h)	69275	25356.1.5(d), (e)
68795	25356(e)	69290	25358.9(a)
68850	25355(a)	69295	25358.9(b)
68855	25350, 1st and 2nd sent.	69310	25355.2(f)
68860	25350, 3rd sent.	69315	25355.2(a)
68870	25358.3(a)	69320	25355.2(b)
68875	25354(a), 2nd sent., (b)	69325	25355.2(c), (d)
68880	25358.5	69330	25355.2(e)
68885	25358.6	69350	25354.5(b)(1), 2nd and 3rd sent.
68900	25355.6(a)	69355	25354.5(a)
68905	25355.6(b)	69360	25354.5(b)(1), 1st sent.
68910	25355.6(c), (d)	69365	25354.5(b)(2)
68925	25358.7.2(a), 2nd sent.	69370	25354.5(c)
68930	25358.7	69375	25354.5(d)
68935	25358.7.1(a), 3rd sent.	69380	25354.5(e)
68950	25358.7.1(a), 1st and 4th sent.	69385	25354.5(g)
68955	25358.7.1(b)	69400	25357.5
68960	25358.7.1(a), 2nd sent.	69450	25352(a), (b)
68965	25358.7.1(c)	69465	25359.20(a)
68970	25358.7.1(d)	69470	25359.20(b), (c)
68975	25358.8	69475	25359.20(d), (e)
69000	25355.7	69490	25351.7
69005	25355(c)(2)	69495	25351.8
69020	25356.1.3(a)	69550	25359.2
69025	25356.1.3(b)	69555	25359.4.5
69030	25356.1.3(c)	69570	25359
69035	25356.1.3(d)	69580	25359.1
69055	25355.5(a)	69590	25359.3(a)
69060	25355.5(b)	69595	25359.3(b)
69065	25355.5(c), (d)	69600	25359.3(c)
69070	25353(a), (b), (d), (f)	69650	25360
69075	25353(e)	69655	25360.1
69100	25355.8	69660	25365
69105	25343	69665	25363(c)
69130(a)	25355(b)	69670	25363(d)

New Provision	Existing Provision	New Provision	Existing Provision
69680	25324(b)	69880	25364.1(b)
69685	25352(c)	69885	25364.1(c)
69690	25353(c)	69890	25364.1(e)
69700	25361(a)	69895	25364.1(f)
69705	25361(b)	69900	25364.1(d)
69710	25362	69910	25363.5
69725	25360.4(d)	69920	25360.6
69730	25360.4(a)	69935	25365.6(a), (c)
69735	25360.4(b)	69940	25365.6(d), 1st sent.
69740	25360.4(c)	69945	25365.6(d), 2nd and 3rd sent.
69745	25360.4(e)	69950	25365.6(b)
69760	25363(a), (b)	69955	25365.6(e)
69765	25363(e)	70000	25390
69780	25360.2(a)	70005	25390.1
69785	25360.2(e)	70010	25390.2
69790	25360.2(b)	70020	25390.3(a), (b), (d)
69795	25360.2(c)	70025	25390.3(c)
69800	25360.2(d)	70040	25390.4(a)
69810	25360.3(a)	70045	25390.4(b)
69815	25360.3(d), (e)	70050	25390.4(c), (d)
69820	25360.3(b)	70055	25390.7
69825	25360.3(c)	70070	25390.5
69840	25366.5(b)	70080	25390.6(a)
69845	25366.5(a)	70085	25390.6(b)
69850	25366.5(c)	70090	25390.8
69860	25364	70100	25390.9
69865	25364.7		
69875	25364.1(a)		

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?
- Are the uses of the undefined terms “remediate” and “remediation” problematic, in light of their similarity to the defined terms, “remedy” and “remedial action”?
- Should the definitions of “owner” and “property” in proposed Section 69870 be restated to clarify the scope of these terms and to assess whether the scope of these definitions is consistent with the underlying legislative policy?
- Should the provisions specifying how a presumption of nonliability may be rebutted (proposed Sections 69800 and 69820) apply to any action in which the presumption of nonliability may apply?