

Memorandum 2020-13

**Recodification of Toxic Substance Statutes
(Chapter 6.5)**

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

At its prior meeting, the Commission approved tentative recommendations for the recodification of Chapter 6.8 and the associated conforming revisions.⁴ The comment deadline for those tentative recommendations is July 24, 2020. The work on Chapter 6.8 is on hold for the time being and will resume when the Commission considers stakeholder comments.

This memorandum discusses next steps in the Commission's study of toxic substance statutes and the drafting practices for this study. This memorandum also presents a proposed outline for the recodification of Chapter 6.5.

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

REMAINING WORK

Chapter 6.5

The natural next step is to proceed to the recodification of Chapter 6.5, the other chapter identified in the Legislature's assignment of this topic to the Commission.

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. Minutes (Jan. 2020), p. 3.

Location of the Recodification of Chapter 6.5

As an initial step, the staff considered where the recodification of Chapter 6.5 should be located in the Health and Safety Code.

When the Commission initially started work on this study, the Commission decided to place the recodified law in the gap between existing Divisions 39 and 101 in the Health and Safety Code.⁵ The Commission also decided to use three levels of subheadings below the division level (Part, Chapter, and Article).⁶ The Commission's tentative recommendation for Chapter 6.8 locates the recodified law in a new Division 45 and uses the three subheading levels.⁷

The staff proposes to locate the recodified Chapter 6.5 in a new Division 44, to precede the recodification of Chapter 6.8. The substance of Chapter 6.5 is more wide-ranging than Chapter 6.8 and includes some general provisions that pertain to the work of the Department of Toxic Substances Control more broadly.⁸ Given the more general provisions in Chapter 6.5, it makes sense to have the provisions of this chapter precede the recodified Chapter 6.8 in the code.

Does the Commission tentatively approve of this proposed location for the recodification of Chapter 6.5?

Related Provisions for Possible Recodification In and Amongst Chapter 6.5 Provisions

The Commission's resolution also authorizes the Commission to address "related provisions." Early in this study, the Commission received input from stakeholders about substantive relationships between the content of Chapters 6.5, 6.8, and the chapters located in between and around those two chapters. Stakeholders raised the issue about these related laws in response to the proposed relocation of the material in Chapter 6.8.

With Chapter 6.8, the Commission took a conservative approach, using its "related provisions" authority to address only cross-references that point to Chapter 6.8 or its contents. For Chapter 6.8, the staff's sense was that the neighboring laws, although substantively related, are separate and distinct from the substance of Chapter 6.8.

The staff is unsure, however, whether the substance of Chapter 6.5 is so strongly related to any of the neighboring bodies of law that those bodies of law

5. Minutes (Dec. 2018), p. 3.

6. *Id.*

7. Tentative Recommendation on *Hazardous Substance Account Recodification Act* (Jan. 2020).

8. See, e.g., Sections 25103, 25152.5.

should be considered for recodification in and amongst the material in Chapter 6.5. **In light of the stakeholder concerns about substantive relationships between Chapter 6.5 and the surrounding chapters, the staff welcomes comment on whether any of the neighboring laws are so related to Chapter 6.5 that they should be considered for recodification in and amongst the substance of Chapter 6.5.**

Related Provisions for This Study as a Whole

The staff recommends that the Commission consider the scope of “related provisions” again in this study, after the work of recodifying Chapter 6.5 is complete. At that time, the Commission can resolve whether to recodify any provisions that are related to, but separate and distinct from, Chapters 6.5 and 6.8.

PRESUMED CONSENT: GENERAL DRAFTING APPROACH

This section discusses the staff’s proposed drafting approach for Chapter 6.5’s recodification. The drafting practices described herein were the practices used in preparing the recodification of Chapter 6.8.

These drafting issues are presented as consent items.⁹ **If any Commissioner would like to discuss or make changes to the drafting practices described below, the Commissioner may request discussion at the meeting. In the absence of such a request, the staff will presume consent on the described practices.**

Default Drafting Practices

As with the recodification of Chapter 6.8, the staff plans to take a conservative drafting approach. In most cases, the recodification will preserve the language of existing law verbatim. This approach is used to ensure that this recodification is strictly nonsubstantive, as directed by the Legislature.

Minor changes to conform to legislative drafting practices or correct technical errors will be made without notation.¹⁰

9. This approach was taken in line with the Commission’s expressed preference that the staff use consent procedures to streamline consideration of purely technical and uncontroversial matters. Minutes (July 2019), p. 2.

10. Changes to conform to legislative drafting practice would include, for example, adding subdivision designations to avoid undesignated paragraphs, eliminating the words “such” and “thereof,” eliminating gendered language, correcting “that”/“which” grammatical errors, and standardizing references to “internet website.” Technical corrections that could be made without notation would include correcting clear typographical errors and correcting cross-reference formatting.

Unless directed otherwise by the Commission, the staff intends to implement the following routine revisions, which were used for Chapter 6.8, in recodifying Chapter 6.5:

- Substituting defined terms, where appropriate (e.g., “Department of Toxic Substances Control” would be shortened to “department,” which is defined for Chapter 6.5 in Section 25111).
- Correcting and standardizing federal law citations (e.g., noting “federal” before the name of any federal act; ensuring a consistent citation format for citations to the “federal act,” defined for Chapter 6.5 as the federal Resource Conservation and Recovery Act of 1976 in Section 25115.1).
- Elimination of uses of both singular and plural forms of a word (e.g., “plan or plans,” “person or persons”).¹¹
- Including a Staff Note addressing any questionable or problematic cross-reference and proposing a resolution where the needed correction seems clear.

In some rare cases, when the statutory language is unduly complex, the staff will propose simplifying changes to improve readability and clarity. Any changes of this type would be described in a “Staff Note” for the affected provision.

The proposed legislation will also contain an introductory, explanatory Staff Note. This initial Staff Note will describe the different components of the Commission’s proposed legislation (Commission’s comments, the Staff Notes, the disposition and derivation tables) and provide other helpful information for stakeholders reviewing the proposed legislation. This Staff Note will be reproduced in the drafts of proposed legislation and updated as needed.

SUBSTANCE OF CHAPTER 6.5

Chapter 6.5 is significantly longer than Chapter 6.8. Chapter 6.5 contains roughly five times more statutory language (based on page counts from an unannotated code book) than Chapter 6.8.

Chapter 6.5 contains more wide-ranging substance than Chapter 6.8. Very broadly, Chapter 6.5 addresses two major topics: (1) the sale and manufacture of products with hazardous or toxic components and (2) hazardous waste management. A list of the articles contained in Chapter 6.5 is attached as an Exhibit to this memorandum.

11. See Section 13 (“The singular number includes the plural, and the plural the singular.”).

More specifically, Chapter 6.5 contains provisions creating processes for identifying and regulating hazardous chemicals in consumer products (Article 14. Green Chemistry). Chapter 6.5 also contains rules governing the sale or manufacture of specific consumer products that contain hazardous materials (e.g., Article 10.02. Lighting Toxics Reduction; Article 10.2.1. Mercury-Added Thermostats, Relays, Switches, and Measuring Devices). Chapter 6.5 also has rules for reducing hazardous waste generation (Article 11.9. Pollution Prevention and Hazardous Waste Source Reduction and Management Review Act).

Chapter 6.5 contains provisions identifying what constitutes hazardous waste (e.g., Article 4. Listings). Chapter 6.5 provides rules for specific types of hazardous waste (e.g., Article 10.3. Electronic Waste; Article 13. Management of Used Oil). And, Chapter 6.5 governs the management and processing of hazardous waste (e.g., Article 6. Transportation; Article 7. Treatment, Recycling, and Disposal Technology; Article 8.7. Procedures for the Approval of New [Hazardous Waste] Facilities).

PROPOSED ORGANIZATION FOR THE RECODIFICATION OF CHAPTER 6.5

In the second Exhibit attached to this memorandum, the staff proposes an organizational outline for the recodification of Chapter 6.5. The outline also includes a brief description of the content of the different subdivisions of the outline by referencing the existing provisions that the staff anticipates will be recodified in each location.

Proposed Division 44, tentatively entitled “Toxics Management,” will contain four parts, which are tentatively entitled: “General Provisions,” “Toxics Reduction,” “Hazardous Waste,” and “Generation and Management of Hazardous Waste.” The content of each of the parts is described very briefly below.

Proposed Part 1, General Provisions, includes findings and declarations, definitions, and financial provisions. This part also includes miscellaneous powers and duties, rules about governmental coordination, and the enforcement provisions for the division.

Proposed Part 2, Toxics Reduction, contains rules about pollution prevention, green chemistry, and reducing toxics in consumer products.

Proposed Part 3, Hazardous Waste, contains rules for identifying hazardous waste, as well as rules applicable only to specific types of hazardous waste.

Proposed Part 4, Generation and Management of Hazardous Waste, contains rules governing the generation and transportation of hazardous waste, as well as the permitting and operation of hazardous waste facilities (i.e., facilities where hazardous waste is treated, stored, recycled, or disposed of). This part also includes rules for land use and planning related to hazardous waste.

Does the Commission tentatively approve of the proposed organization for the recodification of Chapter 6.5?

NEXT STEPS

If the Commission approves of the proposed organization, the staff will begin preparing the recodified law, according to the proposed organizational outline

Respectfully submitted,

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ARTICLES IN CHAPTER 6.5 OF DIVISION 20 OF THE HEALTH AND SAFETY CODE

Chapter 6.5. Hazardous Waste Control

- Article 1. Findings and Declarations
- Article 2. Definitions
- Article 3. Hazardous Waste Resource and Research Coordination Program
- Article 3.5. Hazardous Waste Management Plans
- Article 4. Listings
- Article 4.5. State Regulation of Existing Hazardous Waste Facilities
- Article 5. Standards
- Article 5.5. Coordination with Federal Acts
- Article 5.6. The Toxic Injection Well Control Act of 1985
- Article 6. Transportation
- Article 6.5. Hazardous Waste Haulers
- Article 6.6. Hazardous Waste of Concern and Public Safety Act
- Article 7. Treatment, Recycling, and Disposal Technology
- Article 7.7. Hazardous Waste Treatment Reform Act of 1995
- Article 8. Enforcement
- Article 8.3. Hazardous Waste Enforcement Coordinator and Strike Force
- Article 8.5. Hazardous Waste Testing Laboratories
- Article 8.6. Development of Hazardous Waste Management Facilities on Indian Country
- Article 8.7. Procedures for the Approval of New Facilities
- Article 9. Permitting of Facilities
- Article 9.1. Facilities and Generator Fees
- Article 9.2. Cost Reimbursement
- Article 9.4. Banned, Unregistered, or Outdated Agricultural Wastes
- Article 9.5. Surface Impoundments
- Article 9.6. Land Treatment Units
- Article 9.7. Integrated On-Farm Drainage Management
- Article 10. Prohibited Chemicals
- Article 10.01. Management of Perchlorate
- Article 10.02. Lighting Toxics Reduction
- Article 10.1. Management of Hazardous Wastes Removed From Discarded Appliances
- Article 10.1.1. Metal-Containing Jewelry
- Article 10.1.2. Lead Plumbing Monitoring and Compliance Testing
- Article 10.2. Motor Vehicle Switches
- Article 10.2.1. Mercury-Added Thermostats, Relays, Switches, and Measuring Devices
- Article 10.2.2. Mercury Thermostat Collection Act of 2008
- Article 10.3. Electronic Waste

Article 10.4. Toxics in Packaging Prevention Act
Article 10.5. The Lead-Acid Battery Recycling Act of 2016
Article 10.5.1. Lead Wheel Weights
Article 10.6. Management of Small Household Batteries
Article 10.7. Recyclable Latex Paint and Oil-Based Paint
Article 10.8. Household Hazardous Waste and Small Quantity Generator Waste
Article 10.9. Battery Management: Federal Regulation
Article 11.1. Institutional Control
Article 11.5. Hazardous Waste Disposal on Public Land
Article 11.8. Hazardous Waste Reduction, Recycling, and Treatment
Article 11.9. Pollution Prevention and Hazardous Waste Source Reduction and
Management Review Act
Article 12. Financial Responsibility and Closure and Maintenance of Facilities
Article 12.5. The Perchlorate Contamination Prevention Program
Article 13. Management of Used Oil
Article 13.5. Motor Vehicle Brake Friction Materials
Article 14. Green Chemistry
Article 17. Photovoltaic Modules

PROPOSED ORGANIZATION OF NEW DIVISION 44

Italicized text specifies the location in existing Chapter 6.5 containing the expected content for the new organizational scheme presented below.

Division 44. Toxics Management

Part 1. General Provisions

Chapter 1. Findings and Declarations (*Article 1. Findings and Declarations*)

Chapter 2. Effect of Recodification

Chapter 3. Definitions (*Article 2. Definitions*)

Chapter 4. Financial Provisions (part of *Article 7. Treatment, Recycling, and Disposal Technology*)

Chapter 5. General Powers and Duties

Article 1. Administration (parts of *Article 5. Standards* re regulations, public records, variances, public hearings, and similar)

Article 2. Duties (part of *Article 7. Treatment, Recycling, and Disposal Technology*)

Article 3. Lead Plumbing Monitoring (*Article 10.1.2. Lead Plumbing Monitoring and Compliance Testing*)

Chapter 6. Coordination Among State Agencies

Article 1. Hazardous Waste Resource and Research Coordination Program (*Article 3. Hazardous Waste Resource and Research Coordination Program*)

Article 2. Hazardous Waste Enforcement Coordinator and Strike Force (*Article 8.3. Hazardous Waste Enforcement Coordinator and Strike Force*)

Chapter 7. Coordination with Federal Law

Article 1. Resource Conservation and Recovery Act of 1976 (*Article 5.5. Coordination with Federal Acts*)

Article 2. Batteries (*Article 10.9. Battery Management: Federal Regulation*)

Chapter 8. Laboratory Analysis (*Article 8.5. Hazardous Waste Testing Laboratories*)

Chapter 9. Technology Development (*Article 11.8. Hazardous Waste Reduction, Recycling, and Treatment*)

Chapter 10. Enforcement (*Article 8. Enforcement*)

Part 2. Toxics Reduction

Chapter 1. Pollution Prevention and Source Reduction (*Article 11.9. Pollution Prevention and Hazardous Waste Source Reduction and Management Review Act*)

Chapter 2. Green Chemistry (*Article 14. Green Chemistry*)

Chapter 3. Toxics in Packaging (*Article 10.4. Toxics in Packaging Prevention Act*)

- Chapter 4. Perchlorate
 - Article 1. Management (*Article 10.01. Management of Perchlorate*)
 - Article 2. Contamination (*Article 12.5. The Perchlorate Contamination Prevention Program*)
- Chapter 5. Rules for Specific Products
 - Article 1. Chemical Toilet and Sewage Disposal Prohibited Chemicals (*Article 10. Prohibited Chemicals*)
 - Article 2. Lead Wheel Weights (*Article 10.5.1. Lead Wheel Weights*)
 - Article 3. Lighting (*Article 10.02. Lighting Toxics Reduction*)
 - Article 4. Mercury-Added Equipment (*Article 10.2.1. Mercury-Added Thermostats, Relays, Switches, and Measuring Devices*)
 - Article 5. Metal-Containing Jewelry (*Article 10.1.1. Metal-Containing Jewelry*)
 - Article 6. Motor Vehicle Brake Friction Materials (*Article 13.5. Motor Vehicle Brake Friction Materials*)
- Part 3. Hazardous Waste
 - Chapter 1. Identification of Hazardous Waste
 - Article 1. Listing (*Article 4. Listings*)
 - Article 2. Hazardous Wastes of Concern (*Article 6.6. Hazardous Waste of Concern and Public Safety Act*)
 - Chapter 2. Rules for Specific Wastes
 - Article 1. Electronic Wastes (*Article 10.3. Electronic Waste*)
 - Article 2. Household Batteries (*Article 10.6. Management of Small Household Batteries*)
 - Article 3. Lead Acid Batteries (*Article 10.5. The Lead-Acid Battery Recycling Act of 2016*)
 - Article 4. Mercury Thermostats (*Article 10.2.2. Mercury Thermostat Collection Act of 2008*)
 - Article 5. Motor Vehicle Switches (*Article 10.2. Motor Vehicle Switches*)
 - Article 6. Paint (*Article 10.7. Recyclable Latex Paint and Oil-Based Paint*)
 - Article 7. Photovoltaic Modules (*Article 17. Photovoltaic Modules*)
 - Article 8. Treated Wood Waste (part of *Article 5. Standards*)
 - Article 9. Used Oil (*Article 13. Management of Used Oil*)
 - Article 10. Waste from Discarded Appliances (*Article 10.1. Management of Hazardous Wastes Removed From Discarded Appliances*)
- Part 4. Hazardous Waste Generation and Management
 - Chapter 1. General Provisions
 - Article 1. Fees (*Article 9.1. Facilities and Generator Fees* and part of *Article 7. Treatment, Recycling, and Disposal Technology*)
 - Article 2. Cost Reimbursement (*Article 9.2. Cost Reimbursement*)
 - Article 3. Standards (part of *Article 5. Standards*)
 - Chapter 2. Planning and Land Use
 - Article 1. Hazardous Waste Management Plans (*Article 3.5. Hazardous Waste Management Plans*)
 - Article 2. Land Use Restrictions (*Article 11.1. Institutional Control*)
 - Chapter 3. Generators

- Article 1. Obligations for Hazardous Waste Generation and Management (parts of *Article 5. Standards* re restrictions on generators/managers of hazardous waste)
- Chapter 4. Transportation
 - Article 1. Transportation (*Article 6. Transportation*)
 - Article 2. Haulers (*Article 6.5. Hazardous Waste Haulers*)
- Chapter 5. Disposal on Public Land (*Article 11.5. Hazardous Waste Disposal on Public Land*)
- Chapter 6. Collection Programs
 - Article 1. Household Hazardous Waste and Conditionally Exempt Small Quantity Generator Waste (*Article 10.8. Household Hazardous Waste and Small Quantity Generator Waste*)
 - Article 2. Banned, Unregistered, or Outdated Agricultural Wastes (*Article 9.4. Banned, Unregistered, or Outdated Agricultural Wastes*)
- Chapter 7. Development of Hazardous Waste Facilities
 - Article 1. Approval Procedures for New Facilities (*Article 8.7. Procedures for the Approval of New Facilities*)
 - Article 2. Development of Facilities on Indian Country (*Article 8.6. Development of Hazardous Waste Management Facilities on Indian Country*)
- Chapter 8. Hazardous Waste Facilities
 - Article 1. Permitting (*Article 9. Permitting of Facilities*)
 - Article 2. Existing Facilities, as of May 1, 1981 (*Article 4.5. State Regulation of Existing Hazardous Waste Facilities*)
- Chapter 9. Rules for Specific Types of Facilities or Treatments
 - Article 1. Hazardous Waste Treatment Reform Act of 1995 (*Article 7.7. Hazardous Waste Treatment Reform Act of 1995*)
 - Article 2. Land Treatment Units (*Article 9.6. Land Treatment Units*)
 - Article 3. Metal Shredding Facilities (parts of *Article 5. Standards* re metal shredding facilities)
 - Article 4. Solar Evaporators for On-Farm Drainage Management (*Article 9.7. Integrated On-Farm Drainage Management*)
 - Article 5. Surface Impoundments (*Article 9.5. Surface Impoundments*)
 - Article 6. Toxic Injection Wells (*Article 5.6. The Toxic Injection Well Control Act of 1985*)
- Chapter 10. Facility Closure (*Article 12. Financial Responsibility and Closure and Maintenance of Facilities*)