

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Hazardous Substance Account Recodification Act

January 2020

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **July 24, 2020.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In 2018, the Legislature directed the Law Revision Commission to conduct a strictly nonsubstantive clean-up of “Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and related provisions, to improve the organization and expression of the law.”

The Commission decided to proceed with this work in phases, first undertaking work on Chapter 6.8.

This tentative recommendation presents a complete draft of a proposed recodification of the provisions of Chapter 6.8. The proposed law would reorganize the provisions to make them more user-friendly, without changing the substance of the law. The Commission seeks comments on this proposed recodification of Chapter 6.8.

This tentative recommendation discusses the history and purposes of the Commission’s study. This tentative recommendation then describes the general character and noteworthy features of the proposed recodification, as well as the methodology used in preparing it.

The Commission has prepared a separate recommendation that proposes necessary conforming revisions (i.e., updating cross-references to Chapter 6.8 and its contents).

This tentative recommendation was prepared pursuant to Resolution Chapter 158 of the Statutes of 2018.

HAZARDOUS SUBSTANCE ACCOUNT RECODIFICATION ACT

1 In 2018, the Legislature directed the Law Revision Commission to conduct a
2 strictly nonsubstantive clean-up of “Chapter 6.5 (commencing with Section 25100)
3 and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and
4 Safety Code, and related provisions, to improve the organization and expression of
5 the law.”¹

6 The Commission decided to proceed with this work in phases, first undertaking
7 work on Chapter 6.8.

8 This tentative recommendation presents a complete draft of a proposed
9 recodification of the provisions of Chapter 6.8. The proposed law would reorganize
10 the provisions to make them more user-friendly, without changing the substance of
11 the law. The Commission seeks comments on this proposed recodification of
12 Chapter 6.8.

13 The history and purposes of the Commission’s study are discussed briefly below.
14 This tentative recommendation then describes the general character and noteworthy
15 features of the proposed recodification, as well as the methodology used in
16 preparing it.

17 Unless otherwise indicated, all further statutory references are to the Health and
18 Safety Code.

19 **History and Purposes of the Commission’s Study**

20 This study originated with the work of the Independent Review Panel (IRP) of the
21 Department of Toxic Substances Control.² In 2015, the IRP was established to
22 “review and make recommendations regarding improvements to the department’s
23 permitting, enforcement, public outreach, and fiscal management.”³ During its
24 tenure, the IRP prepared 12 reports and submitted a number of recommendations,
25 including recommendations about statutory reforms.⁴

26 In response to the IRP’s work,⁵ the Legislature authorized the Commission to:

27 study, report on, and prepare recommended legislation to revise Chapter 6.5
28 (commencing with Section 25100) and Chapter 6.8 (commencing with Section
29 25300) of Division 20 of the Health and Safety Code, and related provisions, to
30 improve the organization and expression of the law. Such revisions may include,
31 but are not limited to, grouping similar provisions together, reducing the length and

1. 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)).

2. Senate Committee on Judiciary Analysis of SCR 91 (April 23, 2018), pp. 4-5.

3. 2015 Cal. Stat. ch. 24, § 15. The statute creating the IRP was repealed, by its own terms, on January 1, 2018.

4. See generally <https://dtsc.ca.gov/independent-review-panel/>.

5. See Senate Committee on Judiciary Analysis of SCR 91 (April 23, 2018), p. 3 (quoting Sen. Roth).

1 complexity of sections, eliminating obsolete or redundant provisions, and
2 correcting technical errors. The recommended revisions shall not make any
3 substantive changes to the law. The commission’s report shall also include a list of
4 substantive issues that the commission identifies in the course of its work, for
5 possible future study.⁶

6 The Legislature passed the resolution authorizing this work and the resolution was
7 chaptered in August 2018. Soon afterwards, the Commission began examining the
8 provisions of the Health and Safety Code as requested.⁷

9 **Scope of Tentative Recommendation**

10 Early in the course of this study, the Commission decided to begin work with the
11 recodification of Chapter 6.8. This tentative recommendation contains a proposed
12 recodification for the material currently found in Chapter 6.8.

13 Going forward, the Commission will work on Chapter 6.5 to prepare a separate
14 recommendation addressing those provisions.

15 The Legislature has granted the Commission authority to work on “related
16 provisions.” Early in the course of this study, the Commission received stakeholder
17 input highlighting relationships between Chapters 6.5 and 6.8 and a number of
18 surrounding chapters.⁸ For the time being, the Commission has construed the
19 “related provisions” authority narrowly to focus on required cross-reference updates
20 (and, as needed, relocation of any clearly misplaced provisions). The Commission
21 has prepared a separate tentative recommendation containing conforming revisions
22 to address the cross-references to provisions of Chapter 6.8 throughout the codes.⁹

23 **Nonsubstantive Reform**

24 In directing the Commission to study Chapters 6.5 and 6.8 of Division 20, the
25 Legislature specified that the Commission’s recommended legislation should
26 “improve the organization and expression of the law,” but “shall *not* make any
27 substantive changes to the law.”¹⁰ By this directive, the Legislature made clear that
28 the Commission’s proposed revisions were to be nonsubstantive.

6. 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)).

7. See CLRC Staff Memorandum 2018-52.

Any California Law Revision Commission document referred to in this tentative recommendation 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.

8. See Exhibit to First Supplement to CLRC Staff Memorandum 2018-69; CLRC Staff Memorandum 2019-10, pp. 4-5.

9. Tentative Recommendation on *Hazardous Substance Account Recodification Act: Conforming Revisions* (January 2020).

10. 2018 Cal. Stat. res. ch. 158 (emphasis added).

1 The Commission, mindful of this limitation, took several measures to avoid
2 introducing any substantive changes in the course of its work. These measures are
3 described below.

4 ***Objective and Participatory Study Process***

5 The Commission’s study process is well-suited to the development of a
6 nonsubstantive legal reform, for the following reasons:

- 7 • The Commission is neutral and objective, with a long history of nonpartisan
8 statutory reforms.¹¹
- 9 • The Commission is experienced in drafting legislation to recodify a complex
10 body of law without substantive change.¹²
- 11 • The Commission actively solicits input from affected individuals and interest
12 groups. It carefully considers each comment and often makes revisions in
13 response to concerns raised.
- 14 • In proposing a statutory reform, the Commission prepares a thorough report
15 that explains the purpose and effect of the reform. The report also includes a
16 complete draft of the proposed legislation and accompanying commentary, a
17 detailed table of contents, and a table showing the disposition of every
18 affected section. This report facilitates public review of the proposed reform.
- 19 • The Commission’s work is transparent. All materials are publicly distributed.
20 All deliberations are conducted at open public meetings.

21 ***Commission Comments***

22 In preparing a recommendation, the Commission drafts an explanatory
23 “Comment” for every section that is added, amended, or repealed.¹³ A Comment
24 indicates the derivation of the section and often explains its relation to other law.

25 Virtually every Comment in this tentative recommendation expressly states that a
26 proposed new code section either continues or restates an existing code section
27 “without substantive change.”¹⁴ That is important because upon enactment of the
28 Commission’s recommendation, the Comment would become a key aid in
29 determining legislative intent.

11. For a listing of reforms that have been enacted on the Commission’s recommendation, see the most recent version of its *Annual Report* (available at www.clrc.ca.gov).

12. See, e.g., *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217 (2009) (enacted as 2010 Cal. Stat. chs. 178 & 711); *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm’n Reports 789 (2003) (enacted as 2004 Cal. Stat. ch. 182).

13. In the proposed legislation presented in this tentative recommendation, the Comment for each proposed code section appears immediately after the code section.

14. For example, the Comment to proposed Section 68035 states that it “continues former Section 25310 without substantive change.” The Comment refers to the existing provision as “former Section 25310” (rather than “Section 25310”) because the Comment would be used after enactment of the proposed law and repeal of existing Chapter 6.8 of Division 20.

1 On completion of a final recommendation in this study, the Commission will
2 present the full recommendation, including the Comments, to the Legislature and
3 the Governor. If a bill is introduced to implement the recommendation, the
4 Commission will provide the full recommendation to each member of every policy
5 committee that reviews the bill.

6 Commission materials that have been placed before and considered by the
7 Legislature are considered evidence of legislative intent,¹⁵ and are entitled to great
8 weight in construing statutes.¹⁶ The materials are a key interpretive aid for
9 practitioners as well as courts,¹⁷ and courts may judicially notice and rely on them.¹⁸
10 Courts at all levels of the state¹⁹ and federal²⁰ judicial systems use Commission
11 materials to construe statutes enacted on Commission recommendation.²¹

15. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 51 Cal. Rptr. 3d 871 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.”).

16. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 50 Cal. Rptr. 585 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001) (In discerning legislative intent, Law Revision Commission reports are entitled to great weight).

17. See 7 B. Witkin, *Summary of California Law Constitutional Law* § 138, at 250 (11th ed. 2017) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

18. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315 (1993).

19. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. & Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 5-6, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

20. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292 (Bankr. S.D. Cal. 1984) (bankruptcy court).

21. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 28 Cal. Rptr. 3d 685 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Ramsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 99 Cal. Rptr. 2d 792 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 143 Cal. Rptr. 717 (1978) (Comments persuasive evidence of Legislature’s intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 101 Cal. Rptr. 869 (1972) (Comments evidence clear legislative intent of law).

1 The Commission’s Comments to the proposed legislation in this study would thus
2 help to demonstrate that the legislation constitutes a purely nonsubstantive
3 recodification of Chapter 6.8.

4 *Statements of Legislative Intent*

5 The proposed law would be known as the “Hazardous Substance Account
6 Recodification Act.”²² It includes several codified provisions that would expressly
7 state the purpose and effect of the recodification.

8 Proposed Section 68010 is a general statement regarding the nonsubstantive effect
9 of the recodification:

10 68010. Nothing in the Hazardous Substance Account Recodification Act is
11 intended to substantively change the law contained in former Chapter 6.8
12 (commencing with 25300) of Division 20. The act is intended to be entirely
13 nonsubstantive in effect. Every provision of this part and every other provision of
14 this act, including, without limitation, every cross-reference in every provision of
15 the act, shall be interpreted consistent with the nonsubstantive intent of the act.

16 Proposed Section 68015 would make clear that a provision of the proposed law is
17 intended as a restatement and continuation of the provision that it restates, rather
18 than a new enactment, and that any reference to a restated provision is deemed to
19 include a reference to the section that restates it (and vice versa):

20 68015. (a) A provision of this part, insofar as it is substantially the same as a
21 previously existing provision relating to the same subject matter, shall be
22 considered as a restatement and continuation of the previously existing provision
23 and not as a new enactment.

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

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

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

34 Another provision, proposed Section 68020, would make clear that restatement of
35 an existing provision is not intended to have any effect, positive or negative, on a
36 judicial interpretation of the restated provision:

37 68020. (a) A judicial decision interpreting a previously existing provision is
38 relevant in interpreting any provision of this part that restates and continues that
39 previously existing provision.

22. See proposed Section 68000(b) *infra*.

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

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

7 Lastly, proposed Section 68025 would make clear that restatement of a provision
8 is not intended to have any effect, positive or negative, on a judicial decision on the
9 *constitutionality* of the restated provision:

10 68025. (a) A judicial decision on the constitutionality of a previously existing
11 provision is relevant in determining the constitutionality of any provision of this
12 part that restates and continues that previously existing provision.

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

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

20 The provisions discussed above would establish that enactment of the proposed
21 recodification should not be viewed as acquiescence in any court case construing
22 the provisions of Chapter 6.8, or as an indication that the Legislature assessed the
23 constitutionality of each recodified section in enacting the recodification. The
24 proposed law would take no stand and have no effect on such matters.

25 ***Conservative Drafting***

26 In preparing this tentative recommendation, the Commission used a conservative
27 drafting approach. It stuck closely to the existing statutory text, to further minimize
28 the risk of a substantive change. In large part, this recodification continues the
29 language of existing law verbatim. In a few instances, language was restated to
30 improve clarity.²³ Such changes are noted in the Comment (provisions where
31 language changes were made are designated as “restating” the former provision).
32 Minor changes to reflect current legislative drafting practices or correct grammatical
33 errors were made without notation.

34 ***Legislative Process***

35 After the Commission completes its study process and issues a final
36 recommendation, the proposed law would be scrutinized carefully in the legislative
37 process, just like any other bill. This would serve as a final safeguard against any
38 substantive change in the law.

23. See, e.g., proposed Sections 68105(b), 68185, 68210, 68300, and 68590.

1 **Drafting Approach**

2 As discussed above, the Commission used a conservative drafting approach in
3 preparing this tentative recommendation. Other significant drafting techniques and
4 decisions are described below.

5 ***Location of the Proposed Law***

6 Currently, Chapter 6.8 is codified in “Division 20. Miscellaneous Health and
7 Safety Provisions” of the Health and Safety Code. The chapter contains the
8 following articles:

- 9 • Article 1. Short Title and Legislative Intent.²⁴
- 10 • Article 2. Definitions.²⁵
- 11 • Article 3. Hazardous Substance Account.²⁶
- 12 • Article 4. Fees.²⁷
- 13 • Article 5. Uses of the State Account.²⁸
- 14 • Article 5.5. Cleanup of Santa Susana Field Laboratory.²⁹
- 15 • Article 6. Recovery Actions.³⁰
- 16 • Article 6.3. Technology Demonstration Program.³¹
- 17 • Article 7. Compensation.³²
- 18 • Article 7.5. Hazardous Substance Cleanup Bond Act of 1984.³³
- 19 • Article 7.8. Orphan Share Reimbursement Trust Fund.³⁴
- 20 • Article 8.5. Cleanup Loans and Environmental Assistance to
21 Neighborhoods.³⁵
- 22 • Article 8.6. Revolving Loans Fund.³⁶
- 23 • Article 8.7. California Financial Assurance and Insurance for Redevelopment
24 Program.³⁷

24. Sections 25300-25301.

25. Sections 25310-25327.

26. Sections 25330.2-25337.

27. Sections 25342-25343.

28. Sections 25350-25359.7.

29. Sections 25359.20.

30. Sections 25360-25367.

31. Sections 25368-25368.8.

32. Sections 25372-25382.

33. Sections 25385-25386.5.

34. Sections 25390-25390.9.

35. Sections 25395.20-25395.32.

36. Sections 25395.35-25395.36.

37. Sections 25395.40-25395.45.

1 Within Chapter 6.8, there is only a single heading level available to organize the
2 material. Chapter 6.8 is divided into fourteen articles, as shown above.

3 The Commission recommends moving the substance of Chapter 6.8 to a new
4 location (i.e., Part 2 of a new division, Division 45) within the Health and Safety
5 Code. Relocating the material as proposed would provide an additional heading
6 level to organize the material.

7 The additional heading level would allow for lengthy sections to be subdivided
8 under a single heading and for sections within an article to be grouped into smaller,
9 but thematically cohesive pieces. This would further the legislative objectives to
10 “group[]similar provisions together [and] reduc[e] the length and complexity of
11 sections.”³⁸

12 *Structure of the Proposed Law*

13 As proposed, Chapter 6.8 of Division 20 would be recodified as “Part 2.
14 Hazardous Substance Account” of a new “Division 45. Hazardous Substance
15 Response.” Part 1 of Division 45 would be reserved for general provisions. Part 2
16 would be divided into twelve chapters, as follows:

17 Chapter 1. General Provisions.

18 Chapter 2. Financial Provisions.

19 Chapter 3. General Powers and Duties.

20 Chapter 4. Releases of Hazardous Substances.

21 Chapter 5. Cleanup of Hazardous Substance Releases.

22 Chapter 6. Site-Specific Rules Related to Cleanup.

23 Chapter 7. Enforcement.

24 Chapter 8. Cost Recovery.

25 Chapter 9. Orphan Share Reimbursement.

26 Chapter 10. Cleanup Loans and Environmental Assistance to Neighborhoods.

27 Chapter 11. California Financial Assurance and Insurance for Redevelopment
28 Program.

29 Chapter 12. Compensation.

30 Within those chapters, the material is further subdivided into articles.

31 *Numbering System*

32 Throughout the proposed legislation, the Commission used whole numbers for
33 numbering code sections (e.g., Section 68000). The Commission also left gaps in
34 the numbering, to allow ready insertion of new statutory material in an appropriate
35 location if needed in the future.

38. 2018 Cal. Stat. res. ch. 158.

1 This numbering approach will prevent confusion regarding the proper sequencing
2 of code sections, which sometimes exists when decimal numbers are used. It will
3 also promote logical, user-friendly organization as this law continues to evolve.

4 ***Short, Simple Sections***

5 The Legislature instructed the Commission to “reduc[e] the length and complexity
6 of sections.”³⁹

7 Excessively long sections can obscure relevant details of law, especially if a single
8 section addresses several different subjects. A better approach is to divide the law
9 into a larger number of smaller sections, with each section limited to a single subject.

10 Short sections have numerous advantages. They enhance readability and
11 understanding of the law, and make it easier to locate and refer to pertinent material.
12 In contrast to a long section, a short section can be amended without undue technical
13 difficulties⁴⁰ and new material can be inserted where logically appropriate,
14 facilitating sound development of the law.⁴¹ The use of short sections is the preferred
15 drafting technique of the California Code Commission,⁴² the Legislature,⁴³ the
16 Legislative Counsel,⁴⁴ and the Law Revision Commission.⁴⁵

17 For all of the reasons discussed above, the proposed law would divide lengthy
18 sections into shorter and simpler provisions.

19 ***Cross-References***

20 Chapter 6.8 contains numerous internal cross-references. In the proposed
21 legislation, the Commission updated each such cross-reference to reflect the new
22 numbering scheme in the recodification.

39. 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)).

40. The full text of a section must be set forth in any bill amending the section. Joint Rule 10. A lengthy bill entails higher printing costs than a short one. It also takes longer to review. Much of the material may be unrelated to a proposed reform, wasting reviewers’ time and potentially injecting additional issues into a simple proposal.

Further, the likelihood that two bills will be introduced to amend the same section is greater if a section is long and covers multiple topics than if a section is short and limited to a single topic. If two bills affect the same section and both are enacted, the bill that is signed last generally prevails over the other bill, rendering it a nullity. Gov’t Code § 9605. This can be avoided by double-jointing the bills or including other language to address the conflict. Taking such steps entails expense and effort, however, and introduces new possibilities for errors.

41. In amending a short section, the Legislature is unhampered by constraints such as overlong paragraphs and lack of available subparts. This promotes clear and straightforward drafting, as opposed to confusing and convoluted provisions.

42. California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen*, 1947-48 Report, app. G, at 4.

43. Joint Rule 8.

44. Legislative Counsel of California, *Legislative Drafting Manual* 26-28 (1975).

45. CLRC Staff Memorandum 1976-24; First Supplement to CLRC Staff Memorandum 1985-64.

1 To facilitate review of the updated cross-references, this tentative
2 recommendation includes two tables, located immediately after the proposed
3 legislation. One table shows the disposition of each existing code section; the other
4 table shows the derivation of each proposed code section.

5 Chapter 6.8 also contains numerous cross-references to statutes located outside
6 the chapter. In addition to updating the internal cross-references, the Commission
7 checked each of the external cross-references in preparing this tentative
8 recommendation.

9 Currently, a few of the cross-references in Chapter 6.8 are obsolete or plainly
10 erroneous. Where the proper cross-reference is obvious, the Commission corrected
11 the cross-reference in the proposed legislation, rather than perpetuating the error.
12 The cross-reference corrections are explained in the accompanying Comments.
13 Where the proper cross-reference is not altogether obvious, the Commission left the
14 cross-reference alone, so as not to create a risk of a substantive change. Notes in the
15 proposed legislation seek input on the problematic cross-references.

16 There are also many code sections located outside of Chapter 6.8 that cross-refer
17 to one or more provisions within Chapter 6.8. Those cross-references will also need
18 to be conformed to the new numbering scheme in the recodification. Those cross-
19 references are addressed in a separate tentative recommendation.

20 ***Future Legislation***

21 If, prior to introduction of legislation to implement this recommendation, a bill is
22 enacted amending provisions of Chapter 6.8, the Commission will incorporate the
23 substance of the enacted bill into the legislation to implement the proposed
24 recodification, without substantive change.

25 When the Commission eventually approves a final recommendation and a
26 legislator introduces a bill to implement that recommendation, there might be
27 conflicts between that bill and other pending bills (i.e., they might try to revise the
28 same code provision in different ways). If so, the Commission will recommend
29 double-jointing amendments or other steps to eliminate the conflicts and coordinate
30 the bills. Any such adjustments will be consistent with the nonsubstantive nature of
31 this study.

32 ***Delayed Operative Date***

33 Because of the breadth of the organizational changes that would be made by the
34 proposed legislation, the Commission recommends that it be given a delayed
35 operative date. The proposed legislation includes an uncodified provision to that
36 effect, delaying the operation of the proposed law by one year.

37 This delayed operation would provide time for those who work closely with the
38 affected statutes, including legal publishers, to adjust to the new organizational
39 scheme before it takes effect. The Commission's comments and the disposition and
40 derivation tables in the Commission's report would also help ease the transition.

1 Although the proposed recodification would entail some transitional costs (such
2 as updating manuals and regulations), the Commission believes that the long-term
3 benefits of having a better organized, more user-friendly statutory scheme would
4 soon outweigh those transitional costs.

5 **Request for Public Comment**

6 The Commission seeks public comment on its tentative recommendation. It
7 encourages comments on any aspect of the proposal, but it would especially
8 appreciate comments on the issues flagged for comment in the Notes that
9 accompany some of the proposed legislation.

10 **Comments can be in any format and can be emailed to**
11 **kburford@clrc.ca.gov.** Comments supporting the proposed approach are just as
12 important as comments suggesting changes to that approach or expressing other
13 views.

14 Comments from knowledgeable persons are invaluable in the Commission's
15 study process.

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PROPOSED LEGISLATION

Note. This note provides helpful guidance to describe the material, aside from legislative language, contained in this proposal.

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

Notes serve to flag issues requiring special attention or treatment.

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).

- 1 **Health & Safety Code §§ 25300-25395.45 (repealed). Hazardous Substance Account**
- 2 SEC. ____ Chapter 6.8 (commencing with Section 25300) of Division 20 of the
- 3 Health and Safety Code is repealed.
- 4 **Comment.** Chapter 6.8 is repealed. The substance of Chapter 6.8 has been continued as Part 2
- 5 (commencing with Section 68000) of Division 45. For background, see *Hazardous Substance*
- 6 *Account Recodification Act*, __ Cal. L. Revision Comm’n Reports __ (2020).
- 7 **Health & Safety Code §§ 68000-71050 (added). Hazardous substance response**
- 8 SEC. ____ Division 45 (commencing with Section 68000) is added to the Health
- 9 and Safety Code, to read:

DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

PART 1. GENERAL PROVISIONS [RESERVED]

PART 2. HAZARDOUS SUBSTANCE ACCOUNT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

§ 68000. Short title

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

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

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

Subdivision (b) is new. It provides a convenient means of referring to the recodification of former Chapter 6.8 (commencing with Section 25300) of Division 20. For background, see *Hazardous Substance Account Recodification Act*, __ Cal. L. Revision Comm’n Reports __ (2020).

§ 68005. Legislative intent

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

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

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

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

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

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

Article 2. Effect of Recodification

§ 68010. Nonsubstantive reform

68010. Nothing in the Hazardous Substance Account Recodification Act is intended to substantively change the law contained in former Chapter 6.8

(commencing with 25300) of Division 20. The act is intended to be entirely nonsubstantive in effect. Every provision of this part and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.

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

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

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

§ 68015. Continuation of existing law

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

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

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

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

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

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

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

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

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

§ 68020. Judicial decision interpreting former law

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

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

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

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

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

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

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

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

Note. In another recodification project, the Commission proposed including a section similar to proposed Section 68020 that addresses Attorney General opinions, rather than judicial decisions. The Commission considered whether such a provision should be included in this project, as well. However, in the course of this study, the Commission did not find Attorney General opinions related to Chapter 6.8. For this reason, this tentative recommendation does not include a provision about the effect of the recodification on Attorney General opinions. **The Commission welcomes comment on whether a provision regarding the effect of the recodification on Attorney General opinions should be included in this proposed legislation.**

§ 68025. Constitutionality

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

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

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

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

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

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

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

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

§ 68030. Conforming rule change

68030. (a) The department or another state agency may make a conforming rule change without complying with the rulemaking procedure specified in Article 5

(commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, if the rule change meets all of the requirements of this section.

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

(1) A completed and signed form STD 400.

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

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

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

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

Comment. Section 68030 is new.

See Section 68050 (“department”).

Article 3. Definitions

§ 68035. Applicable definitions

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

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

See Section 68065 (“federal act”).

Notes. (1) Section 25310 was restated in proposed Section 68035 to eliminate extraneous words.

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

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

Perhaps future study of this topic would be useful. Depending on the comment received, it may be appropriate to add this issue to the list of substantive issues for possible future study that is located at the end of the Commission's recommendation.

§ 68040. "Agency"

68040. "Agency" means the California Environmental Protection Agency.

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

§ 68045. "Contract competitor"

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

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

See Section 68085 ("person").

§ 68050. "Department"

68050. "Department" means the Department of Toxic Substances Control.

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

§ 68055. "Director"

68055. "Director" means the Director of Toxic Substances Control.

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

§ 68060. "Feasibility study"

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

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

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

§ 68065. "Federal act"

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

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

§ 68070. "Federally permitted release"

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

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

See Sections 68065 ("federal act"), 68105 ("release").

§ 68075. "Hazardous substance"

68075. (a) "Hazardous substance" means:

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

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

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

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

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

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

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

(b) “Hazardous substance” does not include:

(1) Petroleum, including crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance in paragraphs (1) to (6), inclusive, of subdivision (a), and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas usable for fuel).

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

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

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

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

See Section 68065 (“federal act”).

Note. Section 25317(a) reads:

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

In proposed Section 68075, this language would be restated for clarity and to conform to legislative drafting practices. In particular, it would be divided into paragraphs (1) and (2) of proposed Section 68075(b).

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

1 **§ 68080. “Operation and maintenance”**

2 68080. “Operation and maintenance” means those activities initiated or continued
3 at a hazardous substance release site following completion of a response action that
4 are deemed necessary by the department or regional board in order to protect public
5 health or safety or the environment, to maintain the effectiveness of the response
6 action at the site, or to achieve or maintain the response action standards and
7 objectives established by the final remedial action plan or final removal action work
8 plan applicable to the site.

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

10 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
11 68105 (“release”), 68125 (“remedy”), 68130 (“removal action work plan”), 68140 (“response”),
12 68155 (“site”).

13 **§ 68085. “Person”**

14 68085. “Person” means an individual, trust, firm, joint stock company, business
15 concern, partnership, limited liability company, association, and corporation,
16 including, but not limited to, a government corporation. “Person” also includes any
17 city, county, city and county, district, commission, the state or any department,
18 agency, or political subdivision thereof, any interstate body, and the United States
19 and its agencies and instrumentalities, to the extent permitted by law.

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

21 **Notes. (1)** Section 25319 provides:

22 “25319. ‘Person’ means an individual, trust, firm, joint stock company, business concern,
23 corporation, including, but not limited to, a government corporation, partnership, limited liability
24 company, and association. “Person” also includes any city, county, city and county, district,
25 commission, the state or any department, agency, or political subdivision thereof, any interstate
26 body, and the United States and its agencies and instrumentalities, to the extent permitted by law.”

27 In proposed Section 68085, the order of the phrases in the first sentence in the definition
28 of “person” from Section 25319 would be changed to improve clarity. Minor changes to the text
29 would be made to conform to legislative drafting practices.

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

32 **(2)** The intended application of the final phrase in the second sentence of the definition of “person”
33 seems somewhat uncertain. In particular, it is unclear whether “to the extent permitted by law” is
34 intended as a limitation on all of the listed entities in the second sentence or whether that phrase is
35 only intended to modify the last set of listed entities (“the United States and its agencies and
36 instrumentalities”). If the former application is intended, the Commission would propose moving
37 the phrase “to the extent permitted by law” to the front of the sentence (to read “‘Person’ also
38 includes, to the extent permitted by law, ...”). If the latter application is intended, it would be more
39 clear to move “to the extent permitted by law” to precede “the United States ...”. (to read “any
40 interstate body, and, to the extent permitted by law, the United States and its agencies and
41 instrumentalities”) **The Commission welcomes comment on this issue.**

42 **§ 68090. “Phase I environmental assessment”**

43 68090. “Phase I environmental assessment” means a preliminary assessment of a
44 property to determine whether there has been, or may have been, a release of a

1 hazardous substance based on reasonably available information about the property
2 and general vicinity. A phase I environmental assessment may include, but is not
3 limited to, a review of public and private records, current and historical land uses,
4 prior releases of a hazardous material, database searches, reviews of relevant files
5 of federal, state, and local agencies, visual and other surveys of the property and
6 general vicinity, interviews with current and previous owners and operators, and
7 review of regulatory correspondence and environmental reports. Sampling or testing
8 is not required as part of a phase I environmental assessment.

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

11 **§ 68095. “Preliminary endangerment assessment”**

12 68095. “Preliminary endangerment assessment” means an activity that is
13 performed to determine whether current or past hazardous substance management
14 practices have resulted in a release or threatened release of a hazardous substance
15 that poses a threat to the public health or the environment and is conducted in a
16 manner that complies with the guidelines published by the department entitled
17 “Preliminary Endangerment Assessment: Guidance Manual,” or as those guidelines
18 may be amended by the department. A preliminary endangerment assessment
19 includes all of the following activities:

20 (a) Sampling and analysis of a site.

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

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

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

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

28 **§ 68100. “Regional board”**

29 68100. “Regional board” means a California regional water quality control board.

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

31 **§ 68105. “Release”**

32 68105. (a) “Release” means any spilling, leaking, pumping, pouring, emitting,
33 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
34 environment.

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

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

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

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

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

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

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

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

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

Note. Section 25321(c) provides:

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

For clarity, proposed Section 68105(b) would separate the text of Section 25321(c) into two paragraphs (paragraphs (3) and (4)). The proposed language also includes changes to conform to legislative drafting practices and to correct an apparent error (i.e., an omitted comma).

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

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

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

Comment. Section 68110 continues former Section 25326 without substantive change.

See Sections 68040 (“agency”), 68105 (“release”).

1 **§ 68115. “Remedial design”**

2 68115. “Remedial design” means the detailed engineering plan to implement the
3 remedial action alternative or initial remedial measure approved by the department.

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

6 **§ 68120. “Remedial investigation”**

7 68120. “Remedial investigation” means those actions deemed necessary by the
8 department to determine the full extent of a hazardous substance release at a site,
9 identify the public health and environment threat posed by the release, collect data
10 on possible remedies, and otherwise evaluate the site for purposes of developing a
11 remedial action plan.

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

15 **§ 68125. “Remedy” or “remedial action”**

16 68125. “Remedy” or “remedial action” includes all of the following:

17 (a) Those actions that are consistent with a permanent remedy, that are taken
18 instead of, or in addition to, removal actions in the event of a release or threatened
19 release of a hazardous substance into the environment, as further defined by Section
20 101(24) of the federal act (42 U.S.C. Sec. 9601(24)), except that any reference in
21 Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)) to the President,
22 relating to determinations regarding the relocation of residents, businesses, and
23 community facilities shall, for the purposes of this part, be deemed to be a reference
24 to the Governor and any other reference in that section to the President shall, for the
25 purposes of this part, be deemed a reference to the Governor, or the director, if
26 designated by the Governor.

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

29 (c) Site operation and maintenance.

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

33 **§ 68130. “Removal action work plan”**

34 68130. “Removal action work plan” means a work plan prepared or approved by
35 the department or a regional board that is developed to carry out a removal action,
36 in an effective manner, that is protective of the public health and safety and the
37 environment. The removal action work plan shall include a detailed engineering
38 plan for conducting the removal action, a description of the onsite contamination,
39 the goals to be achieved by the removal action, and any alternative removal options
40 that were considered and rejected and the basis for that rejection.

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

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

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

§ 68135. “Remove” or “removal”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 See Sections 68050 ("department"), 68055 ("director"), 68065 ("federal act"), 68085 ("person"),
20 68105 ("release"), 68125 ("remedy"), 68155 ("site").

21 **§ 68150. "Secretary"**

22 68150. "Secretary" means the Secretary for Environmental Protection.

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

24 **§ 68155. "Site"**

25 68155. "Site" has the same meaning as the term "facility" is defined by Section
26 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

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

28 See Section 68065 ("federal act").

29 **§ 68160. "Site cleanup evaluation"**

30 68160. "Site cleanup evaluation" means an evaluation by the department of the
31 effectiveness of a removal or remedial action conducted by a responsible party, to
32 reduce or eliminate actual or potential public health and environmental threats posed
33 by a hazardous substance release site if the action itself is not the subject of oversight
34 by the department.

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

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

38 **§ 68165. "State account"**

39 68165. "State account" means the Toxic Substances Control Account established
40 pursuant to Section 25173.6.

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”).

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

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

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

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

Article 2. Externally-Funded Positions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 3. State Account

§ 68220. Actions involving state account

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

Comment. Section 68220 continues former Section 25331 without substantive change.
See Section 68165 ("state account").

§ 68225. Excess expenditures

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

Comment. Section 68225 continues former Section 25357 without substantive change.
See Section 68165 ("state account").

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

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

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

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

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of

Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for removal or remedial action at the specific sites.

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

(f) There is hereby created a subaccount in the state account as the successor fund to the Stringfellow Insurance Proceeds Account created pursuant to former Section 25330.6, as amended by Chapter 178 of the Statutes of 2007. All assets, liabilities, and surplus in the Stringfellow Insurance Proceeds Account shall be transferred to, and become a part of, this subaccount for the Stringfellow Superfund Site in Riverside County, as provided in Section 16346 of the Government Code. All appropriations from the Stringfellow Insurance Proceeds Account, to the extent encumbered, shall continue to be available from the subaccount for expenditure for the same purposes and periods.

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

Former Section 25330.4(f)(2) is obsolete and has not been continued.

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

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

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

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

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

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

§ 68235. Subaccount for site operation and maintenance

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

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

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

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

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

5 (b) Notwithstanding Section 13340 of the Government Code, funds deposited in
6 the subaccount for site operation and maintenance are hereby continuously
7 appropriated to the department, without regard to fiscal years, for site operation and
8 maintenance, and for administrative costs associated with site operation and
9 maintenance.

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

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

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

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

23 **§ 68240. Reserve account for emergencies**

24 68240. (a) There is hereby continuously appropriated from the state account to the
25 department the sum of one million dollars (\$1,000,000) for each fiscal year as a
26 reserve account for emergencies, notwithstanding Section 13340 of the Government
27 Code.

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

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

39 **Comment.** Subdivision (a) of Section 68240 continues the first sentence of former Section
40 25354(a).

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

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

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

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

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

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

Article 4. Site Remediation Account

§ 68260. Site Remediation Account

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

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

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

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

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

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

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

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

1 **§ 68265. Encumbrance and disbursement of funds**

2 68265. Funds in the Site Remediation Account appropriated for removal or
3 remedial action pursuant to this part are available for encumbrance for three fiscal
4 years subsequent to the fiscal year in which the funds are appropriated and are
5 available for disbursement in liquidation of encumbrances pursuant to Section
6 16304.1 of the Government Code.

7 **Comment.** Section 68265 continues former Section 25330.2 without substantive change.
8 See Section 68125 (“remedy”), 68135 (“remove”).

9 Article 5. Hazardous Substance Cleanup Bond Act of 1984

10 **§ 68280. Short title**

11 68280. This article shall be known and may be cited as the Johnston-Filante
12 Hazardous Substance Cleanup Bond Act of 1984.

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

14 **§ 68285. Definitions**

15 68285. For purposes of this article, and for purposes of Section 16722 of the
16 Government Code as applied to this article, the following definitions apply:

17 (a) “Board” means the department.

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

20 (c) “Director” means the director.

21 (d) “Fund” means the state account.

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

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

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

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

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

33 **Notes. (1)** Proposed Section 68285 would revise Section 25385.1 to use the defined terms,
34 “department” and “director,” in subdivisions (a) and (c). The relevant subdivisions of Section
35 25385.1 are reproduced below:

36 “25385.1 For purposes of this article, and for purposes of Section 16722 of the
37 Government Code as applied to this article, the following definitions apply:

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

39 ...

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

41 ...”

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 Commission concluded that definition for “director” in subdivision (c) should be continued.

The changes reflected in proposed Section 68285 are intended to be nonsubstantive. **The Commission 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 Commission welcomes comment on this issue.**

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

§ 68290. Application of State General Obligation Bond Law

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

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

Note. The Commission found the intended effect of this provision unclear. In particular, the effect of statements that the State General Obligation Bond Law is “adopted” for this article and the “provisions of that law are included in this article as though set out in full in this article” is not obvious. In its research, the Commission staff found that these statements are very similar to language included in other bond legislation from the same year. Thus, this may be standard language for incorporating the State General Obligation Bond Law. **The Commission welcomes comment on whether the language of this provision causes any problems in practice and should be restated.**

§ 68295. Creation of Hazardous Substance Cleanup Committee

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

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

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

1 **§ 68300. Authority of committee to create debt for specified purposes**

2 68300. The committee may create debts or liabilities of the State of California, in
3 the aggregate of one hundred million dollars (\$100,000,000), in the manner
4 provided in this article. The debts or liabilities shall be created for the purpose of
5 providing moneys, for deposit in the fund, for the purposes specified in Section
6 68305.

7 **Comment.** Section 68300 restates former Section 25385.5 without substantive change. The
8 phrases “debt or debts” and “liability or liabilities” have been singularized. These are
9 nonsubstantive changes. See Section 13.

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

11 **§ 68305. Authorized uses of funds from bond proceeds**

12 68305. (a) The moneys in the state account that are the proceeds of bonds issued
13 and sold pursuant to this article may be used, upon appropriation by the Legislature,
14 for the purposes specified in this section.

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

18 (1) To provide the state share of a removal or remedial action pursuant to Section
19 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)) if the site is the subject of a
20 final remedial action plan issued pursuant to Article 12 (commencing with Section
21 69190) of Chapter 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 **§ 68325. Withdrawals from General Fund**

39 68325. (a) For the purpose of carrying out this article, the Director of Finance
40 may, by executive order, authorize the withdrawal from the General Fund of

1 amounts not to exceed the amount of the unsold bonds that the committee has, by
2 resolution, authorized to be sold for the purpose of carrying out this article.

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

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

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

10 **§ 68330. Tax-exempt funds**

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

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

24 **§ 68335. Determination on issuance of bonds**

25 68335. Upon the request of the board, and supported by a statement of the
26 proposed actions to be taken pursuant to Section 68305, the committee shall
27 determine whether it is necessary or desirable to issue any bonds authorized
28 pursuant to this article in order to take these actions, and if so, the amount of bonds
29 that should be issued and sold. Successive issues of bonds may be authorized and
30 sold to take these actions progressively, and it is not necessary that all of the bonds
31 authorized by this article to be issued are sold at any one time.

32 **Comment.** Section 68335 continues former Section 25386.3 without substantive change.
33 See Section 68285 (“board” and “committee”).

34 **§ 68340. Authority to sell bonds**

35 68340. The committee may authorize the Treasurer to sell all, or any part of, the
36 bonds authorized under this article at the time or times as may be fixed by the
37 Treasurer.

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

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

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

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

Article 6. Revolving Loans Fund

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

Comment. Section 68360 continues former Section 25395.35 without substantive change. Technical changes were made to correct a federal law citation and conform to standard citation formats.

See Section 68065 (“federal act”).

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

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

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

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

§ 68365. Revolving Loans Fund

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

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

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

(2) The amounts collected for loan services.

(3) Interest payments.

(4) Principal repayments.

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

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

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

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

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

Comment. Section 68365 continues former Section 25395.36 without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 68065.

See Sections 68050 (“department”), 68065 (“federal act”), 68140 (“response”), 68360 (“brownfield site,” “brownfield law,” “Federal Trust Fund,” and “fund”).

Note. Subdivision (c) of Section 25395.36 would be revised to conform the citation of the federal act to the format predominately used in this law. Section 25395.35(c) provides, in relevant part:

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

Article 7. Illegal Drug Lab Cleanup Account

§ 68370. Illegal Drug Lab Cleanup Account

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

Comment. Section 68370 continues former Section 25354.5(f) without substantive change. See Section 68050 (“department”), 68135 (“remove”).

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, would be recodified 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 cross-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.

A reference to a “public participation workplan” in subdivision (b) was corrected to refer to a “public participation plan.” See Section 68930.

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

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.” It is well past July 1, 2000, so this language appears to be obsolete. The changes reflected in

proposed Section 68420(a) are intended to be nonsubstantive. **The Commission welcomes any comment on this proposed change.**

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

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

(4) The last sentence of Section 25358.7.2(b) refers to a “public participation workplan” required to be adopted pursuant to Section 25358.7 (proposed Section 68930). Section 25358.7 uses slightly different terminology, requiring the adoption of a “public participation plan.” For this reason, proposed Section 68420 would be revised to refer to a “public participation plan” instead of a “public participation workplan.” This is intended to be a nonsubstantive change.

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

Article 4. Investigatory Powers

§ 68435. Purpose of investigation

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

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

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

§ 68440. Authority to require person to provide relevant information

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

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

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

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

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

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

Comment. Section 68440 continues former Section 25358.1(b)-(d), inclusive, without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 68065.

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

Notes. (1) Proposed Section 68440(c) (continuing Section 25358.1(d)) provides that a person required to provide information *shall* allow access to records “in accordance with Section 68455.” Proposed Section 68455 (continuing Section 25358.1(i)) applies when the department is denied access to property. It requires the department to obtain an inspection warrant (pursuant to Title 13 of Part 3 of the Code of Civil Procedure), unless it is an emergency.

The purpose of the cross-reference to proposed Section 68455 (existing Section 25358.1(i)) is unclear. The cross-reference may simply be intended to clarify that the department should seek a warrant in accordance with proposed Section 68455 *if* access to records is denied.

Another possibility is that proposed Section 68440(c) (existing Section 25358.1(d)) places additional requirements on the department seeking record access, even with a warrant. In particular, this provision could be read to require the department, after obtaining a warrant for record access, to seek access only “upon reasonable notice and at reasonable times.” However, those requirements appear to be in tension with Code of Civil Procedure Section 1822.56, which places notice and timing requirements on the execution of an inspection warrant, but authorizes immediate execution in specified circumstances with court approval.

The Commission welcomes comment on these issues.

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

§ 68445. Disclosure of information

68445. (a) The department may disclose information submitted pursuant to this article to authorized representatives, contractors, or other governmental agencies only in connection with the department’s responsibilities pursuant to this part. The department shall establish procedures to ensure that information submitted pursuant to this article is used only in connection with these responsibilities and is not

1 otherwise disseminated without the consent of the person who provided the
2 information to the department.

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

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

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

11 **§ 68450. Entry, inspection, and sampling of property**

12 68450. (a) Any officer or employee of the department, representative of the
13 director, or person designated by the director may, in accordance with Section
14 68455, enter, at reasonable times, any of the following properties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notes. (1) Proposed Section 68450(c)(1)(C) contains a cross-reference to a definition for “trade secret.” In the corresponding existing provision (existing Section 25358.1(g)(1)(C)), that cross-reference points to Section 25358.2. Section 25358.2 would be recodified as Article 5 of this chapter. The definition of “trade secret” is contained in proposed Section 68480. As proposed above, the updated cross-reference would refer only to proposed Section 68480, as opposed to proposed Article 5 as a whole. This change is intended to be nonsubstantive, while improving readability by more precisely pointing to the relevant provision. **Absent comment, this proposed cross-reference update will be presumed correct.**

(2) Proposed Section 68450(c)(2) contains a cross-reference to a use of the term “disclosure.” In the corresponding existing provision (existing Section 25358.1(g)(2)), that cross-reference points to Section 25358.2, which would be recodified as Article 5. The term “disclosure” is only used once in Section 25358.2. Proposed Section 68485 would continue the portion of Section 25358.2 that uses the term “disclosure.” For this reason, the updated cross-reference would refer only to proposed Section 68485, as opposed to proposed Article 5 as a whole. This change is intended to be nonsubstantive, while improving readability by more precisely pointing to the relevant provision. **Absent comment, this proposed cross-reference update will be presumed correct.**

(3) Proposed Section 68450 would recodify existing Section 25358.1(e)–(h), which would benefit from a restatement for clarity. The Commission identified several issues that may need to be addressed. The most significant ones are:

- Overall, the existing provisions (and thus also proposed Section 68450) suffer from a lack of parallelism. For instance, they use different terms to refer to the same general concept (e.g.,

“establishment or other place or property” in subdivision (e), “facility” in subdivision (g), “premises” in paragraph (f)(3)). It is not clear whether the different terms are interchangeable or, if not, how the different terms relate to each other (e.g., is “facility” a subset of “establishment or other place or property”?).

• The language that would be continued in proposed paragraph (a)(5) would seem to benefit from restatement for clarity. This paragraph appears to permit entry to residential property if three conditions are established:

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

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

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

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

The Commission welcomes comment on these issues and whether they have caused problems in practice.

§ 68455. Entry to property without voluntary grant of access

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

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

§ 68460. Immunity for entry and response action

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

Comment. Section 68460 continues former Section 25358.1(l) without substantive change. See Sections 68050 (“department”), 68085 (“person”), 68140 (“response”).

1 **§ 68465. Order directing compliance**

2 68465. If a person intentionally or negligently fails to furnish and transmit to any
3 officer or employee of the department, a representative of the director, or a person
4 designated by the director any information required to be disclosed pursuant to this
5 article, the department may issue an order directing compliance with the request.
6 The order shall be issued only after notice and opportunity for consultation as is
7 reasonably appropriate under the circumstances.

8 **Comment.** Section 68465 continues former Section 25367(b) without substantive change.
9 See Sections 68050 (“department”), 68055 (“director”), 68085 (“person”).

10 **Note.** Section 25367(b) references information required to be disclosed pursuant to Section
11 25358.1. This reference would be replaced with a reference to “this article.” However, “this article”
12 would also contain sections continuing provisions of Section 25367 (this proposed section and
13 proposed Section 68470). This does not appear to be a problem, as Section 25367 does not relate
14 to the purpose of the reference (i.e., information disclosure). **Absent comment, this proposed**
15 **cross-reference update will be presumed correct.**

16 **§ 68470. Penalties for violations**

17 68470. Any person who commits any of the following acts shall be liable for a
18 civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate
19 violation, or for continuing violations, for each day during which that violation
20 continues:

21 (a) Intentionally or negligently makes any false statement or representation in any
22 report or information furnished pursuant to this article.

23 (b) Intentionally or negligently fails to provide any information requested
24 pursuant to this article.

25 (c) Refuses or prevents, without sufficient cause, any activity authorized pursuant
26 to this article.

27 **Comment.** Section 68470 continues former Section 25367(a), with the exception of part of
28 paragraph (a)(3) (which is restated in Section 68665), without substantive change.

29 See Section 68085 (“person”).

30 **Note.** Section 25367(a) refers to information furnished or requested pursuant to Section 25358.1,
31 as well as any activity authorized pursuant to Section 25358.1. Section 25358.1 would be recodified
32 in this article, as would provisions of Section 25367. The cross-references to Section 25358.1 would
33 be updated to refer to “this article.” **Absent comment, these proposed cross-reference updates**
34 **will be presumed correct.**

35 Article 5. Protection of Trade Secrets

36 **§ 68480. “Trade secrets”**

37 68480. “Trade secrets,” as used in this article, may include, but are not limited to,
38 any formula, plan, pattern, process, tool, mechanism, compound, procedure,
39 production data, or compilation of information that is not patented, that is known
40 only to certain individuals within a commercial concern who are using it to
41 fabricate, produce, develop, or compound an article of trade or a service having

1 commercial value, and that gives its user an opportunity to obtain a business
2 advantage over competitors who do not know or use it.

3 **Comment.** Section 68480 continues former Section 25358.2(a) without substantive change.

4 **§ 68485. Identification of trade secret information**

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

10 **Comment.** Section 68485 continues former Section 25358.2(c) without substantive change.
11 See Sections 68085 (“person”), 68480 (“trade secret”).

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

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

20 **Comment.** Section 68490 continues former Section 25358.2(b) without substantive change.
21 See Sections 68050 (“department”), 68085 (“person”), 68480 (“trade secret”).

22 **§ 68495. Penalty for knowing and willful dissemination of trade secret information**

23 68495. Any person who knowingly and willfully disseminates information
24 protected by this article or procedures established by the department pursuant to
25 Section 68490 shall, upon conviction, be punished by a fine of not more than five
26 thousand dollars (\$5,000), imprisonment in the county jail not to exceed one year,
27 or by both that fine and imprisonment.

28 **Comment.** Section 68495 continues former Section 25358.2(d) without substantive change.
29 See Sections 68050 (“department”), 68085 (“person”).

30 **Article 6. Abandoned Sites**

31 **§ 68505. Notice regarding abandoned sites**

32 68505. (a) The director shall notify, within 20 working days, each of the
33 appropriate county health officers as to all the potential abandoned sites of which
34 the department has knowledge or that the department is investigating for releases of
35 hazardous substances that may have occurred or might be occurring at abandoned
36 sites. The county health officers may request quarterly updates on the status of the
37 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”).

Note. Proposed Section 68505(a) would continue Section 25359.6(a), which 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 Commission 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 has been replaced with a reference to the “State Water Resources Control Board.” Formerly, the State Department of Health Services was the state agency authorized to accredit laboratories under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101. See former Section 100825(c)(1), (4), (18) as added by 2005 Cal. Stat. ch. 406, § 2. Currently, the State Water Resources Control Board is the agency authorized to accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

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

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

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

Article 8. Technology Demonstration Program

§ 68525. Technology demonstration program for treatment technologies

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

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

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

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

§ 68530. Definitions

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

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

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

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

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

Note. Proposed Section 68530(a) would restate Section 25368.1 to eliminate the word “thereof.” “Thereof” would be replaced with “of these characteristics.” This change is intended to be nonsubstantive. **The Commission welcomes any comment on this proposed change.**

1 **§ 68535. Criteria for selection**

2 68535. The department shall select technology demonstration projects to be
3 evaluated pursuant to this article using criteria that include, at a minimum, all of the
4 following requirements:

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

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

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

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

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

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

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

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

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

23 (1) Responsible parties.

24 (2) The United States Environmental Protection Agency.

25 (3) The state account.

26 **Comment.** Section 68535 restates former Section 25368.2 without substantive change. The
27 phrase “technology or technologies” has been singularized. This is a nonsubstantive change. See
28 Section 13.

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

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

39 **§ 68540. Selection of sites**

40 68540. The department shall identify hazardous substance release sites, listed
41 pursuant to Article 5 (commencing with Section 68760) of Chapter 4, that are
42 particularly well-suited for technology demonstration projects. In identifying
43 hazardous substance release sites, the department shall consider, at a minimum, all
44 of the following:

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

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

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

(d) The accessibility of the hazardous substance release.

(e) Availability of required utilities.

(f) Support of federal and local governments.

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

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

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

§ 68545. Solicitation of proposals

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

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

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

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

Note. The introductory clause of Section 25368.4(b) says that “[a]ny person and private or public entity” may submit an application to propose a treatment demonstration project. The use of the conjunction “and” in this phrase appears to be an error. Proposed Section 68545(b) would continue the introductory clause, but would replace “and” with “or.” This change is intended to be nonsubstantive. **The Commission welcomes comment on this issue.**

§ 68550. Selection of technology demonstration projects

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

(b) If the department determines that the required number of demonstrations required by subdivision (a) cannot be initiated consistent with the criteria specified

1 in Section 68535 in any fiscal year, the department shall inform the appropriate
2 committees of the Legislature of the reasons for its inability to conduct these
3 demonstration projects.

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

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

9 **§ 68555. Recovery of incremental costs**

10 68555. Notwithstanding Section 69650, if the department determines that using
11 an alternative treatment technology to conduct a removal or remedial action at a
12 hazardous substance release site listed pursuant to **[paragraph (2) or (3) of**
13 **subdivision (b) of Section 25356]** would be more costly than another available and
14 feasible removal or remedial action method that would also achieve satisfactory
15 results, the department may determine not to attempt to recover from the liable
16 person the incremental costs of the removal or remedial action attributable to the
17 alternative treatment technology.

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

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

22 **Note.** Section 25368.6 refers to a hazardous substance release site listed “pursuant to paragraph (2)
23 or (3) of subdivision (b) of Section 25356.” Section 25356(b), which would be recodified as
24 proposed Section 68760, does not currently have a paragraph (3). However, an earlier version of
25 Section 25356(b) did have a paragraph (3). See former Section 25356, as amended by 1988 Cal
26 Stat. ch. 1387, § 6. At that time, the “list” was significantly different and structured differently.
27 And, it appears that a site “listed pursuant to paragraph (2) and (3)...” would include only sites
28 where the department (as opposed to a responsible party) was conducting the response action.

29 Given the significant changes to the law since this cross-reference was added originally, the
30 Commission is unsure whether this cross-reference can or should be updated to achieve the same
31 substantive result as the cross-reference did previously. Regardless, this cross-reference is broken
32 and must be updated in the recodification. **The Commission invites comment on how this cross-**
33 **reference should be revised.**

34 **§ 68560. Technology transfer program**

35 68560. (a) The department shall conduct a technology transfer program that shall
36 include the development, collection, evaluation, coordination, and dissemination of
37 information relating to the utilization of alternative or innovative hazardous waste
38 treatment technologies demonstrated pursuant to this article.

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

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

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

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

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

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

Notes. (1) Section 25368.7 provides:

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

Proposed Section 68560 would divide the content of Section 25368.7 into subdivisions and paragraphs. These changes are intended to be nonsubstantive. **The Commission welcomes any comment on the proposed restatement.**

(2) Section 25368.7 uses the term “hazardous waste.” The term “hazardous waste” is not defined in Chapter 6.8. The provisions of Chapter 6.8 mostly address “hazardous substances.” And, proposed Section 68560 (continuing Section 25368.7) generally governs technologies used for responding to a “hazardous substance” release. See, e.g., proposed Sections 68525, 68530, 68535. Given this context, it seems likely that the use of the term “hazardous waste” in this section should be replaced with “hazardous substance.” **The Commission welcomes comment on this issue.**

§ 68565. Consideration of cost-effectiveness

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

Comment. Section 68565 continues former Section 25368.8 without substantive change. An erroneous cross-reference to “paragraph (5) of subdivision (c) of Section 25356.1” has been corrected to refer to “subdivision (e) of Section 69205,” which continues former Section 25356.1(d)(5).

See Section 68050 (“department”), 68125 (“remedy”), 68155 (“site”).

Notes. (1) The introductory clause of Section 25368.8 provides that this rule applies “[n]otwithstanding paragraph (5) of subdivision (c) of Section 25356.1.” This cross-reference is erroneous, as Section 25356.1(c) does not have any paragraphs. It appears that this cross-reference should refer to paragraph (5) of subdivision (d). For this reason, the cross-reference has been updated to refer to the provision that would recodify Section 25356.1(d)(5) (proposed Section

69205(e)). **Absent comment, this proposed cross-reference correction will be presumed correct.**

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

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

Article 9. Content of Biennial Report

Note. Both of the reporting requirements in this proposed article pertain to “the biennial report specified in Section 25178.” Instead of placing those requirements in this article, it might be beneficial to recodify them in Section 25178, together with other requirements for the report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Research activity initiated by the department.

(i) Regulatory action by other agencies relating to hazardous waste management.

(j) A revised listing of recyclable materials showing any additions or deletions to the list prepared pursuant to Section 25175 that have occurred since the last report.

(k) Any other data considered pertinent by the department to hazardous waste management.

(l) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.

(m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site in Orange County.”

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

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

1 **§ 68575. San Gabriel Valley groundwater sites**

2 68575. (a) The department shall report to the Governor and the Legislature on the
3 progress of the cleanup of the San Gabriel Valley groundwater sites in Los Angeles
4 County, and on the progress of enforcement actions relating to those sites, in the
5 biennial report specified in Section 25178. The report shall include, but not be
6 limited to, all of the following:

7 (1) State expenditures and planned expenditures.

8 (2) Actions accomplished at the sites.

9 (3) Actions planned, including a time schedule for the accomplishment of planned
10 actions.

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

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

16 **Notes. (1)** Proposed Section 68575 would recodify Section 25334.7, which requires that the
17 department report “to the Governor and the Legislature...in the biennial report specified in Section
18 25178.” Section 25178 currently involves posting information on a website biennially and does not
19 appear to require that a report be submitted to the Governor or the Legislature. Formerly, Section
20 25178 required a report to be submitted to the Legislature biennially. See former Section 25178, as
21 amended by 1987 Cal. Stat. ch. 822, § 1. The Commission is unsure how to reconcile the
22 requirements of Section 25334.7 (proposed Section 68575) and Section 25178. **The Commission**
23 **welcomes comment on this issue.**

24 **(2)** Section 25334.7 requires the department to report to the Governor and the Legislature regarding
25 the status of cleanup at the specified sites.

26 In its work on this study, the Commission came across a provision regarding legislation that
27 requires state agencies to submit reports to the Legislature. Specifically, Government Code Section
28 10231.5 provides, in part:

29 “10231.5. (a) A bill that, as introduced or amended in either house of the Legislature, would
30 require a state agency to submit a report on any subject to either house of the Legislature generally,
31 a committee or office of either house of the Legislature, or the Legislative Counsel Bureau shall
32 include a provision that repeals the reporting requirement, or makes the requirement inoperative,
33 no later than a date four years following the date upon which the bill, as enacted, becomes operative
34 or four years after the due date of any report required every four or more years. If the bill requires
35 that the report be submitted to either house of the Legislature generally, it shall also include a
36 provision that requires the report to be submitted pursuant to Section 9795.”

37 This provision reflects a legislative policy determination that reporting requirements may become
38 stale. The reporting requirement in Section 25334.7 was originally enacted in 1990. See 1990 Cal.
39 Stat. ch. 1624, § 1. The Commission seeks input on whether there is a continuing need for this
40 particular report to be submitted to the Legislature. Given the nonsubstantive nature of this study,
41 however, any change to the legal duty to provide a report to the Legislature would be beyond the
42 scope of this study. It may be appropriate to add this issue to the list of substantive issues for
43 possible future study that is located at the end of the Commission’s recommendation. **The**
44 **Commission welcomes comment on this issue.**

§ 68580. Accounting of expenditures from emergency reserve account

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

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

See Section 68050 (“department”).

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

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

Article 10. Contracting

§ 68590. Definitions

68590. For purposes of this article, the following definitions shall apply:

(a) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering, architecture, environmental, landscape architecture, construction project management, or land surveying.

(b) “Prequalified list” means a list of professional service firms that possess the qualifications established by the department to perform a specific type of professional service, with each firm ranked in order of its qualifications and costs.

(c) “Professional service” includes a professional service of an engineering, architectural, environmental, landscape architectural, construction project management, land surveying, or similar nature, as well as an incidental service that members of these professions and those in their employ may logically or justifiably perform.

Comment. Section 68590 restates former Section 25358.6.1(a) without substantive change. The defined term “engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services” was simplified to “professional service” and implementing changes were made.

See Section 68050 (“department”).

Notes. (1) Section 25358.6.1(a)(1) defines the term “engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services.” This defined term is very lengthy. The repetition of this term throughout the section impedes readability. In proposed Section 68590(c), the Commission has singularized and shortened the defined term to “professional service.” This change is intended to be nonsubstantive. See Section 13. Conforming changes have been made throughout this proposed article. **The Commission welcomes comment on this proposed change.**

(2) Section 25358.6.1(a)(3), which would be recodified as Section 68590(b), uses the phrase “engineering, architectural, environmental, landscape architectural, construction project

management, or land surveying *firms*” (emphasis added). This is similar to, but slightly different than, the defined term in Section 25358.6.1(a)(1), which uses “services” rather than “firms.” It seems clear that the phrase is intended to refer to firms that provide such a service. For this reason, the existing language has been replaced with the phrase “professional service firms,” which includes the proposed shortened defined term “professional service.” This change is intended to be nonsubstantive. **Absent comment, this proposed change will be presumed correct.**

§ 68595. Application of article to contracts less than or equal to \$1,000,000

68595. Notwithstanding Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may advertise and award a contract, in accordance with this article, for a professional service pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20, if the contract is individually in an amount equal to, or less than, one million dollars (\$1,000,000).

Comment. Section 68595 continues former Section 25358.6.1(b) without substantive change. See Sections 68050 (“department”), 68590 (“firm,” “professional service”).

§ 68600. Prequalified lists

68600. The department may establish prequalified lists of professional service firms in accordance with the following process:

(a) For each type of professional service work for which the department elects to use this article for advertising and awarding contracts, the department may request annual statements of qualifications from interested firms. The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications, internet websites, or electronic bulletin boards of respective professional societies that are intended, designed, and maintained by the professional societies to communicate with their memberships. Each announcement shall describe the general scope of services to be provided within each generic project category for a professional service that the department anticipates may be awarded during the period covered by the announcement.

(b) The department shall define a generic project category so that each specific project to be awarded within that generic project category is substantially similar to all other projects within that generic project category, may be within the same size range and geographical area, and requires substantially similar skills and magnitude of professional effort as every other project within that generic project category. The generic categories shall provide a basis for evaluating and establishing the type, quality, and costs, including hourly rates for personnel and field activities and equipment, of the services that would be provided by the firm.

(c) The department shall evaluate the statements of qualifications received pursuant to subdivision (a) and the department shall develop a short list of the most qualified firms that meet the criteria established and published by the department. The department shall hold discussions regarding each firm’s qualifications with all firms listed on the short list. The department shall then rank the firms listed on the short list according to each firm’s qualifications and the evaluation criteria established and published by the department.

(d) The department shall maintain prequalified lists of professional service firms ranked pursuant to subdivision (c) on an ongoing basis, except that no firm may remain on a list developed pursuant to subdivision (c) based on a single qualification statement for more than three years. The department shall include in each prequalified list adopted pursuant to subdivision (c) no less than three firms, unless the department certifies that the scope of the prequalified list is appropriate for the department's needs, taking into account the nature of the work, that the department made reasonable efforts to solicit qualification statements from qualified firms, and that the efforts were unsuccessful in producing three firms that met the established criteria. A firm may remain on the prequalified list up to three years without resubmitting a qualification statement, but the department may add additional firms to that list and may annually rank these firms. For purposes of annual adjustment to the ranking of firms already on the prequalified list developed pursuant to subdivision (c), the department shall rely on that firm's most recent annual qualification statement, if the statement is not more than three years old.

Comment. Section 68600 continues former Section 25358.6.1(c)(1)-(4), inclusive, without substantive change.

See Sections 68050 ("department"), 68590 ("firm," "prequalified list," "professional service").

Notes. (1) The introductory clause of proposed Section 68600 contained the phrase "engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms" (emphasis added). This is similar to, but slightly different than, the defined term in Section 25358.6.1(a)(1), which uses "services" rather than "firms." It seems clear that this phrase is intended to refer to firms that provide such a service. For this reason, the existing language has been replaced with the phrase "professional service firms," which includes the proposed shortened defined term "professional service." This change is intended to be nonsubstantive. **Absent comment, this proposed change will be presumed correct.**

(2) Proposed Section 68600 would recodify Section 25358.6.1(c)(1)-(4), which relate to the establishment of a prequalified list of bidders. In places, Section 25358.6.1(c) refers to a "prequalified list adopted pursuant to paragraph (3)" or a "prequalified list developed pursuant to paragraph (3)." However, Section 25358.6.1(c)(3) uses the term "short list" as opposed to "prequalified list." It appears that the ranked short list, prepared pursuant to that paragraph (which would be recodified as proposed Section 68600(c)), is the "prequalified list." If that is true, it would be helpful to clarify the statute accordingly. **The Commission welcomes comment on this issue.**

(3) Proposed Section 68600(d) replaces the existing language "civil engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms" with "professional service firms." While this phrase differs slightly from the existing, defined term ("engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services") those differences appear to be immaterial. For this reason, the proposed shortened defined term has been used in this subdivision. This change is intended to be nonsubstantive. **Absent comment, this proposed change will be presumed correct.**

§ 68605. Contracting using prequalified lists

69605. (a) During the term of the prequalified list developed pursuant to subdivision (c) of Section 68600, as specific projects are identified by the department as being eligible for contracting under the procedures adopted pursuant

1 to Section 68610, the department shall contact the highest ranked firm on the
2 appropriate prequalified list to determine if that firm has sufficient staff and is
3 available for performance of the project. If the highest ranked firm is not available,
4 the department shall continue to contact firms on the prequalified list in order of
5 rank until a firm that is available is identified.

6 (b) The department may enter into a contract for the services with a firm identified
7 pursuant to subdivision (a), if the contract is for a total price that the department
8 determines is fair and reasonable to the department and otherwise conforms to all
9 matters and terms previously identified and established upon participation in the
10 prequalified list.

11 (c)(1) If the department is unable to negotiate a satisfactory contract with a firm
12 identified pursuant to subdivision (b), the department shall terminate the
13 negotiations with that firm and the department shall undertake negotiations with the
14 next ranked firm that is available for performance. If a satisfactory contract cannot
15 be negotiated with the second identified firm, the department shall terminate these
16 negotiations and the department shall continue the negotiation process with the
17 remaining qualified firms, in order of their ranking, until the department negotiates
18 a satisfactory contract.

19 (2) The department may award a contract to a firm on a prequalified list that is to
20 be executed, including amendments, for a term that extends beyond the expiration
21 date of that firm's tenure on the prequalified list.

22 (3) If the department is unable to negotiate a satisfactory contract with a firm on
23 two separate occasions, the department may remove that firm from the prequalified
24 list.

25 (d) Once a satisfactory contract is negotiated and awarded to a firm from any
26 prequalified list for a generic project category involving a site or facility
27 investigation or characterization, a feasibility study, or a remedial design, for a
28 specific response action or corrective action, including, but not limited to, a
29 corrective action carried out pursuant to Section 25200.10, the department shall not
30 enter into a contract with that firm for purposes of construction or implementation
31 of any part of that same response action or corrective action.

32 **Comment.** Section 68605 continues former Section 25358.6.1(c)(5)-(8), inclusive, without
33 substantive change.

34 See Sections 68050 ("department"), 68060 ("feasibility study"), 68115 ("remedial design"),
35 68135 ("remove"), 68140 ("response"), 68155 ("site"), 68590 ("firm," "prequalified list").

36 **Note.** Section 25358.6.1(c), which would be recodified as proposed Sections 68600 and 68605,
37 contains a series of numbered paragraphs that relate to two distinct issues — the development of
38 prequalified lists and the use of those lists for contracting. Proposed Section 68600 continues the
39 provisions related to the development of prequalified lists, while proposed Section 68605 continues
40 the provisions related to the use of those lists for contracting. Section 25358.6.1(c) also contains
41 text preceding the paragraphs. That introductory text relates only to the development of the
42 prequalified lists ("[t]he department may establish prequalified lists of [professional service] firms
43 in accordance with the following process..."). For that reason, the introductory text in Section
44 25358.6.1(c) would only be continued in proposed Section 68600. **Absent comment, this**
45 **proposed change will be presumed correct.**

1 **§ 68610. Authority to adopt guidelines or regulations**

2 68610. The department may adopt guidelines or regulations as necessary and
3 consistent with this article, to define the manner of advertising, generic project
4 categories, type, quantity and cost of services, qualification standards and evaluation
5 criteria, content and submittal requirements for statements of qualification,
6 procedures for ranking of firms and administration of the prequalified list, the scope
7 of matters addressed by participation on a prequalified list, manner of notification
8 of, negotiation with, and awarding of contracts to, prequalified firms, and
9 procedures for protesting the award of contracts under this article, or any other
10 matter that is appropriate for implementation of this article.

11 **Comment.** Section 68610 continues former Section 25358.6.1(d) without substantive change.
12 See Sections 68050 (“department”), 68590 (“firm,” “prequalified list”).

13 **§ 68615. Exemption for exigent actions**

14 68615. Any removal or remedial action taken or contracted by the department
15 pursuant to Section 68870 or 68875 is exempt from this article.

16 **Comment.** Section 68615 continues former Section 25358.6.1(e) without substantive change.
17 See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

18 **Note.** Section 25358.6.1(e) refers to a removal or remedial action taken pursuant to Section 25354.
19 Section 25354 would be recodified as multiple sections (proposed Sections 68240, 68580, and
20 68875). Only one of those proposed sections, proposed Section 68875, relates to authority to
21 undertake removal or remedial action. For this reason, the cross-reference to Section 25354 would
22 be updated to refer only to proposed Section 68875. **Absent comment, this proposed cross-**
23 **reference update will be presumed correct.**

24 **§ 68620. Compliance with Government Code personal services contract rules**

25 68620. This article does not exempt any contract from compliance with Article 4
26 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of
27 the Government Code.

28 **Comment.** Section 68620 continues former Section 25358.6.1(f) without substantive change.

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 extent
37 of the hazardous substances involved and the extent of danger to the public health
38 or environment.

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

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

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

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

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

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

(A) The time for appeal has elapsed.

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

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

(2) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has violated or failed to comply with this part, Chapter 6.5 (commencing with Section 25100) or Chapter 6.7 (commencing with Section 25280) of Division 20, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the federal act, the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the federal Hazardous Materials Transportation Authorization Act of 1994, as amended (49 U.S.C. Sec. 5101 et

seq.), the federal Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in subdivision (a) of Section 68075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

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

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

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

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

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

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

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

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

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

(5) Section 25358.3(d)(3) (proposed Section 68655(b)(3)) uses the term “hazardous waste” without reference to an applicable definition. The preceding paragraph also uses the term “hazardous waste,” but refers to a definition in “Section 25117.” It seems likely that the definition of “hazardous waste” in Section 25117 should also apply to the use of the term in paragraph (d)(3). **The Commission 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 relief as may be
4 necessary from the responsible party to abate the release or threatened release. The
5 superior court of the county in which the release or threatened release occurs has
6 jurisdiction to grant the relief that the public interest and equities of the case may
7 require to protect the public health and safety and the environment. Upon a showing
8 by the department that a release or threatened release of a hazardous substance has
9 occurred or is occurring, and that there may be an imminent or substantial
10 endangerment to the public health and safety or to the environment, the court may
11 grant a temporary restraining order or a preliminary or permanent injunction.

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

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

27 **Comment.** Section 68660 restates former Section 25358.3(e)-(g), inclusive, without substantive
28 change. The phrase “party or parties” has been singularized. This is a nonsubstantive change. See
29 Section 13.

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

32 **Notes. (1)** Section 25358.3(f) refers to an order issued pursuant to Section 25355.5. Section 25355.5
33 would be recodified as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)).
34 Proposed Section 69055 (which recodifies Section 25355.5(a)) is the only one of those provisions
35 that addresses the issuance of orders and, thus, appears to be the only provision relevant to this
36 cross-reference. For this reason, the cross-reference to Section 25355.5 has been updated to refer
37 only to Section 69055. **The Commission welcomes any comment on this proposed cross-**
38 **reference update.**

39 **(2)** Section 25358.3(g) contains a semicolon. The provision would be recodified in proposed
40 Section 68660(c), which avoids the use of a semicolon by making the material after the semicolon
41 a separate sentence.

42 **§ 68665. Penalties for violations**

43 68665. Any person who refuses or prevents, without sufficient cause, any activity
44 authorized pursuant to this article or Section 68870 shall be liable for a civil penalty

not to exceed twenty-five thousand dollars (\$25,000) for each separate violation, or for continuing violations, for each day during which that violation continues.

Comment. Section 68665 restates part of former Section 25367(a)(3) without substantive change.

See Section 68085 (“person”).

Article 2. Reporting Requirement

§ 68675. Prohibition and reporting requirement for releases

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

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

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

(2) The release is authorized by state law.

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

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

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

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

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

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

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

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

Note. Proposed Section 68675(b)(3) would recodify Section 25359.4(b)(3), which pertains to a release that “requires immediate reporting to the Office of Emergency Services...pursuant to Section 25507.” The cross-reference to Section 25507 appears to be inapt. Section 25507 governs which businesses are required to implement a business plan for emergency response for hazardous material releases. Another section in the same article, Section 25510, pertains to immediate reporting of hazardous material releases. Section 25510 provides, in part:

“Except as provided in subdivision (b), the handler or an employee, authorized representative, agent, or designee of a handler, shall, upon discovery, immediately report any

1 release or threatened release of a hazardous material, or an actual release of a hazardous substance,
2 as defined in Section 374.8 of the Penal Code, to the UPA, and to the [Office of Emergency
3 Services], in accordance with the regulations adopted pursuant to this section. The handler or an
4 employee, authorized representative, agent, or designee of the handler shall provide all state, city,
5 or county fire or public health or safety personnel and emergency response personnel with access
6 to the handler's facilities."

7 In proposed Section 68675, the cross-reference has been updated to refer to Section 25510. **Absent**
8 **comment, the proposed correction to this cross-reference will be presumed correct.**

9 **§ 68680. Liability for failure to report**

10 68680. (a) The owner of property on which a reportable release has occurred and
11 any person who releases, or causes a reportable release and who fails to make the
12 written report required by subdivision (b) of Section 68675, shall be liable for a
13 penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate
14 violation and for each day that a violation continues. Each day on which the released
15 hazardous substance remains is a separate violation unless the person has either filed
16 the report or is in compliance with an order issued by a local, state, or federal agency
17 with regard to the release.

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

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

25 **Comment.** Section 68680 continues former Section 25359.4(d)-(f), inclusive, without
26 substantive change.

27 See Sections 68050 ("department"), 68075 ("hazardous substance"), 68085 ("person"), 68105
28 ("release"), 68140 ("response"), 68145 ("responsible party").

29 **Article 3. Disclosure Requirement**

30 **§ 68700. Disclosure requirement for property owner**

31 68700. Any owner of nonresidential real property who knows, or has reasonable
32 cause to believe, that any release of hazardous substance has come to be located on
33 or beneath that real property shall, prior to the sale, lease, or rental of the real
34 property by that owner, give written notice of that condition to the buyer, lessee, or
35 renter of the real property. Failure of the owner to provide written notice when
36 required by this section to the buyer, lessee, or renter shall subject the owner to
37 actual damages and any other remedies provided by law. In addition, where the
38 owner has actual knowledge of the presence of any release of a material amount of
39 a hazardous substance and knowingly and willfully fails to provide written notice
40 to the buyer, lessee, or renter, as required by this section, the owner is liable for a
41 civil penalty not to exceed five thousand dollars (\$5,000) for each separate violation.

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

3 **§ 68705. Disclosure requirement for lessee or renter**

4 68705. Any lessee or renter of real property who knows or has reasonable cause
5 to believe that any release of a hazardous substance has come or will come to be
6 located on or beneath that real property shall, within a reasonable period of time,
7 either prior to the release or following the discovery by the lessee or renter of the
8 presence or believed presence of the hazardous substance release, give written
9 notice of that condition to the owner of the real property or to the lessor under the
10 lessee’s or renter’s lease or rental agreement.

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

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

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

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

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

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

37 Article 4. Securing Site of Release

38 **§ 68720. Conditions when order to secure site is required**

39 68720. After making a determination, based upon a preliminary site assessment
40 that there has been a release of a hazardous substance on, under, or into the land on

1 a site, the department or a county health officer shall order the property owner to
2 secure the site if all of the following conditions apply to that site:

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

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

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

8 **Comment.** Section 68720 continues former Section 25359.5(a) without substantive change.

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

11 **Note.** Proposed Section 68720(b) would recodify Section 25359.5(a), which refers to “hazardous
12 waste.” The term “hazardous waste” is not defined in Chapter 6.8. The provisions of Chapter 6.8
13 mostly address “hazardous substances.” In fact, Section 25359.5(a) itself (proposed Section 68720)
14 governs a site where there has been a release of a “hazardous substance.” It seems unlikely that the
15 use of the term “hazardous waste” was intended in this provision, particularly without an applicable
16 definition. **The Commission welcomes comment on this issue.**

17 **§ 68725. Requirements of order to secure site**

18 68725. (a) The order to secure the site shall require, within five days after
19 receiving notification of the order, the posting of the site with signs. The order shall
20 also require, within five days after receiving notification of the order, that the site
21 be enclosed with a fence, unless it is physically and economically infeasible or
22 unless the fencing is unnecessary because it will not alleviate the danger to the
23 public health.

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

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

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

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

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

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

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

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

1 **§ 68730. Advising agencies on health risks and site requirements**

2 68730. The department or the county health officer shall advise other agencies on
3 the public health risks and the need for fencing and posting of sites when those
4 agencies confirm the release of a hazardous substance pursuant to Section 68720.

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

8 **§ 68735. Penalty for failure to comply with order to secure site**

9 68735. (a) A property owner who fails to comply with an order of the department
10 or the county health officer is subject to a civil penalty of up to twenty-five thousand
11 dollars (\$25,000). In determining the amount of a civil penalty to be imposed, the
12 court shall consider all relevant circumstances, including, but not limited to, the
13 economic assets of the property owner and whether the property owner has acted in
14 good faith.

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

23 **Comment.** Section 68735 continues former Section 25359.5(d) without substantive change.
24 See Sections 68050 (“department”), 68155 (“site”).

25 **§ 68740. Remedies and penalties not exclusive**

26 68740. The remedies and penalties specified in this article and Section 68505 are
27 in addition to, and do not affect, any other remedies, enforcement actions,
28 requirements, or penalties otherwise authorized by law.

29 **Comment.** Section 68740 continues former Section 25359.5(f) without substantive change.

30 Article 5. Listing of Hazardous Substance Release Sites

31 **§ 68760. List of selected hazardous substance release sites**

32 68760. (a) The department shall publish and revise, at least annually, a listing of
33 the hazardous substance release sites selected for, and subject to, a response action
34 under this part.

35 (b) The department shall list the sites based upon the criteria adopted pursuant to
36 Section 68765 and the extent to which deferral of a response action at a site will
37 result, or is likely to result, in a rapid increase in response costs at the site or in a
38 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. An incomplete 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”).

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

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

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

(2) Section 25356(a) cross-refers to “Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)).” This cross-reference is missing a subdivision designation. Only subdivision (a) of Section 105 has a paragraph 8. For this reason, proposed Section 68765(a) would correct the cross-reference by referring to “Section 105(a)(8) of the federal act (42 U.S.C. Sec. 9605(a)(8)).” **Absent comment, this proposed correction will be presumed correct.**

1 **§ 68770. Priority tiers for listed hazardous substance release sites**

2 68770. The department shall assign each site listed pursuant to Section 68760 to
3 one of the following priority tiers for the purpose of informing the public of the
4 relative hazard of listed sites:

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

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

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

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

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

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

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

24 See Sections 68050 (“department”), 68135 (“remove”), 68140 (“response”), 68155 (“site”),
25 68170 (“tier”).

26 **§ 68775. Requirements for listed hazardous substance release sites**

27 68775. Hazardous substance release sites listed by the department pursuant to
28 Section 68760 are subject to this part and all actions carried out in response to
29 hazardous substance releases or threatened releases at listed sites shall comply with
30 the procedures, standards, and other requirements set forth in this part or established
31 pursuant to the requirements of this part.

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

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

35 **§ 68780. Conformance of expenditures with prioritization of sites**

36 68780. (a) Except as provided in subdivision (b), the department shall expend all
37 funds appropriated to the department for any response action pursuant to this part,
38 and shall take all response action pursuant to this part, in conformance with the
39 assignment of sites to priority tiers pursuant to Section 68770.

40 (b) The department may expend funds appropriated for a response action and take
41 a response action, without conforming to the listing of sites by tier pursuant to

Section 68770, or at a site that has not been listed pursuant to Section 68760, if any of the following apply:

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

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

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

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

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

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

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

§ 68785. Commencement of response actions at sites

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

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

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

§ 68790. Responsibility for response action compliance

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

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

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

Note. Section 25356(h) refers to the “California regional water quality board.” It appears that this provision should instead refer to the “California regional water quality *control* board.” Proposed

Section 68790 replaces the phrase with the “regional board.” In proposed Section 68100, “regional board” is defined as “a California regional water quality control board.”

§ 68795. Application of administrative rulemaking requirements

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

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

Comment. Section 68795 continues former Section 25356(e) without substantive change. See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”), 68170 (“tier”).

CHAPTER 5. CLEANUP OF HAZARDOUS SUBSTANCE RELEASES

Article 1. General Provisions

§ 68850. Coordination of response actions by Governor

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

Comment. Section 68850 continues former Section 25355(a) without substantive change. See Sections 68140 (“response”), 68155 (“site”).

Note. Section 25355(a) refers to “sites identified in Section 25356.”

Section 25356 would be recodified as Article 5 of Chapter 4 of this part and, in proposed Section 68850, the cross-reference would be updated accordingly.

Section 25356 relates to the listing and prioritization of sites for response actions. However, Section 25356 also indicates that there may be a class of sites that is not listed (i.e., those that fall below the minimum hazard threshold). See proposed Section 68765(b). It might be helpful to clarify the intended meaning of “sites identified in Section 25356.” **The Commission welcomes comment on this issue.**

§ 68855. Consistency requirements for response actions

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

by the Legislature and expenditure by the director pursuant to Sections 68240, 68875, and 69450.

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

Comment. Section 68855 restates the first two sentences of former Section 25350 without substantive change. The cross-references to Section 25351 were not continued, because that section has been repealed. See 1997 Cal. Stat. ch. 870, § 43.

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

Notes. (1) Proposed Section 68855 restates part of Section 25330. It would add subdivision designations and replace “thereof” with the phrase “of the response actions.” These changes are intended to be nonsubstantive. **Absent comment, the proposed changes will be presumed correct.**

(2) The first sentence of Section 25350 (proposed Section 68855(a)) refers to “expenditure by the director pursuant to” three specified sections, while the second sentence of Section 25350 (proposed Section 68855(b)) refers to “expenditure by the department pursuant to” the same three specified sections. It is not clear why these sentences do not refer to the same entity (either the department or the director). As indicated in Note #3 below, one of the cross-referenced sections has been repealed. Section 25352 permits appropriation of funds “to the department” for certain purposes, while Section 25354 allows the department to “expend moneys in the reserve account.” Given that, it appears that both sentences (and their proposed recodifications) should refer to “expenditure by the department.” **The Commission welcomes comment on this issue.**

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

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

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

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

Section 25352 would be divided into multiple provisions in this recodification. The cross-reference to Section 25352 would be updated to refer only to the provisions related to expenditures (subdivisions (a) and (b) of Section 25352, which would be recodified as Section 69450). Subdivision (c) of Section 25352, which would be recodified separately, would be omitted from the cross-reference, as it relates to cost recovery and does not appear relevant.

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

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

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

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

§ 68860. No duplication of federal response actions

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

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

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

Article 2. Exigent Actions

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

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

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

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

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

Comment. Section 68870 restates former Section 25358.3(a) without substantive change. The phrase “party or parties” has been singularized. This is a nonsubstantive change. See Section 13.

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

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

(2) Proposed Section 68870(a) would recodify Section 25358.3(a), which precludes an order made to a real property owner “solely on the basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act...” Those federal provisions do not directly preclude making an order to

1 a property owner based on ownership. Rather, they provide certain defenses to landowners under
2 specified situations (e.g., act of God or act of war). If a landowner had a defense, the defense would
3 presumably be raised in response to an order (and would not preclude issuance of the order). **The**
4 **Commission welcomes comment on whether Section 25358.3(a) has caused problems or**
5 **confusion in practice.**

6 **§ 68875. Immediate corrective action**

7 68875. (a) The department shall expend moneys available in the reserve account,
8 established pursuant to subdivision (a) of Section 68240, only for the purpose of
9 taking immediate corrective action necessary to remedy or prevent an emergency
10 resulting from a fire or an explosion of, or human exposure to, hazardous substances
11 caused by the release or threatened release of a hazardous substance.

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

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

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

23 (4) If the department finds that the corrective action includes the relocation of
24 individuals, the department may contract with those individuals for out-of-pocket
25 expenses incurred in moving for an amount of not more than one thousand dollars
26 (\$1,000).

27 **Comment.** Section 68875 restates the second sentence of former Section 25354(a) and all of
28 former Section 25354(b) without substantive change.

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

31 **Note.** Section 25354 would be recodified as multiple provisions. Separating this section into
32 multiple provisions required the addition of a cross-reference to provide context. In subdivision (a),
33 the phrase “established pursuant to subdivision (a) of Section 68240” was added to identify the
34 reserve account. Aside from this change, proposed Section 68875 does not modify the language it
35 contains from Section 25354. **Absent comment, this proposed restatement will be presumed**
36 **correct.**

37 **§ 68880. Exemptions for exigent actions**

38 68880. Any removal or remedial action taken or contracted by the department
39 pursuant to Section 68870 or 68875 shall be exempt from all of the following
40 provisions:

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

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

(c) Section 10295 of the Public Contract Code.

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

Comment. Section 68880 restates former Section 25358.5 without substantive change. The cross-reference to Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code has been omitted because the heading of that article was repealed and the remaining provisions of that article are now located in Article 4 of the same chapter. See 2000 Cal. Stat. ch. 759, § 18.

See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

Notes. (1) Section 25358.5 provides exemptions for actions taken “pursuant to Section 25354” Section 25354 would be recodified as three provisions (proposed Sections 68240, 68580, and 68875). In proposed Section 68880, the cross-reference to Section 25354 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 68240) and a reporting requirement (proposed Section 68580), do not appear to be relevant to this cross-reference and would be omitted from the cross-reference.

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

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

§ 68885. Prequalification of bidders for exigent actions

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

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

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

(d) The system of rating bidders may be adopted by the department as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, when these regulations are adopted as emergency regulations pursuant to

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

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

Notes. (1) Section 25358.6 permits prequalification of bidders for action taken “pursuant to Section 25354” In proposed Section 68885, this cross-reference has been updated as described in Note #1 to proposed Section 68880. **Absent comment, this proposed cross-reference update will be presumed correct.**

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

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

Note. Section 25355.6, which would be recodified in this article, contains several references to a “California regional water resources control board” or a “California regional water quality control board.” The Commission believes that these references were all intended to refer to a “California regional water quality control board.” In this proposed article, those references have all been replaced with the defined term, “regional board.” See proposed Section 68100 (defining “regional board” as “a California regional water quality control board”).

§ 68900. Referral of sites to department for listing

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

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

§ 68905. Authority of department at listed, referred site

68905. If a hazardous substance release site is referred to the department and is listed pursuant to Section 68900, the department may expend money from the state account for removal or remedial action at the site, upon appropriation by the

Legislature, without first issuing an order or entering into an agreement pursuant to paragraph (1) of subdivision (a) of Section 69055, if all of the following apply:

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

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

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

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

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

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

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

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

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

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

Comment. Section 68910 continues former Section 25355.6(c) and (d) without substantive change. An erroneous cross-reference to “subdivision (a)” (as opposed to “subdivision (a) of Section 25356”) has been replaced with a cross-reference to Section 68765 (which continues former Section 25356(a)).

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

Note. Section 25355.6(c)(1) refers to criteria established “pursuant to subdivision (a).” This cross-reference appears to be erroneous, as Section 25355.6(a) does not involve the establishment of criteria. Instead, the correct cross-reference appears to be “subdivision (a) of Section 25356,” which pertains to the criteria for listing sites. That provision would be recodified as proposed Section

68765. Accordingly, proposed Section 68910(a)(1) would cross-refer to proposed Section 68765, as shown above. **Absent comment, this proposed cross-reference correction will be presumed correct.**

Article 4. Public Participation

§ 68925. Role of community service offices

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

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

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

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

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

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

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

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

(2) Based on the results of the baseline survey, the department or regional board shall develop a public participation plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation plan shall be updated as

1 necessary to reflect any significant changes in the degree of public interest as the
2 site investigation and cleanup process moves toward completion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§ 68935. Notice and comment opportunity for local agencies**

2 68935. The department or regional board shall advise local environmental
3 regulatory agencies and other appropriate local agencies of planned response actions
4 and provide opportunities for review and comment.

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

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

8 **Notes. (1)** Proposed Section 68935 would continue the third sentence of subdivision (a) of Section
9 25358.7.1. This provision would be placed here, in a separate section, because it does not appear
10 to relate to community advisory groups. These groups are the focus of the remainder of Section
11 25358.7.1. **The Commission welcomes comment on whether this provision relates to and**
12 **should be recodified with the provisions on community advisory groups.**

13 **(2)** This provision originally provided that a “department or regional board shall *also* advise...”
14 (emphasis added). The word “also” appears to be superfluous and would not be continued. The
15 omission of the word “also” is intended to be a nonsubstantive, technical change. This would be
16 the only change to the wording of this provision. **Absent comment, this proposed change will be**
17 **presumed correct.**

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

24 Article 5. Community Advisory Groups

25 **§ 68950. Establishment of group**

26 68950. (a) At each site, a community advisory group may be established by the
27 affected community to review any response action and comment on the response
28 action to be conducted in that community.

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

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

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

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

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

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

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

§ 68955. Composition of group

68955. To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(a) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(b) Individuals from the local business community.

(c) Local political or government agency representatives.

(d) Local citizen, civic, environmental, or public interest group members residing in the community.

Comment. Section 68955 continues former Section 25358.7.1(b) without substantive change.

See Sections 68075 (“hazardous substance”), 68085 (“person”), 68100 (“regional board”), 68105 (“release”), 68140 (“response”), 68155 (“site”).

§ 68960. Communication with group

68960. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory group.

Comment. Section 68960 continues the second sentence of former Section 25358.7.1(a) without substantive change.

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

Note. Section 25358.7.1(a) specifies that the department or regional board “shall regularly communicate ... with the community advisory *committee*” (emphasis added). Otherwise, this section uses the term “community advisory group.” It seems likely that the use of “committee” was an error, as the term “community advisory committee” is not used elsewhere. For this reason, proposed Section 68960 would replace “community advisory committee” with “community advisory group.” **Absent comment, this proposed correction will be presumed correct.**

§ 68965. Participation in group meetings

68965. The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(a) The department or regional boards.

(b) Representatives of local environmental regulatory agencies.

(c) The potentially responsible parties or other persons who are conducting the response action.

Comment. Section 68965 continues former Section 25358.7.1(c) without substantive change. See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68140 (“response”), 68145 (“responsible party”).

§ 68970. Relationship with other public participation provisions

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

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

Comment. Section 68970 continues former Section 25358.7.1(d) without substantive change. See Sections 68050 (“department”), 68100 (“regional board”).

Notes. (1) Subdivision (b) of proposed Section 68970 would recodify the second sentence of Section 25358.7.1(d). This provision appears to be stating a transitional rule addressing different types of community groups that may have been in existence when Section 25358.7.1 was enacted in 1999. See Note #2 below. It is unclear whether this rule has ongoing utility and needs to be continued. **The Commission welcomes comment on this issue.**

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

For the reference to the substantive contents of the section, Section 25358.7.1 would be recodified as several sections in this article. Rather than referring to the five sections in this article that would recodify Section 25358.7.1, it seems simpler to update the cross-reference to simply refer to “this article” as a whole.

In addition to the sections continuing Section 25358.7.1, this article also includes a provision continuing Section 25358.8. Expanding the cross-reference to include that provision would not be problematic, as nothing in Section 25358.8 appears to affect the status of a citizen advisory group formed before the enactment of Section 25358.7.1, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board. **Absent comment, this proposed cross-reference update will be presumed correct.**

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

§ 68975. Technical assistance grants for group

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

Comment. Section 68975 restates former Section 25358.8 without substantive change. The phrase “party or parties” has been singularized. This is a nonsubstantive change. See Section 13.

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

Note. Section 25358.8 refers to “[a] community advisory group established pursuant to Section 25358.7.1.” Section 25358.7.1 would be recodified as several sections in this proposed article. The cross-reference to Section 25358.7.1 would be updated to refer only to proposed Section 68950, which relates to the establishment of a community advisory group. The other provisions that would recodify Section 25358.7.1 do not seem to relate to the purpose of this cross-reference. **The Commission welcomes comment on this proposed cross-reference update.**

Article 6. Oversight and Review of Responsible Party Actions

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

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

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

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

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

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

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

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

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

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

(b) If the department determines that there may be an adverse impact to water quality as a result of a petroleum release, the department shall notify the appropriate regional board prior to entering into the enforceable agreement pursuant to this

section. The department may enter into an enforceable agreement pursuant to this section unless, within 60 days of the notification provided by the department, the regional board provides the department with a written notice that the regional board will assume oversight responsibility for the removal or remedial action.

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

Comment. Section 69005 continues former Section 25355(c)(2) without substantive change. Technical changes have been made to standardize cross-references.

See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68155 (“site”).

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

(2) Section 25355(c)(2) contains several references to the authority for enforceable agreements. However, these references do not consistently point to the same provision. The reference either points to the subdivision as a whole (see Note #1, above), the paragraph as a whole, or only subparagraph (A). For consistency, these references would all be updated to refer to “this section” (which would continue paragraph (2) of Section 25355(c)). **Absent comment, the proposed standardization of these cross-references will be presumed correct.**

Article 7. Orders to Potentially Responsible Parties

§ 69020. Issuance of orders

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

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

Comment. Section 69020 continues former Section 25356.1.3(a) without substantive change.

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

Notes. (1) Proposed Section 69020 focuses on orders issued by the department in its exercise of authority at a hazardous substance release site. One of the cross-referenced provisions, Section

25358.3, focuses on authority of the director, as opposed to the department. **The Commission welcomes comment on whether this discrepancy has caused any problems in practice.**

(2) Subdivision (a) of Section 25356.1.3 refers to the department exercising its authority pursuant to “subdivision (a) of Section 25355.5 or 25358.3.” The Commission understands this cross-reference to refer to subdivision (a) of Section 25355.5 or subdivision (a) of Section 25358.3. The cross-reference would be updated to refer to the proposed sections recodifying those subdivisions. **Absent comment, this proposed cross-reference update will be presumed correct.**

§ 69025. Meeting with potentially responsible parties

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

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

§ 69030. Request for issuance of order to potentially responsible party

69030. (a) A person issued an order pursuant to Section 68870 or 69055 may identify additional potentially responsible parties for the site to which the order is applicable and may request the department to issue an order to those parties. The request shall include, with appropriate documentation, the factual and legal basis for identifying those parties as potentially responsible parties for the site.

(b) The department shall review the request and accompanying information and, within a reasonable period of time, determine if there is a factual and legal basis for identifying other persons as potentially responsible parties, and notify the person that made the request of the action the department will take in response to the request.

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

Notes. Proposed Section 69030(a) governs a request made by “[a] person issued an order pursuant to Section 25355.5 or 25358.3.” Each of these cross referenced sections is discussed in turn below.

(1) Section 25355.5 would be recodified as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section 25355.5(a)) is the only one of those provisions that addresses the issuance of orders and, thus, appears to be the only provision relevant to this cross-reference. For this reason, the cross-reference to Section 25355.5 would be updated to refer only to Section 69055. **Absent comment, this proposed cross-reference update will be presumed correct.**

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

§ 69035. Determination not subject to judicial review

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

Comment. Section 69035 continues former Section 25356.1.3(d) without substantive change. See Sections 68050 (“department”), 68085 (“person”), 68145 (“responsible party”).

Article 8. Expenditures

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

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

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

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

(B) The department issues an order establishing a schedule for removing or remedying the release of a hazardous substance at the site, or for correcting the conditions that threaten the release of a hazardous substance. The order shall include, but is not limited to, requiring specific dates by which necessary corrective actions shall be taken to remove the threat of a release, or dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan shall be prepared, the remedial action plan shall be submitted to the department for approval, and a removal or remedial action shall be completed.

(C) The department enters into an enforceable agreement with a potentially responsible party for the site that requires the party to take necessary corrective action to remove the threat of the release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

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

with the order or agreement, the department may expend money from the state account for a removal or remedial action.

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

Comment. Section 69055 continues former Section 25355.5(a) without substantive change. An undesignated paragraph in former Section 25355.5(a)(1)(C) has been recodified as subdivision (b) of this section. A cross-reference to former Sections 25233 and 25234 has been updated to reflect the repeal of those provisions. See 2012 Cal. Stat. ch. 39, § 38; see also 2012 Cal. Stat. ch. 39, § 75 (replacing cross-reference to former Sections 25233 and 25234 with cross-reference to Sections 25223 and 25224).

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

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

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

(3) The undesignated paragraph in Section 25355.5(a)(1)(C) relates to an “enforceable agreement entered into pursuant to this section.” Section 25355.5 would be recodified as several sections (proposed Sections 69055, 69060, 69065, and 69130(b)). Of those sections, only proposed Section 69055 (shown above) discusses entering into an enforceable agreement. For this reason, the references to “this section” would be updated to refer only to proposed Section 69055. It would not

refer to the other proposed sections that recodify Section 25355.5, as they do not appear to be relevant. **Absent comment, this proposed cross-reference update will be presumed correct.**

(4) Section 25355.5(a)(1)(C) refers to “to the variance or removal procedures specified in Sections 25233 and 25234.” The cross-referenced sections do not currently exist. They were repealed in 2012. See 2012 Cal. Stat. ch. 39, § 38. It appears that the substance of these provisions was continued in Sections 25223 and 25224. See 2012 Cal. Stat. ch. 39, § 75 (amending a different cross-reference to Sections 25233 and 25234 to instead cross-refer to Sections 25223 and 25224). In proposed Section 69055, the cross-reference would be updated to refer to Sections 25223 and 25224. **The Commission welcomes comment on this proposed cross-reference correction.**

§ 69060. Conditions where required actions not applicable for expenditure

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

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

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

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

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

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

Notes. (1) Section 25355.5(b)(1) permits expenditures where the department is unable to identify “a potential responsible party.” This seems to be an error, as it is the only use of this phrase in Chapter 6.8. The correct phrase appears to be “a *potentially* responsible party,” a phrase that is used repeatedly in Chapter 6.8. For this reason, the provision would be restated to refer to “a potentially responsible party.” This change is intended to be nonsubstantive. **Absent comment, this proposed correction will be presumed correct.**

(2) Section 25355.5(b)(2) permits expenditures if “immediate corrective action is necessary, as provided in Section 25354.”

Section 25354 would be recodified as multiple sections (proposed Sections 68240, 68580, and 68875). The cross-reference to Section 25354 in Section 25355.5(b)(2) would be updated to refer only to the provision authorizing expenditures for immediate corrective action (proposed Section 68875). The other provisions that would recodify Section 25354 relate to appropriations and the funding of the emergency reserve account (proposed Section 68420) and a reporting requirement (proposed Section 68580). They do not appear to be relevant to this cross-reference and would be omitted from the cross-reference.

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

(3) Section 25355.5(b)(3) involves action taken in a situation of “imminent and substantial endangerment to the public health or welfare or to the environment.” Section 25358.3(a) (proposed Section 68870) appears to be the authority for the director to act when “there may be an imminent or substantial endangerment to the public health or welfare or to the environment.” For this reason, it would seem helpful to include a cross-reference to proposed Section 68870 in proposed Section 69060 (shown above) or the accompanying Comment. **The Commission welcomes comment on this issue.**

§ 69065. Authorized expenditures

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

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

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

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

Note. Subdivision (d) of Section 25355.5 provides:

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

Section 104(c)(3) of the federal act does not appear to provide for any list or listing of sites. Instead, Section 104 conditions the federal government's authority to conduct remedial actions (pursuant to that section) at a site on whether the state in which the site is located has provided certain assurances in a contract or cooperative agreement. One of the assurances a state must provide is expressly financial:

"...[T]he State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof."

Thus, the citation to Section 104 appears to be misplaced, as it relates to the state's share of a removal or remedial action. In proposed Section 69065, this issue would be addressed by moving the citation to the end of the subdivision, to read: "...the state's share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3))."

In addition, the reference to a site "listed on the federal act" appears to be erroneous. The Commission understands that sites are not listed in the federal act. The Commission believes that this should be a reference to the federal National Priorities List (authorized by Section 105(a)(8)(B)). For information on the National Priorities List (NPL), see <https://www.epa.gov/superfund/superfund-national-priorities-list-npl>. The National Priorities List is cited in Section 25356.1(h)(2) (proposed Section 69225). The Commission used that citation as a model for drafting the citation in proposed Section 69065 (shown above).

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

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

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

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

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

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

(c) If a local agency is identified as a potentially responsible party in a remedial action plan prepared pursuant to Article 12 (commencing with Section 69190), and the department expends funds pursuant to this part to pay for the local agency's share of the removal and remedial action, the expenditure of these funds shall be deemed to be a loan from the state to the local agency. If the department determines that the local agency is not making adequate progress toward repaying the loan made pursuant to this section, the State Board of Equalization shall, upon notice by the department, withhold the unpaid amount of the loan, in increments from the sales and use tax transmittals made pursuant to Section 7204 of the Revenue and Taxation Code, to the city or county in which the local agency is located. The State Board of Equalization shall structure the amounts to be withheld so that complete repayment of the loan, together with interest and administrative charges, occurs within five years after a local agency has been notified by the department of the amount that it owes. The State Board of Equalization shall deposit any funds withheld pursuant to this section into the state account.

(d) The department may not expend funds from the state account for a removal or remedial action at any waste management unit owned or operated by a local agency if it meets both of the following conditions:

(1) It is classified as a class III waste management unit pursuant to Article 3 (commencing with Section 20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California Code of Regulations.

(2) It was in operation on or after January 1, 1988.

Comment. Section 69070 continues former Section 25353, with the exception of subdivisions (c) and (e), without substantive change. An obsolete cross-reference to the California Administrative Code in paragraph (d)(1) has been updated to refer to the relevant provisions of the California Code of Regulations.

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

Notes. (1) The introductory clause of subdivision (a) of Section 25353 is missing a word. Proposed Section 69070(a) would correct the text to read: “Except as provided in *subdivision* (b)” (added word in italics).

(2) Proposed Section 69070(b)(2) would recodify most of Section 25353, which relates to issuance of a cleanup order or entry into an enforceable agreement “pursuant to Section 25355.5.” Section 25355.5 would be recodified as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). With the exception of proposed Section 69055, all of these proposed sections were omitted in drafting proposed Section 69070, 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) would recodify Section 25353(f), which prohibits the expenditure of funds from the state account for response actions at a local-agency-owned or -operated waste management unit if it meets the specified conditions. One of the conditions is:

“[The facility] is classified as a class III waste management unit pursuant to Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Administrative Code.”

The cross-referenced regulatory provisions do not currently relate to a “class III waste management unit.” Repealed Section 2533 was entitled “Class III: Landfills for Nonhazardous Solid Waste.” It appears that the provisions related to Class III landfills are now located in Title 27 of the California Code of Regulations. In particular, Article 3 (commencing with Section 20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California Code of Regulations addresses classification and siting for waste management units, facilities, and disposal sites.

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

§ 69075. Limitation on expenditure for natural resources damages prior to September 25, 1981

69075. The department may not expend funds from the state account for the purposes specified in Section 69450 where the injury, degradation, destruction, or loss to natural resources, or the release of a hazardous substance from which the damages to natural resources resulted, has occurred prior to September 25, 1981.

Comment. Section 69075 continues former Section 25353(e) without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68155 (“site”), 68165 (“state account”).

Note. Section 25353(c) includes a cross-reference to Section 25352.

Section 25352 would be divided into multiple provisions in this proposed recodification. The cross-reference would be updated to refer only to the provisions that relate to expenditures (subdivisions (a) and (b) of Section 25352, which would be recodified as Section 69450). Subdivision (c) of Section 25352, which would be recodified separately, would be omitted from the cross-reference, as it relates to cost recovery and does not appear relevant.

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

Article 9. Preliminary Endangerment Assessment

§ 69100. Required action prior to preliminary endangerment assessment or no further action letter

69100. (a) The department shall not agree to oversee the preparation of, or to review, a preliminary endangerment assessment for property if action is, or may be, necessary to address a release or threatened release of a hazardous substance, and the department shall not issue a letter stating that no further action is necessary with regard to property, unless the person who made the request does either of the following:

(1) Provides the department with all of the following:

(A) Proof of the identity of all current record owners of fee title to the property and their mailing addresses.

(B) Written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by the requesting person.

(C) An acknowledgment of the receipt of the notice required in subparagraph (B), from the property owners or proof that the requesting person has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

(2) Provides the department with proof of the identity of all current record owners of fee title to the property and proof that the requesting person has made reasonable efforts to locate the property owners and was unable to do so.

(b) The department shall take all reasonable steps necessary to accommodate property owner participation in the site remediation process and shall consider all input and recommendations received from the owner of property that is the subject of the proposed action.

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

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

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

See Sections 68050 ("department"), 68075 ("hazardous substance"), 68085 ("person"), 68095 ("preliminary endangerment assessment"), 68105 ("release"), 68140 ("response"), 68145 ("responsible party"), 68155 ("site").

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

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

“The department shall not agree to oversee the preparation of, or to review, a preliminary endangerment assessment for property if *action* is, or may be, necessary to address a release or threatened release of a hazardous substance, and the department shall not issue a letter stating that no further *action* is necessary with regard to property, unless the person requesting the department *action* does either of the following...”

The first two uses of the term appear to refer to cleanup actions (i.e., a removal or remedial action). The final use of the term seems to be referring to the act being requested of the department (i.e., oversight or review of a preliminary endangerment assessment or issuance of a no further action letter). To avoid using “action” in two different ways, proposed Section 69100 would replace the final reference to “action” with “unless the person who made the request does either of the following.”

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

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

...

(2) Proof of the identity of all current record owners of fee title to the property and proof that the requesting person has made reasonable efforts to locate the property owners and was unable to do so.”

The missing clause (“Provides the department with”) would be included in proposed Section 69100. The changes reflected in proposed Section 69100 are intended to be nonsubstantive. **Absent comment, this proposed restatement will be presumed correct.**

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

(3) Proposed Section 69100(b) would recodify Section 25355.8(b), which requires the department to take steps to accommodate property owner participation in the site remediation process. By its terms, this subdivision seems to state a general rule about facilitating property owner participation in the cleanup process. If this is the case, this provision would be better located elsewhere (perhaps in proposed “Article 1. General Provisions” of Chapter 5). However, it appears that this seemingly broad rule may have limited application pursuant to Section 25355.8(c) (proposed Section 69100 (c), shown above). **The Commission welcomes comment on this issue.**

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

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

20, for the costs incurred by the department for its oversight of any preliminary endangerment assessment at that site.

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

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

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

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

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

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

Article 10. Initiation of Removal or Remedial Actions

§ 69130. Authority to initiate removal or remedial action

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

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

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

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

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

6 **§ 69135. Actions required prior to initiation of removal or remedial action**

7 69135. (a) At least 30 days before initiating removal or remedial actions, the
8 department shall make a reasonable effort to notify the persons identified by the
9 department as potentially responsible parties and shall also publish a notification of
10 this action in a newspaper of general circulation pursuant to the method specified in
11 Section 6061 of the Government Code. This subdivision does not apply to actions
12 taken pursuant to Section 68870 or immediate corrective actions taken pursuant to
13 Section 68875. A responsible party may be held liable pursuant to this part whether
14 or not the person was given the notice specified in this subdivision.

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

24 **Comment.** Section 69135 continues former Section 25355(c)(1) and (d) without substantive
25 change. An erroneous cross-reference to former Section 25358.3(b) has been updated to refer to
26 Section 68870, which continues former Section 25358.3(a).

27 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105
28 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

29 **Notes. (1)** The provisions proposed for recodification in this section refer to “actions taken pursuant
30 to subdivision (b) of Section 25358.3 ...” These cross-references appear to be erroneous. Section
31 25358.3(b) (proposed Section 68650) does not appear to authorize response actions. Rather, Section
32 25358.3(a) (proposed Section 68870) appears to be the relevant provision for these cross-
33 references, as Section 25358.3(a) provides for emergency response actions. For this reason, the
34 cross-references have been updated to refer to proposed Section 68870. **Absent comment, this
35 proposed cross-reference correction will be presumed correct.**

36 **(2)** Proposed Section 69135 also refers to “immediate corrective actions taken pursuant to Section
37 25354.” Section 25354 would be recodified as multiple sections (proposed Sections 68240, 68580,
38 and 68875). In proposed Section 69135, the cross-reference in question would be updated to refer
39 only to the provision authorizing expenditures for immediate corrective action (proposed Section
40 68875). The other provisions that would recodify parts of Section 25354 relate to appropriations
41 and the funding of the emergency reserve account (proposed Section 68420) and a reporting
42 requirement (proposed Section 68580). They do not appear to be relevant to this cross-reference
43 and would be omitted from the cross-reference. **Absent comment, this proposed cross-reference
44 update will be presumed correct.**

45 **(3)** Section 25355(c)(1) pertains to notices to potentially responsible parties. It cross-refers to “this
46 subdivision.” In particular, Section 25355(c)(1) provides that “this subdivision” does not apply to

certain emergency actions and persons who fail to receive the notice specified by “this subdivision” can still be held liable. Currently, Section 25355(c) has two paragraphs. Paragraph (2) would be recodified elsewhere in this draft. It relates to voluntary enforceable agreements for the removal or remedial actions to address certain petroleum releases. The voluntary agreements do not appear to be relevant to the purposes of the cross-references to “this subdivision” in Section 25355(c)(1). For this reason, proposed Section 69135 would only cross-refer to the material contained in paragraph (1) of subdivision (c), as opposed to the entirety of subdivision (c). **Absent comment, this proposed cross-reference update will be presumed correct.**

Article 11. Local Government Removal or Remedial Actions

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

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

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

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

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

Comment. Section 69160 continues former Section 25351.2(a) without substantive change.

See Sections 68050 (“department”), 68085 (“person”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

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

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

Comment. Section 69170 continues former Section 25351.2(c) without substantive change. See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

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

Contrary to what the term seems to imply, a “remedial action plan” does not appear to be strictly a plan for “remedial action,” which is a defined term in Section 25322 (proposed Section 68125). Instead, a “remedial action plan” appears to be required for a “removal action” that exceeds a certain dollar threshold. See Section 25356.1(h)(1) (proposed Section 69225(a)).

“Regional board” is defined as “a California regional water quality control board.” This term has already been defined for the part as a whole. Proposed Section 68100 defines “regional board” for

1 this part as “a California regional water quality control board.” For this reason, the redundant
2 definition of “regional board” in Section 25356.1(a) was not continued.

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

7 **§ 69195. Preparation or approval of plans**

8 69195. Except as provided in Sections 69225 and 69230, the department, or, if
9 appropriate, the regional board shall prepare or approve remedial action plans for
10 the sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter
11 4.

12 **Comment.** Section 69195 continues former Section 25356.1(b) without substantive change.

13 See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68155
14 (“site”).

15 **Note.** The first clause of subdivision (b) of Section 25356.1 is “[e]xcept as provided in subdivision
16 (h).” Subdivision (h) would be recodified as three sections (proposed Sections 69225, 69230, and
17 69235). One of those provisions, proposed Section 69235, would be omitted from the cross-
18 reference in proposed Section 69195. That section contains only a rule for calculating the costs of
19 a removal action and does not appear to be relevant to this cross-reference. For this reason, the
20 cross-reference would be updated to refer only to Sections 69225 and 69230. **Absent comment,**
21 **this proposed cross-reference update will be presumed correct.**

22 **§ 69200. Request by party for preparation or approval of plan**

23 69200. (a) A potentially responsible party may request the department or the
24 regional board, when appropriate, to prepare or approve a remedial action plan for
25 a site not listed pursuant to Article 5 (commencing with Section 68760) of Chapter
26 4, if the department or the regional board determines that a removal or remedial
27 action is required to respond to a release of a hazardous substance. The department
28 or the regional board shall respond to a request to prepare or approve a remedial
29 action plan within 90 days of receipt.

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

33 **Comment.** Section 69200 continues former Section 25356.1(c) without substantive change.

34 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
35 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”), 68145 (“responsible
36 party”), 68155 (“site”).

37 **§ 69205. Standards for plan**

38 69205. All remedial action plans prepared or approved pursuant to this article
39 shall be based upon Sections 68855 and 68860 and Subpart E of the National Oil
40 and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.),
41 as amended, and upon all of the following factors, to the extent that these factors are
42 consistent with these federal regulations and do not require a less stringent level of
43 cleanup than these federal regulations:

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

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

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

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

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

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

Comment. Section 69205 restates former Section 25356.1(d) without substantive change.

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

Note. Section 25356.1(d) provides that remedial action plans shall be based on “Section 25350, Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), and any amendments thereto.” In proposed Section 69205, the cross-reference to Section 25350 has been updated and the phrase “and any amendments thereto” has been replaced with “as amended.” **Absent comment, this proposed restatement will be presumed correct.**

§ 69210. Content of plan

69210. A remedial action plan prepared pursuant to this article shall include the basis for the remedial action selected and shall include an evaluation of each alternative considered and rejected by the department or the regional board for a particular site. The plan shall include an explanation for rejection of alternative remedial actions considered but rejected. The plan shall also include an evaluation

1 of the consistency of the selected remedial action with the requirements of the
2 federal regulations and the factors specified in Section 69205, if those factors are
3 not otherwise adequately addressed through compliance with the federal
4 regulations. The remedial action plan shall also include a nonbinding preliminary
5 allocation of responsibility among all identifiable potentially responsible parties at
6 a particular site, including those parties that may have been released, or may
7 otherwise be immune, from liability pursuant to this part or any other provision of
8 law.

9 **Comment.** Section 69210 continues the first four sentences of former Section 25356.1(e)
10 without substantive change.

11 See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68125
12 (“remedy”), 68145 (“responsible party”), 68155 (“site”).

13 **§ 69215. Public review and comment on plan**

14 69215. (a) Before adopting a final remedial action plan, the department or the
15 regional board shall prepare or approve a draft remedial action plan and shall do all
16 of the following:

17 (1) Circulate the draft plan for at least 30 days for public comment.

18 (2) Notify affected local and state agencies of the removal and remedial actions
19 proposed in the remedial action plan and publish a notice in a newspaper of general
20 circulation in the area affected by the draft remedial action plan. The department or
21 the regional board shall also post notices in the location where the proposed removal
22 or remedial action would be located and shall notify, by direct mailing, the owners
23 of property contiguous to the site addressed by the plan, as shown in the latest
24 equalized assessment roll.

25 (3) Hold one or more meetings with the lead and responsible agencies for the
26 removal and remedial actions, the potentially responsible parties for the removal
27 and remedial actions, and the interested public, to provide the public with the
28 information that is necessary to address the issues that concern the public. The
29 information to be provided shall include an assessment of the degree of
30 contamination, the characteristics of the hazardous substances, an estimate of the
31 time required to carry out the removal and remedial actions, and a description of the
32 proposed removal and remedial actions.

33 (4) Comply with Section 68930.

34 (b) After complying with subdivision (a), the department or the regional board
35 shall review and consider any public comments, and shall revise the draft plan, if
36 appropriate. The department or the regional board shall then issue the final remedial
37 action plan.

38 **Comment.** Section 69215 continues the fifth sentence of former Section 25356.1(e), including
39 paragraphs (e)(1)-(e)(4), inclusive, without substantive change. Section 69215 also continues
40 former Section 25356.1(f) without substantive change.

41 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
42 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

Note. Subdivision (f) of Section 25356.1 requires the department or regional board to review and consider comments “after complying with subdivision (e).” Subdivision (e) would be recodified as two separate provisions: proposed Section 69215 (shown above) and proposed Section 69210. The cross-reference to “subdivision (e)” appears to state a timing rule related to the public notice and comment opportunity that would be recodified as proposed Section 69215(a). The portion of subdivision (e) that would be recodified in proposed Section 69210 relates to requirements for the substantive contents of a plan. This provision does not appear relevant to the cross-reference in question and should be omitted. For this reason, proposed Section 69215 would update the cross-reference to refer only to “subdivision (a).” **Absent comment, this proposed cross-reference update will be presumed correct.**

§ 69220. Judicial review of plan

69220. (a)(1) A potentially responsible party named in the final remedial action plan issued by the department or the regional board may seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final remedial action plan is issued by the department or the regional board. No action may be brought by a potentially responsible party to review the final remedial action plan if the petition for writ of mandate is not filed within 30 days of the date that the final remedial action plan was issued.

(2) Any other person who has the right to seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one year after the final remedial action plan is issued. No action may be brought by any other person to review the final remedial action plan if the petition for writ of mandate is not filed within one year of the date that the final remedial action plan was issued.

(3) The filing of a petition for writ of mandate to review the final remedial action plan shall not stay any removal or remedial action specified in the final plan.

(b) For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence available to the department or the regional board, as the case may be.

(c) This section does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 68305.

Comment. Paragraph (a)(1) of Section 69220 continues the first and third sentences of former Section 25356.1(g)(1) without substantive change.

Paragraph (a)(2) continues the second and fourth sentences of former Section 25356.1(g)(1) without substantive change.

Paragraph (a)(3) continues the fifth sentence of former Section 25356.1(g)(1) without substantive change.

Subdivision (b) continues former Section 25356.1(g)(2) without substantive change.

Subdivision (c) continues former Section 25356.1(g)(3) without substantive change.

See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”).

§ 69225. Situations in which plan not required

69225. (a) This article does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than two million dollars (\$2,000,000).

(b) The department or a regional board shall prepare or approve a removal action work plan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than two million dollars (\$2,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment that may include conducting a public meeting on proposed removal actions.

(c)(1) A remedial action plan is not required pursuant to Section 69195 if the site is listed on the National Priorities List by the United States Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the United States Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the United States Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(2) Paragraph (1) does not apply to a removal action paid from the state account.

Comment. Section 69225 continues former Section 25356.1(h)(1), (2), and (5) without substantive change.

See Sections 68050 ("department"), 68065 ("federal act"), 68075 ("hazardous substance"), 68100 ("regional board"), 68105 ("release"), 68125 ("remedy"), 68130 ("removal action work plan"), 68135 ("remove"), 68145 ("responsible party"), 68155 ("site"), 68165 ("state account").

Notes. (1) Section 25356.1(h)(2) refers to the "National Priority List." It appears that the correct name is the "National Priorities List." Proposed Section 69225 would correct this reference. Section 25356.1(h)(2) also contains several references to the "Environmental Protection Agency," without specifying whether it is the state or the federal Environmental Protection Agency. Given the context, it seems clear that these are references to the federal agency, so these references would be updated to refer to the "United States Environmental Protection Agency." **Absent comment, these proposed changes will be presumed correct.**

(2) Paragraph 5 of Section 25356.1(h) contains a reference to "[p]aragraph (2) of this subdivision." The phrase "of this subdivision" is unnecessary and counter to standard drafting practice. That phrase would not be continued.

§ 69230. Waiver from required standards for plan

69230. The department may waive the requirement that a remedial action plan meet the requirements specified in Section 69205 if all of the following apply:

(a) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4.

(b) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(1) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(2) A listing of the alternative remedial measures that were considered by the responsible party in selecting the proposed removal action.

(3) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(4) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(c) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with Section 69205.

(d) The total cost of the removal action is less than two million dollars (\$2,000,000).

Comment. Section 69230 continues former Section 25356.1(h)(3) without substantive change. An erroneous cross-reference to “subdivision (c)” has been replaced with a cross-reference to Section 69205, which continues subdivision (d) of former Section 25356.1.

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

Notes. (1) Section 25356.1(h)(3) allows the department to waive the requirement that a remedial action plan meet requirements in “subdivision (d)” as long as the specified conditions apply. One of those conditions is a determination by the department that the plan is as protective of health, safety, and the environment as a plan prepared in accordance with “subdivision (c).” Subdivision (c) does not place conditions on preparation of a plan. This appears to be an erroneous cross-reference that should instead refer to “subdivision (d).” For this reason, the cross-reference would be updated to refer to proposed Section 69205, the provision that would recodify the substance of Section 25356.1(d). **Absent comment, this proposed correction will be presumed correct.**

(2) Under Section 25356.1(h)(3), one of the necessary conditions for a waiver of the remedial action plan requirements is that the “total cost of the removal action is less than two million dollars (\$2,000,000).” However, a remedial action plan does not appear to be required for a removal action if the total cost falls below this dollar amount. See Section 25356.1(h)(1) (proposed Section 69225(a)). It is not clear why a waiver of plan requirements would be needed when no plan is required. **The Commission welcomes comment on this issue.**

§ 69235. Costs of removal action

69235. For purposes of this article, the cost of a removal action includes the cleanup or removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

Comment. Section 69235 restates former Section 25356.1(h)(4) without substantive change. See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”), 68135 (“remove”).

Note. Section 25356.1(h)(4) contains an apparent typographical error and a possibly incorrect cross-reference to the federal act. That section provides:

“For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 9601 (23) of Title 42 of the United States Code.”

There appears to be a typographical error in the phrase “the cleanup *of* removal of released hazardous substances” (emphasis added). Proposed Section 69235 would correct that phrase, to read: “the cleanup *or* removal of released hazardous substances” (emphasis added).

Proposed Section 69235 would also standardize the format of the cross-reference to the federal act. In checking that cross-reference, the Commission noticed that it points to the federal act’s definition of “remove.” While this may have been intended, the placement of this cross-reference suggests that the relevant definition would be “release,” which is found in Section 101(22) of the federal act.

The Commission welcomes comment on whether Section 25356.1 (proposed Section 69235) cross-refers to the appropriate term in the federal act. If so, it may be appropriate to move this cross-reference to follow the term “removal” in proposed Section 69235. If not, it may be appropriate to revise this cross-reference to refer to the definition for “release.”

§ 69240. Application of Water Code provisions

69240. Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to an action or failure to act by a regional board pursuant to this article.

Comment. Section 69240 continues former Section 25356.1(i) without substantive change. See Section 68100 (“regional board”).

Article 13. Standards

§ 69260. Standards for response actions

69260. Any response action taken or approved pursuant to this part shall be based upon, and no less stringent than, all of the following requirements:

(a) The requirements established under federal regulation pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended.

(b) The regulations established pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent that the department or the regional board determines that those regulations, plans, and policies do not require a less stringent level of remediation than the federal

1 regulations specified in subdivision (a) and to the degree that those regulations,
2 plans, and policies do not authorize decisionmaking procedures that may result in
3 less stringent response action requirements than those required by the federal
4 regulations specified in subdivision (a).

5 (c) Any applicable provisions of this part, to the extent those provisions are
6 consistent with the federal regulations specified in subdivision (a) and do not require
7 a less stringent level of remediation than, or decisionmaking procedures that are at
8 variance with, the federal regulations set forth in subdivision (a).

9 **Comment.** Section 69260 continues former Section 25356.1.5(a) without substantive change.
10 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”).

11 **§ 69265. Standards for risk assessment for response action**

12 69265. (a) Any health or ecological risk assessment prepared in conjunction with
13 a response action taken or approved pursuant to this part shall be based upon Subpart
14 E of the National Oil and Hazardous Substances Pollution Contingency Plan (40
15 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the United States
16 Environmental Protection Agency developed pursuant to the federal act, and the
17 most current sound scientific methods, knowledge, and practices of public health
18 and environmental professionals who are experienced practitioners in the fields of
19 epidemiology, risk assessment, environmental contamination, ecological risk, fate
20 and transport analysis, and toxicology.

21 (b) Risk assessment practices shall include the most current sound scientific
22 methods for data evaluation, exposure assessment, toxicity assessment, and risk
23 characterization, documentation of all assumptions, methods, models, and
24 calculations used in the assessment.

25 (c) Any health risk assessment shall include all of the following:

26 (1) Evaluation of risks posed by acutely toxic hazardous substances based on
27 levels at which no known or anticipated adverse effects on health will occur, with
28 an adequate margin of safety.

29 (2) Evaluation of risks posed by carcinogens or other hazardous substances that
30 may cause chronic disease based on a level that does not pose any significant risk
31 to health.

32 (3) Consideration of possible synergistic effects resulting from exposure to, or
33 interaction with, two or more hazardous substances.

34 (4) Consideration of the effect of hazardous substances upon subgroups that
35 comprise a meaningful portion of the general population, including, but not limited
36 to, infants, children, pregnant women, the elderly, individuals with a history of
37 serious illness, or other subpopulations, that are identifiable as being at greater risk
38 of adverse health effects due to exposure to hazardous substances than the general
39 population.

40 (5) Consideration of exposure and body burden level that alter physiological
41 function or structure in a manner that may significantly increase the risk of illness

1 and of exposure to hazardous substances in all media, including, but not limited to,
2 exposures in drinking water, food, ambient and indoor air, and soil.

3 **Comment.** Section 69265 continues former Section 25356.1.5(b) without substantive change.
4 See Sections 68065 (“federal act”), 68075 (“hazardous substance”), 68140 (“response”).

5 **§ 69270. Level of hazardous substance that is protective of public health**

6 69270. If currently available scientific data are insufficient to determine the level
7 of a hazardous substance at which no known or anticipated adverse effects on health
8 will occur, with an adequate margin of safety, or the level that poses no significant
9 risk to public health, the risk assessment prepared in conjunction with a response
10 action taken or approved pursuant to this part shall be based on the level that is
11 protective of public health, with an adequate margin of safety. This level shall be
12 based exclusively on public health considerations, shall, to the extent scientific data
13 are available, take into account the factors set forth in paragraphs (1) to (5),
14 inclusive, of subdivision (c) of Section 69265, and shall be based on the most current
15 principles, practices, and methods used by public health professionals who are
16 experienced practitioners in the fields of epidemiology, risk assessment, fate and
17 transport analysis, and toxicology.

18 **Comment.** Section 69270 continues former Section 25356.1.5(c) without substantive change.
19 See Sections 68075 (“hazardous substance”), 68140 (“response”).

20 **§ 69275. Content of exposure assessment**

21 69275. (a) The exposure assessment of any risk assessment prepared in
22 conjunction with a response action taken or approved pursuant to this part shall
23 include the development of reasonable maximum estimates of exposure for both
24 current land use conditions and reasonably foreseeable future land use conditions at
25 the site.

26 (b) The exposure assessment of any risk assessment prepared in conjunction with
27 a response action taken or approved pursuant to this part shall include the
28 development of reasonable maximum estimates of exposure to volatile organic
29 compounds that may enter structures that are on the site or that are proposed to be
30 constructed on the site and may cause exposure due to accumulation of those volatile
31 organic compounds in the indoor air of those structures.

32 **Comment.** Section 69275 continues former Section 25356.1.5(d) and (e) without substantive
33 change.

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

35 **Article 14. On-site Hazardous Waste Facility for Response Action**

36 **§ 69290. Discretion to exclude from permitting requirements**

37 69290. To the extent consistent with the federal Resource Conservation and
38 Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department
39 may exclude any portion of a response action conducted entirely onsite from the

1 hazardous waste facility permit requirements of Section 25201 if both of the
2 following apply:

3 (a) The removal or remedial action is carried out pursuant to a removal action
4 work plan or a remedial action plan prepared pursuant to Article 12 (commencing
5 with Section 69190).

6 (b) The removal action work plan or the remedial action plan requires that the
7 response action complies with all laws, rules, regulations, standards, and
8 requirements, criteria, or limitations applicable to the construction, operation, and
9 closure of the type of facility at the hazardous substance release site and with any
10 other condition imposed by the department as necessary to protect public health and
11 safety and the environment.

12 **Comment.** Section 69290 continues former Section 25358.9(a) without substantive change.
13 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125
14 (“remedy”), 68130 (“removal action work plan”), 68135 (“remove”), 68140 (“response”), 68155
15 (“site”).

16 § 69295. Enforcement

17 69295. (a) The department may enforce in the court for the county in which a
18 response action exempted pursuant to Section 69290 is located any federal or state
19 law, rule, regulation, standard, requirements, criteria, or limitation with which the
20 remedial or removal action is required to comply.

21 (b)(1) Any consent decree entered into pursuant to an enforcement action
22 authorized by this section shall require the parties to attempt expeditiously to
23 informally resolve any disagreements concerning the implementation of the
24 response action with the appropriate federal and state agencies and shall provide for
25 administrative enforcement.

26 (2) The consent decree shall stipulate that the penalty for violation of the consent
27 decree shall be an amount not more than twenty-five thousand dollars (\$25,000) per
28 day, which may be enforced by the state. These penalties do not impair or affect the
29 authority of the court to order compliance with the specific terms of the consent
30 decree.

31 **Comment.** Section 69295 continues former Section 25358.9(b) without substantive change.
32 See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”).

33 Article 15. Operation and Maintenance

34 § 69310. “Small business”

35 69310. For purposes of this article, “small business” is a business that meets the
36 requirements set forth in subdivision (d) of Section 14837 of the Government Code.

37 **Comment.** Section 69310 continues former Section 25355.2(f) without substantive change.

1 **§ 69315. Financial assurance for operation and maintenance**

2 69315. Except as provided in subdivision (a) of Section 69325, the department or
3 the regional board shall require any responsible party who is required to comply
4 with operation and maintenance requirements as part of a response action, to
5 demonstrate and to maintain financial assurance in accordance with this article. The
6 responsible party shall demonstrate financial assurance prior to the time that
7 operation and maintenance activities are initiated and shall maintain it throughout
8 the period of time necessary to complete all required operation and maintenance
9 activities.

10 **Comment.** Section 69315 continues former Section 25355.2(a) without substantive change.

11 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional
12 board”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

13 **§ 69320. Valid financial assurance mechanisms**

14 69320. (a) For purposes of Section 69315, the responsible party shall demonstrate
15 and maintain one or more of the financial assurance mechanisms set forth in
16 subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California
17 Code of Regulations.

18 (b) As an alternative to the requirement of subdivision (a), a responsible party
19 may demonstrate and maintain financial assurance by means of a financial assurance
20 mechanism other than those specified in subdivision (a), if the alternative financial
21 assurance mechanism has been submitted to, and approved by, the department or
22 the regional board as being at least equivalent to the financial assurance mechanisms
23 specified in subdivision (a). The department or the regional board shall evaluate the
24 equivalency of the proposed alternative financial assurance mechanism principally
25 in terms of the certainty of the availability of funds for required operation and
26 maintenance activities and the amount of funds that will be made available. The
27 department or the regional board shall require the responsible party to submit any
28 information necessary to make a determination as to the equivalency of the proposed
29 alternative financial assurance mechanism.

30 **Comment.** Section 69320 restates former Section 25355.2(b) without substantive change. A
31 cross-reference to the California Code of Regulations was corrected to refer to “subsections” as
32 opposed to “subdivisions.”

33 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional
34 board”), 68145 (“responsible party”).

35 **Note.** Section 25355.2(b) refers to “a financial assurance mechanism other than those listed in
36 paragraph (1).” The referenced paragraph corresponds to subdivision (a) of proposed Section 69320
37 (shown above). It does not list financial assurance mechanisms, but refers to those mechanisms set
38 forth in specified provisions of the California Code of Regulations. Since paragraph (1) does not
39 “list” financial assurance mechanisms, the provision would be restated to read: “a financial
40 assurance mechanism other than those *specified* in subdivision (a)” (emphasis added). This change
41 is consistent with a subsequent reference to subdivision (a) in the same proposed section. This
42 change and a correction of the citation to the California Code of Regulations (as noted in the
43 Comment) are the only changes to the existing language. **Absent comment, this proposed**
44 **restatement will be presumed correct.**

1 **§ 69325. Conditions for waiver of financial assurance requirement**

2 69325. (a) The department or the regional board shall waive the financial
3 assurance required by Section 69315 if the department or the regional board makes
4 one of the following determinations:

5 (1) The responsible party is a small business and has demonstrated all of the
6 following:

7 (A) The responsible party cannot qualify for any of the financial assurance
8 mechanisms set forth in subsections (b), (c), and (d) of Section 66265.143 of Title
9 22 of the California Code of Regulations.

10 (B) The responsible party financially cannot meet the requirements of subsection
11 (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

12 (C) The responsible party is not capable of meeting the eligibility requirements
13 set forth in subsection (e) of Section 66265.143 of Title 22 of the California Code
14 of Regulations.

15 (2) The responsible party is a small business and has demonstrated that the
16 responsible party financially is not capable of establishing one of the financial
17 assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section
18 66265.143 of Title 22 of the California Code of Regulations while at the same time
19 financing the operation and maintenance requirements applicable to the site.

20 (3) The responsible party is not separately required to demonstrate and maintain
21 a financial assurance mechanism for operation and maintenance activities at a site
22 because of all of the following conditions:

23 (A) The site is a multiple responsible party site.

24 (B) Financial assurance that operation and maintenance activities at the site will
25 be carried out is demonstrated and maintained by a financial assurance mechanism
26 established jointly by all, or some, of the responsible parties.

27 (C) The financial assurance mechanism specified in subparagraph (B) meets the
28 requirements of Sections 69315 and 69320.

29 (4) The responsible party is a federal, state, or local government entity.

30 (b) The department or the regional board shall withdraw a waiver granted pursuant
31 to paragraph (1) or (2) of subdivision (a) if the department or the regional board
32 determines that the responsible party that obtained the waiver no longer meets the
33 eligibility requirements for the waiver.

34 **Comment.** Section 69325 continues former Section 25355.2(c) and (d) without substantive
35 change. The cross-references to the California Code of Regulations were corrected to refer to
36 “subsections” as opposed to “subdivisions.”

37 See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional
38 board”), 68145 (“responsible party”), 68155 (“site”), 69310 (“small business”).

39 **§ 69330. Reporting on financial assurance**

40 69330. On or before January 15, 2001, the department shall report to the
41 Legislature all of the following:

(a) The number of requests the department and the regional boards have received for waivers from the financial assurance requirements of this article during the period between May 26, 1999, and January 1, 2001.

(b) The disposition of the requests that were received and the reasons for granting the waivers that were allowed and rejecting the waivers that were disallowed.

(c) The total number of businesses or other entities that were required by this article to demonstrate and maintain financial assurance, the number of businesses or other entities that were able to comply with the requirement, the number that were unable to comply and the reasons why they could not or did not comply, and the history of compliance with this part and Chapter 6.5 (commencing with Section 25100) of Division 20 by responsible parties that requested waivers.

(d) Financial assurance mechanisms other than the financial assurance mechanisms referenced in subdivision (a) of Section 69320 that may be available to responsible parties.

Comment. Section 69330 continues former Section 25355.2(e) without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 68145 (“responsible party”).

Notes. (1) Section 25355.2(e) requires a report to Legislature “[n]otwithstanding Section 7550.5 of the Government Code.” Former Government Code Section 7550.5 related to the submission of written reports to the Legislature, Governor, or any state legislative or executive body. Section 7550.5 did not require the submission of written reports except in certain enumerated circumstances; one of those circumstances was that “[t]he Legislature expressly provides that, notwithstanding this section, a written report shall be prepared and submitted.” See former Gov’t Code § 7550.5(b)(3), as amended by 2005 Cal. Stat. ch. 77, § 13. Government Code Section 7550.5 was repealed by its own terms in 2008. See *id.* § 7550.5(g). For this reason, the phrase “[n]otwithstanding Section 7550.5 of the Government Code” appears to be obsolete and would not be continued. **Absent comment, this proposed change will be presumed correct.**

(2) Section 25355.2(e) requires the department to submit a report to the Legislature “on or before January 15, 2001.” This provision appears to relate to a single report due in 2001. It probably is obsolete. **The Commission welcomes comment on this issue.**

Article 16. Illegal Drug Lab Cleanup

Note. This proposed article contains the material currently in Section 25354.5, with the exception of a provision that focuses on the Illegal Drug Lab Cleanup Account. That provision would be recodified as proposed Section 68370 in the chapter for financial provisions. The Commission reviewed each of the cross-references to “this section” contained in Section 25354.5 and concluded that the substance of proposed Section 68370 was not relevant to the purposes of those cross-references. Accordingly, the cross-references to “this section” would be updated to refer only to this proposed article (i.e., not proposed Section 68370). See proposed Sections 69350, 69370, 69375, 69385. **Absent comment, these proposed updates will be presumed correct.**

§ 69350. Expenditures and contracting

69350. (a) The department may expend funds appropriated from the Illegal Drug Lab Cleanup Account created pursuant to Section 68370 to pay the costs of removal actions required by this article.

(b) The department may enter into oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when, in the judgment of the department, immediate corrective action to a hazardous substance subject to this article is necessary to remedy or prevent an emergency.

Comment. Section 69350 continues the second and third sentences of former Section 25354.5(b)(1) without substantive change.

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

§ 69355. Notice to department by law enforcement

69355. A state or local law enforcement officer or investigator or other law enforcement agency employee who, in the course of an official investigation or enforcement action regarding the manufacture of an illegal controlled substance, comes in contact with, or is aware of, the presence of a substance that the person suspects is a hazardous substance at a site where an illegal controlled substance is or was manufactured, shall notify the department for the purpose of taking removal action, as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance, except for samples required under Section 11479.5 to be kept for evidentiary purposes.

Comment. Section 69355 continues former Section 25354.5(a) without substantive change.

See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68135 (“remove”), 68155 (“site”).

Note. Proposed Section 69355 would appear to benefit from restatement for clarity.

To improve readability, it may be helpful to add a defined term, “law enforcement agent.”

In addition, the application of the exception in the final clause is unclear. While it seems clear that material required to be kept for evidentiary purposes should not itself be removed, the primary purpose of this provision appears to be a notice obligation for law enforcement agents. If the exception is intended only to avoid evidentiary samples from being subject to removal, it seems that such an exception should be recodified with proposed Section 69360, which obligates the department to take a removal action.

Similarly, this proposed section provides that law enforcement must notify the department for the purpose of taking a removal action “as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance.” For simplicity, it may be helpful to simply cite to a removal action taken pursuant to proposed Section 69360 and to incorporate this language into proposed Section 69360.

The Commission welcomes comment on these issues and whether this provision is sufficiently clear in practice.

§ 69360. Department obligation upon receipt of notice

69360. Notwithstanding any other provision of law, upon receipt of a notification pursuant to Section 69355, the department shall take removal action, as necessary, with respect to a hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance, and a container for the material, a waste material from the unlawful manufacture of a controlled substance, or any other item

1 contaminated with a hazardous substance used or intended to be used in the
2 manufacture of a controlled substance.

3 **Comment.** Section 69360 continues the first sentence of former Section 25354.5(b)(1) without
4 substantive change.

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

7 **§ 69365. Notification of local environmental health officer**

8 69365. The department shall, as soon as the information is available, report the
9 location of a removal action that will be carried out pursuant to Section 69360, and
10 the time that the removal action will be carried out, to the local environmental health
11 officer within whose jurisdiction the removal action will take place, if the local
12 environmental officer does both of the following:

13 (a) Requests, in writing, that the department report this information to the local
14 environmental health officer.

15 (b) Provides the department with a single 24-hour telephone number to which the
16 information can be reported.

17 **Comment.** Section 69365 continues former Section 25354.5(b)(2) without substantive change.
18 See Sections 68050 (“department”), 68135 (“remove”).

19 **Note.** Section 25354.5(b)(2) refers to a removal action “pursuant to paragraph (1)” of subdivision
20 (b). Section 25354.5(b)(1) would be recodified as two provisions (proposed Sections 69350 and
21 69360). Only one of those provisions appears to be relevant to the cross-reference. Proposed
22 Section 69350, related to expenditures and contracting, does not appear to be relevant and should
23 be omitted from the cross-reference in proposed Section 69365. For this reason, the cross-reference
24 would be updated to refer only to proposed Section 69360. **Absent comment, this proposed cross-**
25 **reference update will be presumed correct.**

26 **§ 69370. Generator of hazardous waste and substances at site**

27 69370. (a) For purposes of Chapter 6.5 (commencing with Section 25100) of
28 Division 20, Chapter 6.9.1 (commencing with Section 25400.10) of Division 20, or
29 this part, a person who is found to have operated a site for the purpose of
30 manufacturing an illegal controlled substance or a precursor of an illegal controlled
31 substance is the generator of a hazardous substance at, or released from, the site that
32 is subject to removal action pursuant to this article.

33 (b) During the removal action, for purposes of complying with the manifest
34 requirements in Section 25160, the department, the county health department, the
35 local environmental health officer, or their designee may sign the hazardous waste
36 manifest as the generator of the hazardous waste. In carrying out that action, the
37 department, the county health department, the local environmental health officer, or
38 their designee shall be considered to have acted in furtherance of their statutory
39 responsibilities to protect the public health and safety and the environment from the
40 release, or threatened release, of hazardous substances, and the department, the
41 county health department, the local environmental health officer, or their designee

1 is not a responsible party for the release, or threatened release, of the hazardous
2 substances.

3 (c) The officer, investigator, or agency employee specified in Section 69355 is not
4 a responsible party for the release, or threatened release, of hazardous substances at,
5 or released from, the site.

6 **Comment.** Section 69370 continues former Section 25354.5(c) without substantive change.

7 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68085 (“person”), 68105
8 (“release”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

9 **§ 69375. Regulations**

10 69375. The department may adopt regulations to implement this article in
11 consultation with appropriate law enforcement and local environmental agencies.

12 **Comment.** Section 69375 continues former Section 25354.5(d) without substantive change.

13 See Section 68050 (“department”).

14 **§ 69380. Methods, standards, and procedures**

15 69380. (a) The department shall develop sampling and analytical methods for the
16 collection of methamphetamine residue.

17 (b) The department shall, to the extent funding is available, develop health-based
18 target remediation standards for iodine, methyl iodide, and phosphine.

19 (c) To the extent that funding is available, the department, using guidance
20 developed by the Office of Environmental Health Hazard Assessment, may develop
21 additional health-based target remediation standards for additional precursors and
22 byproducts of methamphetamine.

23 (d) The department shall adopt investigation and cleanup procedures for use in
24 the remediation of sites contaminated by the illegal manufacturing of
25 methamphetamine. The procedures shall ensure that contamination by the illegal
26 manufacturing of methamphetamine can be remediated to meet the standards
27 adopted pursuant to subdivisions (b) and (c), to protect the health and safety of all
28 future occupants of the site.

29 (e) The department shall implement this section in accordance with Section
30 69375.

31 **Comment.** Section 69380 continues former Section 25354.5(e) without substantive change.

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

33 **Note.** Section 25354.5(e)(4) requires the department to adopt investigation and cleanup procedures
34 “[o]n or before October 1, 2009.” This language specifying the date for adoption of these
35 procedures seems to be obsolete. The Commission proposes deleting the language “[o]n or before
36 October 1, 2009,” while retaining the substantive requirement that the department adopt the
37 specified procedures. **Absent comment, this proposed change will be presumed correct.**

38 **§ 69385. Applicability of article contingent on funding**

39 69385. The responsibilities assigned to the department by this article apply only
40 to the extent that sufficient funding is made available for that purpose.

41 **Comment.** Section 69385 continues former Section 25354.5(g) without substantive change.

See Section 68050 (“department”).

Article 17. Judicial Review of Response Actions

§ 69400. Judicial review of response action adequacy

69400. (a) In any judicial action under this part, judicial review of any issues concerning the adequacy of any response action taken or ordered by the department shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(b) If the court finds that the selection of the response action was not in accordance with law, the court shall award only the response costs or damages that are not inconsistent with the National Contingency Plan, as specified in Part 300 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, and any other relief that is consistent with the National Contingency Plan.

(c) In reviewing an action brought by the department under this part, in which alleged procedural errors by the department are raised as a defense, the court may impose costs or damages only if the errors were serious and related to matters of central relevance to the action, so that the action would have been significantly changed had the errors not been made.

Comment. Section 69400 continues former Section 25357.5 without substantive change. See Sections 68050 (“department”), 68140 (“response”).

CHAPTER 6. SITE-SPECIFIC RULES RELATED TO CLEANUP

Article 1. Financial Provisions

§ 69450. Site-specific appropriations for state account monies

69450. (a) Money deposited in the state account may also be appropriated by the Legislature to the department on a specific site basis for the following purposes:

(1) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of any release of a hazardous substance, to the extent the costs are not reimbursed pursuant to the federal act and taking into account processes of natural rehabilitation, restoration, and replacement.

(2) For all costs incurred in assessing short-term and long-term injury to, degradation or destruction of, or any loss of any natural resource resulting from a release of a hazardous substance, to the extent that the costs are not reimbursed pursuant to the federal act.

(b) No costs may be incurred for any release of a hazardous substance from any facility or project pursuant to subdivision (a) for injury, degradation, destruction, or loss of any natural resource where the injury, degradation, destruction, or loss was

specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement prepared under the authority of the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), or was identified as a significant environmental effect to the natural resources that cannot be avoided in an environmental impact report prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and a decision to grant a permit, license, or similar authorization for any facility or project is based upon a consideration of the significant environmental effects to the natural resources, and the facility or project was otherwise operating within the terms of its permit, license, or similar authorization at the time of release.

Comment. Section 69450 continues former Section 25352(a) and (b) without substantive change.

See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”), 68105 (“release”), 68155 (“site”), 68165 (“state account”).

Notes. (1) Section 25352(b) precludes incurring certain costs “pursuant to subdivision (a) or this subdivision.” The provision of Section 25352(b) discussing the incurred costs would be recodified as paragraph (2) of subdivision (a). Thus, all of the material relevant to the cross-reference can be found in proposed Section 69450(a). For this reason, the cross-reference to “this subdivision” has been omitted. **Absent comment, this proposed cross-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.).” In proposed Section 69450, this reference was corrected to refer to “the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).”

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. The phrase “party or parties” has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 68050 (“department”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”).

Note. Section 25359.20(a) cross-refers to “paragraph (1) of subdivision (b) of Section 25187 of the Health and Safety Code.” It is unnecessary to provide the code name in the cross-reference because the cross-referenced provision is located in the same code. For this reason, the language “of the Health and Safety Code” would not be continued.

1 **§ 69470. Response action**

2 69470. (a) A response action taken or approved at the Santa Susana Field
3 Laboratory site shall be conducted in accordance with the provisions of this part.

4 (b) A response action taken or approved pursuant to this part for the Santa Susana
5 Field Laboratory site shall be based upon, and be no less stringent than, the
6 provisions of Article 13 (commencing with Section 69260) of Chapter 5.

7 (1) In calculating the risk, the cumulative risk from radiological and chemical
8 contaminants at the site shall be summed, and the land use assumption shall be either
9 suburban residential or rural residential (agricultural), whichever produces the lower
10 permissible residual concentration for each contaminant.

11 (2) In the case of radioactive contamination, the department shall use as its risk
12 range point of departure the concentrations in the Preliminary Remediation Goals
13 issued by the Superfund Office of the United States Environmental Protection
14 Agency in effect as of January 1, 2007.

15 **Comment.** Section 69470 continues former Section 25359.20(b) and (c) without substantive
16 change.

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

18 **Note.** Subdivision (c) of Section 25359.20 specifies that a response action for Santa Susana Field
19 Laboratory shall be “based upon, and be no less stringent than, the provisions of Section 25356.1.5.
20 Section 25356.1.5 would be recodified as Article 13 (commencing with Section 69260) of Chapter
21 5. It appears that proposed Section 69260 is the only section that contains standards for a response
22 action. The other sections in Article 13 of Chapter 5 contain standards for risk assessments and
23 exposure assessments. It is not clear whether those sections are relevant to this cross-reference. If
24 not, it might be helpful to update the cross-reference to refer only to Section 69260. **The**
25 **Commission welcomes comment on this issue.**

26 **§ 69475. Land transfers**

27 69475. (a) Notwithstanding any other provision of law regarding transfers of land,
28 no person or entity shall sell, lease, sublease, or otherwise transfer land presently or
29 formerly occupied by the Santa Susana Field Laboratory, except as provided in
30 subdivision (b).

31 (b) As a condition for a sale, lease, sublease, or transfer of land presently or
32 formerly occupied by the Santa Susana Field Laboratory, the director or the
33 director’s designee shall certify that the land has undergone complete remediation
34 pursuant to the most protective standards in [subdivisions (a) to (c), inclusive].

35 **Comment.** Section 69475 continues former Section 25359.20(d) and (e) without substantive
36 change.

37 See Sections 68055 (“director”), 68085 (“person”).

38 **Notes.** (1) Subdivision (e) of Section 25359.20 refers to “the Director of the Department of Toxic
39 Substances Control.” The Commission believes that this reference was intended to refer to “the
40 Director of Toxic Substances Control.” In proposed Section 69475(b), the reference has been
41 replaced with the defined term, “director.” See proposed Section 68055 (defining “director” as “the
42 Director of Toxic Substances Control”).

(2) Subdivision (e) requires the director “or his or her designee” to make a certification prior to a land transfer. The phrase “his or her” is no longer used in legislative drafting practice. This phrase has been replaced with “the director’s.”

(3) Subdivision (e) requires a certification of remediation pursuant to “the most protective standards in subdivisions (a) to (c), inclusive.” The cited subdivisions would be recodified as Sections 69465 and 69470. The cross-reference could simply be updated to refer to these two proposed sections. However, it is unclear whether this citation is correct, as most of the material in these proposed sections does not appear to be relevant to this cross-reference. Subdivision (c) appears to be the only subdivision that itself contains standards, although those standards appear to be for risk assessment. Subdivision (c) also refers to “the provisions in Section 25356.1.5,” which contains standards for response actions and risk assessments. See proposed Sections 69260, 69265. **The Commission welcomes comment on how the cross-reference to “subdivisions (a) to (c), inclusive” should be updated.**

Article 3. Stringfellow Quarry Class I Hazardous Waste Disposal Site

§ 69490. Use of onsite treatment, storage, transfer, or disposal facility

69490. Any treatment, storage, transfer, or disposal facility built on the Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the purpose of a remedial or removal action at that site, shall only be used to treat, store, transfer, or dispose of hazardous substances removed from that site.

Comment. Section 69490 continues former Section 25351.7 without substantive change.

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

§ 69495. Priority of removal and remedial actions

69495. Notwithstanding any other provision of law, including, but not limited to, Article 5 (commencing with Section 68760) of Chapter 4, the department shall place the highest priority on taking removal and remedial actions at the Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote sufficient resources to accomplish the tasks required by this section.

Comment. Section 69495 continues former Section 25351.8 without substantive change. The cross-reference to Section 25334.5 was not continued. That cross-reference is obsolete, because Section 25334.5 has been repealed. See 1999 Cal. Stat. ch. 23, § 1.

See Section 68050 (“department”), 68125 (“remedy”), 68135 (“remove”).

Note. Section 25351.8 cross-refers to Section 25334.5. Section 25334.5 has been repealed. See 1999 Cal. Stat. ch. 23, § 1 (SB 47). Prior to its repeal, Section 25334.5 related to a site-specific plan for expenditures that would be prepared by the department and included in the budget. See former Section 25334.5, as amended by 1985 Cal. Stat. ch. 1439, § 1. The Commission is not aware of such a requirement elsewhere in the current law. For this reason, the cross-reference to Section 25334.5 would not be continued.

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

CHAPTER 7. ENFORCEMENT

Article 1. Noncompliance with Order

§ 69550. Penalty for noncompliance with order

69550. Any person subject to a removal or remedial action order or other order issued pursuant to Section 68660, 68870, or 69055 who does not comply with that order without sufficient cause shall be subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of noncompliance. Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 69590.

Comment. Section 69550 continues former Section 25359.2 without substantive change. See Sections 68085 (“person”), 68125 (“remedy”), 68135 (“remove”).

Notes. Proposed Section 69550 refers to an order “issued pursuant to Section 25355.5 or 25358.3.” Each of these cross-referenced provisions is discussed in turn below.

(1) Section 25355.5 would be recodified as several provisions (proposed Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (Section 25355.5(a)) appears to be the only provision that is relevant to this cross-reference, as it is the only provision that addresses the issuance of orders. For this reason, the cross-reference to Section 25355.5 would be updated to refer only to Section 69055.

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

(2) Section 25358.3 would be recodified as several sections (proposed Sections 68650, 68655, 68660, and 68870). Proposed Sections 68650 and 68655 do not appear to be relevant to the purposes of this cross-reference, as these provisions do not relate to the issuance of orders to parties. For this reason, those proposed sections should be omitted from the cross-reference. Accordingly, the cross-reference to Section 25358.3 would be updated to refer to Sections 68660 and 68870.

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

§ 69555. Treble damages from noncompliant contribution defendant

69555. (a)(1) A responsible party who has entered into an agreement with the department and is in compliance with the terms of that agreement, or who is in compliance with an order issued by the department, may seek, in addition to contribution, treble damages from any contribution defendant who has failed or refused to comply with any order or agreement, was named in the order or agreement, and is subject to contribution.

(2) A contribution defendant from whom treble damages are sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the contribution defendant is an owner of real property who did not generate, treat, transport, store, or dispose of the hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)), or where the principles of fundamental fairness would be violated, as determined by the court.

(3) A party seeking treble damages pursuant to this section shall show that the party, the department, or another entity provided notice, by means of personal service or certified mail, of the order or agreement to the contribution defendant from whom the party seeks treble damages.

(b)(1) One-half of any treble damages awarded pursuant to this section shall be paid to the department, for deposit in the state account.

(2) Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) A contribution defendant from whom treble damages are sought pursuant to this section shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

Comment. Section 69555 continues former Section 25359.4.5 without substantive change.

See Sections 68050 (“department”), 68065 (“federal act”), 68075 (“hazardous substance”), 68145 (“responsible party”), 68165 (“state account”).

Article 2. Response Actions

§ 69570. Treble damages for failure to provide response action

69570. (a) Any person who is liable for a release, or threat of a release, of hazardous substances and who fails, without sufficient cause, as determined by the court, to properly provide a removal or remedial action upon either an order of the director, pursuant to Section 68870, or an order of the court, pursuant to Section 68660, is liable to the department for damages equal to three times the amount of any costs incurred by the state account pursuant to this part as a result of the failure to take proper action.

(b) No treble damages shall be imposed under this section against an owner of real property who did not generate, treat, transport, store, or dispose of any hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

Comment. Section 69570 restates former Section 25359 without substantive change.

See Sections 68050 (“department”), 68055 (“director”), 68065 (“federal act”), 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68165 (“state account”).

Note. Proposed Section 69570 would recodify Section 25359, which refers to an “order of the director or the court, pursuant to Section 25358.3.” Section 25358.3 would be recodified as several sections (proposed Sections 68650, 68655, 68660, and 68870). Proposed Section 68870 would recodify the portion of Section 25358.3 that relates to the issuance of orders by the director, while proposed Section 68660 would recodify the portion of Section 25358.3 that relates to the issuance of orders by a court. For this reason, proposed Section 69570 would restate the quoted language to read: “either an order of the director, pursuant to Section 68870, or an order of the court, pursuant to Section 68660.” **Absent comment, this proposed restatement will be presumed correct.**

Article 3. Natural Resources Damages

§ 69580. Prohibition on recovery of damages for certain losses occurring before September 25, 1981

69580. There shall be no recovery of punitive damages under Section 69570 for an injury to or loss of natural resources that occurred wholly before September 25, 1981. This section shall not be construed as precluding the recovery of punitive damages for injury to or loss of natural resources in an action brought pursuant to any other provision of law.

Comment. Section 69580 continues former Section 25359.1 without substantive change.

Article 4. Administrative Process for Penalty Collection

§ 69590. Complaint for penalties

69590. (a)(1) The department may issue a complaint to any person subject to a penalty pursuant to Sections 68680 and 69550.

(2) The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed penalty.

(3) The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing.

(b)(1) Any person served with a complaint pursuant to this section may, within 45 days after service of the complaint, request a hearing by filing a notice of defense with the department. A notice of defense is deemed to be filed within a 45-day period if it is postmarked within the 45-day period.

(2) If no notice of defense is filed within 45 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint, unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement.

(3) Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

Comment. Section 69590 continues former Section 25359.3(a) without substantive change.

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

Note. Subdivision (a) of Section 25359.3 refers to a person subject to a penalty pursuant to Section 25359.4. Section 25359.4 would be recodified as two sections (proposed Sections 68675 and 68680). Only one of those proposed sections, Section 68680, provides for penalties. For this reason, the cross-reference to Section 25359.4 would be updated to refer only to Section 68680.

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

§ 69595. Hearing for penalties

69595. (a) Any hearing required under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division

1 3 of Title 2 of the Government Code, and the department shall have all powers
2 granted by those provisions.

3 (b) In making a determination, the administrative law judge shall consider the
4 nature, circumstances, extent, and gravity of the violation, the violator's past and
5 present efforts to prevent, abate, or clean up conditions posing a threat to the public
6 health and safety or the environment, the violator's ability to pay the proposed
7 penalty, and the prophylactic effect that imposition of the proposed penalty will
8 have on both the violator and on the regulated community as a whole.

9 **Comment.** Section 69595 continues former Section 25359.3(b) without substantive change.
10 See Section 68050 ("department").

11 **§ 69600. Deposit and expenditure of penalties**

12 69600. All penalties collected under this article and Section 69550 shall be
13 deposited in the state account and shall be available for expenditure by the
14 department upon appropriation by the Legislature.

15 **Comment.** Section 69600 continues former Section 25359.3(c) without substantive change.
16 See Sections 68050 ("department"), 68165 ("state account").

17 **CHAPTER 8. COST RECOVERY**

18 **Article 1. General Provisions**

19 **§ 69650. Recovery of costs generally**

20 69650. (a) A cost incurred by the department or regional board in carrying out or
21 overseeing a response or a corrective action under this part or Chapter 6.5
22 (commencing with Section 25100) of Division 20 shall be recoverable pursuant to
23 state or federal law by the Attorney General, upon the request of the department or
24 regional board, from the liable person.

25 (b) The amount of response or corrective action costs incurred by the department
26 or regional board shall be recoverable at the discretion of the department or regional
27 board, either in a separate action or by way of intervention as of right in an action
28 for contribution or indemnity.

29 (c) The amount of any response or corrective action costs that may be recovered
30 pursuant to this section shall include interest on any amount paid.

31 (d) A person who is liable for response or corrective action costs incurred at a site
32 shall have the liability reduced by any reimbursements that were paid by that person
33 for that site pursuant to Section 69105.

34 (e) Nothing in this section deprives a party of any defense that the party may have.

35 (f) Moneys recovered by the Attorney General pursuant to this section shall be
36 deposited in the state account.

37 **Comment.** Section 69650 restates former Section 25360 without substantive change. The phrase
38 "liable person or persons" has been singularized. This is a nonsubstantive change. See Section 13.

39 See Sections 68050 ("department"), 68085 ("person"), 68100 ("regional board"), 68140
40 ("response"), 68145 ("responsible party"), 68155 ("site"), 68165 ("state account").

1 **§ 69655. Interest on liability to department**

2 69655. (a)(1) Until June 30, 2021, except as provided in subdivision (b), a
3 monetary obligation to the department pursuant to this part or Chapter 6.5
4 (commencing with Section 25100) of Division 20 shall be subject to interest from
5 the date of the demand at an interest rate of 7 percent per annum.

6 (2) Commencing July 1, 2021, except as provided in subdivision (b), a monetary
7 obligation to the department pursuant to this part or Chapter 6.5 (commencing with
8 Section 25100) of Division 20 shall be subject to interest from the date of the
9 demand at an interest rate of 10 percent per annum, except that, for obligations of
10 local governments, the interest rate shall be 7 percent per annum.

11 (b)(1) The department shall waive the interest described in subdivision (a) if the
12 obligation is satisfied within 60 days from the date of invoice.

13 (2) If, within 45 days of receiving an invoice, the liable person provides written
14 notice to the department in accordance with its invoice dispute resolution procedures
15 disputing in good faith the monetary obligation specified in the invoice, or a portion
16 thereof, the department shall waive the interest until the dispute is resolved.

17 **Comment.** Section 69655 restates former Section 25360.1 without substantive change. The
18 phrase “liable person or persons” has been singularized. This is a nonsubstantive change. See
19 Section 13.

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

21 **§ 69660. Judgment not bar to future action**

22 69660. The entry of judgment against any party to the action shall not be deemed
23 to bar any future action by the state account against any person who is later
24 discovered to be potentially liable for costs and expenditures paid by the state
25 account.

26 **Comment.** Section 69660 continues former Section 25365 without substantive change.

27 See Section 68085 (“person”), 68165 (“state account”).

28 **§ 69665. Strict liability**

29 69665. The standard of liability for costs recoverable pursuant to this part is strict
30 liability.

31 **Comment.** Section 69665 continues former Section 25363(c) without substantive change.

32 **§ 69670. Contribution and indemnity**

33 69670. (a) A person who has incurred response or corrective action costs in
34 accordance with this part, Chapter 6.5 (commencing with Section 25100) of
35 Division 20, or the federal act may seek contribution or indemnity from any person
36 who is liable pursuant to this part.

37 (b) An action to enforce a claim may be brought as a cross-complaint by any
38 defendant in an action brought pursuant to Section 69650 or this section, or in a
39 separate action after the person seeking contribution or indemnity has paid response
40 or corrective action costs in accordance with this part, Chapter 6.5 (commencing
41 with Section 25100) of Division 20, or the federal act.

(c) A plaintiff or cross-complainant seeking contribution or indemnity shall give written notice to the director upon filing an action or cross-complaint under this section.

(d) In resolving claims for contribution or indemnity, the court may allocate costs among liable parties using appropriate equitable factors.

Comment. Section 69670 continues former Section 25363(d) without substantive change. See Sections 68055 (“director”), 68065 (“federal act”), 68085 (“person”), 68140 (“response”).

Notes. (1) Section 25363(d) refers to actions or cross-complaints brought pursuant to “this section.” Although Section 25363 would be recodified as an article, proposed Section 69670 (shown above) appears to contain all of the provisions of Section 25363 that authorize bringing an action or cross-complaint. Thus, the remainder of the article does not appear to be relevant and would not be included in the reference in proposed Section 69670. **Absent comment, the proposed treatment of the reference to “this section” will be presumed correct.**

(2) The final sentence of Section 25363(d) uses the term “liable parties.” This term is similar to two defined terms: “liable person” and “responsible party.” However, the definition applicable to those terms does not appear to apply to the term “liable parties.” The Commission is unsure whether the definition was intended to apply to this term. **The Commission 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. The phrase “liable person or persons” has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 68145 (“responsible party”), 68165 (“state account”).

Notes. (1) The introductory clause of Section 25324(b) cross-refers to “any other provision of this section.” Section 25324 only has two subdivisions, so the introductory clause of Section 25324(b) essentially constitutes a cross-reference to Section 25324(a). This cross-reference would thus be updated to refer to proposed Section 68165, which would continue Section 25324(a). **Absent comment, the proposed update to this cross-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). Over a decade has passed since these accounts were consolidated, so the Commission is unsure whether this provision has ongoing utility. **The Commission 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.

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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”).

Note. Proposed Section 69705(a) refers to moneys expended “pursuant to Section 25354.” Section 25354 would be recodified as multiple sections (proposed Sections 68240, 68580, and 68875). The cross-reference to Section 25354 would be updated to refer only to the provision authorizing expenditures for immediate corrective action (proposed Section 68875). The other provisions that would recodify Section 25354 relate to appropriations and the funding of the emergency reserve account (proposed Section 68420) and a reporting requirement (proposed Section 68580). They do not appear to be relevant to this cross-reference and would be omitted from the cross-reference in proposed Section 69705. **Absent comment on this issue, this proposed cross-reference update will be presumed correct.**

§ 69710. Joinder of potentially liable person

69710. Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable under this part.

Comment. Section 69710 continues former Section 25362 without substantive change.

See Section 68085 (“person”).

Article 4. Timing

§ 69725. Commencement prior to expiration of limitations period

69725. An action may be commenced under Section 69650 or 69685 at any time prior to expiration of the applicable limitations period provided for by this article.

Comment. Section 69725 continues former Section 25360.4(d) without substantive change.

§ 69730. Cost recovery actions

69730. (a)(1) Except as provided in paragraph (2) and subdivision (b), an action under Section 69650 for the recovery of costs incurred by the department or a regional board in carrying out or overseeing a response or corrective action pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20, or as otherwise authorized by law, shall be commenced within three years after completion of all response or corrective actions has been certified by the department or a regional board.

(2) If operation and maintenance is required as part of the response or corrective action, the action for recovery of costs incurred by the department or a regional

board shall be commenced within three years after completion of operation and maintenance has been certified by the department or a regional board.

(b) No action described in subdivision (a) may be brought that, as of December 31, 2015, had not been commenced by the department within three years after the certification of the completion of the removal or remedial action.

Comment. Section 69730 continues former Section 25360.4(a) without substantive change.

See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional board”), 68125 (“remedy”), 68135 (“remove”), 68140 (“response”).

Note. Section 25360.4(a)(2) pertains to an action “that, as of December 31, 2015, had not been commenced ... within three years” after the cleanup was certified complete. This appears to be a transitional provision. **The Commission welcomes comment on whether this provision has ongoing utility.**

§ 69735. Recovery actions for natural resources damages

69735. An action under Section 69685 for costs incurred by the department for the purposes specified in Section 69450 shall be commenced within three years after certification by the department of the completion of the activities authorized under Section 69450.

Comment. Section 69735 continues former Section 25360.4(b) without substantive change.

See Section 68050 (“department”).

§ 69740. Reserved and continuing jurisdiction

69740. (a)(1) In an action described in Section 69730 or 69735 for recovery of response or corrective action costs, oversight costs, or damages, where the court has entered a judgment for past costs or damages, the court shall also enter an order reserving jurisdiction over the case and the court shall have continuing jurisdiction to determine any future liability and the amount of the future liability.

(2) The department or regional board may immediately enforce the judgment for past costs and damages.

(b) The department or the regional board may apply for a court judgment for further costs and damages that have been incurred during the response or corrective action, operation and maintenance, or during the performance of the activities authorized by Section 69450, but the application shall be made not later than three years after the certification of completion of the response or corrective action, operation and maintenance, or activities authorized pursuant to Section 69450.

Comment. Section 69740 continues former Section 25360.4(c) without substantive change.

See Sections 68050 (“department”), 68080 (“operation and maintenance”), 68100 (“regional board”), 68140 (“response”).

Note. Section 25360.4(c) refers to activities authorized pursuant to Section 25352. Section 25352 would be divided into multiple provisions in this proposed recodification (proposed Sections 69450 and 69685). The cross-reference to Section 25352 would be updated to refer only to the provisions allowing expenditures for repairing natural resource damages (subdivisions (a) and (b) of Section 25352, which would be recodified as Section 69450). Subdivision (c) of Section 25352 would be omitted from the cross-reference, as it relates to cost recovery and does not appear relevant.

Absent comment on this issue, this proposed cross-reference update will be presumed correct.

§ 69745. Article inapplicable to cost recovery under Water Code

69745. This article does not apply to a cost recovery action brought by a regional board under the Water Code.

Comment. Section 69745 continues former Section 25360.4(e) without substantive change. See Section 68100 (“regional board”).

Article 5. Scope of Liability

§ 69760. Determination of party’s liability

69760. (a) Except as provided in Section 69765, a party found liable for costs recoverable under this part who establishes by a preponderance of the evidence that only a portion of those costs are attributable to that party’s actions shall be required to pay only for that portion.

(b) Except as provided in Section 69765, if the trier of fact finds the evidence insufficient to establish each party’s portion of costs under subdivision (a), the court shall apportion those costs, to the extent practicable, according to equitable principles, among the defendants.

Comment. Section 69760 continues former Section 25363(a) and (b) without substantive change.

§ 69765. Contractor liability

69765. Notwithstanding this part, a response action contractor who is found liable for any costs recoverable under this part and who establishes by a preponderance of the evidence that only a portion of those costs are attributable to the response action contractor’s actions shall be required to pay only that portion of the costs attributable to the response action contractor’s actions.

Comment. Section 69765 continues former Section 25363(e) without substantive change. See Section 68140 (“response”).

Article 6. Liability of Residential Property Owner

§ 69780. Definitions

69780. For purposes of this article, the following definitions apply:

(a) “Owner” means either (1) the owner of property who occupies a single-family residence or one-half of a duplex constructed on the property, or (2) the owner of common areas within a residential common interest development who owns those common areas for the benefit of the residential homeowners. This subdivision does not include the developer of the common interest development.

(b) “Property” means either (1) real property of five acres or less that is zoned for, and on which has been constructed, a single-family residence, or (2) common areas within a residential common interest development.

Comment. Section 69780 continues former Section 25360.2(a) without substantive change.

§ 69785. Relation to other law

69785. Notwithstanding any other provision of this part, this article governs liability pursuant to this part for an owner of property.

Comment. Section 69785 continues former Section 25360.2(e) without substantive change. Redundant language citing to the applicable definitions was not continued.

See Section 69780 (“owner,” “property”).

§ 69790. Presumption

69790. (a) Notwithstanding any other provision of this part, an owner of property that is the site of a hazardous substance release is presumed to have no liability pursuant to this part for either of the following:

(1) A hazardous substance release that has occurred on the property.

(2) A release of a hazardous substance to groundwater underlying the property if the release occurred at a site other than the property.

(b) The presumption may be rebutted as provided in Section 69800.

Comment. Section 69790 continues former Section 25360.2(b) without substantive change.

See Sections 68075 (“hazardous substance”), 68105 (“release”), 68155 (“site”), 69780 (“owner,” “property”).

§ 69795. Certification required to bring action

69795. An action for recovery of costs or expenditures incurred from the state account pursuant to this part in response to a hazardous substance release may not be brought against an owner of property unless the department first certifies that, in the opinion of the department, one of the following applies:

(a) The hazardous substance release that occurred on the property occurred after the owner acquired the property.

(b) The hazardous substance release that occurred on the property occurred before the owner acquired the property and at the time of acquisition the owner knew or had reason to know of the hazardous substance release.

(c) The owner of property where there has been a release of a hazardous substance to groundwater underlying the property took, or is taking, one or more of the following actions:

(1) Caused or contributed to a release of a hazardous substance to the groundwater.

(2) Fails to provide the department, or its authorized representative, with access to the property.

(3) Interferes with response action activities.

Comment. Section 69795 continues former Section 25360.2(c) without substantive change.

1 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140
2 (“response”), 68165 (“state account”), 69780 (“owner,” “property”).

3 **§ 69800. Rebuttal of presumption**

4 69800. In an action brought against an owner of property to recover costs or
5 expenditures incurred from the state account pursuant to this part in response to a
6 hazardous substance release, the presumption established in Section 69790 may be
7 rebutted if it is established by a preponderance of the evidence that the facts upon
8 which the department made the certification pursuant to subdivision (a), (b), or (c)
9 of Section 69795 are true.

10 **Comment.** Section 69800 continues former Section 25360.2(d) without substantive change.
11 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140
12 (“response”), 68165 (“state account”), 69780 (“owner,” “property”).

13 **Article 7. Liability of Easement Holder or Special District**

14 **§ 69810. Definitions**

15 69810. For the purposes of this article, the following terms have the following
16 meaning:

17 (a) “Easement” means a conservation easement, as defined in Section 815.1 of the
18 Civil Code.

19 (b) “Environmental assessment” means an investigation of real property,
20 conducted by an independent qualified environmental consultant, to discover the
21 presence or likely presence of a release or a threat of a release of a hazardous
22 substance at, on, to, or from the real property. An environmental assessment shall
23 include, but is not limited to, an investigation of the historical use of the real
24 property, any prior releases, records, consultant reports and regulatory agency
25 correspondence, a visual survey of the real property, and, if warranted, sampling
26 and analytical testing.

27 (c) “Owner” means either of the following:

28 (1) An independent special district, as defined in Section 56044 of the
29 Government Code.

30 (2) An entity or organization that holds an easement.

31 (d) “Property” means either of the following:

32 (1) Real property acquired by a special district by means of a gift or donation for
33 which an environmental assessment was completed prior to the transfer or
34 conveyance of the real property to the special district.

35 (2) An easement for which an environmental assessment was completed prior to
36 the transfer or conveyance of the easement to an entity or organization authorized
37 to accept the easement pursuant to Section 815.3 of the Civil Code.

38 **Comment.** Section 69810 continues former Section 25360.3(a) without substantive change.
39 See Sections 68075 (“hazardous substance”), 68105 (“release”).

1 **§ 69815. Application**

2 69815. (a) Notwithstanding any other provision of this part, this article governs
3 liability pursuant to this part for an owner of property.

4 (b) This article is applicable only to property that is acquired by the owner on or
5 after January 1, 1995.

6 **Comment.** Section 69815 continues former Section 25360.3(d) and (e) without substantive
7 change. Redundant language citing to the applicable definitions was not continued.

8 See Section 69810 (“owner,” “property”).

9 **§ 69820. Presumption**

10 69820. (a) Notwithstanding any other provision of this part, if an environmental
11 assessment of property discovers no evidence of the presence or likely presence of
12 a release or a threat of a release of a hazardous substance, and a hazardous substance
13 release is subsequently discovered on, to, or from that property, the owner of that
14 property is entitled to a rebuttable presumption, affecting the burden of producing
15 evidence, that the owner is not a liable person or responsible party for purposes of
16 this part. An owner is entitled to this presumption whether the action is brought by
17 the state or by a private party seeking contribution or indemnification.

18 (b) In an action brought against an owner of property to recover costs or
19 expenditures incurred from the state account pursuant to this part in response to a
20 hazardous substance release, the presumption may be rebutted if it is established by
21 a preponderance of the evidence that the facts upon which the department made the
22 certification pursuant to subdivision (a), (b), (c), or (d) of Section 69825 are true.

23 **Comment.** Section 69820 continues former Section 25360.3(b) without substantive change.

24 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140
25 (“response”), 68145 (“responsible party”), 68165 (“state account”), 69810 (“environmental
26 assessment,” “owner,” “property”).

27 **§ 69825. Certification required to bring action**

28 69825. An action for recovery of costs or expenditures incurred from the state
29 account pursuant to this part in response to a hazardous substance release shall not
30 be brought against an owner of property unless the department first certifies that, as
31 found by the department, one of the following situations applies:

32 (a) The hazardous substance release occurred on or after the date that the owner
33 acquired the property.

34 (b) The hazardous substance release occurred before the date that the owner
35 acquired the property and, at the time of the acquisition, the owner knew, or had
36 reason to know, of the hazardous substance release.

37 (c) The environmental assessment applicable to the property was not properly
38 carried out, was fraudulently completed, or involves the negligent or intentional
39 nondisclosure of information.

40 (d) The hazardous substance release was discovered on or after the date of
41 acquisition and the owner failed to exercise due care with respect to the release,

1 taking into consideration the characteristics of the hazardous substance in light of
2 all relevant facts and circumstances.

3 **Comment.** Section 69825 continues former Section 25360.3(c) without substantive change.
4 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68140
5 (“response”), 68165 (“state account”), 69810 (“environmental assessment,” “owner,” “property”).

6 Article 8. Liability of Operator for Household Hazardous Waste or 7 Used Oil Collection Program

8 § 69840. “Household hazardous waste collection program”

9 69840. For purposes of this article, “household hazardous waste collection
10 program” means a program or facility, specified in Section 25218.1, in which
11 hazardous wastes from households and conditionally exempt small quantity
12 generators are collected and ultimately transferred to an authorized hazardous waste
13 treatment, storage, or disposal facility.

14 **Comment.** Section 69840 continues former Section 25366.5(b) without substantive change.

15 § 69845. Limitation on liability of HHW or used oil collection programs

16 69845. A public agency operating a household hazardous waste collection
17 program or a person operating a household hazardous waste collection program
18 under a written agreement with a public agency, or, for material received from the
19 public as used oil, a person operating a certified used oil collection center as
20 provided in Section 48660 of the Public Resources Code, shall not be held liable in
21 a cost recovery action brought pursuant to Section 69650, including, but not limited
22 to, an action to recover the fees imposed by Section 69105 or an action brought
23 pursuant to Section 69670, for waste that has been properly handled and transported
24 to an authorized hazardous waste treatment, storage, or disposal facility at a location
25 other than that of the collection program.

26 **Comment.** Section 69845 continues former Section 25366.5(a) without substantive change.
27 See Section 68085 (“person”), 69840 (“household hazardous waste collection program”).

28 § 69850. Effect on state or federal law obligations or liabilities

29 69850. Except as provided in Section 69845, this article does not affect or modify
30 the obligations or liabilities of a person imposed pursuant to state or federal law.

31 **Comment.** Section 69850 continues former Section 25366.5(c) without substantive change.
32 See Section 68085 (“person”).

33 Article 9. Liability Agreements

34 § 69860. Agreement not effective to transfer liability for recoverable costs or expenditures

35 69680. Except as provided in Article 10, no indemnification, hold harmless,
36 conveyance, or similar agreement shall be effective to transfer any liability for cost
37 or expenditures recoverable under this part. This section shall not bar any agreement

1 to insure, hold harmless, or indemnify a party to the agreement for any costs or
2 expenditures under this part.

3 **Comment.** Section 69860 continues former Section 25364 without substantive change.

4 **§ 69865. Effect of repeal of Section 25364.6**

5 69865. The repeal of Section 25364.6, pursuant to Chapter 1226 of the Statutes of
6 1998, shall not affect any indemnity provided pursuant to that section for any cause
7 of action brought because of any act or omission that occurred before the repeal of
8 that section.

9 **Comment.** Section 69865 restates former Section 25364.7 without substantive change. The
10 cross-reference to the “repeal of Section 25364.6” has been updated to refer to the legislation that
11 repealed the provision. See 1998 Cal. Stat. ch. 1226, § 1. The verb “occur” was made past tense, as
12 all of the relevant acts or omissions would have happened prior to the repeal of former Section
13 25364.6.

14 **Article 10. Former Kaiser Steel Corporation Steel Mill Site**

15 **§ 69875. Definitions**

16 69875. For purposes of this article, the following definitions shall apply:

17 (a) “Affiliate” means any entity that directly, or indirectly through one or more
18 intermediaries, controls, is controlled by, or is under common control with, the
19 responsible party owner. For purposes of this subdivision, “control” means the
20 possession, direct or indirect, of the power to direct or cause the direction of the
21 management and policies of an entity, or ownership of shares or interests in the
22 entity possessing more than 50 percent of the voting power.

23 (b) “Qualified independent consultant” means either a geologist who is registered
24 pursuant to Section 7850 of the Business and Professions Code or a professional
25 engineer who is registered pursuant to Section 6762 of the Business and Professions
26 Code.

27 (c) “Responsible party owner” means the owner of all or part of the site on January
28 1, 1993, or if all or a part of the site is transferred to a joint venture formed for
29 purposes of development of the site, the owner of the site immediately prior to that
30 transfer.

31 (d) “Site” means the site of the former Kaiser Steel Corporation steel mill located
32 near the City of Fontana.

33 **Comment.** Section 69875 continues former Section 25364.1(a) without substantive change.
34 See Section 68155 (“site”).

35 **Note.** Section 25364.1(a)(4) defines the term “site.” “Site” is also defined, for purposes of the
36 entire chapter, in Section 25323.9 (proposed Section 68155). **The Commission welcomes**
37 **comment on whether the two definitions of “site” have caused problems in practice.**

38 **§ 69880. Authority of director to release specified persons from liability**

39 69880. Notwithstanding any other provision of law, except as provided in
40 Sections 69885 and 69890, the director may release from liability under this part or

Chapter 6.5 (commencing with Section 25100) of Division 20, and from liability for any claims of the state for recovery of response costs under the federal act, any of the following persons, with regard to a removal or remedial action at the site:

(a) Any person who provides financing for all, or a substantial part of, the costs of performing a removal or remedial action at the site pursuant to a remedial action plan prepared by a qualified independent consultant and issued by the department pursuant to Section 69210 and subdivision (a) of Section 69215, except that the release from liability shall not release the person providing this financing from liability for any hazardous substance release or threatened release resulting from that person's exercise of decisionmaking control over the performance of the removal or remedial action while the responsible party owner remains in possession of the site.

(b) Any person who enters into an agreement with the responsible party owner to provide development services for the development of all, or a part of, the site, including a developer, who becomes a partner in a joint venture partnership with the responsible party owner, if the joint venture is formed for purposes of the development of the site and legal title to the site is transferred by the responsible party owner to the joint venture. If a release from liability is granted to a developer pursuant to this subdivision and the legal title to the site is transferred by the responsible party owner to a joint venture between the developer and the responsible party owner of the site, the responsible party owner shall not be relieved of liability under this part.

(c) Any person who acquires an ownership or leasehold interest in all or a part of the site after performance of the removal or remedial action specified in the remedial action plan for the site, or part of the site, has been completed to the satisfaction of the department.

Comment. Section 69880 continues former Section 25364.1(b) without substantive change.

See Sections 68050 ("department"), 68055 ("director"), 68065 ("federal act"), 68075 ("hazardous substance"), 68085 ("person"), 68105 ("release"), 68125 ("remedy"), 68135 ("remove"), 68140 ("response"), 68155 ("site"), 69875 ("qualified independent consultant," "responsible party owner," "site").

Note. Section 25364.1(b)(2), which would be continued as proposed Section 69880(b), is difficult to understand and could benefit from restatement for clarity. In particular, it is unclear who (i.e., any person or only a developer) could receive a release from liability as a partner in a joint venture. **The Commission welcomes comment on the meaning of this provision and whether this provision sufficiently clear in practice.**

§ 69885. Conditions required for release to be granted

69885. A release from liability shall not be granted pursuant to Section 69880 unless all of the following conditions are met:

(a) A responsible party owner has entered into a stipulated settlement of an order issued by the department pursuant to Section 25187, 68870, or 69055 to perform the removal or remedial action at the site in accordance with the remedial action plan and has arranged financing, contingent only upon obtaining releases from potential

1 liability pursuant to Section 69880, for the costs of performing the removal or
2 remedial action.

3 (b) A responsible party owner agrees to pay all applicable oversight fees required
4 by Section 69105 and to pay any additional costs that are recoverable pursuant to
5 Section 69650.

6 (c) No person to be released from liability pursuant to Section 69880 is a
7 responsible party or an affiliate of a responsible party, with respect to any hazardous
8 substance release existing at the site at the time the release from liability is granted.

9 (d) The stipulated settlement requires the responsible party owner to provide
10 irrevocable financial assurances for full performance of the remedial action plan.
11 The financial assurances may consist of one or more of the financial assurance
12 instruments described in Section 66264.143 of Title 22 of the California Code of
13 Regulations. Upon the approval of the department, the forms of these instruments
14 may be revised as appropriate to apply to the costs of performing the removal or
15 remedial action specified in the remedial action plan.

16 (e) The director finds that the release from liability to be granted will promote the
17 purposes and goals of this part and encourage private investment in property that is
18 in need of remediation.

19 **Comment.** Section 69885 continues former Section 25364.1(c) without substantive change.

20 See Sections 68050 (“department”), 68055 (“director”), 68075 (“hazardous substance”), 68085
21 (“person”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”),
22 68155 (“site”), 69875 (“affiliate,” “responsible party owner,” “site”).

23 **Notes. (1)** Section 25364.1(c) refers to an order issued pursuant to Section 25355.5. Section
24 25355.5 would be recodified as multiple sections (proposed Sections 69055, 69060, 69065, and
25 69130(b)). Proposed Section 69055 (which recodifies Section 25355.5(a)) is the only one of those
26 provisions that addresses the issuance of orders and, thus, appears to be the only provision relevant
27 to this cross-reference. For this reason, the cross-reference to Section 25355.5 would be updated to
28 refer only to Section 69055. **Unless the Commission receives comment suggesting otherwise,**
29 **this proposed cross-reference update will be presumed correct.**

30 **(2)** Section 25364.1(c) also refers to an order issued pursuant to Section 25358.3. Section 25358.3
31 would be recodified as multiple sections (proposed Sections 68650, 68655, 68660, and 68870).
32 Proposed Section 68870 is the only of those sections that expressly authorizes orders issued by the
33 director to a responsible party. For this reason, the cross-reference to Section 25358.3 would be
34 updated to refer only to Section 68870. **Absent comment on this issue, this proposed cross-**
35 **reference update will be presumed correct.**

36 § 69890. Limitations on release from liability

37 69890. Notwithstanding any other provision of this article, a release from liability
38 granted pursuant to Section 69880 shall not extend to any of the following:

39 (a)(1) Any person who was a responsible party for a hazardous substance release
40 existing at the site before the release from liability was granted

41 (2) Any entity that is an affiliate of a responsible party described in paragraph (1).

42 (b) Any contractor who prepares the remedial action plan or performs the removal
43 or remedial action provided for in the remedial action plan.

(c) Any person who obtains a release pursuant to Section 69880 by fraud or negligent or intentional nondisclosure or misrepresentation.

(d) Any liability for a release or threatened release of a hazardous substance first deposited at the site by a person released from liability pursuant to Section 69880 after the release from liability is granted.

Comment. Section 69890 restates former Section 25364.1(e) without substantive change.

See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 69875 (“affiliate,” “site”).

Note. Proposed Section 69890(a) restates the part of Section 25364.1(e) that provides:

Any person who was a responsible party for a hazardous substance release existing at the site before the release from liability was granted, and any entity which is an affiliate of such a responsible party.

The proposed recodification of this provision would delete “such” and replace “which” with “that.” This restatement is intended to be nonsubstantive. **Absent comment, this proposed restatement will be presumed correct.**

§ 69895. Required content of release from liability

69895. Any release from liability granted by the director pursuant to this article shall contain the following provision: “If, for any reason, the responsible party does not complete the removal or remedial action, this release does not extend to any subsequent actions or activities performed by the released party that exacerbate the conditions at the site.”

Comment. Section 69895 continues former Section 25364.1(f) without substantive change.

See Sections 68055 (“director”), 68105 (“release”), 68125 (“remedy”), 68135 (“remove”), 68145 (“responsible party”), 68155 (“site”), 69875 (“site”).

§ 69900. Subdivision of site to facilitate or secure financing for removal or remedial action

69900. The site may be subdivided to create subdivided parcels of land, pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), in order to facilitate removal or remedial action at the site, secure financing for removal or remedial action, or secure financing for development that would generate funds for removal or remedial action at the site.

Comment. Section 69900 continues former Section 25364.1(d) without substantive change.

See Sections 68125 (“remedy”), 68135 (“remove”), 68155 (“site”), 69875 (“site”).

Article 11. Costs Incurred at BKK Landfill Site

§ 69910. Contribution towards liability

69910. (a) Notwithstanding any other provision of this chapter, the costs incurred by a state agency to take a hazardous substance response action at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to state law upon a state

1 agency that arranged for the disposal or treatment of a hazardous substance at that
2 site.

3 (b) The Legislature declares its intent that the costs incurred by a state agency to
4 take action in response to a hazardous substance release at the BKK Landfills Site
5 in West Covina shall be deemed to be a contribution towards any potential liability
6 for response costs or damages imposed pursuant to the federal act upon a state
7 agency that arranged for the disposal or treatment of a hazardous substance at that
8 site.

9 **Comment.** Section 69910 continues former Section 25363.5 without substantive change.

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

12 **Note.** The introductory clause of Section 25363.5, “[n]otwithstanding any other provision of this
13 article,” is referencing Article 6 (“Recovery Actions”) of Chapter 6.8. Nearly all of the material in
14 that article would be recodified in this proposed chapter (Chapter 8 of Part 2 of proposed new
15 Division 45), with a few exceptions. See, e.g., proposed Section 68185. In addition, some
16 provisions that were originally located elsewhere would be included in this chapter. See, e.g.,
17 proposed Section 69680. These minor adjustments to the content do not appear to have a
18 substantive effect on this reference. Thus, the reference in the introductory clause would be updated
19 to refer to “this chapter.” This update is intended to be nonsubstantive. **Absent comment on this**
20 **issue, this cross-reference update will be presumed correct.**

21 Article 12. Settlement

22 § 69920. Settlement involving minor portion of response costs

23 69920. (a) The department shall, if it determines that it is practicable and in the
24 public interest, propose a final administrative or judicial expedited settlement with
25 potentially responsible parties if the settlement involves only a minor portion of the
26 response costs at a site and, if in the judgment of the department, either of the
27 following conditions are met:

28 (1) The amount of hazardous substances and the toxic or other hazardous effects
29 of the hazardous substances contributed by the potentially responsible party to the
30 site are minimal in comparison to the amount and effects of other hazardous
31 substances at the site.

32 (2) The potentially responsible party is the owner of the real property on or in
33 which the site is located, did not conduct or permit the generation, transportation,
34 storage, treatment, or disposal of any hazardous substance at the site, and did not
35 contribute to the release or threat of release of a hazardous substance at the site
36 through any act or omission. This paragraph does not apply if the potentially
37 responsible party, at the time of the purchase of the real property, knew or should
38 have known that the property was used for the generation, transportation, storage,
39 treatment, or disposal of any hazardous substance.

40 (b) A party who has resolved its liability to the state under this section shall not
41 be liable for claims for contribution regarding matters addressed in the settlement.
42 A settlement under this section does not discharge any of the other potentially

1 responsible parties unless its terms so provide, but it reduces the potential liability
2 of the others by the amount of the settlement.

3 (c) Any person who enters into a settlement under this section shall provide any
4 information relevant to the administration of this part that is requested by the
5 department. In order to obtain the contribution protection provided by subdivision
6 (b), a potentially responsible party participating in a de minimis settlement shall
7 certify that it has responded fully and accurately to all of the department's requests
8 for information, and that it has provided all of the relevant documents pertaining to
9 the site to the department.

10 (d) Nothing in this section shall be construed to affect the authority of the
11 department or regional board to reach settlements with other potentially responsible
12 parties under this part.

13 **Comment.** Section 69920 restates former Section 25360.6 without substantive change. For
14 consistency, the term "site" was substituted for the term "facility." See Section 68155 ("site" has
15 the same meaning as "facility" in federal act); see also Section 68035 (definitions in federal act
16 apply to terms used in this part).

17 See Sections 68050 ("department"), 68075 ("hazardous substance"), 68085 ("person"), 68100
18 ("regional board"), 68105 ("release"), 68140 ("response"), 68145 ("responsible party").

19 **Note.** Section 25360.6 allows for settlement of a minor portion of response costs at a "facility."
20 "Facility" is defined in the federal act. See 42 U.S.C. § 9601(9); see also Section 25310 (proposed
21 Section 68035). Section 25323.9 (proposed Section 68155) defines "site" as having "the same
22 meaning as the term 'facility' is defined by Section 101(9) of the federal act (42 U.S.C. Sec.
23 9601(9))." Typically, the provisions of this part use the term "site." For consistency, the term
24 "facility" in this section would be replaced with "site." This is intended to be a nonsubstantive
25 change. **The Commission welcomes comment on this proposed restatement.**

26 Article 13. Liens

27 **Note.** Section 25365.6(a) provides that a lien arises when response action costs are incurred by
28 "the department or regional board." However, subdivisions (b) and (c) of Section 25356.6 refer
29 only to the department as the lienholder. It is unclear whether the department would necessarily be
30 the lienholder if a lien is imposed pursuant to these provisions, particularly in a situation where the
31 regional board incurred the costs. **The Commission welcomes comment on this issue.**

32 § 69935. Lien on real property

33 69935. (a)(1) Any costs or damages incurred by the department or regional board
34 pursuant to this part constitute a claim and lien upon the real property owned by the
35 responsible party that is subject to, or affected by, the removal and remedial action.

36 (2) The lien provided by this article shall continue until the liability for these costs
37 or damages, or a judgment against the responsible party, is satisfied. However, if it
38 is determined by the court that the judgment against the responsible party will not
39 be satisfied, the department may exercise its rights under the lien.

40 (b) This lien shall attach regardless of whether the responsible party is insolvent.

41 (c) A lien established by this article shall be subject to the notice and hearing
42 procedures required by due process of the law and shall arise at the time costs are

1 first incurred by the department or regional board with respect to a response action
2 at the site.

3 **Comment.** Section 69935 continues former Section 25365.6(a) and (c) without substantive
4 change.

5 See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68135
6 (“remove”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

7 **§ 69940. Force and effect of lien**

8 69940. The lien imposed by this article shall have the force and effect of, and the
9 priority of, a judgment lien upon its recordation in the county in which the property
10 subject to the lien is located.

11 **Comment.** Section 69940 continues the first sentence of former Section 25365.6(d) without
12 substantive change.

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

14 **§ 69945. Contents of lien**

15 69945. (a) The lien shall contain the legal description of the real property, the
16 assessor’s parcel number, and the name of the owner of record, as shown on the
17 latest equalized assessment roll.

18 (b) The lien shall also contain a legal description of the property that is the site of
19 the hazardous substance release, the assessor’s parcel number for that property, and
20 the name of the owner of record, as shown on the latest equalized assessment roll,
21 of that property.

22 **Comment.** Section 69945 continues the second and third sentences of former Section 25365.6(d)
23 without substantive change.

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

25 **§ 69950. Department not responsible party due to lien**

26 69950. The department shall not be considered a responsible party for a hazardous
27 substance release site because a claim and lien is imposed pursuant to this article.

28 **Comment.** Section 69950 continues former Section 25365.6(b) without substantive change.

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

31 **§ 69955. Deposit of funds recovered**

32 69955. All funds recovered pursuant to this article shall be deposited in the state
33 account.

34 **Comment.** Section 69955 continues former Section 25365.6(e) without substantive change.

35 See Section 68165 (“state account”).

CHAPTER 9. ORPHAN SHARE REIMBURSEMENT

Article 1. General Provisions

§ 70000. Definitions

70000. For purposes of this chapter, the following definitions shall apply:

(a) “Fund” means the Orphan Share Reimbursement Trust Fund established pursuant to Section 70020.

(b) “Orphan share” means the share of liability for the costs of response action that is attributable to the activities of persons who are defunct or insolvent, as determined pursuant to Section 70070.

Comment. Section 70000 continues former Section 25390 without substantive change. See Sections 68085 (“person”), 68140 (“response”).

Note. Section 25390(a) cross-references Section 25390.3 for the establishment of the Orphan Share Reimbursement Trust Fund. Section 25390.3 would be recodified as multiple provisions (proposed Sections 70020 and 70025). In proposed Section 70000, the cross-reference in question would be updated to refer only to Section 70020, which contains the provision establishing the fund. **Absent comment, this proposed cross-reference update will be presumed correct.**

§ 70005. Legislative findings and declarations

70005. The Legislature finds and declares all of the following:

(a) This chapter, which establishes an Orphan Share Reimbursement Trust Fund, operates in conjunction with the federal liability scheme under the federal act as in effect on July 1, 1998, for the recovery of response costs expended by government agencies.

(b) Under federal liability, at sites where there are insolvent or defunct parties that cannot contribute to the cost of cleanup, viable responsible parties pay the share of liability for that cleanup that may be attributable to insolvent and defunct parties.

(c) The Orphan Share Reimbursement Trust Fund is created to mitigate the payment of an insolvent or defunct party’s liability share by viable responsible parties, to the extent money in the fund is available, and to encourage responsible parties to quickly and efficiently remediate contamination.

Comment. Section 70005 continues former Section 25390.1 without substantive change.

See Sections 68065 (“federal act”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 70000 (“fund”).

§ 70010. Effect of chapter

70010. (a) This chapter does not prohibit, and is not intended to prohibit, the department, the regional board, or the Attorney General from pursuing any existing legal, equitable, or administrative remedies, pursuant to federal or state law, against any potentially responsible party.

(b) No liability or obligation is imposed upon the state pursuant to this chapter, and the state shall not incur a liability or obligation beyond the payment of claims

pursuant to this chapter, to the extent that money is available and has been allocated by the administrator under subdivision (a) of Section 70050. No legal action may be brought against the Orphan Share Reimbursement Trust Fund in its own name.

Comment. Section 70010 continues former Section 25390.2 without substantive change. See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68145 (“responsible party”).

Article 2. Orphan Share Reimbursement Trust Fund

§ 70020. Creation, administration, and funding of Orphan Share Reimbursement Trust Fund

70020. (a) The Orphan Share Reimbursement Trust Fund is hereby created in the State Treasury.

(b) The administrator of the fund may expend the money deposited in the fund as provided in this chapter, upon appropriation by the Legislature. The administrator of the fund shall act in a fiduciary capacity, shall prudently administer the fund, and shall protect the fund from any unreasonable or unjustified claims, including any unreasonable or unjustified determinations of the orphan share percentage.

(c) If an appropriation from the General Fund is made to the fund in any fiscal year and an amount greater than five million dollars (\$5,000,000) in unexpended funds, beyond any amount approved by the administrator of the fund to pay claims pursuant to this chapter from that General Fund appropriation, remain in the fund at the end of that fiscal year, and if the department determines that additional funding for orphan sites beyond that appropriated from the state account is required for the next fiscal year, the administrator may expend the amount in excess of five million dollars (\$5,000,000) from the General Fund appropriation to pay for response costs incurred by the department or the regional boards under this part at sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4 where no viable responsible parties exist.

Comment. Section 70020 continues former Section 25390.3(a), (b), and (d) without substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 68165 (“state account”), 70000 (“fund,” “orphan share”).

Note. Section 25390.3(d) refers to the “Toxic Substances Control Account.” In proposed Section 70020, this reference would be replaced with the defined term, “state account.” See proposed Section 68165.

§ 70025. Permissible expenditures

70025. Except as provided in subdivision (b) of Section 68420 and subdivision (c) of Section 70020, the administrator of the fund may expend the money in the fund for all of the following purposes:

(a) To pay claims for reimbursement of all, or any part of, the orphan share at a site paid by the responsible party filed pursuant to Sections 70040, 70045, and 70050.

1 (b) For the costs of implementing this chapter.

2 (c) To pay the reasonable costs of the department and the regional board for
3 performance of its duties under this chapter, including, but not limited to, its
4 participation in the orphan share determination process set forth in Section 70070,
5 unless those costs are paid by a potentially responsible party under an agreement
6 specified in subdivision (c) of Section 70040. The expenditures from the fund for
7 purposes of this subdivision shall not exceed 5 percent of the total amount
8 appropriated from the fund in the annual Budget Act for purposes of this section for
9 that fiscal year.

10 (d) To pay the portion of costs attributable to the orphan share incurred by the
11 department and the regional boards to oversee actions of potentially responsible
12 parties, unless those costs are paid by a potentially responsible party under an
13 agreement specified in subdivision (c) of Section 70040.

14 **Comment.** Section 70025 continues former Section 25390.3(c) without substantive change.

15 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68145
16 (“responsible party”), 68155 (“site”), 70000 (“fund,” “orphan share”).

17 Article 3. Claims for Orphan Share Reimbursement

18 § 70040. Persons who may file claim

19 70040. A potentially responsible party may file a claim pursuant to subdivision
20 (a) of Section 70025 only if all of the following apply:

21 (a) The site is listed pursuant to Article 5 (commencing with Section 68760) of
22 Chapter 4.

23 (b) The department or the regional board has approved a final remedy for the site
24 under Article 12 (commencing with Section 69190) of Chapter 5.

25 (c) The department and the potentially responsible party have entered into a
26 written, enforceable cleanup agreement or order embodied in a consent order issued
27 pursuant to Section 68870 or 69055, or the regional board and the potentially
28 responsible party have entered into a written, enforceable cleanup agreement or
29 order that provides for the completion of all response actions necessary at the site,
30 conducted pursuant to this part and under the oversight and at the direction of the
31 department or the regional board. The agreement shall provide for the payment by
32 the potentially responsible party of the department’s or the regional board’s
33 response costs.

34 (d) The potentially responsible party demonstrates, and the department or the
35 regional board finds, that the potentially responsible party has and will have
36 sufficient financial resources to complete all required response actions.

37 (e) The potentially responsible party is in compliance with the agreement provided
38 in subdivision (c), and with any other applicable order or agreement pertaining to
39 the potentially responsible party’s obligations with respect to the site.

40 (f) The potentially responsible party has prepared and provided the information
41 required under subdivision (b) of Section 70070.

(g) The claim for reimbursement is for the costs incurred for response actions that were subject to the oversight and approval of the department or the regional board.

Comment. Section 70040 continues former Section 25390.4(a) without substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68125 (“remedy”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

Notes. Section 25390.4(a) refers to “the department and the potentially responsible party” entering an “enforceable cleanup agreement or order... issued pursuant to Section 25355.5 or 25358.3.” Each of these cross-referenced provisions is discussed in turn below.

(1) Section 25355.5 would be recodified as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). Of those sections, proposed Section 69055 (Section 25355.5(a)) is the only one 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 would be updated to refer only to proposed Section 69055. **Absent comment, this proposed cross-reference update will be presumed correct.**

(2) Section 25358.3 would be recodified as several sections (proposed Sections 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section 25358.3(a)) is the only provision that addresses the department’s issuance of orders to parties and, thus, appears to be the only provision that is relevant to this cross-reference. Proposed Section 68660 relates to relief sought in court, in which case the court would be the one to issue orders. However, this provision does not appear to encompass court orders. For this reason, the cross-reference to Section 25358.3 would be updated to refer only to proposed Section 68870. **Absent comment, this proposed cross-reference update will be presumed correct.**

§ 70045. Forms and procedures for claims

70045. The administrator of the fund shall prescribe appropriate application forms and procedures for claims filed pursuant to subdivision (a) of Section 70025 that shall include all of the following:

(a) Requirements that the claimant provide, at a minimum, all of the following documentation:

(1) A sworn verification of the claim to the best of the information known to the claimant or within the claimant’s possession or control.

(2) All records and information pertaining to the site and relevant to the ownership, operation, or control of the site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the site, within the possession or control of the claimant, including, but not limited to, the information specified in subdivision (a) of Section 68440.

(3) Certification of all response costs that have been, or will be, incurred at the site by the potentially responsible party, and an estimate of the total cost of completion of the approved final remedy at the site.

(b) Procedures specifying that claims shall be filed only at the two following specific time periods during the performance of a response action:

(1) After the final remedy is selected under Article 12 (commencing with Section 69190) of Chapter 5.

1 (2) After the department or the regional board determines that the response action
2 is complete. The department or the regional board shall not include operation and
3 maintenance activities in determining whether the response action is complete under
4 this paragraph.

5 **Comment.** Section 70045 continues former Section 25390.4(b) without substantive change.

6 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68100 (“regional board”),
7 68125 (“remedy”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 70000
8 (“fund”).

9 **§ 70050. Payment of claims**

10 70050. (a) The administrator of the fund shall annually, on a fiscal year basis, pay
11 claims for reimbursement from the fund filed by potentially responsible parties
12 under subdivision (a) of Section 70025, in accordance with the following
13 procedures:

14 (1) Claims for funds available during each fiscal year shall be filed with the
15 administrator by July 30 of that fiscal year.

16 (2) For sites with multiple responsible parties, all potentially responsible parties
17 that have entered into the cleanup agreement specified in subdivision (c) of Section
18 70040 shall file a single claim.

19 (3)(A) The administrator shall allocate the money available in the fund for the
20 fiscal year among the claims filed by the July 30 deadline. The allocation shall be
21 based on the determination of the orphan share percentage at the facility under the
22 process set forth in Section 70070, the long-term financial stability and short-term
23 resources available in the fund, and the administrator’s fiduciary duty with respect
24 to the fund. Except as provided in subparagraph (B), the administrator shall pay
25 claims for funds in the order in which they are received.

26 (B) Notwithstanding subparagraph (A), if an appropriation from the General Fund
27 is made to the fund in any fiscal year, the administrator may alter the order of
28 payment of claims required by subparagraph (A) by using funds appropriated from
29 the General Fund to pay claims based on the threat to public health or the
30 environment posed by a site or the need to improve economic and environmental
31 conditions in redeveloping communities.

32 (4) The total amount allocated to any one site shall not exceed 10 percent of the
33 total amount available each fiscal year in the fund. If, due to this limit or to the
34 unavailability of funds, a claimant receives only partial or no reimbursement of the
35 orphan share paid by that claimant, the claim shall be paid in the following fiscal
36 year and shall be given priority over all claims filed after the claim was initially
37 received, subject to the discretion of the administrator set forth in paragraph (3).

38 (5) The administrator’s proposed allocation shall be subject to public review and
39 comment for 30 days.

40 (b) The state and the fund have no obligation to provide full reimbursement to a
41 claimant. The fund shall be allocated at the discretion of the administrator, subject
42 to the requirements of this chapter. In enacting this chapter, the Legislature intends

1 that claimants be reimbursed only to the extent that money is available in the fund
2 and is allocated to the claimant by the administrator.

3 **Comment.** Section 70050 continues former Section 25390.4(c) and (d) without substantive
4 change.

5 See Sections 68145 (“responsible party”), 68155 (“site”), 70000 (“fund,” “orphan share”).

6 **§ 70055. Sites for which claims not permitted**

7 70055. A claim for reimbursement under subdivision (a) of Section 70025 shall
8 not be filed for any of the following:

9 (a) Sites listed on the National Priorities List pursuant to the federal act (42 U.S.C.
10 Sec. 9605(a)(8)(B)).

11 (b) Sites remediated pursuant to former Chapter 6.85 (commencing with Section
12 25396) of Division 20.

13 (c) Sites, or portions of sites, for which the potentially responsible party has
14 agreed to take all response action required by the department or the regional board
15 at the site, and that agreement is embodied in a written, enforceable settlement
16 agreement, including, but not limited to, a judicial consent decree, entered into prior
17 to January 1, 1999.

18 (d) Sites, or portions of sites, that have been fully remediated for which the
19 department or the regional board has determined that the response action is complete
20 prior to January 1, 1999. The department or the regional board shall not include
21 operation and maintenance activities in determining whether the response action is
22 complete under this section.

23 **Comment.** Section 70055 continues former Section 25390.7 without substantive change.

24 See Sections 68050 (“department”), 68065 (“federal act”), 68080 (“operation and
25 maintenance”), 68100 (“regional board”), 68140 (“response”), 68145 (“responsible party”), 68155
26 (“site”).

27 **Article 4. Determination of Orphan Share**

28 **§ 70070. Manner for determination**

29 70070. For the purposes of this chapter, the orphan share shall be determined in
30 the following manner:

31 (a) The orphan share shall be expressed as a percentage in multiples of five, up
32 to, and, including, but not greater than, 75 percent.

33 (b) The potentially responsible party filing a claim for reimbursement of the
34 orphan share shall provide the administrator of the fund with a written potentially
35 responsible party search report that shall include a list of all potentially responsible
36 parties identified for the site, the factual and legal basis for identifying those parties,
37 and a proposed orphan share percentage. The potentially responsible party shall also
38 provide the administrator with the factual documentation necessary to support the
39 proposed orphan share percentage.

40 (c) Upon receipt of the information required by subdivision (b), the administrator
41 of the fund shall invite all identified potentially responsible parties and the

department and the regional board to submit any additional information relating to the proposed orphan share percentage or to the list of identified potentially responsible parties.

(d) The administrator of the fund, in consultation with the department or the regional board, shall determine a final orphan share percentage based on the volume, toxicity, and difficulty of removal of the contaminants contributed to the site by the party responsible for the orphan share. The administrator shall determine the orphan share timely and efficiently and is not required to precisely determine all relevant factors, as long as the determination is generally equitable. In addition, the administrator may consider the results of any apportionment or allocation conducted by voluntary arbitration or mediation or by a civil action filed by a potentially responsible party, or any other apportionment or allocation decision that is helpful when determining the orphan share percentage.

(e) A potentially responsible party shall not assert, and the administrator of the fund shall not determine, that the orphan share percentage includes the share of liability attributable to a potentially responsible party's acts that occurred before January 1, 1982, unless that share of responsibility is attributable to a person who is defunct or insolvent.

(f) In determining the orphan share percentage under this section, the administrator of the fund may perform any of the activities authorized in subdivisions (a) and (c) of Section 68440.

(g) The administrator of the fund shall issue all orphan share percentage determinations in writing, with notification to all appropriate parties. The decision of the administrator with respect to either apportionment or payment of claims is a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision; however, judicial review of the administrator's decision is limited to a showing of fraud by a party submitting information under [this subdivision]. The administrator shall be represented by the Attorney General in any action brought under this chapter.

Comment. Section 70070 restates former Section 25390.5 without substantive change. The phrase "party or parties" has been singularized. This is a nonsubstantive change. See Section 13. An erroneous reference to "subdivision (a)" in subdivision (c) has been corrected to refer to "subdivision (b)."

See Sections 68050 ("department"), 68085 ("person"), 68100 ("regional board"), 68135 ("remove"), 68145 ("responsible party"), 68155 ("site"), 70000 ("fund," "orphan share").

Notes. (1) Section 25390.5(c) requires the fund administrator to take specified action after "receipt of the information required by subdivision (a)." Subdivision (a) simply states a rule for the orphan share percentage to be expressed as a multiple of five. Apparently, Section 25390.5(c) should instead refer to the information required by subdivision (b), which specifies what information a party filing a reimbursement claim must submit. In proposed Section 70070(c), the reference would be corrected accordingly. **Absent comment, this proposed correction will be presumed correct.**

(2) Section 25380.5(g) limits judicial review to a showing of fraud by a party submitting information under "this subdivision." This reference appears to be erroneous, as subdivision (g) does not provide for a party to submit information. It is unclear whether this reference should be

revised to refer to the section as a whole or some subset of the section. **The Commission welcomes comment on how this reference should be corrected.**

Article 5. Enforcement and Cost Recovery

§ 70080. Recovery of costs paid from fund

70080. Any costs paid from the fund pursuant to subdivisions (a) and (d) of Section 70025 shall be recoverable by the Attorney General, at the request of the administrator of the fund, from any liable person who has not entered into, or is not in compliance with, a written cleanup agreement entered into pursuant to subdivision (c) of Section 70040 that provides for the completion of all response actions necessary at the site under the oversight and at the direction of the department or the regional board.

Comment. Section 70080 restates former Section 25390.6(a) without substantive change. The phrase “person or persons” has been singularized. This is a nonsubstantive change. See Section 13.

See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 70000 (“fund”).

§ 70085. Penalty for withholding information or submitting false information

70085. Any potentially responsible party who withholds information required to be submitted under this section or Section 70080, or who submits false information, is subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) for each piece of information withheld or for each piece of false information submitted.

Comment. Section 70085 continues former Section 25390.6(b) without substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”).

Note. Section 25390.6(b) establishes a civil penalty for a party who withholds information “required to be submitted under this section.” Section 25390.6 would be recodified as two sections (this proposed section and proposed Section 70080). Section 25390.6(b)’s cross-reference to “this section” would be updated to refer to both of these proposed sections. However, nothing in existing Section 25390.6 appears to require a party to submit information. It is unclear what the intended application of this rule should be. **The Commission welcomes comment on this issue.**

§ 70090. Lien for incurred costs

70090. (a) Any costs incurred and payable from the fund by the administrator pursuant to this chapter shall constitute a claim and lien upon the real property owned by a responsible party that is subject to, or affected by, a response action. A lien established by this subdivision shall have all of the following properties:

(1) The lien shall not exceed the increase in fair market value of the site attributable to the response action at the time of a subsequent sale or other disposition of the site.

(2) The lien shall attach regardless of whether the responsible party property owner is solvent.

(3) The lien shall arise at the time costs to the fund are first incurred by the administrator.

(4) The lien shall be subject to the notice and hearing procedures that due process of the law requires.

(b) Neither the administrator of the fund nor the fund shall be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c)(1) The lien imposed by this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located.

(2) The lien shall contain the legal description of the property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll. The lien shall also contain a legal description of the property that is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

(d) All funds recovered pursuant to this section shall be deposited in the fund.

Comment. Section 70090 continues former Section 25390.8 without substantive change. A cross-reference to "this subdivision" in subdivision (d) has been corrected to refer to "this section."

See Sections 68075 ("hazardous substance"), 68105 ("release"), 68140 ("response"), 68145 ("responsible party"), 68155 ("site"), 70000 ("fund").

Note. Section 25390.8(d) governs the deposit of all funds recovered pursuant to "this subdivision." However, subdivision (d) does not otherwise provide for fund recovery. In a very similar section governing other liens, the corresponding provision refers to funds recovered pursuant to "this section." See Section 25365.6. It appears that Section 25390.8(d)'s reference to "this subdivision" should be replaced with a reference to the section as a whole. For this reason, proposed Section 70090(d) would refer to "this section." **Absent comment, this proposed correction will be presumed correct.**

Article 6. Operative Date

§ 70100. Operative date

70100. (a) This chapter shall become operative on the operative date of the statute that does either, or both, of the following:

(1) Appropriates funds to the fund to implement this chapter.

(2) Establishes a revenue source for the fund.

(b) Notwithstanding subdivision (a), the operation of this chapter shall be suspended during any fiscal year in which both no funds are appropriated to the fund to implement this chapter and no revenue source for the fund is operative.

Comment. Section 70100 continues former Section 25390.9 without substantive change.

See Section 70000 ("fund").

Note. Section 25390.9(a) provides that this law becomes operative "on the operative date of a statute" that meets at least one of specified conditions. **The Commission welcomes input on whether the specified conditions have been met such that this law is operative.** If this law is operative, subdivision (a) would appear to be obsolete and should not be continued.

CHAPTER 10. CLEANUP LOANS AND ENVIRONMENTAL ASSISTANCE
TO NEIGHBORHOODS

Article 1. Definitions

Note. Proposed Article 1 restates Section 25395.20(a). Two definitions from that provision would not be continued. This note identifies those terms and the reason that each definition would not be continued. **The Commission welcomes comment on whether either of these definitions should be continued.**

(1) Section 25395.20(a)(9) defines “implementation costs.” However, the term is not used elsewhere in the article. In the absence of any uses of the defined term, this definition appears to be unnecessary.

(2) Section 25395.20(a)(17) defines “regional board” as “a California regional water quality control board.” This term is already defined for the part as a whole in proposed Section 68100. Proposed Section 68100 defines “regional board” for this part as “a California regional water quality control board.” For this reason, the redundant definition of “regional board” in Section 25395.20(a)(17) would not be continued.

§ 70200. Application of definitions

70200. For purposes of this chapter, the definitions contained in this article shall apply.

Comment. Section 70200 restates the initial clause of former Section 25395.20(a) without substantive change.

§ 70205. “Account”

70205. “Account” means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 70350.

Comment. Section 70205 continues former Section 25395.20(a)(1) without substantive change.

§ 70210. “Brownfield”

70210. (a) “Brownfield” means property that meets all of the following conditions:

(1) It is located in an urban area.

(2) It was previously the site of an economic activity that is no longer in operation at that location.

(3) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this chapter.

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

(1) Property listed, or proposed for listing, on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is a brownfield described in paragraph (5) of subdivision (a) of Section 70230.

Comment. Section 70210 continues former Section 25395.20(a)(2) without substantive change. A technical change was made to conform to the standard citation format for the federal act. See Section 68065.

See Sections 68065 (“federal act”), 68155 (“site”), 70225 (“economic activity”), 70250 (“no longer in operation”), 70260 (“property”), 70280 (“urban area”).

§ 70215. “Cleanup and abatement order”

70215. “Cleanup and abatement order” means an order issued by a regional board pursuant to Section 13304 of the Water Code.

Comment. Section 70215 continues former Section 25395.20(a)(3) without substantive change. See Section 68100 (“regional board”).

§ 70220. “Cleanup Loans and Environmental Assistance to Neighborhoods Program” or “CLEAN”

70220. “Cleanup Loans and Environmental Assistance to Neighborhoods Program” or “CLEAN” means the loan program established by the department pursuant to Article 6 (commencing with Section 70450), to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

Comment. Section 70220 continues former Section 25395.20(a)(4) without substantive change. See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 70230 (“eligible property”), 70235 (“hazardous material”).

§ 70225. “Economic activity”

70225. “Economic activity” means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

Comment. Section 70225 continues former Section 25395.20(a)(5) without substantive change.

§ 70230. “Eligible property”

70230. (a) “Eligible property” means a site that is any of the following:

(1) A brownfield.

(2) An underutilized property that is a property described in paragraph (5) of subdivision (d) of Section 70275.

(3) An underutilized property that is a property located [in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code].

(4) An underutilized property that is a property, the redevelopment of which will result in any of the following:

(A) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(B) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(C) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(D) Housing for very low, low-, or moderate-income households, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(E) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(5) A brownfield or an underutilized property described in paragraph (3) that will be the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:

(A) A small business.

(B) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).

(C) A small business incubator that is undertaking the expansion with the **[assistance of a grant authorized by Section 15339.3 of the Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code]**.

(b) “Eligible property” does not include any of the following:

(1) Property listed or proposed for listing on the National Priorities List pursuant to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(2) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(3) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property meets the criteria specified in paragraph (5) of subdivision (a).

Comment. Section 70230 continues former Section 25395.20(a)(6) and (7) without substantive change. Technical changes were made to correct an erroneous cross-reference to Government Code Section 65589.5(h)(2) (as opposed to Government Code Section 65589.5(h)(3)) and conform to the standard citation format for the federal act. See Section 68065.

See Sections 68065 (“federal act”), 68155 (“site”), 70210 (“brownfield”), 70225 (“economic activity”), 70255 (“project”), 70260 (“property”), 70265 (“small business”), 70275 (“underutilized property”).

Notes. (1) Proposed Section 70230(a)(3) would recodify Section 25395.20(a)(6)(B)(ii), which refers to a property “located in an enterprise zone established pursuant to the Enterprise Zone Act

(Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.”

The Enterprise Zone Act and Government Code Section 7072 have been repealed. See 2013 Cal. Stat. ch. 69, § 2. While these obsolete cross-references could be excised, it is unclear whether the relevant enterprise zones and eligible areas designated under these former provisions may have ongoing effect.

In 2012, legislation “eliminate[d] redevelopment agencies (RDAs) and specific[d] a process for the orderly wind-down of RDA activities.” See Senate Floor Analysis of Assembly Bill 26 (1st Ex. Sess.) (June 15, 2011), p. 1. While redevelopment plans prepared before this change may have continuing effect, this provision is likely to become obsolete over time as old plans expire and no new plans are prepared.

The Commission does not know whether Section 25395.20(a)(6)(B)(ii) is obsolete (or will become so soon) or could be adjusted to achieve the intended legislative purpose (and, if so, what changes are needed). **The Commission welcomes comment on how this provision should be addressed in the proposed recodification.**

In addition, two sections in this draft refer, either directly or indirectly, to this provision. See proposed Sections 70210(b)(3) and 70230(a)(5). Given the possible need to adjust this provision, it is unclear whether the sections that reference it are similarly in need of changes to achieve their intended purpose. **Comment on that point would be helpful.**

(2) Section 25395.20(a)(6)(B)(iii)(IV), which would be continued in proposed Section 70230(a)(4)(D), refers to the definition of “housing for very low, low-, or moderate income households” in “paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.” The term is defined in paragraph (3), as opposed to paragraph (2). Proposed Section 70230(a)(4)(D) would correct this cross-reference.

(3) Proposed Section 70230(a)(5)(C) would recodify Section 25395.20(6)(C)(iii), cross-refers to two repealed sections related to small business grants and loan guarantees. Although the cross-referenced sections were repealed, it appears that the legislation repealing these sections shifted (rather than eliminated) the authority for small business grant and loan guarantee programs. More specifically, the 2003 bill repealing Gov’t Code Section 15339.3 moved duties related to small business loans from one agency, which was being abolished, to another agency (the Business, Transportation and Housing Agency). See Legislative Counsel’s Digest for Assembly Bill 1757 (2003 Cal. Stat. ch. 229). In 2013, the legislation repealing Corporations Code Section 14090 transferred functions of the Business, Transportation and Housing Agency related to small businesses to a new agency, the California Infrastructure and Economic Development Bank. See Legislative Counsel’s Digest for Assembly Bill 1247 (2013 Cal. Stat. ch. 537). However, it is unclear how the small business grant and loan guarantee program may have changed over this time and whether this provision should be deleted as obsolete or updated to achieve the intended legislative purpose. **The Commission welcomes comment on how to address this provision in the proposed recodification.**

In addition, one section in this draft (proposed Section 70275(e)(3)) cross-refers to this provision. Given the possible need to adjust this provision, it is unclear whether the cross-reference to it is also in need of changes to achieve its intended purpose. **Comment on that point would be helpful.**

§ 70235. “Hazardous material”

70235. (a) “Hazardous material” means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. “Hazardous material” includes, but is not limited to, all of the following:

(1) A hazardous substance, as defined in Section 25281 or subdivision (a) of Section 68075.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(4) A substance specified in subdivision (b) of Section 68075

(b) “Hazardous material” does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

Comment. Section 70235 restates former Section 25395.20(a)(8) without substantive change. See Sections 68075 (“hazardous substance”), 68140 (“response”), 70260 (“property”).

Notes. (1) Section 25395.20(a)(8)(A)(i) provides that “hazardous material” includes:

“A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.”

Reading this provision in isolation, the cross-reference to Section 25317 is somewhat unclear, as Section 25317 lists substances that are *excluded* from the definition of “hazardous substance” provided in Section 25316.

Because other provisions of this chapter address underground fuel tanks that contain petroleum (a substance that is excluded from the definition of “hazardous substance” by Section 25317), it seems reasonably clear that the substances listed in Section 25317 are intended to be “hazardous materials” for the purpose of this law. See Sections 25299.24, 25395.20(a)(11), 25395.28. To make that point more clear, the clause that refers to Section 25317 would be recodified in a separate paragraph (proposed Section 70235(a)(4)). **The Commission welcomes comment on this proposed restatement.**

(2) The definition of “hazardous material” in Section 25395.20(a)(8) specifically includes “a waste” as that term is defined in two cited sections.

The first cited section, Section 101075, defines the terms “waste” and “hazardous waste.” The definition of “waste” is very broad, including “[a]ny material for which no use or reuse is intended and that is to be discarded.”

The definition of “waste” in the second cited section, Water Code Section 13050, is also broad, including “sewage and any and all other waste substances ... associated with human habitation.”

Thus, the kinds of “wastes” that are included in this section’s definition of “hazardous material” seem to include waste that is not hazardous (like nonhazardous household garbage). That result probably stems from a drafting oversight. Nonetheless, the plain meaning of the existing language is clear. It does, by its terms, include such waste.

Given the nonsubstantive nature of this study, the apparent oversight cannot be addressed in proposed Section 70235, which would recodify the language in question. It may be appropriate to add this matter to the list of substantive issues for possible future study that is located at the end of the Commission’s recommendation. **The Commission welcomes comment on this matter.**

§ 70240. “Investigating site contamination program”

70240. “Investigating site contamination program” means the loan program established by the department pursuant to Article 5 (commencing with Section 70400) to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

Comment. Section 70240 continues former Section 25395.20(a)(10) without substantive change.

1 See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 70210
2 (“brownfield”), 70260 (“property”).

3 **§ 70245. “Leaking underground fuel tank”**

4 70245. “Leaking underground fuel tank” has the same meaning as “tank,” as
5 defined in Section 25299.24.

6 **Comment.** Section 70245 continues former Section 25395.20(a)(11) without substantive
7 change.

8 **§ 70250. “No longer in operation”**

9 70250. “No longer in operation” means an economic activity that is, or previously
10 was, located on a property that is not conducting operations on the property of the
11 type usually associated with the economic activity.

12 **Comment.** Section 70250 continues former Section 25395.20(a)(12) without substantive
13 change.

14 See Sections 70225 (“economic activity”), 70260 (“property”).

15 **§ 70255. “Project”**

16 70255. “Project” means any response action, and the planned future development,
17 included in an application for a loan pursuant to Article 6 (commencing with Section
18 70450).

19 **Comment.** Section 70255 continues former Section 25395.20(a)(13) without substantive
20 change.

21 See Section 68140 (“response”).

22 **§ 70260. “Property”**

23 70260. “Property” means real property, as defined in Section 658 of the Civil
24 Code.

25 **Comment.** Section 70260 continues former Section 25395.20(a)(14) without substantive
26 change.

27 **§ 70265. “Small business”**

28 70265. “Small business” means an independently owned and operated business,
29 that is not dominant in its field of operation, that, together with affiliates, has 100 or
30 fewer employees, and that has average annual gross receipts of ten million dollars
31 (\$10,000,000) or less over the previous three years, or a business that is a
32 manufacturer, as defined in Section 14837 of the Government Code, with 100 or
33 fewer employees.

34 **Comment.** Section 70265 continues former Section 25395.20(a)(15) without substantive
35 change.

36 **§ 70270. “State board”**

37 70270. “State board” means the State Water Resources Control Board.

38 **Comment.** Section 70270 continues former Section 25395.20(a)(18) without substantive
39 change.

1 **§ 70275. “Underutilized property”**

2 70275. “Underutilized property” means property that meets all of the following
3 conditions:

4 (a) It is located in an urban area.

5 (b) An economic activity is conducted on the property.

6 (c) It is the subject of a proposal for development pursuant to this chapter.

7 (d) One of the following applies:

8 (1) The economic activity on the property is irregular or intermittent in nature and
9 uses the property for productive purposes less than four months in any calendar year.

10 (2) The economic activity on the property employs less than 25 percent of the
11 property for productive purposes.

12 (3) The structures, infrastructure, and other facilities on the property are
13 antiquated, obsolete, or in such poor repair that they cannot be used for the purposes
14 for which they were originally constructed and require replacement in order to
15 implement the redevelopment proposal.

16 (4) The economic activity conducted on the property is a parking facility or an
17 activity that offers a similar marginal economic service and the facility or activity
18 will be replaced when the property is redeveloped.

19 (5) The property is adjacent to one or more brownfields or underutilized properties
20 that are the subject of a project under this chapter and its inclusion in the project is
21 necessary in order to ensure that the redevelopment of the brownfield or brownfields
22 or underutilized property or underutilized properties occurs.

23 (e) An underutilized property does not include any of the following:

24 (1) Property listed or proposed for listing on the National Priorities List pursuant
25 to Section 105(a)(8)(B) of the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

26 (2) Property that is, or was, owned or operated by a department, agency, or
27 instrumentality of the United States.

28 (3) Property that will be the site of a contiguous expansion or improvement of an
29 operating industrial or commercial facility, unless the property is an underutilized
30 property described in paragraph (5) of subdivision (a) of Section 70230.

31 **Comment.** Section 70275 continues former Section 25395.20(a)(16) without substantive
32 change. A technical change was made to conform to the standard citation format for the federal act.
33 See Section 68065.

34 See Sections 68065 (“federal act”), 68155 (“site”), 70210 (“brownfield”), 70225 (“economic
35 activity”), 70255 (“project”), 70260 (“property”), 70280 (“urban area”).

36 **§ 70280. “Urban area”**

37 70280. “Urban area” means either of the following:

38 (a) The central portion of a city or a group of contiguous cities with a population
39 of 50,000 or more, together with adjacent densely populated areas having a
40 population density of at least 1,000 persons per square mile.

41 (b) An urbanized area as defined in **[paragraph (2) of subdivision (b) of Section**
42 **21080.7 of the Public Resources Code]**.

Comment. Section 70280 continues former Section 25395.20(a)(19) without substantive change.

See Section 68085 (“person”).

Note. Proposed Section 70280(b) would recodify Section 25395.20(a)(19)(2), which refers to an urbanized area as defined in Public Resources Code Section 21080.7(b)(2). The cross-referenced section was repealed in 2003. See 2002 Cal. Stat. ch. 1039, § 7. It is unclear how the cross-reference should be updated. **The Commission welcomes comment on this issue.**

Based on the history of Public Resources Code Section 21080.7, the Commission identified two candidates for replacing the obsolete cross-reference:

(1) Before its repeal, Public Resources Code Section 21080.7 cross-referred to “urbanized areas” designated by the U.S. Census Bureau. See former Pub. Res. Code § 21080.7, as amended by 1993 Cal. Stat. ch. 1130, § 6. The cross-reference to Public Resources Code Section 21080.7(b)(2) in Section 25395.20(a)(19)(2) could be updated to incorporate the substance of the former rule (i.e., it could refer to urbanized areas designated by the U.S. Census Bureau). See, e.g., <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html>.

(2) The legislation that repealed Public Resources Code Section 21080.7 also added a new section that defines “urbanized area.” See Pub. Res. Code § 21071. That new definition of “urbanized area” is significantly different from the one in the repealed provision. The current definition focuses on incorporated areas above a specified population threshold and unincorporated areas that meet specified criteria (related to population, compact development, and location in proximity to incorporated areas or urban growth boundaries). The cross-reference to Public Resources Code Section 21080.7(b)(2) in Section 25395.20(a)(19)(2) could be updated to refer to the new definition of “urbanized area” in Public Resources Code Section 21071.

Looking beyond the legislative history, one could identify other reasonable candidates to replace this outdated cross-reference. For instance, the Commission received informal input from DTSC staff that, from a practical perspective, the definition of “urban area” in Section 25395.79.2 would be a good alternative. Although this option may be preferable from a practical perspective, such a change would likely be seen as substantive.

The Commission welcomes comment on how to update the cross-reference to Public Resources Code Section 21080.7(b)(2) in Section 25395.20(a)(19)(2). The Commission also seeks comment on whether to add this provision to the list of substantive issues for possible future study that is located at the end of its recommendation, so that it could consider a more robust set of options.

Article 2. General Provisions

§ 70300. Governing law

70300. Except as provided in Sections 70570 and 70575, any response action carried out under this chapter shall be conducted in accordance with the requirements of this part and Chapter 6.65 (commencing with Section 25260) of Division 20.

Comment. Section 70300 continues the first sentence of former Section 25395.27(a)(1) without substantive change.

See Section 68140 (“response”).

§ 70305. Administering agency

70305. (a)(1) Notwithstanding Section 70300, for purposes of Section 25262, the administering agency for any site that is the subject of a loan under this chapter shall

either be the department pursuant to this chapter, or a regional board, the state board, or a local oversight program agency under contract with the state board pursuant to Article 11 (commencing with Section 70570).

(2) A person shall not request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260) of Division 20.

(b)(1) For purposes of this article, the Site Designation Committee created by Section 25261 is not required to meet and formally designate the department, a regional board, the state board, or a local oversight program agency under contract with the state board, as specified in Article 11 (commencing with Section 70570), as the administering agency pursuant to Section 25262 for a site that is the subject of a loan under this chapter.

(2) Upon the approval of a loan under Article 7 (commencing with Section 70480), the department shall notify the Site Designation Committee of the administering agency for the site.

Comment. Section 70305 restates the second sentence of former Section 25395.27(a)(1) without substantive change. The section also continues former Section 25395.27(a)(2) without substantive change.

See Sections 68050 (“department”), 68085 (“person”), 68100 (“regional board”), 68155 (“site”), 70270 (“state board”).

Note. The second sentence of Section 25395.27(a)(1) reads:

“However, for purposes of Section 25262, the administering agency for any site that is the subject of a loan under this chapter shall either be the department pursuant to this chapter, or a regional board, the state board, or a local oversight program agency under contract with the state board pursuant to Section 25395.28, and a person shall not request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260) [of Division 20].”

Proposed Section 70305(a) would break this material into two sentences and revise it to reflect that the first sentence of Section 25395.27(a)(1) would be recodified separately, as proposed Section 70300.

The restatement of the second sentence of Section 25395.27(a)(1) is intended to be nonsubstantive. **The Commission welcomes any comment on this proposed restatement.**

§ 70310. References to “hazardous substance”

70310. For sites that are the subject of a loan under this chapter, all references in this part to a hazardous substance shall be deemed to be a reference to a hazardous material.

Comment. Section 70310 continues former Section 25395.27(b) without substantive change. See Sections 68075 (“hazardous substance”), 68155 (“site”), 70235 (“hazardous material”).

Note. By its terms, Section 25395.27(b) would seem to broaden the application of every provision of Chapter 6.8 that governs “hazardous substances” so that they also apply to “hazardous materials” (a broader class of materials) on a site that receives a loan under this proposed chapter. Compare proposed Section 68075 (“hazardous substance”) with proposed Section 70235 (“hazardous material”).

In some cases, the purpose of that rule of construction seems clear. If a loan is granted to conduct a response action at a site that contains hazardous *materials* (the broader class), that response must be conducted under the rules that govern a response action at a site that contains hazardous

1 *substances* (the narrower class). In other words, one must read the provisions that govern such a
2 response action as if they refer to (and therefore apply to) “hazardous materials” rather than
3 “hazardous substances.”

4 For provisions of Chapter 6.8 that do not govern response actions, it seems less clear how those
5 rules should apply to sites that received a loan. **The Commission welcomes comment on the**
6 **intended effect of this provision and whether it has caused any confusion in practice.**

7 **§ 70315. Application of part**

8 70315. Except as provided in Sections 70570 and 70575, this part shall apply to a
9 site that is the subject of a loan under this chapter, regardless of whether the site is
10 on the list created pursuant to Article 5 (commencing with Section 68760) of
11 Chapter 4.

12 **Comment.** Section 70315 continues former Section 25395.27(c) without substantive change.
13 See Section 68155 (“site”).

14 **§ 70320. Construction of chapter**

15 70320. (a) Except as provided in Section 25264, this chapter shall not be construed
16 to limit the authority of the department, the regional board, or the state board to take
17 any action otherwise authorized under any other provision of law.

18 (b) This chapter shall not be construed to limit, extend, or affect local land use
19 and zoning authority.

20 **Comment.** Subdivision (a) of Section 70320 continues former Section 25395.27(d) without
21 substantive change. Subdivision (b) continues former Section 25395.26(e) without substantive
22 change.

23 See Sections 68050 (“department”), 68100 (“regional board”), 70270 (“state board”).

24 **§ 70325. Required posting**

25 70325. (a)(1) The department shall post, and update at least monthly, a list of loan
26 applications received pursuant to this chapter on the department’s internet website.

27 (2) The list shall include the name of the applicant, the location of the property
28 that is the subject of the loan application, the administering agency, and a contact at
29 the department for further information.

30 (b) The department shall also annually post on that website a summary of the
31 response action status for each site with a loan approved under Article 7
32 (commencing with Section 70480).

33 **Comment.** Section 70325 continues former Section 25395.27(e) without substantive change.
34 See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”), 70260 (“property”).

35 **Article 3. Financial Provisions**

36 **§ 70350. Cleanup Loans and Environmental Assistance to Neighborhoods Account**

37 70350. The Cleanup Loans and Environmental Assistance to Neighborhoods
38 Account is hereby established in the General Fund to provide low-interest loans to
39 qualified applicants for the purpose of funding preliminary endangerment
40 assessments and response actions at brownfields and underutilized properties

located in the state pursuant to this chapter, and for any other purpose determined by the department to stimulate the redevelopment of brownfields and underutilized properties, if the department determines that the redevelopment will result in the overall improvement of the community in which the property is located and will provide a reasonable economic or social benefit, in accordance with Section 70355.

All of the following moneys shall be deposited in the account:

(a) Funds appropriated by the Legislature for the purposes of this chapter.

(b) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(c) Proceeds from loan repayments.

(d) Proceeds from the sale, pursuant to this chapter, of property that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

Comment. Section 70350 restates former Section 25395.20(b) without substantive change.

See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 68140 (“response”), 70205 (“account”), 70210 (“brownfield”), 70260 (“property”).

Note. Section 25395.20(b)(4) was restated for clarity. The phrases in that provision would be reordered in proposed Section 70350(d).

§ 70355. Appropriation and expenditure

70355. (a) Except as provided in subdivision (b), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated, without regard to fiscal years, to the department for the purpose of providing loans pursuant to Articles 5 (commencing with Section 70400) and 6 (commencing with Section 70450) and for the purpose of providing subsidies for environmental insurance pursuant to Chapter 11 (commencing with Section 70680), the California Financial Assurance and Insurance for Redevelopment Program.

(b) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article and for implementation and administration of the California Financial Assurance and Insurance for Redevelopment Program (Chapter 11 (commencing with Section 70680)), only upon appropriation by the Legislature in the annual Budget Act or in another measure.

Comment. Section 70355 continues former Section 25395.20(c) without substantive change. An erroneous citation to the California Financial Assurance and Insurance for Redevelopment Program has been corrected.

See Sections 68040 (“agency”), 68050 (“department”), 68100 (“regional board”), 70205 (“account”), 70270 (“state board”).

Note. Section 25395.20(c)(2) twice refers to “the California Financial Assurance and Insurance for Redevelopment Program.” In one instance, the reference contains an erroneous citation to the relevant law. In proposed Section 70355, both references have been updated to refer to the proposed recodification of that law.

Article 4. Loans Generally

§ 70370. Ineligible persons

70370. The following persons are not eligible to apply for a loan under this chapter:

(a) A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under former Section 25395.13 (repealed by Section 73 of Chapter 39 of the California Statutes of 2012).

(b) A person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering.

(c) A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site.

(d) A person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to the secretary under this chapter.

Comment. Section 70370 restates former Section 25395.30 without substantive change. The cross-reference to Section 25395.13 has been updated to reflect the repeal of that provision.

See Sections 68085 (“person”), 68140 (“response”), 68150 (“secretary”), 68155 (“site”), 70235 (“hazardous material”).

Note. Section 25395.30 designates persons convicted under “Section 25395.13” as ineligible for a loan. The cross-referenced section is offered as an example of a criminal law relating to the regulation of hazardous materials. The cross-referenced section was repealed in 2012. See 2012 Cal. Stat. ch. 39, § 73. In proposed Section 70370(a), the cross-reference would be updated to refer to the “former” section and provide a citation to the law repealing that section. Because this cross-reference is simply an illustrative example, updating it to refer to the former section seems unproblematic. **Absent comment, the Commission will presume this cross-reference update is correct.**

§ 70375. Interest rate for loans

70375. The rate of interest to be applied to loans made pursuant to this chapter shall be the same rate earned on investments in the Surplus Money Investment Fund during the loan repayment period. If a loan recipient defaults on a loan, the rate of interest to be applied to the loan shall be 10 percent from the date of default, or whatever greater rate is reflected in the agreement entered into pursuant to subdivision (a) of Section 70520.

Comment. Section 70375 continues former Section 25395.31 without substantive change.

§ 70380. Reporting on loan program

70380. On or before January 10 of each year when a loan under this chapter is made or repaid during the previous fiscal year, the secretary shall report to the Joint Legislative Budget Committee and to the chairs of the appropriate policy

committees of the Senate and the Assembly, and shall post on the internet website of the agency, all of the following:

(a) The number and dollar amount of loans approved pursuant to Article 5 (commencing with Section 70400), the number and dollar amount of those loans that have been repaid, and, the number and dollar amount of those loans that are in default.

(b) The number and dollar amount of loans waived pursuant to Section 70425.

(c) The number and dollar amount of loans approved pursuant to Article 7 (commencing with Section 70480), the number and dollar amount of those loans that have been repaid, and the number and dollar amount of those loans that are in default.

(d) The number of preliminary endangerment assessments completed pursuant to agreements entered into under this chapter.

(e) The number of sites where necessary response actions have been completed pursuant to agreements entered into under this chapter.

Comment. Section 70380 continues former Section 25395.32 without substantive change.

See Sections 68040 (“agency”), 68095 (“preliminary endangerment assessment”), 68140 (“response”), 68150 (“secretary”), 68155 (“site”).

Article 5. Investigating Site Contamination Program

§ 70400. Establishment of program

70400. The department, with the approval of the secretary, shall establish an Investigating Site Contamination Program to provide loans to eligible persons to conduct preliminary endangerment assessments of brownfields and underutilized properties. A loan provided pursuant to this article shall not be used for the cost of a phase I environmental assessment or the department’s oversight of the preparation and approval of the preliminary endangerment assessment.

Comment. Section 70400 continues former Section 25395.21(a) without substantive change.

See Sections 68050 (“department”), 68085 (“person”), 68090 (“phase I environmental assessment”), 68095 (“preliminary endangerment assessment”), 68150 (“secretary”), 68155 (“site”), 70210 (“brownfield”), 70240 (“investigating site contamination program”).

§ 70405. Loan application

70405. The department shall develop a loan application form for an investigating site contamination program loan and shall include, in the form, any provisions that the department considers to be appropriate. The application form shall be signed by the loan applicant and shall be submitted to the department with all of the following documentation:

(a) The phase I environmental assessment for the property that is the subject of the loan application.

(b) Information that demonstrates that the property is a brownfield or an underutilized property.

1 (c) If the owner of the property that is the subject of the loan application is not the
2 loan applicant, one of the following:

3 (1) Documentation that demonstrates that the owner consents to the performance
4 of the preliminary endangerment assessment of the property.

5 (2) A copy of an agreement between the property owner and the loan applicant
6 that gives the loan applicant an option to purchase the property.

7 (3) If the loan applicant is a local government entity, or a developer or prospective
8 purchaser acting together with a local government entity pursuant to an enforceable
9 agreement, a demonstration to the department that the local government entity, or
10 developer or prospective purchaser acting together with the local government entity
11 pursuant to an enforceable agreement, has legal access to perform the preliminary
12 endangerment assessment at the property, or will have legal access, prior to
13 receiving loan funds.

14 (d) Any other information the department deems necessary.

15 **Comment.** Section 70405 continues former Section 25395.21(b) without substantive change.

16 See Sections 68050 (“department”), 68090 (“phase I environmental assessment”), 68095
17 (“preliminary endangerment assessment”), 68155 (“site”), 70210 (“brownfield”), 70240
18 (“investigating site contamination program”), 70260 (“property”), 70275 (“underutilized
19 property”).

20 § 70410. Decision on loan application

21 70410. The department shall determine whether to approve a loan application
22 pursuant to this article based upon the information submitted pursuant to Section
23 70405. In making a decision regarding whether to approve a loan application, the
24 department shall approve a loan pursuant to this article for a property only if the
25 department determines the property is a brownfield or an underutilized property.

26 **Comment.** Section 70410 continues former Section 25395.21(c) without substantive change.

27 See Sections 68050 (“department”), 70210 (“brownfield”), 70260 (“property”), 70275
28 (“underutilized property”).

29 § 70415. Maximum loan amount

30 70415. The maximum amount of a loan granted pursuant to this article shall not
31 exceed one hundred thousand dollars (\$100,000).

32 **Comment.** Section 70415 continues former Section 25395.21(d) without substantive change.

33 § 70420. Loan repayment

34 70420. (a) Except as provided in subdivision (b) and in Section 70425, upon
35 approval of the loan application by the department, the loan recipient shall execute
36 an agreement with the department to repay the loan over a period not to exceed three
37 years.

38 (b) If the loan is to a local government entity, or to a developer or prospective
39 purchaser acting together with a local government entity pursuant to an enforceable
40 agreement, the department may delay the beginning of the loan repayment period.

(c) Except as provided in subdivision (d), the agreement made pursuant to subdivision (a) shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the loan application, any money so recovered, except for reasonable costs and the fees incurred to recover that money, shall be used first to repay the loan or repay the grant.

(d) Notwithstanding subdivision (c), a loan recipient is not required to first use the money recovered to repay the loan or grant, if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

Comment. Section 70420 continues former Section 25395.21(e) without substantive change.

See Sections 68050 (“department”), 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 70260 (“property”).

§ 70425. Waiver of loan repayment

70425. If a loan recipient who is not the owner of the property and the department determine, after the completion of the preliminary endangerment assessment, that the sum of the cost of remediation and the property purchase price makes the redevelopment of the property not economically feasible, the department may waive the repayment of up to 75 percent of the loan, and the amount waived shall be deemed a grant to the loan recipient. If the department waives the repayment of part of the loan, the recipient shall repay the remaining portion of the loan within one year of that waiver.

Comment. Section 70425 continues former Section 25395.21(f) without substantive change.

See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 70260 (“property”).

§ 70430. Oversight agreement

70430. Upon approval of a loan, the recipient shall enter into an agreement with the department for the department to provide regulatory oversight of the preparation and approval of the preliminary endangerment assessment.

Comment. Section 70430 continues former Section 25395.21(g) without substantive change.

See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”).

§ 70435. Nonliability for oversight costs

70435. Notwithstanding any requirement of Division 20 or this part regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department’s cost associated with the oversight of the preparation and approval of the preliminary endangerment assessment if the department determines there are sufficient funds in the account to reimburse the department for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the preparation and

1 approval of the preliminary endangerment assessment, the loan recipient shall pay
2 the department the amount of those costs.

3 **Comment.** Section 70435 continues former Section 25395.21(h) without substantive change.
4 See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 70205
5 (“account”).

6 Article 6. Cleanup Loans and Environmental Assistance to
7 Neighborhoods Program

8 **§ 70450. Establishment of CLEAN Program**

9 70450. The department, with the approval of the secretary, shall establish a
10 Cleanup Loans and Environmental Assistance to Neighborhoods Program to
11 provide loans to finance the performance of any action necessary to respond to the
12 release or threatened release of hazardous material at an eligible property.

13 **Comment.** Section 70450 continues the first sentence of former Section 25395.22(a) without
14 substantive change.

15 See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 68150 (“secretary”),
16 70220 (“Cleanup Loans and Environmental Assistance to Neighborhoods Program”), 70230
17 (“eligible property”), 70235 (“hazardous material”).

18 **§ 70455. CLEAN loan application**

19 70455. The department shall develop an application form for a loan under the
20 CLEAN program and shall include, in the form, any provisions that the department
21 determines to be appropriate to carry out the CLEAN program. The application shall
22 be signed by the loan applicant and shall be accompanied by all of the following:

23 (a) A preliminary endangerment assessment that has been approved by the
24 department, or an environmental assessment with equivalent information, that
25 discloses the presence of a release or threatened release of a hazardous material at
26 the property at concentrations that may pose a risk to public health and safety and
27 the environment.

28 (b) The name and address of the project coordinator for the site and the résumé of
29 the coordinator that demonstrates that the coordinator possesses the requisite
30 qualifications to manage the response action at the site.

31 (c) Documentation that the property is an eligible property and, if the department
32 has implemented the priority scoring system set forth in Article 7 (commencing with
33 Section 70480), sufficient information to enable the department to determine the
34 priority score for the property.

35 (d) Documentation that the planned future development of the site is consistent
36 with the current and reasonably foreseeable future land uses of the property.

37 (e) If the owner of the eligible property that is the subject of the loan application
38 is not the loan applicant, one of the following:

39 (1) Documentation that demonstrates that the owner agrees to use the property as
40 a security interest for the loan to finance necessary response action at the property.

(2) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(3) If the loan applicant is a local government entity, or a developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, has legal access to perform any action necessary to respond to the release or threatened release of hazardous material at an eligible property, or will have legal access, prior to receiving loan funds.

(f) Any other information the department deems necessary.

Comment. Section 70455 continues former Section 25395.22(b) without substantive change.

See Sections 68050 (“department”), 68095 (“preliminary endangerment assessment”), 68105 (“release”), 68140 (“response”), 68155 (“site”), 70220 (“Cleanup Loans and Environmental Assistance to Neighborhoods Program”), 70230 (“eligible property”), 70235 (“hazardous material”), 70255 (“project”), 70260 (“property”).

§ 70460. Use of CLEAN loan funds

70460. (a) A recipient of a loan to perform an action to respond to a release or threatened release of a hazardous material at an eligible property that is granted pursuant to this article may also use the loan funds to pay the premium for environmental insurance products to facilitate the development of the site, if the insurance company has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger and is authorized to offer environmental insurance in California.

(b) A loan provided pursuant to this article shall not be used to pay for a phase I environmental assessment, a preliminary endangerment assessment, the department’s oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site.

Comment. Section 70460 continues the second and fourth sentences of former Section 25395.22(a) without substantive change.

See Sections 68050 (“department”), 68090 (“phase I environmental assessment”), 68095 (“preliminary endangerment assessment”), 68105 (“release”), 68140 (“response”), 68155 (“site”), 70230 (“eligible property”), 70235 (“hazardous material”).

§ 70465. Use of CLEAN loans by local government

70465. The department shall take those necessary actions to promote the use of loans under the CLEAN program by local governments.

Comment. Section 70465 continues the third sentence of former Section 25395.22(a) without substantive change.

See Section 68050 (“department”), 70220 (“Cleanup Loans and Environmental Assistance to Neighborhoods Program”).

Article 7. Review of CLEAN Loan Applications

§ 70480. Approval of CLEAN loans

70480. (a) The department, after consultation with the secretary, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research, may approve loan applications submitted pursuant to Article 6 (commencing with Section 70450).

(b) The department may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property.

Comment. Section 70480 continues former Section 25395.23(a) without substantive change. See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 68150 (“secretary”), 70230 (“eligible property”), 70235 (“hazardous material”).

§ 70485. Ranking loan applications

70485. If the department determines, based on estimates of the number of loan requests that will be submitted in any fiscal year and the amount of loan funds that will be available during that fiscal year, that sufficient funding to meet the demand for loans will not be available, the department shall establish a system for ranking loan applications based on priority scores. Priority scores shall be calculated for each loan application by scoring the project that is the subject of the loan application using scales that measure the factors listed in Section 70490. The department shall approve loans for a project based on its priority scores.

Comment. Section 70485 continues former Section 25395.23(b) without substantive change. See Section 68050 (“department”), 70255 (“project”).

§ 70490. Factors for ranking loan applications

70490. The system for ranking loan applications pursuant to Section 70485 shall establish priority scores for projects that are the subjects of the loan applications using scales that measure all of the following factors:

(a) The degree of community support expressed for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.

(b) Financial support for the project provided at the local level, including grants or other subsidies, and funding provided by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code) or financing under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).

(c) The potential for the project to provide additional protection of the public health and safety.

(d) The potential for the project to enhance strategic community development, including, but not limited to, all of the following:

- 1 (1) The creation of new jobs.
- 2 (2) Generation of additional tax revenue.
- 3 (3) The likelihood that the project will stimulate additional redevelopment in
- 4 adjacent areas.
- 5 (4) The degree to which implementation of the project will improve local property
- 6 values.
- 7 (5) The degree to which implementation of the project will result in the
- 8 development of new parks.
- 9 (6) The extent to which the project may have a beneficial effect on the
- 10 construction of new schools.
- 11 (7) The extent to which the project will result in the construction of affordable
- 12 inner-city housing.
- 13 (8) The potential for the project to have a beneficial impact on existing local and
- 14 regional infrastructure or projected infrastructure needs, or otherwise promote infill
- 15 development.
- 16 (e) The economic viability of the project, including, but not limited to, an analysis
- 17 of the current value of the property as compared to its projected value after all
- 18 necessary response actions have been completed.
- 19 (f) The ability of the loan applicant to successfully perform the response action at
- 20 the site and repay the loan if funding is provided.
- 21 (g) The geographic location of the project, taking into consideration the number
- 22 and amounts of loans approved for projects located in that area, as compared to
- 23 those approved for other needy areas throughout the state.
- 24 (h) The degree of likelihood that the response action would not be completed if a
- 25 loan pursuant to Article 6 (commencing with Section 70450) is not made, including
- 26 whether any necessary response action is already being paid for by a responsible
- 27 party pursuant to an administrative order, an agreement issued or entered into with
- 28 a federal, state, or local agency, a judicial order, or a consent decree.
- 29 (i) The ability to obtain conventional financing absent a loan under this program.

30 **Comment.** Section 70490 restates former Section 25395.23(c) without substantive change. An
31 erroneous cross-reference to the Mello-Roos Community Facilities Act of 1982 has been corrected.

32 See Sections 68140 (“response”), 68145 (“responsible party”), 68155 (“site”), 70255 (“project”),
33 70260 (“property”).

34 **Note.** Section 25395.23(c)(2) refers to financing “under the Community Redevelopment Law
35 (Part 1 (commencing with Section 33000) of Division 24).” In 2012, existing redevelopment
36 agencies were barred from undertaking new obligations and were dissolved. See CLRC Staff
37 Memorandum 2012-7, pp. 9-13. In addition, revenues that would have been allocated to a
38 redevelopment agency are allocated to a fund that is administered for the benefit of those to which
39 the redevelopment agency had an enforceable obligation. See *id.* at 12-13; see also 2011 Cal. Stat.
40 ch. 5 (ABx1 26 (Blumenfeld)). The Commission is unsure whether projects could still be receiving
41 financial support from financing under the Community Redevelopment Law (i.e., could a project
42 proponent have an enforceable obligation against a former redevelopment agency that entitles the
43 proponent to continue to receive funds?). **The Commission welcomes comment on whether this**
44 **reference to financing under the Community Redevelopment Law is obsolete.**

Article 8. Conditions for Loan Approval

§ 70500. Maximum loan amount

70500. The department may approve all, or part of, a loan request pursuant to Article 7 (commencing with Section 70480), except the maximum amount of a loan approved pursuant to Article 7 (commencing with Section 70480) shall not exceed two million five hundred thousand dollars (\$2,500,000).

Comment. Section 70500 continues former Section 25395.24(a) without substantive change. See Section 68050 (“department”).

§ 70505. Percentage of debt to future value

70505. The department shall not approve a loan pursuant to Article 7 (commencing with Section 70480) if the total debt against the eligible property subject to the release or threatened release of a hazardous material on which the response action will be taken exceeds 80 percent of the estimated value of the property after all necessary response actions are complete.

Comment. Section 70505 continues former Section 25395.24(b) without substantive change. See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 70230 (“eligible property”), 70235 (“hazardous material”), 70260 (“property”).

Article 9. Obligations of Loan Recipient

§ 70520. Obligations

70520. Upon the approval of a loan pursuant to Article 7 (commencing with Section 70480), the loan recipient shall do all of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than seven years. If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2)(A) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money, except for reasonable costs and the fees incurred to recover that money, first to satisfy the loan.

(B) Notwithstanding subparagraph (A), a loan recipient is not required to first use the money recovered to repay the loan or grant if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

(b)(1) Enter into an agreement with the department or with the regional board or state board pursuant to Article 11 (commencing with Section 70570) for the oversight and approval of the response action at the site. This agreement shall include any necessary conditions and assurances to ensure that post-completion, ongoing operation and maintenance activities, and any necessary institutional controls on future uses of the property, are complied with. This agreement shall be provided to the department before the department may release any loan funds to the loan recipient.

(2) Notwithstanding any requirement of Division 20 or this part regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 70570) associated with the oversight of the response action at the site subject to the agreement, if the department determines there are sufficient funds in the account to reimburse the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 70570) for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the response action at the site subject to the agreement, the loan recipient shall pay the department's costs pursuant to this chapter or the regional board's or state board's costs pursuant to Article 11 (commencing with Section 70570) for the amount of those costs.

(c)(1) Except as provided in paragraph (2), obtain secured creditor insurance, as defined in Section 70730, from the insurance company selected by the secretary pursuant to Section 70760, or comparable insurance from any insurance company with an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger that is authorized to offer environmental insurance in California. This insurance shall be obtained before the department may release any loan funds to the loan recipient.

(2) The secretary may waive the requirement of paragraph (1) to obtain insurance or any specific insurance coverage if either of the following apply:

(A) No money is available for the environmental insurance subsidies authorized pursuant to Section 70800.

(B) The secretary determines that the scope of the response action is limited and the cost of the premiums of the prenegotiated package of environmental insurance products equals or exceeds the estimated response action costs, or is otherwise not commercially feasible.

Comment. Section 70520 continues former Section 25395.25 without substantive change.

See Sections 68050 ("department"), 68100 ("regional board"), 68105 ("release"), 68140 ("response"), 68145 ("responsible party"), 68150 ("secretary"), 68155 ("site"), 70205 ("account"), 70260 ("property"), 70270 ("state board").

Notes. (1) Section 25395.25(c)(1) refers to an insurance company "selected by the secretary pursuant to subdivision (b) of Section 25395.41." Section 25395.41(b) would be recodified as several sections (proposed Sections 70755, 70760, and 70765). Proposed Section 70760 would continue the provision authorizing the secretary to select a state-authorized environmental

insurance provider. The other provisions that would recodify Section 25395.41(b) do not appear to be relevant for the purposes of the cross-reference in question. For this reason, this cross-reference would be updated to refer to proposed Section 70760. **Absent comment, this proposed cross-reference update will be presumed correct.**

(2) Section 25395.25(c)(2)(A) refers to the “subsidies authorized pursuant to Section 25395.42.” Section 25395.42 would be recodified as two sections (proposed Sections 70800 and 70805). In proposed Section 70520(c)(2)(A), the cross-reference to Section 25395.42 would be updated to refer only to proposed Section 70800, which authorizes the use of funds to provide subsidies. **Absent comment, this proposed cross-reference update will be presumed correct.**

Article 10. Security for Loan

§ 70540. Security required

70540. (a) A loan approved pursuant to Article 7 (commencing with Section 70480) shall be secured by the property subject to the release or threatened release of the hazardous material on which the response action will be taken or by another form of security that the department determines will adequately protect the state’s interest.

(b) The department shall obtain an appropriate security interest in the property or other alternative form of security approved by the department.

(c)(1) The department may foreclose on property, or the alternative form of security approved by the department, that is subject to a security interest pursuant to this article.

(2) Any funds received through a foreclosure or through the enforcement of any other security interest pursuant to this chapter shall be deposited in the account.

Comment. Section 70540 continues former Section 25395.26(a) without substantive change. See Sections 68050 (“department”), 68105 (“release”), 68140 (“response”), 70205 (“account”), 70235 (“hazardous material”), 70260 (“property”).

§ 70545. Liability of security interest holder

70545. (a) The state, the secretary, the department, and the account are not liable under any state or local statute, regulation, or ordinance because the department holds the security interest identified in Section 70540 or because the department acquired property through foreclosure or its equivalent in satisfaction of a loan issued pursuant to this chapter.

(b) Chapter 6.96 (commencing with Section 25548) of Division 20 does not apply to the state, the secretary, the department, the agency, or the account with regard to a loan secured pursuant to Section 70540.

Comment. Section 70545 continues former Section 25395.26(b) and (c) without substantive change.

See Sections 68040 (“agency”), 68050 (“department”), 68150 (“secretary”), 70205 (“account”), 70260 (“property”).

1 **§ 70550. Application of other laws**

2 70550. (a) Notwithstanding any other provision of law, no approval or review
3 shall be required from the Department of General Services to obtain any security
4 interest or exercise any rights, including, but not limited to, foreclosure, under any
5 security interest or other agreement made pursuant to this chapter.

6 (b) The acquisition of a property pursuant to this chapter through foreclosure or
7 its equivalent is not subject to Article 2 (commencing with Section 14660) of
8 Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code.

9 (c) The department shall promptly dispose of any property acquired through the
10 exercise of any security interest pursuant to this chapter at the property's current
11 market value and the disposal of this property is exempt from Section 11011.1 of
12 the Government Code and Article 8 (commencing with Section 54220) of Chapter
13 5 of Part 1 of Division 2 of Title 5 of the Government Code.

14 **Comment.** Section 70550 continues former Section 25395.26(d) without substantive change.
15 See Section 68050 ("department"), 70260 ("property").

16 Article 11. Administering Agency

17 **Note.** This article contains provisions that would recodify Section 25395.28. Section 25395.28 is
18 quite lengthy and would be recodified as several sections. While this appears to be an improvement,
19 the language of existing Section 25395.28 is difficult to follow. It seems that this provision would
20 benefit from further restatement for clarity. **The Commission welcomes comment on whether**
21 **Section 25395.28 is sufficiently clear in practice.**

22 **§ 70570. Administering agency for leaking underground fuel tank property**

23 70570. (a) Except as provided in subdivision (b) and Section 70575, upon the
24 request of a regional board or the state board, the administering agency for any site
25 that is the subject of a loan approved under Article 7 (commencing with Section
26 70480) shall be a regional board, the state board, or a local oversight program
27 agency under contract with the state board in accordance with Chapter 6.7
28 (commencing with Section 25280) of Division 20 and Chapter 6.75 (commencing
29 with Section 25299.10) of Division 20, if the property is subject to a release from a
30 leaking underground fuel tank and the release from the leaking underground fuel
31 tank is the principal threat at that property, as determined by the regional board, the
32 state board, and the department.

33 (b) If the site specified in subdivision (a) was not subject to oversight by a local
34 oversight program agency prior to the date the loan application was submitted to the
35 department pursuant to Article 6 (commencing with Section 70450), the regional
36 board shall serve as the administering agency.

37 (c) Any response action for a property subject to this section for a leaking
38 underground fuel tank shall be carried out under Chapter 6.65 (commencing with
39 Section 25260), Chapter 6.7 (commencing with Section 25280), and Chapter 6.75
40 (commencing with Section 25299.10) of Division 20.

41 **Comment.** Section 70570 continues former Section 25395.28(a) without substantive change.

1 See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68140
2 (“response”), 68155 (“site”), 70245 (“leaking underground fuel tank”), 70260 (“property”), 70270
3 (“state board”).

4 **§ 70575. Administering agency for site subject to Water Code orders or agreements**

5 70575. (a) Upon the request of a regional board, the regional board shall be the
6 administering agency for a property specified in Section 70570, if the site is subject
7 to one or more of the following orders or agreements under Division 7 (commencing
8 with Section 13000) of the Water Code prior to the date the loan application was
9 submitted to the department pursuant to Article 6 (commencing with Section
10 70450):

11 (1) A cleanup and abatement order.

12 (2) Another cleanup order issued by a regional board.

13 (3) A written voluntary agreement with a regional board.

14 (b) Any response action for a site subject to this section shall be carried out
15 pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20.

16 **Comment.** Section 70575 continues former Section 25395.28(b) without substantive change.

17 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68155
18 (“site”), 70215 (“cleanup and abatement order”), 70260 (“property”).

19 **§ 70580. Request for department to be administering agency**

20 70580. Notwithstanding Sections 70570 and 70575, the regional board and the
21 state board, in consultation with the department, may request the department to be
22 the administering agency for a property subject to this article.

23 **Comment.** Section 70580 continues former Section 25395.28(c) without substantive change.

24 See Sections 68050 (“department”), 68100 (“regional board”), 70260 (“property”), 70270 (“state
25 board”).

26 **§ 70585. Administering agency for site subject to multiple agreements or orders**

27 70585. Notwithstanding Section 70575, if a regional board has issued a cleanup
28 order or entered into a written voluntary agreement under Division 7 (commencing
29 with Section 13000) of the Water Code for a site and the department has issued an
30 order or entered into an enforceable agreement under Chapter 6.5 (commencing
31 with Section 25100) of Division 20 or this part, the regional board and the
32 department shall consult and determine which agency shall be the administering
33 agency for the site under this chapter.

34 **Comment.** Section 70585 continues former Section 25395.28(d) without substantive change.

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

36 **§ 70590. Notice of loan application**

37 70590. The department shall provide a written notice of the receipt of a loan
38 application under Article 6 (commencing with Section 70450), including the name
39 and address of the loan applicant and the location of the property, to both of the
40 following:

1 (a) A regional board for any property within that regional board’s jurisdiction.

2 (b) The state board for any property that contains a leaking underground fuel tank.

3 **Comment.** Section 70590 continues former Section 25395.28(e) without substantive change.

4 See Sections 68050 (“department”), 68100 (“regional board”), 70245 (“leaking underground fuel
5 tank”), 70260 (“property”), 70270 (“state board”).

6 **§ 70595. Election to oversee response action**

7 70595. The regional board or state board shall respond with a written notice to the
8 department within 20 working days after receipt of the notice or information
9 provided pursuant to Section 70590 indicating whether the regional board or a local
10 oversight program agency under contract with the state board will oversee the
11 response action pursuant to this article. If the regional board or state board does not
12 provide this notice within that time period, the regional board or state board shall be
13 deemed to have elected not to oversee the response action.

14 **Comment.** Section 70595 continues former Section 25395.28(f) without substantive change.

15 See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 70270 (“state
16 board”).

17 **§ 70600. Reimbursement for oversight costs**

18 70600. (a) If a regional board or a local oversight program agency under contract
19 with the state board oversees a response action pursuant to this article, the
20 department shall reimburse the regional board or state board from the account for
21 oversight costs, if all of the following occur:

22 (1) The department determines, pursuant to paragraph (2) of subdivision (b) of
23 Section 70520, that there are sufficient funds in the account.

24 (2) The department receives the report required upon completion of the response
25 action under Section 70605.

26 (3) The regional board or a local oversight program agency under contract with
27 the state board, as appropriate, certifies that it is not eligible to be reimbursed for
28 oversight costs from any other fund or account, including, but not limited to, the
29 Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75 (commencing
30 with Section 25299.10) of Division 20.

31 (b) If the department determines pursuant to paragraph (2) of subdivision (b) of
32 Section 70520 that the account has insufficient funds, the regional board or state
33 board shall recover its oversight costs from the loan recipient, and the department
34 shall not be liable for these oversight costs.

35 (c) If a regional board or a local oversight program agency under contract with
36 the state board oversees a response action pursuant to this article, the recipient of a
37 loan approved pursuant to Article 7 (commencing with Section 70480) shall enter
38 into an agreement with the regional board or the state board under paragraph (1) of
39 subdivision (b) of Section 70520 for the oversight and approval of the response
40 action at the site, prior to the release of loan funds by the department. The agreement
41 shall meet the requirements specified in the regulations adopted pursuant to Article
42 12 (commencing with Section 70620).

Comment. Section 70600 continues former Section 25395.28(g) and (h) without substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68105 (“release”), 68140 (“response”), 68155 (“site”), 70205 (“account”), 70270 (“state board”).

§ 70605. Reporting and notification of completion

70605. If the regional board or a local oversight program agency under contract with the state board serves as the administering agency pursuant to this article, the regional board or the state board shall do both of the following:

(a) Annually provide information to the department about the status of the response action, including any response action decision document that includes limitations on land use or other institutional controls.

(b) Notify the department upon completion of the response action.

Comment. Section 70605 continues former Section 25395.28(i) without substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 70270 (“state board”).

§ 70610. Application of article

70610. This article does not apply to any site subject to Chapter 1 (commencing with Section 17210) of Part 10.5 of Division 1 of Title 1 of the Education Code.

Comment. Section 70610 continues former Section 25395.28(j) without substantive change.

See Section 68155 (“site”).

Article 12. Emergency Regulations

§ 70620. Authority to adopt emergency regulations

70620. (a) The department may adopt regulations to implement this chapter as emergency regulations. The Office of Administrative Law shall consider the situation addressed by those regulations to be an emergency for purposes of Section 11349.6 of the Government Code.

(b) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 70620 restates former Section 25395.29(a) without substantive change.

See Sections 68050 (“department”), 68150 (“secretary”).

Notes. (1) Section 25395.29(a) requires the Office of Administrative Law to “consider [] regulations [adopted to implement this chapter] to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code.” Government Code Section 11349.6 used to include this language as a standard for enactment of emergency regulations. See former Government Code Section 11349.6, as amended by 2000 Cal. Stat. ch. 1060, § 34.

Thus, the purpose of the quoted language in Section 25395.29(a) was essentially to treat regulations adopted under this chapter as emergency regulations under Government Code Section 11349.6.

Section 11349.6 was revised to replace this standard for the enactment of emergency regulations with a requirement that the situation addressed by the regulation be an emergency. The standard for what constitutes an emergency is now found in Government Code Section 11342.545, which defines “emergency” as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.”

Proposed Section 70620(a) has been restated to conform to these changes. This change is intended to continue the legislative policy that regulations adopted pursuant to this provision should be treated as emergency regulations. **The Commission requests comment on this proposed update.**

(2) Section 25395.29(a) also provides that, “[n]otwithstanding the 120-day limitation specified in” Government Code Section 11346.1(e), a 180-day period applies for these regulations. The cross-referenced Government Code provision currently provides for a 180-day limitation period. For this reason, the reference to a 120-day period is obsolete. In proposed Section 20620(b), the language would be restated to refer to “the time period specified in” Government Code Section 11346.1, instead of “the 120-day limitation.”

Because the time periods specified in Government Code Section 11346.1(e) and Section 25395.29 are now the same (i.e., 180 days), this provision may be surplus. However, if Government Code Section 11346.1(e) were to be amended in the future, to provide a different period of effect for emergency regulations, this provision would once again have its originally intended effect of providing a 180-day period for emergency regulations adopted under Section 25395.29, notwithstanding the general rule for emergency regulations. For that reason, the Commission has retained the provision in this draft. **The Commission welcomes comment on the proposed treatment of this provision.**

§ 70625. Authority to adopt emergency regulations for Chapter 548 of the Statutes of 2001

70625. (a) The department may adopt emergency regulations to implement the changes made by Chapter 548 of the Statutes of 2001. The Office of Administrative Law shall consider the situation addressed by those regulations an emergency for purposes of Section 11349.6 of the Government Code.

(b) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this section shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 70625 restates former Section 25395.29(b) without substantive change.

See Sections 68050 (“department”), 68150 (“secretary”).

Notes. (1) Proposed Section 70625 would recodify Section 25395.29(b), which appears to be largely a transitional provision, authorizing emergency regulations to address specified legislative changes. Nearly 20 years have passed since the relevant legislation was enacted, so it seems likely that the need for emergency regulations has ended. Moreover, the authority provided by this proposed section appears to be largely redundant. Proposed Section 70620 would appear to provide authority for emergency regulations with respect to nearly all of the changes in the relevant legislation. See 2001 Cal. Stat. ch. 548 (only Section 25264 appears to be outside of the scope of proposed Section 70620). **The Commission welcomes comment on whether this provision has continuing effect in practice.**

(2) If this proposed section has continuing effect, **the Commission invites comment on the following issues:**

- Section 25395.29(b) provides authority to adopt emergency regulations to implement “changes made by the act of the 2001-02 Regular Session of the Legislature that amends this section.” This reference would be updated to cite to the statute chapter for the relevant legislation (i.e., 2001 Cal. Stat. ch. 548). **Absent comment, this change will be presumed correct.**

- Section 25395.29(b) contains an out-of-date reference to the standard for emergency regulations. This issue is more fully described in Note #1 to proposed Section 70620. The language of proposed Section 70625 would be restated to better coordinate with the current language of Government Code Section 11349.6.

- Section 25395.29(b) refers to a 120-day limit for emergency regulations. As discussed in Note #2 to Section 70620, that reference is obsolete. In proposed Section 70625, the obsolete 120-day language would be replaced with a reference to the “time period specified in” Government Code Section 11346.1(e).

CHAPTER 11. CALIFORNIA FINANCIAL ASSURANCE AND INSURANCE FOR REDEVELOPMENT PROGRAM

Article 1. Definitions

Note. Proposed Article 1 would restate Section 25395.40. Two definitions in the section would not be continued:

(1) Section 25395.40(f) defines the acronym “FAIR” as “the Financial Assurance and Insurance for Redevelopment Program...” However, the acronym is not used elsewhere in the article. In the absence of any uses of the defined term, this definition appears to be unnecessary.

(2) Section 25395.40(m) defines “unforeseen and unexpected response action costs.” However, this term is not used elsewhere in the article. In the absence of any uses of the defined term, this definition appears to be unnecessary.

The Commission welcomes comment on whether either of these definitions should be continued in the proposed recodification.

§ 70680. Application of definitions

70680. For purposes of this chapter, the definitions contained in this article shall apply.

Comment. Section 70660 restates the initial clause of former Section 25395.40 without substantive change.

§ 70685. “CLEAN Program”

70685. “CLEAN Program” means the Cleanup Loans and Environmental Assistance to Neighborhoods Program established pursuant to Section 70450.

Comment. Section 70685 continues former Section 25395.40(a) without substantive change.

Note. Section 25395.40(a) refers to a loans and assistance program established pursuant to Section 25395.22. Section 25395.22 would be recodified as several different provisions. The cross-reference in question would be updated to refer only to proposed Section 70450, which would continue the part of Section 25395.22 that provides for the establishment of the loans and assistance program. **Absent comment, this proposed cross-reference update will be presumed correct.**

1 **§ 70690. “Cost overrun insurance”**

2 70690. (a) “Cost overrun insurance” means insurance that covers some, or all of
3 the response costs caused by a known pollution condition at a site, that exceed the
4 estimated response action costs that have been accepted and approved by the insurer,
5 based on information from the department and other relevant sources at the time the
6 insurance is first obtained.

7 (b) Cost overrun insurance shall, at a minimum, provide for all of the following:

8 (1) The response costs in excess of the estimated response action costs that have
9 been accepted and approved by the insurer.

10 (2) A policy period of sufficient length to cover the duration of the response
11 activities, not including post-completion operation and maintenance.

12 (3) A self-insured retention amount not to exceed 25 percent of the estimated
13 response action costs that have been accepted and approved by the insurer.

14 **Comment.** Section 70690 continues former Section 25395.40(b) without substantive change.

15 See Sections 68050 (“department”), 68140 (“response”), 68155 (“site”), 70705 (“estimated
16 response action costs”), 70720 (“pollution condition”), 70735 (“self-insured retention amount”).

17 **§ 70695. “Eligible property”**

18 70695. “Eligible property” has the same meaning as defined in subdivision (a) of
19 Section 70230.

20 **Comment.** Section 70695 continues former Section 25395.40(c) without substantive change.

21 **§ 70700. “Environmental insurance”**

22 70700. “Environmental insurance” means insurance intended to limit the liability
23 associated with the discovery and cleanup of a hazardous material release, including
24 secured creditor insurance, pollution liability insurance, and cost overrun insurance,
25 and any other insurance product that the secretary selects to be provided pursuant to
26 Article 2 (commencing with Section 70750).

27 **Comment.** Section 70700 restates former Section 25395.40(d) without substantive change. The
28 phrase “hazardous materials release” has been singularized. This is a nonsubstantive change. See
29 Section 13.

30 See Sections 68105 (“release”), 68150 (“secretary”), 70690 (“cost overrun insurance”), 70710
31 (“hazardous material”), 70725 (“pollution liability insurance”), 70730 (“secured creditor
32 insurance”).

33 **§ 70705. “Estimated response action costs”**

34 70705. “Estimated response action costs” means the projected costs of taking a
35 response action in implementing an approved removal action work plan or remedial
36 action plan prepared to address a pollution condition at a site.

37 **Comment.** Section 70705 continues former Section 25395.40(e) without substantive change.

38 See Sections 68125 (“remedy”), 68130 (“removal action work plan”), 68140 (“response”),
39 68155 (“site”), 70720 (“pollution condition”).

1 **§ 70710. “Hazardous material”**

2 70710. “Hazardous material” means a substance or waste that, because of its
3 physical, chemical, or other characteristics, may pose a risk of endangering human
4 health or safety or of degrading the environment. “Hazardous material” includes,
5 but is not limited to, all of the following:

6 (a) A hazardous substance, as defined in Section 25281 or subdivision (a) of
7 Section 68075, including the substances specified in subdivision (b) of Section
8 68075.

9 (b) A hazardous waste, as defined in Section 25117.

10 (c) A waste, as defined in Section 101075, or as defined in Section 13050 of the
11 Water Code.

12 **Comment.** Section 70710 continues former Section 25395.40(g) without substantive change.
13 See Section 68075 (“hazardous substance”).

14 **Notes. (1)** Section 25395.40(g) cross-refers to several provisions to define the term “hazardous
15 material.” Among other things, it refers to provisions that define the term “hazardous substance”
16 and list exclusions from that term. As described more fully in Note #1 to proposed Section 70235,
17 the phrasing of these references is ambiguous. In light of that issue, it may be helpful to delete the
18 last clause of proposed Section 70710(a) and instead include a proposed Section 70710(d): “(d)
19 Substances specified in subdivision (b) of Section 68075.” **The Commission welcomes comment**
20 **on this issue.**

21 **(2)** The definition of “hazardous material” in Section 25395.40(g) specifically includes “a waste”
22 as that term is defined in two cited sections. As described in Note #2 to proposed Section 70235,
23 the definitions of “waste” are quite broad. It is unclear whether this provision was intended to deem
24 otherwise non-hazardous “waste” as a “hazardous material” for the purpose of this law. **The**
25 **Commission welcomes comment on how this provision is understood in practice.**

26 **§ 70715. “Insurance company”**

27 70715. “Insurance company” means an insurance company authorized in
28 California to offer environmental insurance and that has an A.M. Best Financial
29 Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC
30 X or larger.

31 **Comment.** Section 70715 continues former Section 25395.40(h) without substantive change.
32 See Section 70700 (“environmental insurance”).

33 **§ 70720. “Pollution condition”**

34 70720. “Pollution condition” means a release or threatened release of a hazardous
35 material and any resulting impact upon the environment.

36 **Comment.** Section 70720 continues former Section 25395.40(i) without substantive change.
37 See Section 68105 (“release”), 70710 (“hazardous material”).

38 **§ 70725. “Pollution liability insurance”**

39 70725. (a) “Pollution liability insurance” means insurance that covers damages
40 caused by a pollution condition from, or at, a site that is preexisting and unknown,
41 or was otherwise unknown at the time the insurance is first obtained, and, at a
42 minimum, provides for all of the following:

(1) A minimum policy period of five years after the completion of remediation activities, not including post-completion operation and maintenance.

(2) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the damages, so long as there already exists a reasonably quantifiable legal obligation to pay those damages.

(b) For purposes of this section, “damages” means either of the following:

(1) Property damage incurred at a site as an unforeseen and unexpected result of a pollution condition.

(2) Bodily injury, property damage, and response action costs sustained or incurred by a third party as a result of a pollution condition at a site.

(c) For purposes of this section, “damages” includes the property damage, bodily injury, and response costs specified in subdivision (b), irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the property damage, bodily injury, or response costs, so long as there exists a reasonably quantifiable legal obligation to pay for those damages.

Comment. Section 70725 continues former Section 25395.40(j) without substantive change. See Sections 68140 (“response”), 68155 (“site”), 70720 (“pollution condition”).

§ 70730. “Secured creditor insurance”

70730. “Secured creditor insurance” means insurance made available to an insured that covers all of the following:

(a) Response costs at a site incurred by the lender after a default by the borrower or foreclosure by the lender that occurs as a result of a pollution condition at the site, and the costs are reasonably necessary to remediate the site for its intended use so that it can be sold.

(b) Damages or other liability for a pollution condition at a site incurred by a lender as a result of that lender exercising a foreclosure option.

(c) Loss or damages incurred by a lender as a result of a borrower’s inability to satisfy a loan obligation or due to the existence of an unforeseen and unexpected pollution condition.

(d) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the loss, damages, or liability, so long as there exists a reasonably quantifiable legal obligation to pay damages.

Comment. Section 70730 continues former Section 25395.40(k) without substantive change. See Sections 68140 (“response”), 68155 (“site”), 70720 (“pollution condition”).

Note. Section 25395.40(k)(1), which would be continued as proposed Section 70730(a), would seem to benefit from restatement for clarity. **The Commission welcomes comment on whether Section 25395.40(k)(1) is sufficiently clear in practice.**

1 **§ 70735. “Self-insured retention amount”**

2 70735. “Self-insured retention amount” means response action costs in excess of
3 the estimated response action costs that have been accepted and approved by the
4 insurer that the insured is obligated to pay before being eligible to make a claim of
5 an insurer under a cost overrun insurance policy.

6 **Comment.** Section 70735 continues former Section 25395.40(l) without substantive change.
7 See Sections 68140 (“response”), 70690 (“cost overrun insurance”), 70705 (“estimated response
8 action costs”).

9 Article 2. Environmental Insurance Products

10 **§ 70750. Request for proposal**

11 70750. (a) The secretary shall solicit proposals for a package of environmental
12 insurance products from insurance companies through a competitive bidding
13 process.

14 (b)(1) The request for proposal prepared by the secretary shall identify the
15 objectives of this chapter and the specific types and coverage limits of the insurance
16 products desired, including endorsements and exclusions.

17 (2) The request for proposal shall require that the proposal allow a purchaser the
18 opportunity to pay for additional coverage without losing the lower transaction costs
19 structure of the prenegotiated policy.

20 (c) The secretary shall hold at least one public workshop in both the northern and
21 the southern part of the state to present and solicit comments on the request for
22 proposal prior to receiving any proposals.

23 **Comment.** Section 70750 continues former Section 25395.41(a) without substantive change.
24 See Sections 68150 (“secretary”), 70700 (“environmental insurance”).

25 **§ 70755. Factors for evaluation of proposals**

26 70755. The secretary shall evaluate the extent to which each proposal submitted
27 pursuant to Section 70750 meets the objectives of the request for proposal and shall
28 also evaluate each proposal and interested party using all of the following factors:

29 (a) Product pricing.

30 (b) Claims history.

31 (c) Underwriting history.

32 (d) Company financial strength and size.

33 (e) Scope of policy coverages, including endorsements and exclusions.

34 (f) Marketing and distribution of the insurance products.

35 (g) Any other factor that the secretary determines will affect the ability of the
36 selected insurance company to meet the requirements of this chapter and provide
37 the environmental insurance products in the most effective and efficient manner and
38 at the least cost to the state and to persons seeking that insurance.

39 **Comment.** Section 70755 continues former Section 25395.41(b)(1) without substantive change.
40 See Sections 68085 (“person”), 68150 (“secretary”), 70700 (“environmental insurance”), 70715
41 (“insurance company”).

1 **§ 70760. Selection of state-designated provider**

2 70760. (a) The secretary shall select one or more insurance companies that have
3 submitted a proposal pursuant to Section 70750 to be the exclusive state-designated
4 provider of environmental insurance under this chapter for a period of three years
5 from the date of selection.

6 (b) The secretary shall select a company that, in the secretary’s determination, has
7 submitted a proposal that best meets the requirements of this chapter and the
8 objectives stated in the request for proposal at the best possible price.

9 **Comment.** Section 70760 continues the first two sentences of former Section 25395.41(b)(2)
10 without substantive change.

11 See Sections 68150 (“secretary”), 70700 (“environmental insurance”).

12 **§ 70765. Bidding every three years**

13 70765. Every three years, the secretary shall repeat the competitive bidding
14 process specified in this article.

15 **Comment.** Section 70765 continues the third sentence of former Section 25395.41(b)(2) without
16 substantive change.

17 See Section 68150 (“secretary”).

18 **§ 70770. Offer of insurance products**

19 70770. (a) An insurance company selected to provide prenegotiated
20 environmental insurance products pursuant to Section 70760 shall offer this
21 prenegotiated package of insurance products to any interested recipient of a loan
22 under the CLEAN Program.

23 (b) The insurance company shall also offer the environmental insurance products
24 made available under this chapter to any other person who conducts a response
25 action in the state.

26 **Comment.** Section 70770 continues former Section 25395.41(c) without substantive change.

27 See Sections 68085 (“person”), 68140 (“response”), 70685 (“CLEAN Program”), 70700
28 (“environmental insurance”), 70715 (“insurance company”).

29 **Note.** Section 25395.41(c) refers to an insurance company selected to offer products pursuant to
30 “subdivision (b).” Subdivision (b) of Section 25395.41 would be recodified as multiple sections
31 (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section
32 70760 (relating to the selection of a state-designated insurance provider) seems relevant to Section
33 25395.41(c)’s reference to “subdivision (b).” For this reason, the reference would be updated to
34 refer to proposed Section 70760. **Absent comment, this proposed cross-reference update will**
35 **be presumed correct.**

36 **§ 70775. Consultation with state agencies and interested parties**

37 70775. The secretary shall implement this article in consultation with
38 representatives of other appropriate state agencies, including the Business,
39 Transportation and Housing Agency, the Office of Planning and Research, the
40 Pollution Control Financing Authority, the Department of Insurance, the state board,
41 the department, and with other interested parties, including developers, lenders,
42 insurers, and representatives from environmental organizations.

Note. Proposed Section 70775 identifies agencies that the secretary must consult in implementing this article, including the “state board.” “State board” is used here without an applicable definition. Existing Chapter 6.8 contains a few, limited-application definitions of “state board,” which define the term to mean the “State Water Resources Control Board.” See, e.g., Section 25356.1, 25395.20(a)(18). It seems likely that the same definition was intended here. **The Commission welcomes comment on this issue.**

70780. The secretary shall implement this article in a manner that is consistent with the requirements for state procurement of services set forth in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

See Section 68150 (“secretary”).

70800. The secretary shall expend the funds from the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 70350 that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products offered by the insurance company selected pursuant to Section 70760, in accordance with Section 70805.

See Sections 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance company”).

Notes. (1) Section 25395.42(a) refers to the Cleanup Loans and Environmental Assistance to Neighborhoods account established pursuant to Section 25395.20. Section 25395.20 would be recodified as multiple provisions (which would be located in proposed Articles 1 and 3 of Chapter 10). The cross-reference in question would be updated to refer only to proposed Section 70350, which contains language establishing the account. **Absent comment, this proposed cross-reference update will be presumed correct.**

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1 **§ 70805. Amount of subsidies**

2 70805. The secretary shall provide the following subsidies, in accordance with the
3 application process specified in this article, from the funds made available pursuant
4 to Section 70800:

5 (a) Up to 50 percent of the cost of the premiums for the environmental insurance
6 products provided pursuant to Section 70770.

7 (b)(1) Up to 80 percent of the self-insured retention amount of the cost overrun
8 insurance provided pursuant to Section 70770, up to a maximum of five hundred
9 thousand dollars (\$500,000).

10 (2) The secretary may expend the funds available to pay a portion of the self-
11 insured retention amount of the cost overrun insurance provided pursuant to
12 [**subdivision (b) of Section 25395.41**] only under all of the following conditions:

13 (A) The insured demonstrates that it exercised reasonably prudent business
14 judgment in insuring the cost overrun, consistent with an attempt to minimize the
15 incurred costs, and incurred the costs through no fault of its own.

16 (B) The insured pays, at a minimum, the first 20 percent of the self-insured
17 retention amount.

18 (C) The secretary determines that the amount of the payment is in the best interests
19 of the state, taking into account the environmental and economic benefits of the
20 specified project, as compared to the benefit of conserving funds for assistance at
21 other sites.

22 **Comment.** Section 70805 continues former Section 25395.42(b) without substantive change.

23 See Sections 68150 (“secretary”), 68155 (“site”), 70690 (“cost overrun insurance”), 70700
24 (“environmental insurance”), 70735 (“self-insured retention amount”).

25 **Notes. (1)** Section 25395.42(b) refers to the application process for subsidies specified in Section
26 25395.43. Proposed Article 3 of Chapter 11 of Part 2 of new Division 45 would contain several
27 provisions recodifying Section 25395.43, as well as one other section, which would recodify
28 Section 25395.42(a). Section 25395.42(a) does not relate to applications for subsidies. Rather than
29 referring to each of the proposed sections that would recodify Section 25395.43, the cross-reference
30 to Section 25395.43 in Section 25395.42(b) would be updated to refer to “this article.” See the
31 introductory clause of proposed Section 70805 (shown above). This is a nonsubstantive change.

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

33 **(2)** Section 25395.42(b) refers to insurance “provided pursuant to subdivision (b) of Section
34 25395.41.” Section 25395.41(b) would be recodified as multiple provisions (proposed Sections
35 70755, 70760, 70765). It is not clear how the cross-reference to Section 25395.41 in Section
36 25395.42(b) should be updated, as Section 25395.41(b) does not seem to relate to the providing of
37 insurance products. Rather it appears that this cross-reference should instead point to subdivision
38 (c) of Section 25395.41, which is twice cross-referenced in this proposed section as a provision
39 pursuant to which insurance products are provided. **The Commission welcomes comment on how
40 this cross-reference should be updated.**

41 **§ 70810. Eligibility for subsidies**

42 70810. (a) Any person who is conducting a response action at an eligible property
43 under the oversight of the department or a regional board and who purchases the
44 prenegotiated environmental insurance products from the insurance company

selected pursuant to Section 70760 may apply to the secretary for the subsidies that are made available pursuant to this article.

(b) To the extent that the funds that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products provided pursuant to this chapter are available, an applicant is eligible for a subsidy in the order in which the applicant's application is received.

Comment. Section 70810 continues former Section 25395.43(a) without substantive change. See Sections 68050 ("department"), 68085 ("person"), 68100 ("regional board"), 68140 ("response"), 68150 ("secretary"), 70695 ("eligible property"), 70700 ("environmental insurance"), 70715 ("insurance company").

Notes. (1) Section 25395.43(a) refers to an insurance company selected to offer products pursuant to "subdivision (b) of Section 25395.41." Section 25395.41(b) would be recodified as multiple sections (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section 70760, which relates to the selection of a state-designated insurance provider, appears to be relevant to the reference. For this reason, the reference would be updated to refer to proposed Section 70760. **Absent comment, this proposed cross-reference update will be presumed correct.**

(2) Section 25395.43(a) also refers to subsidies available "pursuant to Section 25395.42." This article contains multiple proposed provisions that recodify Section 25395.42 (proposed Sections 70800 and 70805), as well as proposed sections that recodify the remainder of Section 25395.43. Rather than referring to each of the proposed sections that recodify Section 25395.42, the cross-reference would be updated to refer to "this article." This is a nonsubstantive change. **Absent comment, this proposed cross-reference update will be presumed correct.**

§ 70815. Information to be provided by applicant

70815. An applicant for a subsidy made available pursuant to this article shall provide the secretary with all information necessary to demonstrate to the secretary that the applicant is eligible to receive a subsidy.

Comment. Section 70815 continues former Section 25395.43(b) without substantive change. See Section 68150 ("secretary").

Note. Section 25395.43(b) refers to subsidies available "pursuant to Section 25395.42." This article contains multiple proposed provisions that recodify 25395.42 (proposed Sections 70800 and 70805), as well as proposed sections that recodify the remainder of Section 25395.43. Rather than referring only to the proposed sections that recodify Section 25395.42, the cross-reference would be updated to refer to "this article." This is a nonsubstantive change. **Absent comment, this proposed cross-reference update will be presumed correct.**

§ 70820. No obligation to provide subsidy funds

70820. The state and the Cleanup Loans and Environmental Assistance to Neighborhoods Account do not have any obligation to provide funds to any person that applies for a subsidy pursuant to this chapter.

Comment. Section 70820 continues the first sentence of former Section 25395.43(c) without substantive change.

See Section 68085 ("person").

§ 70825. Subsidy availability limited to reserved funds

70825. The secretary shall provide an applicant with a subsidy only to the extent that money in the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 70350 has been reserved in the annual Budget Act for the purpose of providing environmental insurance and the money that has been reserved for this purpose is available.

Comment. Section 70825 continues the second sentence of former Section 25395.43(c) without substantive change.

See Sections 68050 (“department”), 68100 (“regional board”), 68140 (“response”), 68150 (“secretary”), 70700 (“environmental insurance”).

Note. Section 25395.43(c) refers to the Cleanup Loans and Environmental Assistance to Neighborhoods account established pursuant to Section 25395.20. Section 25395.20 would be recodified as multiple provisions (which would be located in proposed Articles 1 and 3 of Chapter 10). The cross-reference in question would be updated to refer only to proposed Section 70350, which contains language establishing the account. **Absent comment, this proposed cross-reference update will be presumed correct.**

Article 4. Liability

§ 70840. Immunity from liability

70840. Notwithstanding any other provision of law, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or their employees, shall not be liable to any person for any of the following:

(a) Any acts or omissions by the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or their employees, in implementing this chapter.

(b) Any acts or omissions by an insurance company selected to provide prenegotiated environmental insurance products pursuant to Section 70760.

(c) Any acts or omissions by any person that purchases a prenegotiated environmental insurance product made available pursuant to this chapter.

Comment. Section 70840 restates former Section 25395.44(a) without substantive change.

See Sections 68040 (“agency”), 68085 (“person”), 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance company”).

Notes. (1) Section 25395.44(a) would be restated to replace the phrase “employees thereof” with “their employees.”

(2) Section 25395.44(a) refers to an insurance company selected to offer products pursuant to “subdivision (b) of Section 25395.41.” Section 25395.41(b) would be recodified as multiple sections (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed Section 70760 (relating to the selection of a state-designated insurance provider) appears to be relevant to the reference in question. For this reason, the reference would be updated to refer to proposed Section 70760. See proposed Section 70840(b). **Absent comment, this proposed cross-reference update will be presumed correct.**

1 **§ 70845. Immunity includes specified acts**

2 70845. The immunity from liability set forth in Section 70840 specifically
3 includes, but is not limited to, immunity if an insurance company selected to provide
4 prenegotiated environmental insurance products pursuant to Section 70760 does any
5 of the following:

- 6 (a) Cancels, rescinds, or otherwise terminates its contract with the secretary.
7 (b) Fails, for any reason, to compensate an insured for a loss covered by a policy.
8 (c) Delays payment to an insured, or otherwise breaches a duty or covenant
9 imposed by law or required by a policy or contract with an insured that purchased
10 an environmental insurance product pursuant to this chapter.

11 **Comment.** Section 70845 continues former Section 25395.44(b) without substantive change.
12 See Sections 68150 (“secretary”), 70700 (“environmental insurance”), 70715 (“insurance
13 company”).

14 **Note.** Section 25395.44(b) refers to an insurance company selected to offer products pursuant to
15 “subdivision (b) of Section 25395.41.” Section 25395.41(b) would be recodified as multiple
16 sections (proposed Sections 70755, 70760, and 70765). Of those proposed sections, only proposed
17 Section 70760 (relating to the selection of a state-designated insurance provider) appears to be
18 relevant to the reference in question. For this reason, the reference would be updated to refer to
19 proposed Section 70760. See the introductory clause of proposed Section 70845. **Absent comment,**
20 **this proposed cross-reference update will be presumed correct.**

21 **§ 70850. Immunity in addition to other immunities and defenses**

22 70850. The immunity set forth in this article is in addition to other immunities and
23 defenses otherwise available to the agency, the secretary, the state, their respective
24 employees and agents, and any of the state’s political subdivisions and employees
25 thereof.

26 **Comment.** Section 70850 continues former Section 25395.44(c) without substantive change.
27 See Sections 68040 (“agency”), 68150 (“secretary”).

28 **§ 70855. Application of Insurance Code to acts under this chapter**

29 70855. In implementing this chapter, the agency, the secretary, the state, their
30 respective employees and agents, and any of the state’s other political subdivisions
31 and employees thereof, may not:

32 (a) Be construed to be an insurer, as defined in Section 23 of the Insurance Code,
33 an insurance agent, as defined in Sections 31 and 1621 of the Insurance Code, an
34 insurance solicitor, as defined in Sections 34 and 1624 of the Insurance Code, or an
35 insurance broker, as defined in Sections 33 and 1623 of the Insurance Code.

36 (b) Be construed to be transacting insurance, as defined in Section 35 of the
37 Insurance Code.

38 (c) Be required to obtain a license or other authorization pursuant to any provision
39 of the Insurance Code.

40 **Comment.** Section 70855 continues former Section 25395.44(d) without substantive change.
41 See Sections 68040 (“agency”), 68150 (“secretary”).

Article 5. Regulations

§ 70870. Adoption of regulations

70870. (a) The agency may adopt regulations to implement this chapter pursuant to this section.

(b)(1) The regulations adopted to implement this chapter shall be deemed to be emergency regulations for purposes of Section 11346.1 of the Government Code.

(2) Notwithstanding the time period specified in subdivision (e) of Section 11346.1 of the Government Code, those emergency regulations may remain in effect for up to 180 days.

Comment. Section 70870 continues former Section 25395.45 without substantive change. See Section 68040 (“agency”).

Note. Section 25395.45 provides that, “[n]otwithstanding the 120-day limit specified in” Government Code Section 11346.1(e), a 180-day period applies for these regulations. The cross-referenced Government Code provision currently provides for a 180-day limitation period. For this reason, the reference to a 120-day period is obsolete. Proposed Section 70870(b)(2) would thus refer to the “time period specified in” Government Code Section 11346.1, instead of the “120-day limit.”

Because the time periods specified in Government Code Section 11346.1(e) and Section 25395.45 are now the same (i.e., 180 days), this provision may be surplus. However, if Government Code Section 11346.1(e) were to be amended in the future, to provide a different period of effect for emergency regulations, this provision would once again have its originally intended effect of providing a 180-day period for emergency regulations adopted under Section 25395.45, notwithstanding the general rule for emergency regulations. For this reason, the Commission has retained the provision in this draft. **The Commission welcomes comment on the proposed treatment of this provision.**

CHAPTER 12. COMPENSATION

Article 1. Financial Provisions

§ 70900. Funds for payment of claims

70900. (a) Claims approved by the Department of General Services pursuant to this chapter shall be paid from the state account.

(b) The Legislature may appropriate up to two million dollars (\$2,000,000) annually from the state account to be used by the Department of General Services for the payment of awards pursuant to this chapter.

(c) Claims against or presented to the Department of General Services shall not be paid in excess of the amount of money appropriated for this purpose from the state account. These claims shall be paid only when additional money is collected, appropriated, or otherwise added to that account.

Comment. Section 70900 continues former Section 25381(b)-(d), inclusive, without substantive change.

See Section 68165 (“state account”).

Note. Proposed Section 70900(c) would recodify Section 25381(d), which allows payment of claims beyond the appropriated amount “only when additional money is collected, appropriated, or

otherwise added to that account.” By its terms, that language does not require a nexus between the added funds and this claims payment program.

The account referenced in this provision appears to be the “state account.” The state account is a primary funding source for the Department of Toxic Substances Control. See <http://www.ebudget.ca.gov/2019-20/pdf/GovernorsBudget/3890/3960.pdf>. Several different types of revenues are deposited into the state account. *Id.* It seems unlikely that *all* revenue added to the state account was intended to be available to pay compensation claims under this chapter.

The Commission welcomes comment on how this provision is understood in practice and whether it needs to be clarified.

§ 70905. Funds for administration of program

70905. The Department of General Services may expend from the state account those sums of money as are reasonably necessary to administer and carry out this chapter.

Comment. Section 70905 continues former Section 25382 without substantive change. See Section 68165 (“state account”).

Article 2. Claims for Compensation

§ 70920. Conditions for application for compensation

70920. Any person may apply to the Department of General Services, pursuant to Section 70925, for compensation of a loss caused by the release, in California, of a hazardous substance if any of the following conditions are met:

(a) The source of the release of the hazardous substance, or the identity of the party liable for damages in connection with the release or responsible for the costs of removal of the hazardous substance, is unknown or cannot, with reasonable diligence, be determined.

(b) The loss was not compensable pursuant to law, including Chapter 6.5 (commencing with Section 25100) of Division 20, because there is no liable party or the judgment could not be satisfied, in whole or part, against the party determined to be liable for the release of the hazardous substance.

(c) The person has presented a written demand for compensation, which sets forth the basis for the claim, to the party that the person reasonably believes is liable for a loss specified in subdivision (a) of Section 70940 that was incurred by that person and is compensable pursuant to this chapter, the person has presented the Department of General Services with a copy of the demand, and, within 60 days after presenting the demand, the party has either rejected, in whole or in part, the demand to be compensated for a loss specified in subdivision (a) of Section 70940, or has not responded to the demand. Only losses specified in subdivision (a) of Section 70940 are compensable under a claim filed pursuant to this subdivision.

Comment. Section 70920 restates former Section 25372 without substantive change.

See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”), 68135 (“remove”), 68140 (“response”).

Notes. (1) Section 25372(a) would be restated for clarity to replace the phrase “damages in connection therewith” with “damages in connection with the release.” **Absent comment, this change will be presumed correct.**

(2) Section 25372(b) uses the term “liable party.” The term “liable party” is undefined, but is very similar to two defined terms: “responsible party” and “liable person.” See Section 25323.5 (proposed Section 68145), which defines “responsible party” and “liable person.” It is unclear whether the use of the undefined term “liable party” in Section 25372(b) was intentional and, if so, what it means. **The Commission welcomes comment on this issue.**

§ 70925. Forms and procedures

70925. (a) The Department of General Services shall prescribe appropriate forms and procedures for claims filed pursuant to this chapter, which shall include, as a minimum, all of the following:

(1) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant’s knowledge.

(2) A full description, supported by appropriate evidence from government agencies of the release of the hazardous substance claimed to be the cause of the physical injury or illness or loss of income.

(3) Certification by the claimant of dates and places of residence for the five years preceding the date of the claim.

(4) Certification of the medical history of the claimant for the five years preceding the date of the claim, along with certification of the alleged physical injury or illness and expenses for the physical injury or illness. The certification shall be made by hospitals, physicians, or other qualified medical authorities.

(5) The claimant’s income as reported on the claimant’s federal income tax return for the preceding three years in order to compute lost wages or income.

(b) Any person who knowingly gives, or causes to be given, any false information as a part of any claim pursuant to this chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined up to five thousand dollars (\$5,000), or imprisoned for not more than one year, or both.

Comment. Section 70925 restates former Section 25373 without substantive change. See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”).

Notes. (1) Section 25373(f) would be restated in proposed Section 70925(b). The phrase “any such claim” would be replaced with “any claim pursuant to this chapter.” **Absent comment, this proposed change will be presumed correct.**

(2) Section 25373 is structured with an unnumbered introductory clause, followed by a list of items that the Department of General Services shall prescribe for claim forms and procedures. The final item in the list appears to state a substantive rule (making it a crime to provide false information), rather than prescribe the content of claims forms or procedures. For this reason, the subdivision and paragraph numbering in proposed Section 70925 would be adjusted, such that the final item is its own subdivision, where it would not be part of the prescribed content of claims forms and procedures. **Absent comment, this proposed change will be presumed correct.**

1 **§ 70930. Time for presenting claims**

2 70930. No claim may be presented to the Department of General Services
3 pursuant to this chapter later than three years from the date of discovery of the loss
4 or from January 1, 1982, whichever is later.

5 **Comment.** Section 70930 continues former Section 25376 without substantive change.

6 Article 3. Compensable Losses

7 **§ 70940. Types of losses**

8 70940. If the Department of General Services makes the determination, specified
9 in Section 70945, that losses resulted from the claimant's damages, injury, or
10 disease, only the following losses are compensable pursuant to this chapter:

11 (a) One hundred percent of uninsured, out-of-pocket medical expenses, for up to
12 three years from the onset of treatment.

13 (b) Eighty percent of any uninsured, actual lost wages, or business income in lieu
14 of wages, caused by injury to the claimant or the claimant's property, not to exceed
15 fifteen thousand dollars (\$15,000) per year for three years.

16 (c)(1) One hundred percent of uninsured, out-of-pocket expenses for remedial
17 action on the claimant's property undertaken to address a release of a hazardous
18 substance when all of the following apply:

19 (A) The claimant's property is an owner-occupied single-family residence.

20 (B) The remedial action was ordered by federal, state, or local authorities due to
21 a release of a hazardous substance.

22 (C) The department makes one of the following determinations:

23 (i) The release of the hazardous substance originated outside the boundaries of the
24 property.

25 (ii) The release of the hazardous substance occurred on the property, was the result
26 of an action that violated state or federal law, and the responsible party cannot be
27 identified or cannot be located, or a judgment against the responsible party cannot
28 be satisfied.

29 (2) The maximum compensation under this subdivision is limited to twenty-five
30 thousand dollars (\$25,000) per residence and to one hundred thousand dollars
31 (\$100,000) for five contiguous residential properties. Any compensation provided
32 shall be reduced by the amount that the remedial action results in a capital
33 improvement to the claimant's residence.

34 (d)(1) One hundred percent of the fair market value of owner-occupied real
35 property that is rendered permanently unfit for occupancy because of the release of
36 a hazardous substance.

37 (2) For purposes of this subdivision, real property is rendered permanently unfit
38 for occupancy only if a state or federal agency requires that it be evacuated for a
39 period of six or more months because of the release of a hazardous substance.

40 (3) The fair market value of the real property shall be determined by an
41 independent appraiser, and shall be considered by the independent appraiser as

1 being equal to the value of the real property prior to the release of the hazardous
2 substance that caused the evacuation of the property.

3 (4) Where compensation is made by the Department of General Services pursuant
4 to this subdivision, sole ownership of the real property shall be transferred to the
5 state and any proceeds resulting from the final disposition of the real property shall
6 be deposited into the state account, for expenditure by the department upon
7 appropriation by the Legislature.

8 (5) To be eligible for compensation pursuant to this subdivision, claims for
9 compensation shall be made within 12 months of the date on which the evacuation
10 was ordered.

11 (e)(1) One hundred percent of the expenses incurred due to the evacuation of a
12 residence ordered by a state or federal agency.

13 (2) For purposes of this subdivision, “evacuation expenses” include the cost of
14 shelter and any other emergency expenditures incurred due to an evacuation ordered
15 by a state or federal agency.

16 (3) The Department of General Services may provide compensation, pursuant to
17 this subdivision, only if it finds that the evacuation expenses represent reasonable
18 costs for the goods or services purchased, and would not have been incurred if an
19 evacuation caused by a hazardous substance release had not occurred.

20 (4) The Department of General Services may provide compensation for these
21 evacuation expenses only if they were incurred within 12 months from the date on
22 which evacuation was ordered.

23 **Comment.** Section 70940 continues former Section 25375(a) without substantive change.

24 See Sections 68050 (“department”), 68075 (“hazardous substance”), 68105 (“release”), 68125
25 (“remedy”), 68145 (“responsible party”), 68165 (“state account”).

26 § 70945. Required findings

27 70945. A loss specified in Section 70940 is compensable if the Department of
28 General Services makes all of the following findings, based upon a preponderance
29 of the evidence:

30 (a) A release of a hazardous substance occurred.

31 (b) The claimant or the claimant’s property was exposed to the release of the
32 hazardous substance.

33 (c) The exposure of the claimant to the release of the hazardous substance was of
34 such a duration, and to such a quantity of the hazardous substance, that the exposure
35 caused the damages, injury, or disease that resulted in the claimant’s loss.

36 (d) For purposes of subdivisions (d) and (e) of Section 70940, the hazardous
37 substance release, or the order that resulted in the claim for compensation occurred
38 on or after January 1, 1986.

39 (e) The conditions and requirements of this chapter including, but not limited to,
40 the conditions of Sections 70920 and 70925, have been met.

41 **Comment.** Section 70945 continues former Section 25375(b) without substantive change.

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

1 **§ 70950. Noncompensable claim**

2 70950. No money shall be used for the payment of any claim authorized by this
3 part, where the claim is the result of long-term exposure to ambient concentrations
4 of air pollutants.

5 **Comment.** Section 70950 continues former Section 25375(c) without substantive change.

6 **Note.** Section 25375(c) refers to a claim authorized by “this chapter” (i.e., Chapter 6.8 of Division
7 20). It is not clear why this provision refers to Chapter 6.8 as a whole, as opposed to the article
8 related to claims for compensation. **The Commission welcomes comment on this issue.**

9 In proposed Section 70950, the reference has tentatively been updated to refer to “this part,”
10 which will include all of the provisions of Chapter 6.8 **Absent comment, this cross-reference**
11 **update will be presumed correct.**

12 Article 4. Claim Proceedings

13 **§ 70970. Applicable law**

14 70970. (a) Except as specified in subdivision (b), the procedures specified in
15 Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division
16 3 of Title 2 of, and in Section 11513 of, the Government Code apply to the
17 proceedings conducted by the Department of General Services pursuant to this
18 chapter.

19 (b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the
20 Evidence Code apply to the proceedings conducted by the Department of General
21 Services pursuant to this chapter.

22 (c) The Department of General Services may consider evidence presented by any
23 person against whom a demand was made pursuant to subdivision (c) of Section
24 70920. The evidence presented by that person shall become a part of the record upon
25 which the Department of General Services shall base its decision.

26 **Comment.** Section 70970 restates former Section 25375.5 without substantive change.

27 See Section 68085 (“person”).

28 **Note.** Section 25375.5(c), which would be recodified as proposed Section 70970(c), was restated
29 to eliminate the use of a possessive agency name. The phrase “Department of General Services’
30 decision shall be based” would be replaced with “Department of General Services shall base its
31 decision.”

32 **§ 70975. Decisions**

33 70975. (a) All decisions rendered by the Department of General Services shall be
34 in writing, with notification to all appropriate parties, and shall be rendered within
35 90 days of submission of a claim to the Department of General Services unless all
36 the parties to the claim agree in writing to an extension of time.

37 (b) The decision shall be considered a final agency action for the purposes of
38 judicial review of the decision by any party to the proceedings resulting in the
39 decision.

40 **Comment.** Section 70975 continues former Section 25374 without substantive change.

41 See Section 68040 (“agency”).

Article 5. Relationship to Other Remedies

§ 70990. Claim not condition precedent to other remedies

70990. Nothing in this chapter shall require, or be deemed to require, pursuit of any claim against the Department of General Services as a condition precedent to any other remedy.

Comment. Section 70990 continues former Section 25377 without substantive change. See Section 68125 (“remedy”).

§ 70995. Compensation from other sources

70995. (a) Compensation of any loss pursuant to this chapter shall preclude indemnification or reimbursement from any other source for the identical loss, and indemnification or reimbursement from any other source shall preclude compensation pursuant to this chapter.

(b) If a claimant recovers any compensation from a party in a civil or administrative action for a loss for which the claimant has received compensation pursuant to this chapter, the claimant shall reimburse the state account in an amount equal to the compensation that the claimant has received from the state account pursuant to this chapter. The Attorney General may bring an action against the claimant to recover the amount that the claimant is required to reimburse the state account, and until the account is reimbursed, the state shall have a lien of first priority on the judgment or award recovered by the claimant. If the state account is reimbursed pursuant to this subdivision, the state shall not acquire, by subrogation, the claimant’s rights pursuant to Article 7 (commencing with Section 71030).

(c) The Legislature hereby finds and declares that it is the purpose of this section to prevent double recovery for a loss compensable pursuant to this chapter.

Comment. Section 70995 continues former Section 25378 without substantive change. See Section 68165 (“state account”).

Article 6. Nonadmissibility of Evidence in Other Proceedings

§ 71010. Evidence not admissible

71010. (a) The following evidence is not admissible as evidence in any civil or criminal proceeding, including a subrogation action by the state pursuant to Article 7 (commencing with Section 71030), to establish the liability of any person for any damages alleged to have been caused by a release of a hazardous substance:

(1) A final decision made by the Department of General Services pursuant to this chapter.

(2) A decision made by the Department of General Services to admit or not admit any evidence.

(3) Any finding of fact or conclusion of law entered by the Department of General Services in a proceeding for a claim pursuant to this chapter.

(4) The fact that any person has done any of the following in a proceeding for a claim pursuant to Section 70920:

(A) Chosen to participate or appear.

(B) Chosen not to participate or appear.

(C) Failed to appear.

(D) Settled or offered to settle the claim.

(b) Subdivision (a) does not apply to any civil action or writ by a claimant against the Department of General Services for any act, decision, or failure to act on a claim submitted by the claimant.

Comment. Section 71010 continues former Section 25379 without substantive change. See Sections 68075 (“hazardous substance”), 68085 (“person”), 68105 (“release”).

Article 7. State Recovery from Liable Party

Note. Proposed Article 7 is entitled “State Recovery from Liable Party.” The term “liable party” is similar to two defined terms: “responsible party” and “liable person.” The Commission intentionally refrained from using those defined terms for this article heading, as it was not clear whether those terms are apt for this article. **The Commission welcomes comment on this issue.**

§ 71030. State acquisition of claimant’s right to recover

71030. Compensation of any loss pursuant to this chapter shall be subject to the state’s acquiring, by subrogation, all rights of the claimant to recover the loss from the party determined to be liable for the loss.

Comment. Section 71030 restates the first sentence of former Section 25380 without substantive change.

Note. The first sentence of Section 25380 would be restated for clarity to replace the phrase “liable therefor” with “liable for the loss.”

§ 71035. Action for recovery

71035. Upon the request of the Department of General Services, the Attorney General shall commence an action in the name of the people of the State of California to recover any amount paid in compensation for any loss pursuant to this chapter against any party who is liable to the claimant for any loss compensable pursuant to this chapter in accordance with the procedures set forth in Chapter 8 (commencing with Section 69650).

Comment. Section 71035 continues the second sentence of former Section 25380 without substantive change.

Note. Section 25380 specifies that recovery of funds is subject to “the procedures set forth in Sections 25360 to 25364, inclusive.” The referenced provisions would be recodified, along with other, unreferenced provisions, in proposed Chapter 8 of Part 2 of new Division 45. In particular, Articles 3-7, inclusive, 11, and 12 of proposed Chapter 8 would be entirely comprised of provisions cross-referenced in Section 25380. Articles 1 and 9 contain cross-referenced provisions, but each also contains a single unreferenced provision. Given the impracticality of reproducing this cross-reference exactly, the Commission proposes updating it to refer to the entirety of Chapter 8. **The Commission welcomes comment on this proposed cross-reference update.**

1 **§ 71040. Deposit of recovered funds**

2 71040. Moneys recovered pursuant to this article shall be deposited in the state
3 account.

4 **Comment.** Section 71040 continues the third sentence of former Section 25380 without
5 substantive change.

6 See Section 68165 (“state account”).

7 Article 8. Implementing Rules and Regulations

8 **§ 71050. Adoption and revision**

9 71050. The Department of General Services shall, in consultation with the
10 department, adopt, and revise when appropriate, all rules and regulations necessary
11 to implement this chapter, including methods that provide for establishing that a
12 claimant has exercised reasonable diligence in satisfying the conditions specified in
13 Articles 3 (commencing with Section 70940) and 4 (commencing with Section
14 70970) and Sections 70920 and 70925, and regulations that specify the proof
15 necessary to establish a loss compensable pursuant to this chapter.

16 **Comment.** Section 71050 continues former Section 25381(a) without substantive change.

17 See Section 68050 (“department”).

18 **Note.** Section 25381(a) cross-refers to conditions “specified in Sections 25372, 25373, 25375, and
19 25375.5.” The cross-referenced provisions would be recodified as several proposed new sections.
20 In proposed Section 71050, the cross-reference would be updated to refer to two articles and two
21 sections. One of the new articles, proposed Article 4, contains a section that is not referenced in
22 Section 25381(a): Section 25374 (proposed Section 70975). Section 25374 does not place any
23 conditions on the claimant, but relates to decisions rendered by the agency. For this reason, the
24 inclusion of this section in the cross-reference does not appear to be a substantive change. **Absent**
25 **comment, this proposed cross-reference update will be presumed correct.**

26 UNCODIFIED

27 **Operative date**

28 SEC. _____. This act becomes operative on January 1, 2023.

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this 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, 2020. 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(c)	69690
25315	68065	25353(e)	69075
25316	68075(a)	25353.5	68210
25317	68075(b)	25354(a), 1st sent.	68240(a)
25318.5	68080	25354(a), 2nd sent.	68875(a)
25319	68085	25354(b)	68875(b)
25319.1	68090	25354(c), 1st sent.	68580
25319.5	68095	25354(c), 2nd-3rd sent.	68240(b)
25319.6	68100	25354(d)	68240(c)
25320	68105(a)	25354.5(a)	69355
25321	68105(b)	25354.5(b)(1), 1st sent.	69360
25322	68125	25354.5(b)(1), 2nd and 3rd sent.	69350
25322.1	68115	25354.5(b)(2)	69365
25322.2	68120	25354.5(c)	69370
25323	68135	25354.5(d)	69375
25323.1	68130	25354.5(e)	69380
25323.3	68140	25354.5(f)	68370
25323.5	68145	25354.5(g)	69385
25323.9	68155	25355(a)	68850
25324(a)	68165	25355(b)	69130(a)
25324(b)	69680	25355(c)(1), (d)	69135
25325	68070	25355(c)(2)	69005
25326	68110	25355.2(a)	69315
25326.3	68150	25355.2(b)	69320
25326.5	68160	25355.2(c), (d)	69325
25327	68170	25355.2(e)	69330
25330.2	68265	25355.2(f)	69310
25330.4(a)-(e), (f)(1)	68230	25355.5(a)	69055
25330.4(f)(2)	Not cont'd	25355.5(b)	69060
25330.5	68235	25355.5(c), (d)	69065
25331	68220	25355.5(e)	69130(b)
25334.7	68575	25355.6(a)	68900
25337	68260	25355.6(b)	68905
25342	68200	25355.6(c), (d)	68910
25343	69105	25355.7	69000
25350, 1st and 2nd sent.	68855	25355.8	69100
25350, 3rd sent.	68860	25356(a)	68765
25351.2(a)	69160	25356(b)	68760
25351.2(b)	69165	25356(c)	68770
25351.2(c)	69170	25356(d)	68775

Existing Provision	New Provision	Existing Provision	New Provision
25356(e)	68795	25358.7.1(b)	68955
25356(f)	68780	25358.7.1(c)	68965
25356(g)	68785	25358.7.1(d)	68970
25356(h)	68790	25358.7.2(a), 1st sent., (b)-(d)	68420
25356.1(a) (“regional board”)	Not cont’d	25358.7.2(a), 2nd sent.	68925
25356.1(a) (“state board”)	69190	25358.8	68975
25356.1(b)	69195	25358.9(a)	69290
25356.1(c)	69200	25358.9(b)	69295
25356.1(d)	69205	25359	69570
25356.1(e), 1st-4th sent.	69210	25359.1	69580
25356.1(e), 5th sent., (f)	69215	25359.2	69550
25356.1(g)	69220	25359.20(a)	69465
25356.1(h)(1), (2), (5)	69225	25359.20(b), (c)	69470
25356.1(h)(3)	69230	25359.20(d), (e)	69475
25356.1(h)(4)	69235	25359.3(a)	69590
25356.1(i)	69240	25359.3(b)	69595
25356.1.3(a)	69020	25359.3(c)	69600
25356.1.3(b)	69025	25359.4(a)-(c)	68675
25356.1.3(c)	69030	25359.4(d)-(f)	68680
25356.1.3(d)	69035	25359.4.5	69555
25356.1.5(a)	69260	25359.5(a)	68720
25356.1.5(b)	69265	25359.5(b), (c)	68725
25356.1.5(c)	69270	25359.5(d)	68735
25356.1.5(d), (e)	69275	25359.5(e)	68730
25357	68225	25359.5(f)	68740
25357.5	69400	25359.6	68505
25358	68410	25359.7(a)	68700
25358.1(a)	68435	25359.7(b)	68705
25358.1(b)-(d)	68440	25360	69650
25358.1(e)-(h)	68450	25360.1	69655
25358.1(i)	68455	25360.2(a)	69780
25358.1(j), (k)	68445	25360.2(b)	69790
25358.1(l)	68460	25360.2(c)	69795
25358.2(a)	68480	25360.2(d)	69800
25358.2(b)	68490	25360.2(e)	69785
25358.2(c)	68485	25360.3(a)	69810
25358.2(d)	68495	25360.3(b)	69820
25358.3(a)	68870	25360.3(c)	69825
25358.3(b)	68650	25360.3(d), (e)	69815
25358.3(c), (d)	68655	25360.4(a)	69730
25358.3(e)-(g)	68660	25360.4(b)	69735
25358.4	68510	25360.4(c)	69740
25358.5	68880	25360.4(d)	69725
25358.6	68885	25360.4(e)	69745
25358.6.1(a)	68590	25360.6	69920
25358.6.1(b)	68595	25361(a)	69700
25358.6.1(c)(1)-(4)	68600	25361(b)	69705
25358.6.1(c)(5)-(8)	68605	25362	69710
25358.6.1(d)	68610	25363(a), (b)	69760
25358.6.1(e)	68615	25363(c)	69665
25358.6.1(f)	68620	25363(d)	69670
25358.7	68930	25363(e)	69765
25358.7.1(a), 1st and 4th sent.	68950	25363.5	69910
25358.7.1(a), 2nd sent.	68960	25364	69860
25358.7.1(a), 3rd sent.	68935	25364.1(a)	69875

Existing Provision	New Provision	Existing Provision	New Provision
25364.1(b)	69880	25386.2	68325
25364.1(c)	69885	25386.25	68330
25364.1(d)	69900	25386.3	68335
25364.1(e)	69890	25386.4	68340
25364.1(f)	69895	25386.5	68345
25364.7	69865	25390	70000
25365	69660	25390.1	70005
25365.6(a), (c)	69935	25390.2	70010
25365.6(b)	69950	25390.3(a), (b), (d)	70020
25365.6(d), 1st sent.	69940	25390.3(c)	70025
25365.6(d), 2nd and 3rd sent.	69945	25390.4(a)	70040
25365.6(e)	69955	25390.4(b)	70045
25366	68185	25390.4(c), (d)	70050
25366.5(a)	69845	25390.5	70070
25366.5(b)	69840	25390.6(a)	70080
25366.5(c)	69850	25390.6(b)	70085
25367(a) (except pt. of (a)(3) re Section 25358.3)	68470	25390.7	70055
25367(a)(3) (pt. re Section 25358.3) ..	68665	25390.8	70090
25367(b)	68465	25390.9	70100
25368	68525	25395.20(a), initial cl.	70200
25368.1	68530	25395.20(a)(1)	70205
25368.2	68535	25395.20(a)(2)	70210
25368.3	68540	25395.20(a)(3)	70215
25368.4	68545	25395.20(a)(4)	70220
25368.5	68550	25395.20(a)(5)	70225
25368.6	68555	25395.20(a)(6), (7)	70230
25368.7	68560	25395.20(a)(8)	70235
25368.8	68565	25395.20(a)(9)	Not cont'd
25372	70920	25395.20(a)(10)	70240
25373	70925	25395.20(a)(11)	70245
25374	70975	25395.20(a)(12)	70250
25375(a)	70940	25395.20(a)(13)	70255
25375(b)	70945	25395.20(a)(14)	70260
25375(c)	70950	25395.20(a)(15)	70265
25375.5	70970	25395.20(a)(16)	70275
25376	70930	25395.20(a)(17)	Not cont'd
25377	70990	25395.20(a)(18)	70270
25378	70995	25395.20(a)(19)	70280
25379	71010	25395.20(b)	70350
25380, 1st sent.	71030	25395.20(c)	70355
25380, 2nd sent.	71035	25395.21(a)	70400
25380, 3rd sent.	71040	25395.21(b)	70405
25381(a)	71050	25395.21(c)	70410
25381(b)-(d)	70900	25395.21(d)	70415
25382	70905	25395.21(e)	70420
25385	68280	25395.21(f)	70425
25385.1	68285	25395.21(g)	70430
25385.2	68290	25395.21(h)	70435
25385.4	68295	25395.22(a), 1st sent.	70450
25385.5	68300	25395.22(a), 2nd & 4th sent.	70460
25385.6	68305	25395.22(a), 3rd sent.	70465
25385.7	68310	25395.22(b)	70455
25386	68315	25395.23(a)	70480
25386.1	68320	25395.23(b)	70485
		25395.23(c)	70490

Existing Provision	New Provision	Existing Provision	New Provision
25395.24(a)	70500	25395.40(b)	70690
25395.24(b)	70505	25395.40(c)	70695
25395.25	70520	25395.40(d)	70700
25395.26(a)	70540	25395.40(e)	70705
25395.26(b), (c)	70545	25395.40(f)	Not cont'd
25395.26(d)	70550	25395.40(g)	70710
25395.26(e)	70320(b)	25395.40(h)	70715
25395.27(a)(1), 1st sent.	70300	25395.40(i)	70720
25395.27(a)(1), 2nd sent., (a)(2)	70305	25395.40(j)	70725
25395.27(b)	70310	25395.40(k)	70730
25395.27(c)	70315	25395.40(l)	70735
25395.27(d)	70320(a)	25395.40(m)	Not cont'd
25395.27(e)	70325	25395.41(a)	70750
25395.28(a)	70570	25395.41(b)(1)	70755
25395.28(b)	70575	25395.41(b)(2), 1st & 2nd sent.	70760
25395.28(c)	70580	25395.41(b)(2), 3rd sent.	70765
25395.28(d)	70585	25395.41(c)	70770
25395.28(e)	70590	25395.41(d), 1st sent.	70775
25395.28(f)	70595	25395.41(d), 2nd sent.	70780
25395.28(g), (h)	70600	25395.42(a)	70800
25395.28(i)	70605	25395.42(b)	70805
25395.28(j)	70610	25395.43(a)	70810
25395.29(a)	70620	25395.43(b)	70815
25395.29(b)	70625	25395.43(c), 1st sent.	70820
25395.30	70370	25395.43(c), 2nd sent.	70825
25395.31	70375	25395.44(a)	70840
25395.32	70380	25395.44(b)	70845
25395.35	68360	25395.44(c)	70850
25395.36	68365	25395.44(d)	70855
25395.40, initial cl.	70680	25395.45	70870
25395.40(a)	70685		

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in the proposed Hazardous Substance Account Recodification Act, as reflected in this 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	68260	25337
68000(b)	new	68265	25330.2
68005	25301	68280	25385
68010	new	68285	25385.1
68015	new	68290	25385.2
68020	new	68295	25385.4
68025	new	68300	25385.5
68030	new	68305	25385.6
68035	25310	68310	25385.7
68040	25310.5	68315	25386
68045	25311	68320	25386.1
68050	25312	68325	25386.2
68055	25313	68330	25386.25
68060	25314	68335	25386.3
68065	25315	68340	25386.4
68070	25325	68345	25386.5
68075(a)	25316	68360	25395.35
68075(b)	25317	68365	25395.36
68080	25318.5	68370	25354.5(f)
68085	25319	68400	25351.5
68090	25319.1	68410	25358
68095	25319.5	68420	25358.7.2(a), 1st sent., (b)-(d)
68100	25319.6	68435	25358.1(a)
68105(a)	25320	68440	25358.1(b)-(d)
68105(b)	25321	68445	25358.1(j), (k)
68110	25326	68450	25358.1(e)-(h)
68115	25322.1	68455	25358.1(i)
68120	25322.2	68460	25358.1(l)
68125	25322	68465	25367(b)
68130	25323.1	68470	25367(a) (except pt. of (a)(3) re Section 25358.3)
68135	25323	68480	25358.2(a)
68140	25323.3	68485	25358.2(c)
68145	25323.5	68490	25358.2(b)
68150	25326.3	68495	25358.2(d)
68155	25323.9	68505	25359.6
68160	25326.5	68510	25358.4
68165	25324(a)	68525	25368
68170	25327	68530	25368.1
68185	25366	68535	25368.2
68200	25342	68540	25368.3
68210	25353.5	68545	25368.4
68220	25331	68550	25368.5
68225	25357	68555	25368.6
68230	25330.4(a)-(e), (f)(1)	68560	25368.7
68235	25330.5	68565	25368.8
68240(a)	25354(a), 1st sent.	68575	25334.7
68240(b)	25354(c), 2nd-3rd sent.	68580	25354(c), 1st sent.
68240(c)	25354(d)		

New Provision	Existing Provision	New Provision	Existing Provision
68590.....	25358.6.1(a)	69055.....	25355.5(a)
68595.....	25358.6.1(b)	69060.....	25355.5(b)
68600.....	25358.6.1(c)(1)-(4)	69065.....	25355.5(c), (d)
68605.....	25358.6.1(c)(5)-(8)	69070.....	25353(a), (b), (d), (f)
68610.....	25358.6.1(d)	69075.....	25353(e)
68615.....	25358.6.1(e)	69100.....	25355.8
68620.....	25358.6.1(f)	69105.....	25343
68650.....	25358.3(b)	69130(a).....	25355(b)
68655.....	25358.3(c), (d)	69130(b).....	25355.5(e)
68660.....	25358.3(e)-(g)	69135.....	25355(c)(1), (d)
68665.....	25367(a)(3) (pt. re Section 25358.3)	69160.....	25351.2(a)
68675.....	25359.4(a)-(c)	69165.....	25351.2(b)
68680.....	25359.4(d)-(f)	69170.....	25351.2(c)
68700.....	25359.7(a)	69175.....	25351.2(d)
68705.....	25359.7(b)	69190.....	25356.1(a) (“state board”)
68720.....	25359.5(a)	69195.....	25356.1(b)
68725.....	25359.5(b), (c)	69200.....	25356.1(c)
68730.....	25359.5(e)	69205.....	25356.1(d)
68735.....	25359.5(d)	69210.....	25356.1(e), 1st-4th sent.
68740.....	25359.5(f)	69215.....	25356.1(e), 5th sent., (f)
68760.....	25356(b)	69220.....	25356.1(g)
68765.....	25356(a)	69225.....	25356.1(h)(1), (2), (5)
68770.....	25356(c)	69230.....	25356.1(h)(3)
68775.....	25356(d)	69235.....	25356.1(h)(4)
68780.....	25356(f)	69240.....	25356.1(i)
68785.....	25356(g)	69260.....	25356.1.5(a)
68790.....	25356(h)	69265.....	25356.1.5(b)
68795.....	25356(e)	69270.....	25356.1.5(c)
68850.....	25355(a)	69275.....	25356.1.5(d), (e)
68855.....	25350, 1st and 2nd sent.	69290.....	25358.9(a)
68860.....	25350, 3rd sent.	69295.....	25358.9(b)
68870.....	25358.3(a)	69310.....	25355.2(f)
68875(a).....	25354(a), 2nd sent.	69315.....	25355.2(a)
68875(b).....	25354(b)	69320.....	25355.2(b)
68880.....	25358.5	69325.....	25355.2(c), (d)
68885.....	25358.6	69330.....	25355.2(e)
68900.....	25355.6(a)	69350.....	25354.5(b)(1), 2nd and 3rd sent.
68905.....	25355.6(b)	69355.....	25354.5(a)
68910.....	25355.6(c), (d)	69360.....	25354.5(b)(1), 1st sent.
68925.....	25358.7.2(a), 2nd sent.	69365.....	25354.5(b)(2)
68930.....	25358.7	69370.....	25354.5(c)
68935.....	25358.7.1(a), 3rd sent.	69375.....	25354.5(d)
68950.....	25358.7.1(a), 1st and 4th sent.	69380.....	25354.5(e)
68955.....	25358.7.1(b)	69385.....	25354.5(g)
68960.....	25358.7.1(a), 2nd sent.	69400.....	25357.5
68965.....	25358.7.1(c)	69450.....	25352(a), (b)
68970.....	25358.7.1(d)	69465.....	25359.20(a)
68975.....	25358.8	69470.....	25359.20(b), (c)
69000.....	25355.7	69475.....	25359.20(d), (e)
69005.....	25355(c)(2)	69490.....	25351.7
69020.....	25356.1.3(a)	69495.....	25351.8
69025.....	25356.1.3(b)	69550.....	25359.2
69030.....	25356.1.3(c)	69555.....	25359.4.5
69035.....	25356.1.3(d)	69570.....	25359
		69580.....	25359.1

New Provision	Existing Provision	New Provision	Existing Provision
69590.....	25359.3(a)	70050.....	25390.4(c), (d)
69595.....	25359.3(b)	70055.....	25390.7
69600.....	25359.3(c)	70070.....	25390.5
69650.....	25360	70080.....	25390.6(a)
69655.....	25360.1	70085.....	25390.6(b)
69660.....	25365	70090.....	25390.8
69665.....	25363(c)	70100.....	25390.9
69670.....	25363(d)	70200.....	25395.20(a), initial cl.
69680.....	25324(b)	70205.....	25395.20(a)(1)
69685.....	25352(c)	70210.....	25395.20(a)(2)
69690.....	25353(c)	70215.....	25395.20(a)(3)
69700.....	25361(a)	70220.....	25395.20(a)(4)
69705.....	25361(b)	70225.....	25395.20(a)(5)
69710.....	25362	70230.....	25395.20(a)(6), (7)
69725.....	25360.4(d)	70235.....	25395.20(a)(8)
69730.....	25360.4(a)	70240.....	25395.20(a)(10)
69735.....	25360.4(b)	70245.....	25395.20(a)(11)
69740.....	25360.4(c)	70250.....	25395.20(a)(12)
69745.....	25360.4(e)	70255.....	25395.20(a)(13)
69760.....	25363(a), (b)	70260.....	25395.20(a)(14)
69765.....	25363(e)	70265.....	25395.20(a)(15)
69780.....	25360.2(a)	70270.....	25395.20(a)(18)
69785.....	25360.2(e)	70275.....	25395.20(a)(16)
69790.....	25360.2(b)	70280.....	25395.20(a)(19)
69795.....	25360.2(c)	70300.....	25395.27(a)(1), 1st sent.
69800.....	25360.2(d)	70305.....	25395.27(a)(1), 2nd sent., (a)(2)
69810.....	25360.3(a)	70310.....	25395.27(b)
69815.....	25360.3(d), (e)	70315.....	25395.27(c)
69820.....	25360.3(b)	70320(a).....	25395.27(d)
69825.....	25360.3(c)	70320(b).....	25395.26(e)
69840.....	25366.5(b)	70325.....	25395.27(e)
69845.....	25366.5(a)	70350.....	25395.20(b)
69850.....	25366.5(c)	70355.....	25395.20(c)
69860.....	25364	70370.....	25395.30
69865.....	25364.7	70375.....	25395.31
69875.....	25364.1(a)	70380.....	25395.32
69880.....	25364.1(b)	70400.....	25395.21(a)
69885.....	25364.1(c)	70405.....	25395.21(b)
69890.....	25364.1(e)	70410.....	25395.21(c)
69895.....	25364.1(f)	70415.....	25395.21(d)
69900.....	25364.1(d)	70420.....	25395.21(e)
69910.....	25363.5	70425.....	25395.21(f)
69920.....	25360.6	70430.....	25395.21(g)
69935.....	25365.6(a), (c)	70435.....	25395.21(h)
69940.....	25365.6(d), 1st sent.	70450.....	25395.22(a), 1st sent.
69945.....	25365.6(d), 2nd and 3rd sent.	70455.....	25395.22(b)
69950.....	25365.6(b)	70460.....	25395.22(a), 2nd & 4th sent.
69955.....	25365.6(e)	70465.....	25395.22(a), 3rd sent.
70000.....	25390	70480.....	25395.23(a)
70005.....	25390.1	70485.....	25395.23(b)
70010.....	25390.2	70490.....	25395.23(c)
70020.....	25390.3(a), (b), (d)	70500.....	25395.24(a)
70025.....	25390.3(c)	70505.....	25395.24(b)
70040.....	25390.4(a)	70520.....	25395.25
70045.....	25390.4(b)	70540.....	25395.26(a)

New Provision	Existing Provision	New Provision	Existing Provision
70545	25395.26(b), (c)	70775	25395.41(d), 1st sent.
70550	25395.26(d)	70780	25395.41(d), 2nd sent.
70570	25395.28(a)	70800	25395.42(a)
70575	25395.28(b)	70805	25395.42(b)
70580	25395.28(c)	70810	25395.43(a)
70585	25395.28(d)	70815	25395.43(b)
70590	25395.28(e)	70820	25395.43(c), 1st sent.
70595	25395.28(f)	70825	25395.43(c), 2nd sent.
70600	25395.28(g), (h)	70840	25395.44(a)
70605	25395.28(i)	70845	25395.44(b)
70610	25395.28(j)	70850	25395.44(c)
70620	25395.29(a)	70855	25395.44(d)
70625	25395.29(b)	70870	25395.45
70680	25395.40, initial cl.	70900	25381(b)-(d)
70685	25395.40(a)	70905	25382
70690	25395.40(b)	70920	25372
70695	25395.40(c)	70925	25373
70700	25395.40(d)	70930	25376
70705	25395.40(e)	70940	25375(a)
70710	25395.40(g)	70945	25375(b)
70715	25395.40(h)	70950	25375(c)
70720	25395.40(i)	70970	25375.5
70725	25395.40(j)	70975	25374
70730	25395.40(k)	70990	25377
70735	25395.40(l)	70995	25378
70750	25395.41(a)	71010	25379
70755	25395.41(b)(1)	71030	25380, 1st sent.
70760	25395.41(b)(2), 1st & 2nd sent.	71035	25380, 2nd sent.
70765	25395.41(b)(2), 3rd sent.	71040	25380, 3rd sent.
70770	25395.41(c)	71050	25381(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?