

MEMORANDUM 2024-37

Recodification of Toxic Substances Statutes: Cumulative Draft of Material Previously Approved

In this study, the Commission¹ is preparing a nonsubstantive recodification of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.² To date, the Commission has provisionally approved two drafts of proposed provisions to recodify portions of Chapter 6.5 for inclusion in a future tentative recommendation in the study,³ and incorporation of subsequent legislative changes to provisions included in the first draft.⁴

Unless otherwise indicated, all statutory references in this memorandum are to the Health and Safety Code. All references to proposed provisions refer to the proposed sections in the attached cumulative draft.

CUMULATIVE DRAFT PRACTICE

This memorandum presents a cumulative draft of recodified provisions for Chapter 6.5. Aside from the revisions noted in this memorandum, the contents of the draft have previously been provisionally approved by the Commission for inclusion in a future tentative recommendation in this study.

Going forward, as the Commission provisionally approves recodified provisions, the cumulative draft will be updated to include those approved provisions, and again presented to the Commission. While the Commission works toward a tentative recommendation recodifying the entirety of Chapter 6.5, this process will allow the cumulative draft to serve as a continuing reference for Commissioners and other interested persons indicating the

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

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

2. See [2021 Cal. Stat. res. ch. 108](#) (ACR 24 (Chau)). Earlier in the study, Commission recommendations recodifying former Chapter 6.8 of Division 20 were submitted to and thereafter enacted by the Legislature. See [Hazardous Substance Account Recodification Act \(Pre-Print\)](#) (Feb. 2021), [2022 Cal. Stat. ch. 257](#); [Hazardous Substance Account Recodification Act: Conforming Revisions \(Pre-Print\)](#) (Feb. 2021), [2022 Cal. Stat. ch. 258](#).

3. See [Memorandum 2021-19](#), [Minutes \(Apr. 2021\)](#), p. 3; [Memorandum 2023-33](#), [Minutes \(June 2023\)](#), p. 3.

4. See [Memorandum 2023-20](#), [Minutes \(Apr. 2023\)](#), p. 3.

status of the proposed recodification.

NEEDED REVISIONS TO PREVIOUSLY APPROVED DRAFTS

The attached cumulative draft incorporates necessary revisions to proposed code sections, as discussed below.

Legislative Updates

This draft incorporates changes to reflect legislative enactments following the Commission’s approval of these recodified Chapter 6.5 provisions. The draft includes the following changes:

- Proposed Section 60250,⁵ which would recodify existing Section 25160(a)(3), has been revised to conform to the deletion of a statutory cross-reference⁶ in the existing provision.⁷
- Proposed Section 60328 has been added to the cumulative draft, to recodify a newly enacted provision⁸ defining the term “release.”⁹
- Proposed Section 60450, which would recodify existing Section 25174(a), has been revised to conform to minor changes made to the text of the existing provision, and the addition of two statutory cross-references.¹⁰
- Proposed Section 60455, which would recodify existing Section 25174(b), has been revised to conform to the addition of cross-references and minor language changes to the text of the existing provision.¹¹

5. In reporting on this same proposed revision in [Memorandum 2023-38](#), the staff erroneously transposed the digits of the provision, and identified it as proposed Section 60525. The staff regrets the error.

6. The cross-reference was to former Section 25205.15, which was repealed by the same legislative enactment. Section 25205.15 had not yet been proposed for recodification in this study.

7. See [2021 Cal. Stat. ch. 73](#), §§ 20, 21.

8. [Section 25121.2](#).

9. See [2024 Cal. Stat. ch. 72](#), § 17.

10. See [2023 Cal. Stat. ch. 196](#), § 11, and [2024 Cal. Stat. ch. 72](#), § 18.

More specifically, existing Section 25174(a) was revised to refer in two places to funds deposited “into” (rather than “in”) the Hazardous Waste Control Account, and to add cross-references in existing Section 25714(a)(3) to existing Sections 25205.5.2 and 25205.25.

11. See [2024 Cal. Stat. ch. 72](#), § 18.

More specifically, existing Section 25174(b) was revised to refer to funds deposited “into” (rather than “in”) the Hazardous Waste Control Account, existing Section 25174(b)(2) was revised to refer to fees “collected pursuant to Sections 25205.5 and 25205.5.2, or described in Section 25205.25,” rather than fees imposed pursuant to Section 25205.5,” and Section 25174(b)(3)(C) was revised to indicate that “Subparagraph (B) does not require” the Attorney General to report on any confidential or investigatory matter, rather than indicating that “Nothing in subparagraph (b) shall” require that reporting.

- Proposed Section 60515, which would have recodified an existing provision¹² that was discontinued by a legislative enactment,¹³ has been withdrawn from the draft.
- Proposed Section 60575, which would recodify existing Section 25174(c), has been revised to conform the addition of cross-references and minor language changes to the text of the existing provision.¹⁴

Editorial Revisions

The cumulative draft also incorporates some minor editorial revisions to the previously presented material, to reflect prior Commission decisions and improve consistency:

- A definitional provision inadvertently included in non-alphabetical order was properly located, and implementing changes were made.¹⁵
- Minor technical adjustments were made to Comments to conform to standard Comment drafting practice.¹⁶
- “Staff Notes” in proposed recodification drafts have been relabeled as “Notes,” and the content of the Notes was recharacterized to express the views of the Commission, rather than the thoughts of Commission staff.¹⁷
- Some purely technical errors were corrected.

LIST OF SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

The Commission previously provisionally approved the listing in the tentative recommendation of four substantive issues for possible future study.¹⁸

Those issues, phrased as follows, have been added to the list of substantive issues for possible future study that appears at the end of the attached cumulative draft:

- (1) Should the provisions defining different types of violations (see proposed Sections 60110, 60115, and 60255, which define “class I violation,” “class II violation,” and “minor violation,” respectively) be revised for consistency and clarity?

12. [Section 25173.6\(i\)](#). The enacted bill added an entirely distinct subdivision (i), declaring the operative date of the new enactment of Section 25173.6 to be January 1, 2022. The text of that provision is not continued in the cumulative draft.

13. See [2021 Cal. Stat. ch. 73](#), §§ 22, 23.

14. See [2024 Cal. Stat. ch. 72](#), §18.

More specifically, existing Section 25174(c)(2) was revised to refer to fees “collected pursuant to Sections 25205.5 and 25205.5.2, or described in Section 25205.25,” rather than fees imposed pursuant to Section 25205.5,” and to refer to funds deposited “into” (rather than “in”) the Hazardous Waste Control Account.

15. The sections affected by the renumbering were proposed Sections 60210, 60215, 60220, and 60225.

16. See, e.g., proposed Sections 60035-60060 (consistently identifying “Effect of Recodification” provisions as “new”).

17. Going forward, these revisions of “Staff Notes” will be made as a matter of course each time the cumulative draft is updated, without special note in a presenting memorandum.

18. See [Memorandum 2021-19](#), pp. 7-8.

(2) Should the definition of “treatment” (proposed Section 60365) be restated for clarity?

(3) Should the use of terms that are undefined in proposed Division 44, but are defined in Part 2 of Division 45, be addressed by incorporating the definitions from Part 2 of Division 45 by reference (either individually or globally)?

(4) Should proposed Section 60700, which specifies materials that the department is obligated to post on its website, be revised to eliminate obsolescence (see DTSC Independent Review Panel Recommendations to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f), p. 31 (January 8, 2018))?

COMMISSION DECISION

Does the Commission approve the incorporation of the revisions and additions identified in the memorandum for inclusion in a future tentative recommendation in this study?

Respectfully submitted,

Steve Cohen
Staff Counsel

CUMULATIVE DRAFT OF PROPOSED DIVISION 44 OF THE HEALTH & SAFETY CODE

Note. This is a work in progress. The material shown below may be changed. For a tentative outline and discussion of the proposed organization of new Division 44 of the Health & Safety Code, see Memorandum 2020-13, Exhibit pp. 3-5, and Memorandum 2023-33, pp. 2-3. All the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code, unless otherwise indicated.

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

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

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. Where a Note serves as a prompt for public comment, it will typically be continued in the Commission’s tentative recommendation as a Note calling for comment. However, where, for instance, the Commission decides against a proposed restatement and reverts to existing statutory language, the Note describing the proposed restatement would not be continued in future drafts.

Cross-references. In some places, the provisions proposed for recodification in this draft cross-refer to provisions contained in Chapter 6.5. Where the cross-referenced provision has not yet been included in the recodification draft, the cross-reference is unchanged and is shown in bold text. Bracketed text designates cross-references that have been updated in form, but still need to be updated to reflect the recodified section number.

As new Division 44 is drafted, these references will be updated to reflect the new numbering scheme. Where the cross-referenced material is contained in this draft, the cross-reference was updated to reflect the recodified section number.

Where a proposed section or Commission Comment is drafted to refer to a section of the recodified law that has not yet been included in the draft, the text refers to “Section [XXXXX].” These references will be updated when the relevant provision is drafted.

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 Chapter 6.5 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.

Substantive Issues for Possible Future Study. As part of the Legislature’s assignment to the Commission to conduct this study, the Legislature directed the Commission to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” That list appears in this document following the disposition and derivation tables.

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

Contents

| | |
|---|----|
| DIVISION 44. TOXICS REDUCTION AND MANAGEMENT | 1 |
| PART 1. GENERAL PROVISIONS | 1 |
| CHAPTER 1. FINDINGS AND DECLARATIONS | 1 |
| § 60000. Legislative findings | 1 |
| § 60005. Legislative declarations | 1 |
| § 60010. Findings related to access to public records | 2 |
| § 60015. Construction of division related to state or local agency enforcement or administration | 3 |
| § 60020. Relationship of division with law governing administrative regulations and rulemaking | 3 |
| CHAPTER 2. EFFECT OF RECODIFICATION | 3 |
| § 60035. Short title | 3 |
| § 60040. Nonsubstantive reform | 3 |
| § 60045. Continuation of existing law | 4 |
| § 60050. Judicial decision interpreting former law | 4 |
| § 60055. Constitutionality | 5 |
| § 60060. Conforming rule change | 5 |
| CHAPTER 3. DEFINITIONS | 6 |
| § 60075. Applicable definitions | 6 |
| § 60080. “Acutely hazardous waste” | 7 |
| § 60085. “Applicant” | 8 |
| § 60088. “Board” | 8 |
| § 60090. “Buffer zone” | 8 |
| § 60095. “Business” | 8 |
| § 60100. “Business concern” | 8 |
| § 60105. “Certified Unified Program Agency” or “CUPA” | 8 |
| § 60110. “Class I violation” | 8 |
| § 60115. “Class II violation” | 9 |
| § 60120. “Conditional authorization” | 10 |
| § 60125. “Conditional exemption” | 10 |
| § 60130. “Conditionally exempt small quantity treatment” | 11 |
| § 60135. “Conditionally exempt specified waste stream” | 11 |
| § 60140. “Consolidated manifest” | 11 |
| § 60150. “Consolidation site” | 11 |
| § 60155. “Contained gaseous material” | 12 |
| § 60160. “Department” | 12 |
| § 60165. “Director” | 12 |
| § 60170. “Disclosure statement” | 12 |
| § 60175. “Disposal” | 13 |
| § 60180. “Disposal site” | 13 |
| § 60185. “Electronic manifest system” or “e-Manifest system” | 13 |
| § 60190. “Environmental assessor” | 14 |
| § 60195. “Extremely hazardous waste” | 14 |
| § 60200. “Federal act” | 14 |
| § 60205. “Handling” | 14 |
| § 60210. “Hazardous waste” | 14 |
| § 60215. “Hazardous waste facility” | 15 |
| § 60220. “Hazardous waste management” or “management” | 16 |
| § 60225. “Intermediate manufacturing process stream” | 16 |

| | |
|---|----|
| § 60230. “Land use restriction” | 16 |
| § 60235. “License” | 17 |
| § 60240. “Local health officer” | 17 |
| § 60245. “Local officer” | 18 |
| § 60250. “Manifest” | 19 |
| § 60255. “Minor violation” | 20 |
| § 60260. “Natural resources” | 21 |
| § 60265. “Non-RCRA hazardous waste” | 21 |
| § 60270. “Notice to comply” | 21 |
| § 60275. “Offsite facility” | 22 |
| § 60280. “Onsite facility” | 22 |
| § 60285. “Participating Agency” or “PA” | 22 |
| § 60290. “Permit-by-rule” | 22 |
| § 60295. “Person” | 22 |
| § 60300. “Processing” | 23 |
| § 60305. “Producer” | 23 |
| § 60310. “RCRA hazardous waste” | 23 |
| § 60315. “Recyclable material” | 23 |
| § 60320. “Recycled material” | 24 |
| § 60325. “Recycling” | 24 |
| § 60328. “Release” | 24 |
| § 60330. “Remote site” | 24 |
| § 60335. “Retrograde material” | 25 |
| § 60340. “Restricted hazardous waste” | 25 |
| § 60345. “Secretary” | 26 |
| § 60350. “Storage” | 26 |
| § 60355. “Storage facility” | 26 |
| § 60360. “Transportable hazardous waste treatment unit” or “transportable treatment unit” | 27 |
| § 60365. “Treatment” | 27 |
| § 60370. “Unified Program Agency” or “UPA” | 28 |
| § 60375. “Unified Program Facility” | 29 |
| § 60380. “Universal waste” | 29 |
| § 60385. “Volatile organic compound” | 30 |
| § 60390. “Waste” | 30 |
| CHAPTER 4. FINANCIAL PROVISIONS | 32 |
| Article 1. Hazardous Waste Control Account | 32 |
| § 60450. Funds to be deposited in account | 32 |
| § 60455. Appropriations from account | 33 |
| § 60465. Loans from general fund to account | 35 |
| § 60475. Successor fund to Federal Receipts Account | 35 |
| Article 2. Toxic Substances Control Account | 35 |
| § 60490. Funds to be deposited in account | 35 |
| § 60495. Appropriations from account | 37 |
| § 60500. Expenditures | 40 |
| § 60505. Loans to account | 40 |
| § 60510. Account as successor fund | 41 |
| § 60520. Legislative intent regarding appropriations to account | 41 |
| § 60525. Annual adjustments for cost of living | 42 |
| Article 3. Reporting for Budget | 42 |
| § 60575. Reporting on specified budget amounts | 42 |
| § 60580. Report regarding estimated funding for direct site remediation costs | 43 |

| | |
|---|----|
| CHAPTER 5. GENERAL POWERS AND DUTIES..... | 43 |
| Article 1. Contracting | 43 |
| § 60620. Contracts for specialized training programs | 43 |
| Article 2. Duties | 44 |
| § 60635. Department obligations | 44 |
| Article 3. Information Distribution | 45 |
| § 60650. Reporting and distribution of information | 45 |
| § 60655. Protection of trade secrets | 45 |
| Article 4. Regulations and Standards..... | 47 |
| § 60670. Hazardous waste management to protect against hazards to public health, to domestic livestock, to wildlife, or to the environment | 47 |
| § 60675. Authority to adopt varying regulations..... | 48 |
| § 60680. Regulations adopted prior to January 1, 2008 | 48 |
| § 60685. Public hearing on proposed regulations | 49 |
| § 60690. Permissible format for contingency plan..... | 49 |
| Article 5. Reporting | 50 |
| § 60700. Information to be posted online..... | 50 |
| CHAPTER 6. LABORATORY ANALYSIS | 51 |
| § 60720. Laboratory accreditation for analyses..... | 51 |
| § 60725. Exceptions to certification requirements | 53 |
| § 60730. Certification required for contracts for laboratory analyses | 54 |
| PART 2. BOARD OF ENVIRONMENTAL SAFETY..... | 55 |
| CHAPTER 1. PRELIMINARY PROVISIONS..... | 55 |
| Article 1. Establishment of Board..... | 55 |
| § 61000. Appointment of board members | 55 |
| § 61005. Role of board members | 55 |
| § 61010. Terms..... | 55 |
| § 61015. Appointment of chair, workload and compensation of members..... | 56 |
| § 61025. Liaison with United States Department of Defense | 56 |
| § 61030. Litigation counsel | 56 |
| Article 2. Conducting of Business | 57 |
| § 61060. Voting and quorum requirements | 57 |
| § 61065. Compliance with other acts | 57 |
| § 61070. Adoption of rules relating to conduct | 57 |
| § 61075. External interactions relating to board matters | 58 |
| § 61080. Conflict of interest | 58 |
| § 61085. Removal of board member | 58 |
| CHAPTER 2. MEETING PROCESS..... | 59 |
| § 61130. Number and location of meetings..... | 59 |
| § 61135. Use of advisory subcommittees | 59 |
| § 61140. Director participation..... | 60 |
| CHAPTER 3. BOARD RESPONSIBILITIES | 60 |
| § 61200. Setting of fees | 60 |
| § 61205. Hazardous waste facility permit appeals | 60 |
| § 61210. Public hearings | 60 |
| § 61215. Evaluation of director priorities and adoption of performance metrics..... | 60 |
| § 61220. Analysis of department activity fee structure | 61 |
| § 61225. Evaluation of department programs and development of recommendations | 62 |
| § 61230. Development of long-term goals for departmental activities | 62 |
| § 61235. Annual review of department and director performance | 63 |
| § 61240. Appearance before legislative policy committees | 63 |

| | |
|---|----|
| § 61300. Adoption of regulations | 63 |
| § 61350. Establishment of office | 64 |
| § 61355. Appointment | 64 |
| § 61360. Responsibilities..... | 64 |
| § 61365. Determination of responsibilities | 64 |
| § 61370. Establishment of procedures..... | 64 |
| § 61375. Submission of complaint or suggestion..... | 65 |
| DISPOSITION OF EXISTING LAW | 67 |
| DERIVATION OF NEW LAW | 71 |
| SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY | 75 |

DRAFT LEGISLATION

1 **Health & Safety Code §§ 60000-[XXXXX] (added). Toxics Reduction and Management**
2 SEC. _____. Division 44 (commencing with Section 60000) is added to the Health
3 and Safety Code, to read:

4 DIVISION 44. TOXICS REDUCTION AND MANAGEMENT

5 **Notes. (1)** The proposed title of this division, “Toxics Reduction and Management,” is intended
6 to concisely describe the contents of Chapter 6.5 of Division 20. **The Commission welcomes**
7 **comments on whether an alternative title would better describe the contents for Chapter 6.5**
8 **of Division 20 for users of this law.**

9 **(2)** The provisional outline for this recodification project would recodify the entirety of Chapter
10 6.5 (commencing with Section 25100) of Division 20 in this proposed division. The provisions
11 contained in this draft, particularly those that cross-refer to the division, will require reconsideration
12 and possible adjustment if provisions of Chapter 6.5 of Division 20 are recodified in a different
13 location.

14 PART 1. GENERAL PROVISIONS

15 CHAPTER 1. FINDINGS AND DECLARATIONS

16 § 60000. Legislative findings

17 60000. The Legislature finds that:

18 (a) Increasing quantities of hazardous wastes are being generated in the state, for
19 which the generators of the hazardous waste must provide safe disposal.

20 (b) Long-term threats to public health and to air and water quality are posed by
21 the landfill disposal of many types of untreated hazardous wastes and by the
22 inappropriate handling, storage, use, and disposal of hazardous wastes.

23 (c) Extensive technology exists for the safe treatment, neutralization, and
24 destruction of many types of hazardous wastes prior to disposal.

25 (d) Numerous opportunities exist to reduce the amount of hazardous waste
26 generated in the state and to conserve resources through the application of existing
27 source reduction and recycling technology.

28 (e) The people of the state face immense costs as a result of improper hazardous
29 waste handling and disposal practices.

30 **Comment.** Section 60000 continues former Section 25100 without substantive change.

31 See Sections 60205 (“handling”), 60210 (“hazardous waste”), 60325 (“recycling”), 60350
32 (“storage”), 60365 (“treatment”).

33 § 60005. Legislative declarations

34 60005. The Legislature therefore declares that:

35 (a) In order to protect the public health and the environment and to conserve
36 natural resources, it is in the public interest to establish regulations and incentives

1 which ensure that the generators of hazardous waste employ technology and
 2 management practices for the safe handling, treatment, recycling, and destruction
 3 of their hazardous wastes prior to disposal.

4 (b) In order to assist the generators of hazardous waste in meeting the
 5 responsibility for the safe disposal of hazardous waste it is necessary to establish the
 6 Hazardous Waste Management Council.

7 (c) The Legislature further declares that in order to protect the public of this state
 8 and particularly the communities where hazardous wastes are treated and disposed,
 9 it is essential to assure full compensation of all people injured or damaged by
 10 hazardous wastes. It is therefore necessary that the Hazardous Waste Management
 11 Council, created pursuant to Section 25206, make recommendations regarding a
 12 system of insurance and mechanisms establishing liability to achieve this result, as
 13 required by subdivision (e) of Section 25208.

14 (d) It is in the best interest of the health and safety of the people of the State of
 15 California for the state to obtain and maintain authorization to administer a state
 16 hazardous waste program in lieu of the federal program pursuant to Section 3006 of
 17 Public Law 94-580, as amended, the Resource Conservation and Recovery Act of
 18 1976 (42 U.S.C. 6926). Therefore, it is the intent of the Legislature that the director
 19 shall have those powers necessary to secure and maintain interim and final
 20 authorization for the state hazardous waste program pursuant to the requirements of
 21 Section 3006 of Public Law 94-580, the Resource Conservation and Recovery Act
 22 of 1976 (42 U.S.C. 6926), and to implement such program in lieu of the federal
 23 program.

24 **Comment.** Section 60005 continues former Section 25101 without substantive change. Obsolete
 25 references to the “Hazardous Waste Management Council” and associated cross-referenced
 26 provisions have been retained for ease of historical reference.

27 See Sections 60165 (“director”), 60205 (“handling”), 60210 (“hazardous waste”), 60220
 28 (“hazardous waste management” or “management”), 60260 (“natural resources”), 60325
 29 (“recycling”), 60365 (“treatment”).

30 § 60010. Findings related to access to public records

31 60010. The Legislature has found that access by the people of this state to public
 32 records is a fundamental and necessary right. The Legislature finds that it is
 33 necessary to further the public’s right of access to public records pertaining to
 34 hazardous waste management, information, and cleanup, to assure the fullest
 35 opportunity for public participation in permitting and other decisions in order to
 36 protect public health and the environment.

37 **Comment.** Section 60010 continues former Section 25103 without substantive change.

38 See Section 60220 (“hazardous waste management” or “management”).

§ 60015. Construction of division related to state or local agency enforcement or administration

60015. No provision of this division shall limit the authority of any state or local agency in the enforcement or administration of any provision of law that it is specifically permitted or required to enforce and administer.

Comment. Section 60015 continues former Section 25105 without substantive change.

§ 60020. Relationship of division with law governing administrative regulations and rulemaking

60020. Except as expressly provided by statute, this division does not supersede or modify Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 60020 continues former Section 25106 without substantive change.

CHAPTER 2. EFFECT OF RECODIFICATION

§ 60035. Short title

60035. This division recodifies the provisions of former Chapter 6.5 (commencing with Section 25100) of Division 20. The act that added this division, and the act that consists of conforming revisions to reflect the addition of this division, shall be known and may be cited as the “Hazardous Waste Control Recodification Act.”

Comment. Section 60035 is new. It provides a convenient means of referring to the recodification of former Chapter 6.5 (commencing with Section 25100) of Division 20. For background, see *Recodification of Hazardous Waste Control Provisions*, __ Cal. L. Revision Comm’n Reports __ (20XX).

§ 60040. Nonsubstantive reform

60040. Nothing in the Hazardous Waste Control Recodification Act is intended to substantively change the law contained in former Chapter 6.5 (commencing with 25100) of Division 20. The act is intended to be entirely nonsubstantive in effect. Every provision of this division 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 60040 is new. It is modeled on Penal Code Section 16005. It makes clear that the Hazardous Waste Control Recodification Act has no substantive effect. The act is intended solely to make the provisions of former Chapter 6.5 (commencing with Section 25100) of Division 20 more user-friendly. For background, see *Recodification of Hazardous Waste Control Provisions*, __ Cal. L. Revision Comm’n Reports __ (20XX).

For specific guidance on the impact of a judicial decision interpreting a predecessor of a provision in this division, see Section 60050. For specific guidance on the impact of a judicial decision assessing the constitutionality of a predecessor of a provision in this division, see Section 60055.

See Section 60035 (“Hazardous Waste Control Recodification Act”).

1 **§ 60045. Continuation of existing law**

2 60045. (a) A provision of this division, insofar as it is substantially the same as a
3 previously existing provision relating to the same subject matter, shall be considered
4 as a restatement and continuation of the previously existing provision and not as a
5 new enactment.

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

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

12 (d) A reference in a regulation to a provision of former Chapter 6.5 (commencing
13 with Section 25100) of Division 20, rather than to the provision of this division that
14 continues the former provision, has no effect on the validity of the regulation.

15 **Comment.** Section 60045 is new.

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

19 Subdivision (b) is drawn from Government Code Section 9604, and Penal Code Section
20 16010(b).

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

22 Subdivision (d) is drawn from Section 78015(d). It is added to make clear that any delay in
23 updating regulations to reflect the enactment of this division does not have any effect on the validity
24 of the regulation. A regulation continues to be valid even if it refers to a provision of former Chapter
25 6.5 (commencing with Section 25100) of Division 20.

26 **§ 60050. Judicial decision interpreting former law**

27 60050. (a) A judicial decision interpreting a previously existing provision is
28 relevant in interpreting any provision of this division that restates and continues that
29 previously existing provision.

30 (b) However, in enacting the Hazardous Waste Control Recodification Act, the
31 Legislature has not evaluated the correctness of any judicial decision interpreting a
32 provision affected by the act.

33 (c) The Hazardous Waste Control Recodification Act is not intended to, and does
34 not, reflect any assessment of any judicial decision interpreting any provision
35 affected by the act.

36 **Comment.** Section 60050 is new. It is modeled on Penal Code Section 16020.

37 Subdivision (a) makes clear that case law construing a predecessor provision is relevant in
38 construing its successor in this division.

39 Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.5 (commencing with
40 Section 25100) of Division 20, the Legislature has not taken any position on any case interpreting
41 any of those provisions.

42 For specific guidance on the impact of a judicial decision assessing the constitutionality of a
43 predecessor of a provision in this division, see Section 60055. For general guidance on the
44 nonsubstantive impact of the Hazardous Waste Control Recodification Act, see Section 60040.

45 See Section 60035 (“Hazardous Waste Control Recodification Act”).

Note. In another recently completed recodification project, the Commission included a section similar to proposed Section 60050 that addresses Attorney General opinions, rather than judicial decisions. The Commission considered whether such a provision should be included in this project, as well. The Commission searched for Attorney General opinions related to Chapter 6.5 and found a couple. See 70 Cal. Ops. Atty. Gen. 130, 70 Cal. Ops. Atty. Gen. 183. Given that there are very few Attorney General opinions, it is not clear whether it would be worthwhile to include a provision about the effect of the recodification on Attorney General opinions.

The Commission welcomes comment on this issue.

§ 60055. Constitutionality

60055. (a) A judicial decision on the constitutionality of a previously existing provision is relevant in determining the constitutionality of any provision of this division that restates and continues that previously existing provision.

(b) However, in enacting the Hazardous Waste Control 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 Waste Control Recodification Act is not intended to, and does not, reflect any determination of the constitutionality of any provision affected by the act.

Comment. Section 60055 is new. It 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 this division.

Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.5 (commencing with Section 25100) 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 division, see Section 60050. For general guidance on the nonsubstantive effect of the Hazardous Waste Control Recodification Act, see Section 60040.

See Section 60035 (“Hazardous Waste Control Recodification Act”).

§ 60060. Conforming rule change

60060. (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 6.5 (commencing with Section 25100) of Division 20 and replaces it with a reference to the provision of this division 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 60060 is new. It is modeled on Section 78030. See Section 60160 (“department”).

CHAPTER 3. DEFINITIONS

Note. The following existing definitions appear to be obsolete or otherwise unnecessary, as described below:

“Authorized local health officer” (Section 25110.2) – this defined term is not used in any other provisions of Chapter 6.5 (nor is it incorporated by reference in other provisions of the California codes). In addition, the cross-referenced provision pursuant to which the department would authorize a local health officer (Section 25187.7) has been repealed.

“Consolidated transporter” (Section 25110.10.1) - this defined term is not used in any other provisions of Chapter 6.5 (nor is it incorporated by reference in other provisions of the California codes).

“Designated local public officer” (Section 25111.1) – this defined term is not used in any other provisions of Chapter 6.5 (nor is it incorporated by reference in other provisions of the California codes).

“State operational costs” (Section 25122.8) – this defined term is not used in any other provisions of Chapter 6.5 (nor is it incorporated by reference in other provisions of the California codes).

Absent comment indicating that these definitions have ongoing utility, the definitions would not be continued in the proposed recodification.

§ 60075. Applicable definitions

60075. (a) Unless expressly incorporated by reference by another statute, the definitions in this chapter govern only the construction of this division.

(b) Until terms used in this division are defined in either this division or in regulations adopted to implement this division, the corresponding definitions found in the federal act and the regulations adopted pursuant to that act, shall apply to the terms used in this division.

Comment. Section 60075 continues former Section 25110 without substantive change. A reference to the “Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.)” was replaced with the defined term “federal act.” See Section 60200.

See Section 60200 (“federal act”).

Notes. Subdivision (b) of proposed Section 60075 provides for the application of definitions contained in the federal act (42 U.S.C. Sec. 6901 et seq.) if the terms are not defined either in Chapter 6.5 or the associated state regulations. In preparing this recodification, the Commission has not exhaustively evaluated the application of definitions in the state regulation, federal law, or

federal regulations to the use of those terms in this division. Assessing the applicability of the numerous definitions to uses of the defined terms in this law would be a significant undertaking. And, importantly, the potential benefits of doing such work in this nonsubstantive study are limited. That said, the Commission has identified issues that may be appropriate for future attention:

(1) Subdivision (b) implies that, for a term that is not defined in this division, but is defined in the state regulations adopted pursuant to this division, the regulatory definition would apply to uses of the term in this division. If that is the intended outcome, the rule should be stated more directly.

More broadly, Section 66260.10 of Title 22 of the California Code of Regulations appears to be the key regulatory section defining terms related to hazardous waste management. That section defines over 400 terms (although some definitions are simply cross-references, e.g., “‘Acute hazardous waste’ see ‘Acutely hazardous waste.’”). The regulations include definitions for a number of terms that are also defined in this proposed division (e.g., “acutely hazardous waste,” “applicant,” “buffer zone,” “business”); the same term may be defined differently in this proposed division and the regulations (see, e.g., “disposal site” definitions in proposed Section 60180 and 22 C.C.R. § 66260.10). While many defined terms are sufficiently technical that they would not be mistakenly used in a more colloquial sense (e.g., “Acute aquatic 96-hour LC₅₀,” “polychlorinated biphenyls”), there are several defined terms that have a more general colloquial meaning (e.g., “activity,” “application,” “assets,” “authorized representative,” “commence,” “component”).

(2) Section 6903 of the federal act defines over 40 terms and the federal act’s regulations define many, many more. See generally <https://www.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-regulations> (over 25 parts of the federal regulations are associated with the federal act; a number of those parts have one or more sections containing numerous definitions); see, e.g., 40 C.F.R. §§ 239.2, 240.101, 256.05, 260.10, 273.9, 280.12.

In general, it is uncertain whether this provision provides sufficient clarity as to when the federal definitions apply. In particular, the federal act regulations cover three general categories: non-hazardous waste, hazardous waste, and other (used oil and storage tanks). Chapter 6.5 primarily deals with hazardous waste. It is unclear whether all of the definitions contained in the non-hazardous waste and storage tank regulations should be applied to Chapter 6.5. See, e.g., Section 25200.15 (using the word “upgrade” in a section about hazardous waste facility improvements), 40 C.F.R. § 280.12 (defining “upgrade” for underground storage tank systems).

At a minimum, it seems worthwhile to consider whether subdivision (b) should expressly limit the application of federal definitions in situations where those definitions were clearly not intended to apply (i.e., definitions apply “unless the context requires otherwise”).

The Commission welcomes comment on the above issues.

(3) Chapter 6.5 contains a number of provisions that apply to DTSC and pertain to programs other than those in Chapter 6.5. In particular, the financial provisions in Chapter 6.5 involve programs and terminology used in Chapter 6.8. See Note to proposed Chapter 4. In several cases, terms defined in Part 2 of Division 45 are used in Chapter 6.5 without reference to the applicable definitions, although it seems likely that those definitions were intended to apply. It may be worthwhile to include a provision specifying that, unless otherwise provided in this proposed division, the definitions in Part 2 of Division 45 apply to uses of those terms in this law. This is particularly true for the financial provisions (proposed Chapter 4 in this draft), but may apply to the whole of Chapter 6.5.

This issue has been added to the list of substantive issues for possible future study.

§ 60080. “Acutely hazardous waste”

60080. “Acutely hazardous waste” means any hazardous waste classified as an acutely hazardous waste in regulations adopted by the department.

Comment. Section 60080 continues former Section 25110.02 without substantive change. See Sections 60160 (“department”), 60210 (“hazardous waste”).

1 **§ 60085. “Applicant”**

2 60085. “Applicant” means any person seeking an original hazardous waste
3 facilities permit, or an original hazardous waste hauler’s registration from the
4 department to generate, transport, treat, store, recycle, dispose of or handle
5 hazardous waste.

6 **Comment.** Section 60085 continues former Section 25110.1 without substantive change.

7 See Sections 60160 (“department”), 60210 (“hazardous waste”), 60215 (“hazardous waste
8 facility”), 60295 (“person”).

9 **§ 60088. “Board”**

10 60088. “Board” means the Board of Environmental Safety established pursuant
11 to **Section 25125**.

12 **Comment.** Section 60088 continues former Section 25110.3 without substantive change.

13 **§ 60090. “Buffer zone”**

14 60090. “Buffer zone” means an area of land that surrounds a hazardous waste
15 facility and on which certain land uses and activities are restricted to protect the
16 public health and safety and the environment from existing or potential hazards
17 caused by the migration of hazardous waste.

18 **Comment.** Section 60090 continues former Section 25110.4 without substantive change.

19 See Sections 60210 (“hazardous waste”), 60215 (“hazardous waste facility”).

20 **§ 60095. “Business”**

21 60095. “Business” means the conduct of activity and is not limited to a
22 commercial or proprietary activity.

23 **Comment.** Section 60095 continues former Section 25110.5 without substantive change.

24 **§ 60100. “Business concern”**

25 60100. “Business concern” means any sole proprietorship, corporation,
26 association, firm, partnership, trust, or other form of commercial organization.

27 **Comment.** Section 60100 continues former Section 25110.8 without substantive change.

28 **§ 60105. “Certified Unified Program Agency” or “CUPA”**

29 60105. “Certified Unified Program Agency” or “CUPA” means the agency
30 certified by the secretary to implement the unified program specified in Chapter
31 6.11 (commencing with Section 25404) of Division 20 within a jurisdiction.

32 **Comment.** Section 60105 continues former Section 25123.7(b) without substantive change.

33 See Section 60345 (“secretary”).

34 **§ 60110. “Class I violation”**

35 60110. “Class I violation” means any of the following:

36 (a) A deviation from the requirements of this division, or any regulation, standard,
37 requirement, or permit or interim status document condition adopted pursuant to this
38 division, that meets one or more of the following conditions:

(1) The deviation represents a significant threat to human health or safety or the environment because of one or more of the following:

- (A) The volume of the waste.
- (B) The relative hazardousness of the waste.
- (C) The proximity of the population at risk.

(2) The deviation is significant enough that it could result in a failure to accomplish any of the following:

- (A) Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.
- (B) Prevent releases of hazardous waste or constituents to the environment during the active or postclosure period of facility operation.
- (C) Ensure early detection of releases of hazardous waste or constituents.
- (D) Ensure adequate financial resources in the case of releases of hazardous waste or constituents.
- (E) Ensure adequate financial resources to pay for facility closure.
- (F) Perform emergency cleanup operations of, or other corrective actions for, releases.

(b) A deviation that is a Class II violation that is a chronic violation or committed by a recalcitrant violator.

Comment. Section 60110 restates former Section 25110.8.5, with the exception of the second sentence of subdivision (b), without substantive change.

See Sections 60115 (“class II violation”), 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60390 (“waste”).

Note. Section 25110.8.5 was restated to ensure grammatical consistency in the section. Minor changes were made to the portion of subdivision (a) preceding the numbered paragraphs and to subdivision (b). Currently, those provisions of Section 25110.8.5 provide:

“Class I violation” means any of the following:

(a) A deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter, that is any of the following:

...

(b) The deviation is a Class II violation which is a chronic violation or committed by a recalcitrant violator. “Class II Violation” has the same meaning as defined in Section 66260.10 of Title 22 of the California Code of Regulations.

The second sentence of subdivision (b) is continued in proposed Section 60115.

Absent comment, the proposed restatement of this provision will be presumed correct.

§ 60115. “Class II violation”

60115. “Class II violation” has the same meaning as defined in Section 66260.10 of Title 22 of the California Code of Regulations.

Comment. Section 60115 continues the second sentence of former Section 25110.8.5(b) without substantive change.

See Section 60110 (“class I violation”).

Note. The scope of application for that definition is not expressly limited to the section. The term “class II violation” is also used in the provision defining “minor violation.” See proposed Section 60255 (“minor violation”). For ease of use, the definition of “class II violation” is continued as a separate section.

Absent comment, the proposed treatment of this provision will be presumed correct.

§ 60120. “Conditional authorization”

60120. (a) “Conditional authorization” means a provision of this division that provides that a person or activity is deemed to be operating pursuant to a grant of authorization, as required pursuant to **subdivision (a) of Section 25201**, if the person or activity meets the specified requirements.

(b) “Conditional authorization” includes, but is not limited to, **Section 25200.3**.

Comment. Section 60120 restates former Section 25110.9.1(a) without substantive change. See Section 60295 (“person”).

Note. Section 25110.9.1(a) is restated to improve readability. Section 25110.9.1(a) provides:

25110.9.1. (a) “Conditional authorization” means a provision of this chapter, including, but not limited to, Section 25200.3, which provides that a person or activity is deemed to be operating pursuant to a grant of authorization, as required pursuant to subdivision (a) of Section 25201, if the person or activity meets the requirements of that provision.

The portion of the definition that identifies the example section (the “included, but not limited to” provision) was placed in a separate subdivision and conforming changes were made. The indefinite reference to “requirements of that provision” was changed to refer to the “specified requirements.”

Absent comment, the proposed restatement of this provision will be presumed correct.

§ 60125. “Conditional exemption”

60125. (a) “Conditional exemption” means a provision of this division that provides that a person or activity is exempted from, or is otherwise not subject to, the requirement to obtain a hazardous waste facilities permit or other grant of authorization if the person or activity meets the requirements of that provision.

(b) “Conditional exemption” includes, but is not limited to, **Sections 25144.6, 25201.5, 25201.8, and 25201.13**.

Comment. Section 60125 restates former Section 25110.9.1(b) without substantive change. See Sections 60215 (“hazardous waste facility”), 60295 (“person”).

Notes. (1) Section 25110.9.1(b) is restated to improve readability. Section 25110.9.1(b) provides:

25110.9.1. ... (b) “Conditional exemption” means a provision of this chapter, including, but not limited to, Sections 25144.6, 25201.5, 25201.5.1, 25201.8, and 25201.13, which provides that a person or activity is exempted from, or is otherwise not subject to, the requirement to obtain a hazardous waste facilities permit or other grant of authorization if the person or activity meets the requirements of that provision.

The portion of the definition that identifies the example sections (the “included, but not limited to” provision) was placed in a separate subdivision and conforming changes were made.

Absent comment, the proposed restatement of this provision will be presumed correct.

(2) Section 25110.9.1(b)(2) lists sections that govern conditional exemptions. One of the listed sections, Section 25201.5.1, has been repealed. Former Section 25201.5.1 related to silver halide-based imaging product processing. See 1994 Cal. Stat. ch. 440, § 1. This material does not appear to have been continued elsewhere in the code. For that reason, the obsolete reference to Section 25201.5.1 was continued.

Absent comment, the proposed treatment of this cross-reference will be presumed correct.

§ 60130. “Conditionally exempt small quantity treatment”

60130. “Conditionally exempt small quantity treatment” means the operations of a generator conditionally exempted pursuant to **subdivision (a) of Section 25201.5**.

Comment. Section 60130 continues former Section 25110.9(a) without substantive change.

§ 60135. “Conditionally exempt specified waste stream”

60135. “Conditionally exempt specified waste stream” means a waste stream treated by a generator conditionally exempted pursuant to **subdivision (c) of Section 25201.5**.

Comment. Section 60135 continues former Section 25110.9(b) without substantive change. See Section 60390 (“waste”).

§ 60140. “Consolidated manifest”

60140. “Consolidated manifest” means a hazardous waste manifest used by a milk run transporter to combine hazardous waste shipments from multiple generators on one consolidated manifest pursuant to the procedures in **Section 25160.2**.

Comment. Section 60140 restates former Section 25110.9.3 without substantive change. See Sections 60210 (“hazardous waste”), 60250 (“manifest”).

Note. Section 25110.9.3 begins with a clause specifying that the definition is “[f]or purposes of this chapter.” This language appears to be redundant. Proposed Section 60075 (Section 25110) provides that the definitions in this proposed chapter govern “only the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 60140 does not continue the “[f]or purposes of this chapter” language.

Absent comment, the proposed restatement of this provision will be presumed correct.

§ 60150. “Consolidation site”

60150. “Consolidation site” means a site to which hazardous waste initially collected at a remote site is transported.

Comment. Section 60150 restates former Section 25110.10(a) without substantive change. See Sections 60210 (“hazardous waste”), 60330 (“remote site”).

Notes. (1) Section 25110.10(a) includes a clause specifying that “remote site” is “as defined in Section 25121.3.” The “as defined in Section 25121.3” language appears to be redundant. “Remote site” is defined in Section 25121.3 and that definition governs this division. See proposed Section 60075. For this reason, the clause cross-referencing the remote site definition was not continued.

Absent comment, the proposed restatement of this provision will be presumed correct.

(2) Subdivisions (b) to (e) of Section 25110.10 will be recodified with the substantive rules related to hazardous waste transportation and consolidation.

1 **§ 60155. “Contained gaseous material”**

2 60155. (a) “Contained gaseous material” means any gas that is contained in an
3 enclosed cylinder or other enclosed container.

4 (b) Notwithstanding subdivision (a), “contained gaseous material” does not
5 include any exhaust or flue gas, or other vapor stream, or any air or exhaust gas
6 stream that is filtered or otherwise processed to remove particulates, dusts, or other
7 air pollutants, regardless of the source.

8 **Comment.** Section 60155 restates former Section 25110.11 without substantive change.

9 **Notes. (1)** Section 25110.11(a) specifies that the definition of “contained gaseous material” is
10 “for purposes of subdivision (a) of Section 25124 or any other provision of this chapter.” This
11 language appears to be redundant. Proposed Section 60075 (Section 25110) provides that the
12 definitions in this chapter govern “only the construction of this division [existing Chapter 6.5].”
13 For this reason, proposed Section 60155 does not continue the language specifying that the
14 definition applies “for purposes of subdivision (a) of Section 25124 or any other provision of this
15 chapter.”

16 **Absent comment, the proposed restatement of this provision will be presumed correct.**

17 **(2)** Currently, Section 25124(a) (defining “waste”) is the only provision that appears to use the
18 term “contained gaseous material” in Chapter 6.5. Given that, it is unclear if there is value to
19 retaining this provision as a separate definition that applies to the whole of Chapter 6.5.

20 **The Commission welcomes comment on whether this definition should be incorporated**
21 **into the definition of “waste.”**

22 **§ 60160. “Department”**

23 60160. “Department” means the Department of Toxic Substances Control.

24 **Comment.** Section 60160 continues former Section 25111 without substantive change.

25 **§ 60165. “Director”**

26 60165. “Director” means the Director of Toxic Substances Control.

27 **Comment.** Section 60165 continues former Section 25112 without substantive change.

28 **§ 60170. “Disclosure statement”**

29 60170. “Disclosure statement” means a statement submitted to the department by
30 an applicant, signed by the applicant under penalty of perjury, that includes all of
31 the information specified in [Section XXXXX].

32 **Comment.** Section 60170 restates the portion of former Section 25112.5(a) that precedes the
33 numbered paragraphs without substantive change.

34 See Sections 60085 (“applicant”), 60160 (“department”).

35 **Notes. (1)** Section 25112.5 contains the definition of “disclosure statement,” along with
36 supporting rules about the contents of the disclosure statement. Proposed Section 60170 recodifies
37 the portion of Section 25112.5 that defines disclosure statement, which provides:

38 “(a) ‘Disclosure statement’ means a statement submitted to the department by an applicant,
39 signed by the applicant under penalty of perjury, which includes all of the following information:
40”

Proposed Section 60170 would restate this portion of Section 25112.5(a) to include a (placeholder) cross-reference to the proposed provision(s) that will recodify the remainder of Section 25112.5(a).

(2) The remaining material in Section 25112.5 — i.e., subdivisions (b)-(d) and the numbered paragraphs of subdivision (a) — will be recodified later in this proposed division.

§ 60175. “Disposal”

60175. (a) “Disposal” means either of the following:

(1) The discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste so that the waste or any constituent of the waste is or may be emitted into the air or discharged into or on any land or waters, including groundwaters, or may otherwise enter the environment.

(2) The abandonment of any waste.

(b) The amendment of former Section 25113 by Section 2 of Chapter 1436 of the Statutes of 1989 does not constitute a change in, but is declaratory of, the existing law.

Comment. Section 60175 restates former Section 25113 without substantive change. See Section 60390 (“waste”).

Note. Section 25113(b) is restated to replace the phrase “[t]he amendment of the section made at the 1989-90 Regular Session of the Legislature” with a reference to “[t]he amendment of former Section 25113 by Section 2 of Chapter 1436 of the Statutes of 1989.”

Absent comment, this proposed restatement will be presumed correct.

§ 60180. “Disposal site”

60180. “Disposal site” means the location where any final deposition of hazardous waste occurs.

Comment. Section 60180 continues former Section 25114 without substantive change. See Section 60210 (“hazardous waste”).

§ 60185. “Electronic manifest system” or “e-Manifest system”

60185. “Electronic manifest system” or “e-Manifest system” means the United States Environmental Protection Agency’s national information technology system through which an electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest, and to regulatory agencies.

Comment. Section 60185 restates former Section 25160(a)(2) without substantive change. See Section 60250 (“manifest”).

Note. The text preceding the numbered paragraphs in Section 25160(a) provides “[f]or purposes of this chapter, the following definitions apply.” Given the application of these definitions to the entirety of Chapter 6.5, the definitions have been proposed for recodification in this proposed chapter.

The prefatory “[f]or purposes of this chapter” text is redundant and therefore is not continued. Proposed Section 60075 (Section 25110) provides that the definitions in this chapter govern “only the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 60185 does not continue the “[f]or purposes of this chapter” language.

Absent comment, this proposed restatement will be presumed correct.

1 **§ 60190. “Environmental assessor”**

2 60190. “Environmental assessor” means an environmental professional as defined
3 in Section 312.10 of Title 40 of the Code of Federal Regulations. Notwithstanding
4 Section 60075, this definition shall apply for all California statutes, unless the
5 context requires otherwise.

6 **Comment.** Section 60190 continues former Section 25114.5 without substantive change.

7 **Note.** Section 25114.5 indicates that the definition of environmental assessor “shall apply for all
8 California statutes, unless the context requires otherwise.” This is a very broad scope of application
9 and raises the question of whether this definition should be relocated to a more general location or
10 reproduced elsewhere.

11 **The Commission welcomes comment on this issue.**

12 **§ 60195. “Extremely hazardous waste”**

13 60195. “Extremely hazardous waste” means any hazardous waste or mixture of
14 hazardous wastes that, if human exposure should occur, may likely result in death,
15 disabling personal injury or serious illness caused by the hazardous waste or mixture
16 of hazardous wastes because of its quantity, concentration, or chemical
17 characteristics.

18 **Comment.** Section 60195 continues former Section 25115 without substantive change.

19 See Section 60210 (“hazardous waste”).

20 **§ 60200. “Federal act”**

21 60200. “Federal act” means the federal Resource Conservation and Recovery Act
22 of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

23 **Comment.** Section 60200 continues former Section 25115.1 without substantive change.

24 **§ 60205. “Handling”**

25 60205. (a) “Handling” means either of the following:

26 (1) The transporting or transferring from one place to another of hazardous waste.

27 (2) The pumping, processing, storing, or packaging of hazardous waste.

28 (b) “Handling” does not include the handling of any substance before it becomes
29 a waste.

30 **Comment.** Section 60205 restates former Section 25116 without substantive change.

31 See Sections 60210 (“hazardous waste”), 60300 (“processing”), 60390 (“waste”).

32 **Note.** Section 25116 has been restated for clarity. Section 25116 provides:

33 “‘Handling’ means the transporting or transferring from one place to another, or pumping,
34 processing, storing, or packaging of hazardous waste, but does not include the handling of any
35 substance before it becomes a waste.”

36 **Absent comment, the proposed restatement of this section will be presumed correct.**

37 **§ 60210. “Hazardous waste”**

38 60210. (a)(1) Except as provided in **subdivision (d) [of Section 25117]**,
39 “hazardous waste” means a waste that meets any of the criteria for the identification
40 of a hazardous waste adopted by the department pursuant to **Section 25141**.

(2) “Hazardous waste” includes, but is not limited to, RCRA hazardous waste.

(3) Unless expressly provided otherwise, “hazardous waste” also includes extremely hazardous waste and acutely hazardous waste.

(b)(1) Waste that is hazardous only because it is medical waste, as defined in the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104), shall not be governed by, subject to fees assessed by, or otherwise subject to, the requirements of this division or regulations adopted pursuant to this division.

(2) Biohazardous waste that meets the conditions specified in **subdivision (f) or (g) of Section 117635** is not subject to this division.

Comment. Subdivision (a) of Section 60210 continues former Section 25117(a)-(c) without substantive change.

Subdivision (b) continues former Section 25117.5 without substantive change.

See Sections 60080 (“acutely hazardous waste”), 60160 (“department”), 60195 (“extremely hazardous waste”), 60310 (“RCRA hazardous waste”), 60390 (“waste”).

Notes. (1) Subdivision (d) of Section 25117 contains a rule about satisfying “the element of proof that the waste is hazardous waste” in a criminal or civil prosecution for violations of Chapter 6.5. That subdivision will be recodified with the enforcement provisions in this proposed division.

(2) Section 25117.5 is missing a comma at the end of the citation to the Medical Waste Management Act. A comma has been added in this proposed section.

(3) Section 25117.5(b) (which will be recodified as paragraph (b)(2) of this proposed section) provides:

“(b) Biohazardous waste that meets the conditions specified in subdivision (f) or (g) of Section 117635 is not subject to this chapter.”

Section 117635 has been repealed. See 2014 Cal. Stat. ch. 564, § 5. Former Section 117635(f) and (g) related to biological waste that was only hazardous due to the presence of chemical fixatives, chemotherapeutic agents, or pharmaceuticals. See 1996 Cal. Stat. ch. 536, § 1. Former Section 117635 also specified that these types of waste “are not subject to” Chapter 6.5.

The definition of biohazardous waste was moved to Section 117690 and no longer has separate provisions about the types of waste addressed by former subdivisions (f) and (g). In the current provision, medical waste as a whole is defined as certain types of waste “not regulated by RCRA.” It is unclear how this cross-reference should be updated (i.e., by referring to former law or to refer to a different provision in the current law).

More generally, it is unclear whether this exclusion for biohazardous waste is intended to be different in scope than the exclusion for medical waste in paragraph (b)(1) of this proposed section (existing Section 25117.5(a)).

The Commission welcomes comment on these issues.

§ 60215. “Hazardous waste facility”

60215. (a) “Hazardous waste facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste.

(b) A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal, or recycling hazardous waste management units, or combinations of these units.

Comment. Section 60215 continues former Section 25117.1 without substantive change.

See Sections 60175 (“disposal”), 60210 (“hazardous waste”), 60220 (“hazardous waste management” or “management”), 60325 (“recycling”), 60350 (“storage”), 60365 (“treatment”).

§ 60220. “Hazardous waste management” or “management”

60220. “Hazardous waste management” or “management” means the transportation, transfer, recycling, recovery, disposal, handling, processing, storage, and treatment of hazardous waste.

Comment. Section 60220 continues former Section 25117.2 without substantive change.

See Sections 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous waste”), 60300 (“processing”), 60325 (“recycling”), 60350 (“storage”), 60365 (“treatment”).

§ 60225. “Intermediate manufacturing process stream”

60225. (a) “Intermediate manufacturing process stream” means a material, or combination of materials, that meets all of the following conditions:

(1) It is produced as part of the manufacturing process.

(2) It is used onsite on a batch or continuous basis, in either the same or in a different manufacturing process to produce a commercial product.

(3) It is not a recyclable material.

(4) The person who produced the material or combination of materials is able to demonstrate all of the following:

(A) The material, or combination of materials, is used, alone or in combination with other materials, in a manufacturing process that is designed for its use.

(B) The material, or combination of materials, is not accumulated or stored in amounts greater than can be used in the manufacturing process.

(C) The material, or combination of materials, is not handled, stored, or processed in a manner that is inconsistent with its intended use or the operating requirements of the manufacturing process.

(D) The material, or combination of materials, is not burned or incinerated for the purpose of abandoning or relinquishing the material or combination of materials, except as may otherwise be allowed under both this division and the federal act.

(b) Notwithstanding subdivision (a), a material is not an intermediate manufacturing process stream if it has been released in violation of this division, or any other applicable law, or an order issued pursuant to this division or other applicable law, unless it has been released into an appropriate containment area or structure and has been promptly recovered and returned to the manufacturing process, without prior treatment, for use in the originally intended manufacturing process.

Comment. Section 60225 continues former Section 25116.5 without substantive change.

See Sections 60200 (“federal act”), 60295 (“person”), 60315 (“recyclable material”), 60365 (“treatment”).

§ 60230. “Land use restriction”

60230. “Land use restriction” means any limitation regarding the uses of property which may be provided by, but is not limited to, a written instrument that imposes

an easement, covenant, restriction, or servitude, or a combination thereof, as appropriate, upon the present and future uses of all, or part of, the land, pursuant to Section **25202.5** or 79055 or former Section 25222.1 or 25230.

Comment. Section 60230 continues former Section 25117.13 without substantive change.

Notes. (1) Section 25117.13 specifies that a “land use restriction” is a limitation on the use of property that is imposed pursuant to specified sections. The phrasing of this provision is a bit ambiguous. Specifically, it is unclear whether the list of sections is intended to be an exclusive list.

The Commission identified certain sections that are not listed here that provide for restrictions on land use. It is not clear whether those omissions were intentional. For instance, Section 25221 discusses agreements between the property owner and the department that provide for restricting property uses. The section provides that such an agreement “shall be recorded... as a hazardous waste easement, covenant, restriction, or servitude, or any combination of those servitudes.” It is unclear why this section is not a listed land use restriction. See also Section 25220(a) (citing the land use restrictions imposed pursuant to former Sections 25229, 25230, and 25398.7, and current Sections 25202.5, 25221, and 25355.5).

The Commission welcomes comment on these issues and whether this definition has caused problems in practice.

Depending on the comment received, the Commission may add clarification of this definition to the list of substantive issues for possible future study.

(2) Section 25117.13 lists two sections that have been repealed, Sections 25222.1 and 25230. See 2012 Cal. Stat. ch. 39, § 38. Since the land use restrictions enacted under these repealed laws may still be in effect, proposed Section 60230 has been drafted to continue to refer to land use restrictions pursuant to those “former” sections. For these references, no statutory citation was provided to avoid an implication that only certain restrictions under these former sections are “land use restrictions” for the purpose of this definition (i.e., those restrictions adopted when a specified version of the section was in effect).

§ 60235. “License”

60235. “License” includes, but is not limited to any, permit, registration, or certification issued by any local, state, or federal agency for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste.

Comment. Section 60235 continues former Section 25117.10 without substantive change.

See Sections 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous waste”), 60325 (“recycling”), 60350 (“storage”), 60365 (“treatment”).

§ 60240. “Local health officer”

60240. “Local health officer” means county health officers, city health officers, and district health officers, as defined in this code.

Comment. Section 60240 continues former Section 25117.4.1(a) without substantive change.

Notes. (1) The definition of “local health officer” includes three specified types of officers (county, city, and district health officers) “as defined in this code.”

The Commission conducted a quick search to identify the provision(s) defining each type of health officer.

- “County health officer” – “County health officer” does not appear to be a defined term in this code. However, Section 101000 requires the board of supervisors to “appoint a health officer who is a county officer.” Presumably, this would be the “county health officer.” See also Section 111015

(defining “health officer” to include a health officer “appointed by a county board of supervisors pursuant to Section 101000”).

- “City health officer” – Similarly, “city health officer” does not appear to be a defined term in the code. Section 101460 specifies that the governing body of a city “shall appoint a health officer” See also Section 111015 (defining “health officer” to include a health officer appointed “by the governing body of a city pursuant to Section 101460.”).

- “District health officer” – The Commission has not found a section of the Health and Safety Code that provides for the appointment of a district health officer (aside from one permitting a sanitary district board to authorize the county health officer to act as a health officer for a sanitary district; see Section 6492.5). Section 111015 defines “health officer” to include a health officer appointed by “by a local health district board pursuant to former Section 940, that is continued in effect as to any existing district by Section 3 of Chapter 380 of the Statutes of 1959.” It is unclear whether these are the district health officers intended here.

The Commission welcomes comment on whether it would be helpful to specify where exactly these different officers are defined in the code.

(2) More broadly, it appears that a “local health officer” under this section may be the same as a “health officer” under Section 111015. If so, the definition in this section could either cite to Section 111015 (or duplicate the text of that definition).

The Commission welcomes comment on whether these two definitions have an identical scope.

§ 60245. “Local officer”

60245. “Local officer” means a local public officer authorized to implement this division pursuant to **subdivision (a) of Section 25180**.

Comment. Section 60245 continues former Section 25117.4.1(b) without substantive change.

Notes. (1) Section 25117.4.1(b) defines “local officer” as a “local public officer authorized to implement [Chapter 6.5] pursuant to” Section 25180(a). This definition differs from that of a “designated local public officer,” which is defined in Section 25111.1 as “a local public officer designated by the director pursuant to subdivision (a) of Section 25180.” The definition of “designated local public officer” is not proposed for continuation, as the term is not used in Chapter 6.5. However, given that both of these defined terms rely on authority in Section 25180, it is helpful to consider them together in assessing who would be a “local officer” under this proposed section.

Section 25180 describes three categories of local agencies/officers with a role in enforcing or implementing Chapter 6.5 and its regulations. Those three categories are as follows:

(1) For provisions of this chapter that are part of the unified program (see Section 25404(c)(1)) and where there is a Certified Unified Program Agency (CUPA), the unified program agencies are “authorized to enforce” the chapter’s requirements that are part of the unified program. (Section 25180(a)(2)(B)). See proposed Section 60370 (defining “unified program agency”).

(2) For provisions of this chapter that are part of the unified program and where there is no CUPA, an officer or agency “authorized, pursuant to [Section 25404.3(f)], to implement and enforce the provisions that are part of the unified program.” (Section 25180(a)(2)(A)).

(3) For provisions of this chapter that are not part of the unified program, “any local health officer or any local public officer designated by the director” may enforce this chapter’s standards. (Section 25180(a)(1)).

It appears that a “local officer” is an officer *authorized* as described in paragraph (2), while a “designated local public officer” is a local public officer *designated* as described in paragraph (3). If this is the case, it would seem to be helpful to offer a pinpoint cite to the relevant provision of Section 25180. Otherwise, it may not be clear whether “local officer” includes *any* local officer

that is either designated or authorized pursuant to Section 25180(a), particularly in the absence of the contrasting definition of “designated local public health officer.”

This provision defines “local officer” by referring specifically to a “local public officer.” This terminology differs from that in Section 25180, which refers to “any officer.” It is not clear whether any officer authorized under Section 25180 would necessarily be a “local public officer” (in which case, consistent terminology would be preferable). Alternatively, it may be that “local public officers” are only a subset of those officers authorized under Section 25180 (in which case, the Commission would recommend adjusting the language of the provision to make this clear).

The Commission welcomes comment on these issues.

(2) More broadly, this defined term does not appear to be the most useful term for Chapter 6.5.

First, it is not clear why this defined term includes only officers (and not agencies). As indicated above, Section 25180(a)(2)(A) provides for authorizing either “an officer or agency.” In Chapter 6.5, the term “local officer” is consistently used in combination with a reference to an “agency authorized ... pursuant to Section 25180(a).” See, e.g., proposed Section 60255(b)(2), Sections 25110.10(e), 25150(b), 25201.8(b). Given that, defining a term for an “authorized local officer or agency” would provide significant drafting convenience, as it better reflects how these agencies/officers are referenced in the statutes.

And, in fact, some sections use this shorthand term after first referring to “local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.” See, e.g., Section 25187.8 (numerous references to an “authorized local officer or agency”).

The Commission also welcomes comment on these issues.

§ 60250. “Manifest”

60250. (a) “Manifest” means a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by the department and that complies with all applicable federal and state regulations, and includes any of the following:

(1) A California Uniform Hazardous Waste Manifest, which was a manifest document printed and supplied by the state for a shipment initiated on or before September 4, 2006.

(2) A Uniform Hazardous Waste Manifest, which is United States Environmental Protection Agency Form 8700-22 (Manifest) and includes, if necessary, Form 8700-22A (Manifest Continuation Sheet), printed by a source registered with the United States Environmental Protection Agency for a shipment initiated on or after September 5, 2006.

(3)(A) An electronic manifest, which is the electronic format of a hazardous waste manifest, that is obtained from the electronic manifest system and transmitted electronically to the system, that is the legal equivalent of United States Environmental Protection Agency Forms 8700-22 and 8700-22A, as specified in **Section 25160.01**.

(B) A printed copy of the manifest from the e-Manifest system.

(b) For purposes of **this section [Section 25160]**, a shipment is initiated on the date when the manifest is signed by the first transporter and the hazardous waste leaves the site where it is generated.

Comment. Section 60250 restates former Section 25160(a)(1) and (a)(3) without substantive change.

See Sections 60160 (“department”), 60185 (“electronic manifest system,” “e-manifest system”), 60210 (“hazardous waste”).

Notes. (1) The text preceding the numbered paragraphs in Section 25160(a) provides “[f]or purposes of this chapter, the following definitions apply.” Given the application of these definitions to the entirety of Chapter 6.5, the definitions have been proposed for recodification in this proposed chapter.

The prefatory “for the purposes of this chapter” text is redundant and therefore is not continued. Proposed Section 60075 (Section 25110) provides that the definitions in this chapter govern “only the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 60250 does not continue the “[f]or purposes of this chapter” language.

Absent comment, this proposed restatement will be presumed correct.

(2) Subdivision (b) of this proposed section continues Section 25160(a)(3). That paragraph provides a rule for the date of shipment initiation. That rule applies specifically for the purposes of “this section” (Section 25160). The cross-reference to this section will be updated when the remainder of Section 25160 is proposed for recodification.

(3) Another definition from Section 25160 is included in this draft, but is not proposed for inclusion in the cross-reference as it does not pertain to the date of shipment initiation. See proposed Section 60185.

§ 60255. “Minor violation”

60255. (a) “Minor violation” means a deviation from the requirements of this division, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this division, that is not a class I violation.

(b)(1) A minor violation does not include any of the following:

(A) Any knowing, willful, or intentional violation of this division.

(B) Any violation of this division that enables the violator to benefit economically from noncompliance, either by reduced costs or competitive advantage.

(C) Any class II violation that is a chronic violation or that is committed by a recalcitrant violator.

(2) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of subparagraph (C) of paragraph (1), the department, or the local officer or agency authorized to enforce this division pursuant to **subdivision (a) of Section 25180**, shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this division.

Comment. Section 60255 continues former Section 25117.6 without substantive change.

See Sections 60110 (“class I violation”), 60115 (“class II violation”), 60160 (“department”), 60245 (“local officer”).

Note. Section 25117.6(a) specifies that a “minor violation” does not include a “class I violation.” A “class I violation” is defined to include “a class II violation that is a chronic violation or committed by a recalcitrant violator” (hereafter, a chronic class II violation). See proposed Section 60110. Thus, a chronic class II violation is not a minor violation.

Even so, Section 25117.6(b)(1)(C) separately and specifically excludes a “class II violation that is a chronic violation or that is committed by a recalcitrant violator” from the definition of “minor violation.” This appears to be redundant, as a chronic class II violation would already be excluded from “minor violation” as it is a class I violation.

Further, Section 25117.6(b)(2) includes a rule for assessing when a class II violation is a chronic class II violation. That rule, however, applies only for the purposes of the (redundant) exclusion described above. It appears that this rule should be generalized to apply when assessing whether a class II violation should be considered a class I violation (i.e., whether the class II violation is chronic).

This issue has been added to the list of substantive issues for possible future study.

§ 60260. “Natural resources”

60260. “Natural resources” includes, but is not limited to, disposal site capacity and substances that are hazardous waste, or that are in hazardous waste, the reuse of which is technologically and economically feasible.

Comment. Section 60260 continues former Section 25117.8 without substantive change.

See Sections 60180 (“disposal site”), 60210 (“hazardous waste”).

§ 60265. “Non-RCRA hazardous waste”

60265. (a) “Non-RCRA hazardous waste” means all hazardous waste regulated in the state, other than RCRA hazardous waste.

(b) A hazardous waste regulated in the state is presumed to be RCRA hazardous waste, unless it is determined, pursuant to regulations adopted by the department, that the hazardous waste is a non-RCRA hazardous waste.

Comment. Section 60265 restates former Section 25117.9 without substantive change.

See Sections 60160 (“department”), 60210 (“hazardous waste”), 60310 (“RCRA hazardous waste”).

Note. Section 25117.9 is restated to add subdivision designators and delete redundant language at the end of the first sentence specifying that RCRA hazardous waste is “as defined in Section 25120.2 [proposed Section 60310].” Proposed Section 60075 (Section 25110) provides that the definitions in this chapter govern “the construction of this division [existing Chapter 6.5].”

Absent comment, the proposed restatement of this section will be presumed correct.

§ 60270. “Notice to comply”

60270. “Notice to comply” means a written method of alleging a minor violation that is in compliance with all of the following requirements:

(a) The notice to comply is written in the course of conducting an inspection of a facility by an authorized representative of the department or by a local officer or agency authorized to enforce this division pursuant to **subdivision (a) of Section 25180**.

(b) A copy of the notice to comply is presented to a person who is an owner or employee of the facility being inspected at the time that the notice to comply is written.

(c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the permit conditions, rule, regulation, standard, or other requirement cited by the inspector may be achieved, and a time limit in which to comply, which shall not exceed 30 days.

(d) The notice to comply shall contain the information specified in **subdivision (h) of Section 25187.8** with regard to inspection of the facility.

Comment. Section 60270 continues former Section 25117.9.1 without substantive change.
See Sections 60160 (“department”), 60245 (“local officer”), 60255 (“minor violation”), 60295 (“person”).

§ 60275. “Offsite facility”

60275. “Offsite facility” means a hazardous waste facility that is not an onsite facility.

Comment. Section 60275 continues former Section 25117.11 without substantive change.
See Sections 60215 (“hazardous waste facility”), 60280 (“onsite facility”).

§ 60280. “Onsite facility”

60280. “Onsite facility” means a hazardous waste facility at which a hazardous waste is produced and that is owned by, leased to, or under the control of, the producer of the waste.

Comment. Section 60280 continues former Section 25117.12 without substantive change.
See Sections 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60305 (“producer”), 60390 (“waste”).

§ 60285. “Participating Agency” or “PA”

60285. “Participating Agency” or “PA” means an agency that has a written agreement with the CUPA pursuant to **subdivision (d) of Section 25404.3**, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in **paragraph (1) of subdivision (c) of Section 25404**, in accordance with the provisions of **Sections 25404.1 and 25404.2**.

Comment. Section 60285 continues former Section 25123.7(c) without substantive change.
See Section 60105 (“certified unified program agency” or “CUPA”), 60345 (“secretary”).

§ 60290. “Permit-by-rule”

60290. “Permit-by-rule” means a provision of the regulations adopted pursuant to this division stating that a facility or activity is deemed to have a hazardous waste facilities permit if it meets the requirements of that provision.

Comment. Section 60290 continues former Section 25117.14 without substantive change.
See Section 60215 (“hazardous waste facility”).

§ 60295. “Person”

60295. “Person” means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. “Person” also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

Comment. Section 60295 continues former Section 25118 without substantive change.
See Sections 60100 (“business concern”), 60160 (“department”).

1 **§ 60300. “Processing”**

2 60300. “Processing” means treatment.

3 **Comment.** Section 60300 restates former Section 25119 without substantive change.
4 See Section 60365 (“treatment”).

5 **Note.** Section 25119 is restated to delete redundant language at the end of the sentence specifying
6 that treatment is “as defined in Section 25123.5 [proposed Section 60365].” Proposed Section
7 60075 (Section 25110) provides that the definitions in this chapter govern “the construction of this
8 division [existing Chapter 6.5].”

9 **§ 60305. “Producer”**

10 60305. “Producer” means any person who generates a waste material.

11 **Comment.** Section 60305 continues former Section 25120 without substantive change.
12 See Sections 60295 (“person”), 60390 (“waste”).

13 **§ 60310. “RCRA hazardous waste”**

14 60310. “RCRA hazardous waste” means all waste identified as a hazardous waste
15 in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter I of Title
16 40 of the Code of Federal Regulations and appendixes thereto.

17 **Comment.** Section 60310 continues former Section 25120.2 without substantive change. The
18 reference to the Code of Federal Regulations was revised to use roman numerals for the chapter
19 designation, consistent with the numbering practice used in the federal regulations.

20 See Sections 60210 (“hazardous waste”), 60390 (“waste”).

21 **Note.** Section 25150.2 refers to a part of the Code of Federal Regulations. The reference refers
22 to “Chapter 1.” This has been adjusted to refer to “Chapter I,” as the relevant chapter is numbered
23 using a roman numeral in the federal regulations. See 1 C.F.R. § 21.11. The subchapters are lettered
24 consecutively in capital letters. *Id.*

25 **§ 60315. “Recyclable material”**

26 60315. “Recyclable material” means a hazardous waste that is capable of being
27 recycled, including, but not limited to, any of the following:

28 (a) A residue.

29 (b) A spent material, including, but not limited to, a used or spent stripping or
30 plating solution or etchant.

31 (c) A material that is contaminated to such an extent that it can no longer be used
32 for the purpose for which it was originally purchased or manufactured.

33 (d) A byproduct listed in the regulations adopted by the department as “hazardous
34 waste from specific sources” or “hazardous waste from nonspecific sources.”

35 (e) Any retrograde material that has not been used, distributed, or reclaimed
36 through treatment by the original manufacturer or owner by the later of the
37 following dates:

38 (1) One year after the date when the material became a retrograde material.

39 (2) If the material has been returned to the original manufacturer, one year after
40 the material is returned to the original manufacturer.

41 **Comment.** Section 60315 continues former Section 25120.5 without substantive change.

See Sections 60160 (“department”), 60210 (“hazardous waste”), 60335 (“retrograde material”), 60365 (“treatment”).

§ 60320. “Recycled material”

60320. (a) “Recycled material” means a recyclable material that has been used or reused, or reclaimed.

(b) “Recycled material” does not include an intermediate manufacturing process stream.

Comment. Section 60320 continues former Section 25121 without substantive change.

See Sections 60225 (“intermediate manufacturing process stream”), 60315 (“recyclable material”).

§ 60325. “Recycling”

60325. (a) “Recycling” means using, reusing, or reclaiming a recyclable material.

(b) Notwithstanding subdivision (a), for purposes of the fees, taxes, and charges imposed pursuant to **Article 7 (commencing with Section 25170)**, “recycling” means the collecting, transporting, storing, transferring, handling, segregating, processing, using or reusing, or reclaiming of recyclable material to produce recycled material.

Comment. Section 60325 continues former Section 25121.1 without substantive change.

See Sections 60205 (“handling”), 60300 (“processing”), 60315 (“recyclable material”), 60320 (“recycled material”).

Note. Section 25121.1(b) refers to fees, taxes, and charges imposed “pursuant to Article 7 (commencing with Section 25170).” The provisions of Article 7 of Chapter 6.5 will be recodified in multiple locations (some of which are in proposed Chapter 4 in this draft). The provisions of Article 7 that impose fees, taxes, and charges are proposed to be located in a later piece of the recodified law. The cross-reference in this provision will be updated when the relevant provisions are proposed for recodification.

The Commission welcomes comment on whether the rule in subdivision (b) should be recodified with the provisions of Article 7 (commencing with Section 25170) related to fees, taxes, and charges.

§ 60328. “Release”

60328. “Release” has the same definition as in Section 78105.

Comment. Section 60328 continues former Section 25121.2 without substantive change.

§ 60330. “Remote site”

60330. (a) “Remote site” means a site operated by the generator that meets all of the following conditions:

(1) Initial collection of hazardous waste occurs at the site.

(2) Generator staff, other than security staff, is not routinely located at the site.

(3) The site is not contiguous to a staffed site operated by the generator of the hazardous waste or does not have access to a staffed site without the use of public roads.

(b) Generator staff who visit a remote location to perform inspection, monitoring, or maintenance activities on a periodic scheduled or random basis, less frequently than daily, are not considered to be routinely located at the remote location.

Comment. Section 60330 restates former Section 25121.3(a) without substantive change. See Section 60210 (“hazardous waste”).

Notes. (1) Section 25121.3(a) is restated for clarity. Currently, Section 25121.3(a) provides:

“‘Remote site’ means a site operated by the generator where hazardous waste is initially collected, at which generator staff, other than security staff, is not routinely located, and that is not contiguous to a staffed site operated by the generator of the hazardous waste or that does not have access to a staffed site without the use of public roads. Generator staff who visit a remote location to perform inspection, monitoring, or maintenance activities on a periodic scheduled or random basis, less frequently than daily, are not considered to be routinely located at the remote location.”

Absent comment, this proposed restatement of this provision will be presumed correct.

(2) Subdivisions (b) and (c) of Section 25121.3 will be recodified with the substantive rules related to hazardous waste transportation and consolidation.

§ 60335. “Retrograde material”

60335. (a) “Retrograde material” means any hazardous material that is not to be used, sold, or distributed for use in an originally intended or prescribed manner or for an originally intended or prescribed purpose and that meets any one or more of the following criteria:

(1) Has undergone chemical, biochemical, physical, or other changes due to the passage of time or the environmental conditions under which it was stored.

(2) Has exceeded a specified or recommended shelf life.

(3) Is banned by law, regulation, ordinance, or decree.

(4) Cannot be used for reasons of economics, health or safety, or environmental hazard.

(b) “Retrograde material” does not include material designated in regulations adopted by the department as included in a category that the department shall title “Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof”, if either of the following conditions is met:

(1) The material is used in a manner constituting disposal and the material is not normally used in a manner constituting disposal.

(2) The material is burned for energy recovery and the material is not normally burned for energy recovery.

Comment. Section 60335 continues former Section 25121.5 without substantive change. See Sections 60160 (“department”), 60175 (“disposal”).

§ 60340. “Restricted hazardous waste”

60340. “Restricted hazardous waste” includes both of the following:

(a) Any hazardous waste subject to land disposal restrictions pursuant to **Section 25179.6** and the regulations adopted by the department pursuant to that section.

(b) Any hazardous waste that contains any of the following substances, in the following concentrations, as determined without considering any dilution that may occur, unless the dilution is a normal part of a manufacturing process:

(1) Liquid hazardous wastes containing free cyanides at concentrations greater than, or equal to, 1,000 milligrams per liter.

(2) Liquid hazardous wastes containing any of the following metals or elements, or compounds of these metals or elements, at concentrations greater than, or equal to, any of the following:

| | |
|---------------|--------------------------|
| Arsenic | 500 milligrams per liter |
| Cadmium | 100 milligrams per liter |
| Chromium (VI) | 500 milligrams per liter |
| Lead | 500 milligrams per liter |
| Mercury | 20 milligrams per liter |
| Nickel | 134 milligrams per liter |
| Selenium | 100 milligrams per liter |
| Thallium | 130 milligrams per liter |

(3) Liquid hazardous wastes having a pH less than or equal to two.

(4) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than, or equal to, 50 milligrams per liter.

(5) Hazardous wastes containing halogenated organic compounds in total concentration greater than, or equal to, 1,000 milligrams per kilogram.

Comment. Section 60340 continues former Section 25122.7 without substantive change. See Sections 60160 (“department”), 60175 (“disposal”), 60210 (“hazardous waste”).

§ 60345. “Secretary”

60345. “Secretary” means the Secretary for Environmental Protection.

Comment. Section 60345 continues former Section 25122.9 without substantive change.

§ 60350. “Storage”

60350. “Storage” means the holding of hazardous wastes, for a temporary period.

Comment. Section 60350 continues former Section 25123 without substantive change. See Section 60210 (“hazardous waste”).

§ 60355. “Storage facility”

60355. “Storage facility” means a hazardous waste facility that is identified as a storage facility pursuant to **Article ZZZ of Chapter ZZZ**.

Comment. Section 60355 continues the initial clause of former Section 25123.3(b) without substantive change.

See Section 60215 (“hazardous waste facility”).

Notes. (1) Proposed Section 60355 continues only the initial clause of Section 25123.3(b). The remainder of this section contains substantive requirements for hazardous waste storage, as well as supporting definitions (that only apply for the purposes of the section).

(2) The remainder of Section 25123.3 will be recodified later in this proposed division, with substantive provisions regarding hazardous waste facilities.

§ 60360. “Transportable hazardous waste treatment unit” or “transportable treatment unit”

60360. “Transportable hazardous waste treatment unit” or “transportable treatment unit” means mobile equipment that performs treatment, is transported onto a facility to perform treatment, and is not permanently stationed at a single facility.

Comment. Section 60360 continues former Section 25123.4 without substantive change. See Section 60365 (“treatment”).

§ 60365. “Treatment”

60365. (a) Except as provided in subdivisions (b) and (c), “treatment” means any method, technique, or process that is not otherwise excluded from the definition of treatment by this division and that is designed to change the physical, chemical, or biological character or composition of any hazardous waste or any material contained therein, or that removes or reduces its harmful properties or characteristics for any purpose.

(b)(1) “Treatment” does not include any of the activities listed in paragraph (2), if one of the following requirements is met:

(A) The activity is conducted onsite in accordance with the requirements of this division and the department’s regulations adopted pursuant to this division governing the generation and accumulation of hazardous waste.

(B) The activity is conducted in accordance with the conditions specified in a permit issued by the department for the storage of hazardous waste.

(2) The activities subject to the exemption specified in paragraph (1) include all of the following:

(A) Sieving or filtering liquid hazardous waste to remove solid fractions, without added heat, chemicals, or pressure, as the waste is added to or removed from a storage or accumulation tank or container. For purposes of this subparagraph, sieving or filtering does not include adsorption, reverse osmosis, or ultrafiltration.

(B) Phase separation of hazardous waste during storage or accumulation in tanks or containers, if the separation is unaided by the addition of heat or chemicals. If the phase separation occurs at a commercial offsite permitted storage facility, all phases of the hazardous waste shall be managed as hazardous waste after separation.

(C) Combining two or more waste streams that are not incompatible into a single tank or container if both of the following conditions apply:

(i) The waste streams are being combined solely for the purpose of consolidated accumulation or storage or consolidated offsite shipment, and they are not being

combined to meet a fuel specification or to otherwise be chemically or physically prepared to be treated, burned for energy value, or incinerated.

(ii) The combined waste stream is managed in compliance with the most stringent of the regulatory requirements applicable to each individual waste stream.

(D) Evaporation of water from hazardous wastes in tanks or containers, such as breathing and evaporation through vents and floating roofs, without the addition of pressure, chemicals, or heat other than sunlight or ambient room lighting or heating.

(3) This subdivision does not apply to any activity for which a hazardous waste facilities permit for treatment is required under the federal act.

(c) “Treatment” does not include the combination of glutaraldehyde or orthophthalaldehyde, which is used by medical facilities to disinfect medical devices, with formulations containing glycine as the sole active chemical, if the process is carried out onsite.

Comment. Section 60365 continues former Section 25123.5 without substantive change.

See Sections 60160 (“department”), 60200 (“federal act”), 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60350 (“storage”), 60390 (“waste”).

Note. Section 25123.5 would appear to benefit from a restatement for clarity. However, given the current state of this provision, the degree of restatement that would be needed, and the strictly nonsubstantive constraints in this study, the Commission believes that it would be best to address any restatement of this provision as an issue for future work.

This issue has been added to the list of substantive issues for possible future study.

§ 60370. “Unified Program Agency” or “UPA”

60370. (a) “Unified Program Agency” or “UPA” means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in **paragraph (1) of subdivision (c) of Section 25404**.

(b)(1) For purposes of this division, the UPAs have the responsibility and authority, to the extent provided by this division and **Sections 25404.1 and 25404.2**, to implement and enforce only those requirements of this division listed in **paragraph (1) of subdivision (c) of Section 25404**. The UPAs also have the responsibility and authority, to the extent provided by this division and **Sections 25404.1 and 25404.2**, to implement and enforce the regulations adopted to implement the requirements of this division listed in **paragraph (1) of subdivision (c) of Section 25404**.

(2) After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this division listed in **paragraph (1) of subdivision (c) of Section 25404** within the jurisdiction of the CUPA.

(c) This section shall not be construed to limit the authority or responsibility granted to the department by this division to implement and enforce this division and the regulations adopted pursuant thereto.

Comment. Section 60370 continues former Section 25123.7(d) without substantive change.

See Sections 60105 (“certified unified program agency or “CUPA”), 60160 (“department”), 60285 (“participating agency” or “PA”), 60345 (“secretary”).

Notes. (1) The language of Section 25123.7 was continued unchanged, but subdivision and paragraph designators were added.

The language in proposed subdivision (d) references “this section” (Section 25123.7). It appears that all of the material relevant to this reference is contained in this proposed section. The other proposed provisions continuing the language of Section 25123.7 simply define terms and do not appear to place any limits or restrictions on the authority to implement and enforce Chapter 6.5. For this reason, the proposed language only refers to “this section,” which continues Section 25123.7(d).

Absent comment, this proposed treatment of the reference to “this section” will be presumed correct.

(2) Section 25123.7(d) defines “unified program agency” or “UPA” as the “CUPA or its participating agencies to the extent that each PA has been designated by the CUPA ... to implement or enforce a particular unified program element.” Where a particular program element of the unified program is at issue, the term “UPA” is presumably intended to refer to whichever agency is authorized to enforce and implement that program element within the relevant jurisdiction (either the CUPA or an authorized PA).

However, this proposed section also uses the plural term “unified program agencies” or “UPAs.” In these cases, the term seems to be used to refer to *all* CUPAs, as well as *all* PAs throughout the state. The use of the disjunctive “or” in the definition of “UPA” is inconsistent with this apparent intent. More broadly, it seems to be unclear whether a reference to the plural “UPAs” is referring to all the CUPAs/PAs throughout the state, the CUPA and all the PAs within a particular jurisdiction, or, with respect to a particular requirement, the CUPA or PA authorized to enforce that requirement within every jurisdiction.

It is unclear whether this issue is causing problems in practice, or whether the references to “unified program agencies” or “UPAs” are sufficiently clear in context.

The Commission welcomes comment this issue.

(3) The Commission noticed that the disjunctive is also used in the definition of “UPA” in Section 25404, which is in the law establishing the unified program. “UPA” is also similarly defined in other sections. See Sections 25270.2(c)(3), 25281(d)(3), 25501(e)(3). There seems to be value in preserving consistency across these definitions of “UPA.”

The Commission also welcomes comment on this issue. Depending on the comment received, the Commission may consider adding the issue to the list of substantive issues for possible future study.

§ 60375. “Unified Program Facility”

60375. “Unified Program Facility” means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of **paragraph (1) of subdivision (c) of Section 25404.**

Comment. Section 60375 continues former Section 25123.7(a) without substantive change.

§ 60380. “Universal waste”

60380. “Universal waste” means a hazardous waste identified as a universal waste in Section 66273.9 of Title 22 of the California Code of Regulations, or as that regulation may be further amended pursuant to this division, or a hazardous waste designated as a universal waste pursuant to this division.

Comment. Section 60380 continues former Section 25123.8 without substantive change.

See Section 60210 (“hazardous waste”).

Note. Section 25123.8 defines “universal waste” by referring to a waste “identified as a universal waste” in a specified section of the California Code of Regulations. The referenced section of the regulations defines a large number of terms, including “universal waste.” In that section, the definition of “universal waste” does not provide a list of wastes, but instead simply defines the term by cross-referencing a list of wastes in a separate section of the regulations (22 C.C.R. § 66261.9).

It is unclear why the cross-reference in this section does not simply refer to the regulatory provision that actually lists universal wastes.

The Commission welcomes comment on whether the cross-reference to the regulations should instead refer to 22 C.C.R. § 66261.9, which actually lists universal wastes.

§ 60385. “Volatile organic compound”

60385. “Volatile organic compound” means a compound that is a volatile organic compound according to Method No. 8240 in the United States Environmental Protection Agency Document No. Solid Waste 846 (1982) or any equivalent, alternative method acceptable to the department.

Comment. Section 60385 continues former Section 25123.6 without substantive change. See Section 60160 (“department”).

Note. Section 25123.6 defines “volatile organic compound” by reference to what appears to be a scientific test, “Method No. 8240 in the Environmental Protection Agency Document No. Solid Waste 846 (1982).”

In proposed Section 60385, “United States” was added to indicate that this section is referring to the federal agency, as opposed to the state Environmental Protection Agency.

More significantly, it appears that the referenced method, Method 8240, may be obsolete. This method is not listed in the SW-846 compendium posted on the U.S. Environmental Protection Agency website. See <https://www.epa.gov/hw-sw846/sw-846-compendium>; see also <https://www.epa.gov/hw-sw846/status-table-test-methods-evaluating-solid-waste-physicalchemical-methods-compendium-sw-846> (Method 8240 not listed on status table identifying historical and latest versions of SW-846 methods).

The compendium includes a variety of other methods specifically related to the class of volatile organic compounds, including, for example, Methods 8260D (“Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)”) and 8261 (“Volatile Organic Compounds by Vacuum [Distillation] in Combination with Gas Chromatography/Mass Spectrometry (VD/GC/MS)”).

The Commission welcomes comment on whether the reference to Method No. 8240 needs to be updated and, if so, how this provision should be revised.

§ 60390. “Waste”

60390. (a) Except as provided in subdivision (c), “waste” means any discarded material, including solid, liquid, semisolid, or contained gaseous material, that is not excluded by this division or by regulations adopted pursuant to this division.

(b) For purposes of subdivision (a), a discarded material is a material that is any of the following:

(1) Relinquished by being any of the following:

(A) Disposed of.

(B) Burned or incinerated.

(C)(i) Accumulated, stored, or treated before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.

(ii) This subparagraph does not apply to materials that are recycled before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.

(2) Recycled, or accumulated, stored, or treated before recycling, except as provided in **Section 25143.2**.

(3) Poses a threat to public health or the environment and meets either, or both, of the following conditions:

(A) The material is mislabeled or not adequately labeled and the label is not corrected or made adequate within 10 days after the discovery of the mislabeling or inadequate labeling.

(B) The material is packaged in deteriorated or damaged containers and the material not packaged in sound or undamaged containers within 96 hours after the discovery of the deterioration or damage.

(4) Considered inherently wastelike, as specified in regulations adopted by the department.

(c) Notwithstanding subdivision (a), a material is not a discarded material if it is either of the following:

(1) An intermediate manufacturing process stream.

(2)(A) Except as specified in subparagraph (B) and to the extent consistent with the federal act, a coolant, lubricant, or cutting fluid necessary to the operation of manufacturing equipment, that is processed to extend the life of the material for continued use, and is processed in the same manufacturing equipment in which the material is used or in connected equipment that returns the material to the originating manufacturing equipment for continued use.

(B) Subparagraph (A) does not apply to any of the following material:

(i) Material that is processed in connected equipment that is not directly and permanently connected to the originating manufacturing equipment or that is constructed or operated in a manner that may allow the release of any material or constituent of the material into the environment.

(ii) Material that is a hazardous waste prior to being introduced into the manufacturing equipment or connected equipment.

(iii) Material that is removed from the manufacturing equipment or connected equipment for storage, treatment, disposal, or burning for energy recovery outside that equipment.

(iv) Material that remains in the manufacturing equipment or connected equipment more than 90 days after that equipment ceases to be operated.

(v) Material that is processed using methods other than physical procedures.

Comment. Section 60390 restates former Section 25124 without substantive change.

See Sections 60155 (“contained gaseous material”), 60160 (“department”), 60175 (“disposal”), 60200 (“federal act”), 60210 (“hazardous waste”), 60225 (“intermediate manufacturing process stream”), 60325 (“recycling”), 60350 (“storage”), 60365 (“treatment”).

Note. Section 25124 is restated for clarity and to make a grammatical correction, as follows:

Subdivision (a) is restated to make clear that the provision is using the defined terms “contained gaseous material” and “discarded material.” See proposed subdivisions (b), (c) of this section

(specifying materials that are and are not “discarded materials”) and Commission Note to proposed Section 60155 (the definition for “contained gaseous material” specifically provides that it applies to this provision).

In the introductory clause to subdivision (b), “any material” was replaced with “a material.” The portions of subdivision (b) that were restated for clarity are noted below.

Subparagraph(b)(1)(C) currently provides:

“[A discarded material includes a material that is] [a]ccumulated, stored, or treated, but not recycled, before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.”

This subparagraph has been proposed for restatement as two clauses.

Subparagraphs (A) and (B) of paragraph (b)(3) currently provide:

“[A material that poses a threat to public health or the environment and meets one or both of the following conditions is considered discarded]:

(A) It is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.

(B) It is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.”

These subparagraphs were restated to make clear that the failure to correct the deficiency within the specified time frame is necessary to satisfy the condition.

Absent comment, this proposed restatement will be presumed correct.

CHAPTER 4. FINANCIAL PROVISIONS

Note. This proposed chapter contains a number of provisions that relate to laws other than Chapter 6.5. In particular, proposed Article 2, related to The Toxic Substance Control Account, governs funds related to laws other than Chapter 6.5. In some cases, these provisions use terminology from and appear to be discussing legal concepts contained in provisions outside of Chapter 6.5, without cross-referencing the relevant provisions. In particular, several provisions in this proposed article use defined terms from Part 2 of Division 45 without citing to those definitions. See, e.g., proposed Section 60490 (Note #2), proposed Section 60495 (Note #2).

It may be helpful to include a provision in this chapter making clear that certain terms used in the chapter have the meaning provided in Part 2 of Division 45, including, for example, “responsible party,” “remedial action,” “removal,” and “hazardous substance.”

This issue has been added to the list of substantive issues for possible future study.

Article 1. Hazardous Waste Control Account

§ 60450. Funds to be deposited in account

60450. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director.

(b) In addition to any other money that may be deposited into the Hazardous Waste Control Account, pursuant to statute, all of the following amounts shall be deposited into the account:

(1) The fees collected pursuant to Sections **25205.5** and **25205.5.2**, or described in Section **25205.25**.

(2) The funds collected pursuant to Section **25187.2**, to the extent that those funds are payments for the costs incurred by the department in overseeing corrective action taken under this division.

(3) Any interest earned upon the money deposited into the Hazardous Waste Control Account.

(4) Any money received from the federal government pursuant to the federal act to pay for department costs at sites or activities at sites other than those operated by a hazardous waste facility authorized to operate under this division.

(5) Any reimbursements for funds expended from the Hazardous Waste Control Account for services provided by the department pursuant to this division at a site other than a site operated by a hazardous waste facility authorized to operate under this division, including, but not limited to, the reimbursements required pursuant to Sections **25201.9** and **25205.7**.

Comment. Section 60450 restates former Section 25174(a) without substantive change. See Sections 60160 (“department”), 60165 (“director”), 60200 (“federal act”), 60215 (“hazardous waste facility”).

Note. Section 25174(a)(2) has been restated to improve consistency with the referenced provision. Section 25174(a)(2) refers to “fees collected pursuant to Section 25187.2, to the extent that those fees are for the oversight of corrective action taken under this chapter.” Section 25187.2 provides for the payment of “the department’s *costs* incurred in overseeing or carrying out the corrective action.”

To improve consistency with Section 25187.2, proposed Section 60450 restates this paragraph to refer to “funds” collected pursuant to Section 25187.2, where those funds are payments for the costs incurred in overseeing corrective action.

Absent comment, this proposed restatement will be presumed correct.

§ 60455. Appropriations from account

60455. The funds deposited into the Hazardous Waste Control Account may be appropriated by the Legislature, for expenditure as follows:

(a) To the department for the costs to administer and implement this division, but not including the costs of regulatory activities at sites operated by a hazardous waste facility authorized to operate under this division, and not including regulatory activities authorized under **Article 10 (commencing with Section 25210)**, **Article 10.01 (commencing with Section 25210.5)**, **Article 10.02 (commencing with Section 25210.9)**, **Article 10.1.1 (commencing with Section 25214.1)**, **Article 10.1.2 (commencing with Section 25214.4.3)**, **Article 10.2.1 (commencing with Section 25214.8.1)**, **Article 10.4 (commencing with Section 25214.11)**, **Article 10.5 (commencing with Section 25215)**, **Article 10.5.1 (commencing with Section 25215.8)**, **Article 13.5 (commencing with Section 25250.50)**, **Article 14 (commencing with Section 25251)**, and **Section 25214.10**.

(b) To the department for allocation to the California Department of Tax and Fee Administration to pay refunds of fees collected pursuant to Section 43053 of the

Revenue and Taxation Code and for the administration and collection of the fees collected pursuant to **Sections 25205.5 and 25205.5.2**, or described in Section **25205.25**, that are deposited into the Hazardous Waste Control Account.

(c)(1) To the department for allocation to the office of the Attorney General for the support of the Toxic Substance Enforcement Program in the office of the Attorney General in carrying out investigations, inspections, and audits, and the administrative enforcement and adjudication thereof, for purposes of this division, but not for purposes related to a site operated by a hazardous waste facility authorized to operate under this division or related to the owner or operator of a hazardous waste facility authorized to operate under this division, and not for regulatory activities authorized under **Article 10 (commencing with Section 25210)**, **Article 10.01 (commencing with Section 25210.5)**, **Article 10.02 (commencing with Section 25210.9)**, **Article 10.1.1 (commencing with Section 25214.1)**, **Article 10.1.2 (commencing with Section 25214.4.3)**, **Article 10.2.1 (commencing with Section 25214.8.1)**, **Article 10.4 (commencing with Section 25214.11)**, **Article 10.5 (commencing with Section 25215)**, **Article 10.5.1 (commencing with Section 25215.8)**, **Article 13.5 (commencing with Section 25250.50)**, **Article 14 (commencing with Section 25251)**, and **Section 25214.10**.

(2) On or before October 1 of each year, the Attorney General shall report to the Legislature on the expenditure of any funds allocated to the office of the Attorney General for the preceding fiscal year pursuant to this paragraph. The report shall include all of the following:

(A) A description of cases resolved by the office of the Attorney General through settlement or court order, including the monetary benefit to the department and the state.

(B) A description of injunctions or other court orders benefiting the people of the state.

(C) A description of any cases in which the Attorney General's Toxic Substance Enforcement Program is representing the department or the state against claims by defendants or responsible parties.

(D) A description of other pending litigation handled by the Attorney General's Toxic Substance Enforcement Program.

(3) Paragraph (2) does not require the Attorney General to report on any confidential or investigatory matter.

(d) To the department for administration and implementation of Chapter 6.11 (commencing with Section 25404) of Division 20.

(e) To the department for costs incurred by the board in the administration and implementation of its duties and responsibilities established in **Article 2.1 (commencing with Section 25125)**.

Comment. Section 60455 restates former Section 25174(b) without substantive change. See Sections 60088 ("board"), 60160 ("department"), 60215 ("hazardous waste facility").

Note. Section 25174(b)(5) refers to the “Board of Environmental Safety.” Proposed Section 60455(e) replaces that reference with the defined term “board.” See proposed Section 60088 (“board”).

§ 60465. Loans from general fund to account

60465. The Director of Finance, upon the request of the director, may make a loan from the General Fund to the Hazardous Waste Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

Comment. Section 60465 continues former Section 25174(d) without substantive change. See Section 60165 (“director”).

§ 60475. Successor fund to Federal Receipts Account

60475. (a) The Hazardous Waste Control Account is the successor fund of the Federal Receipts Account that was established pursuant to Section 25174.8, as that section read on January 1, 1999.

(b) All assets, liabilities, and surplus of the Federal Receipts Account shall, as of June 30, 1999, be transferred to, and become a part of the Hazardous Waste Control Account, as provided by Section 16346 of the Government Code.

(c) All existing appropriations from the Federal Receipts Account, to the extent encumbered, and also those that had been made for particular projects from the Federal Receipts Account, shall continue to be available for the same purposes and periods from the Hazardous Waste Control Account.

Comment. Section 60475 continues former Section 25174.9 without substantive change.

Article 2. Toxic Substances Control Account

§ 60490. Funds to be deposited in account

60490. (a) There is in the General Fund the Toxic Substances Control Account, which shall be administered by the director.

(b) In addition to any other money that may be appropriated by the Legislature to the Toxic Substances Control Account, all of the following shall be deposited in the account:

(1) The fees collected pursuant to **Section 25205.6**.

(2) The funds collected pursuant to **Section 25187.2**, to the extent that those funds are payments for the costs incurred overseeing a removal or remedial action taken under Chapter 6.86 (commencing with Section 25396) of Division 20 or Part 2 (commencing with Section 78000) of Division 45.

(3) Except as directed otherwise by **Section 25192**, fines or penalties collected pursuant to this division, including, but not limited to, fines or penalties recovered pursuant to **Section 25214.3, 25214.22.1, and 25215.82**.

(4) Interest earned upon money deposited in the Toxic Substances Control Account.

(5) All money recovered pursuant to Section 79650, except any amount recovered on or before June 30, 2006, that was paid from the Hazardous Substance Cleanup Fund.

(6) All money recovered pursuant to Article 7 (commencing with Section 81030) of Chapter 12 of Part 2 of Division 45.

(7) Fines or penalties collected pursuant to Chapter 6.86 (commencing with Section 25396) of Division 20, or Part 2 (commencing with Section 78000) of Division 45.

(8) Reimbursements for funds expended from the Toxic Substances Control Account for services provided by the department, including, but not limited to, reimbursements required pursuant to Sections **25201.9** and 79105.

(9) Money received from the federal government pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(10) Money received from responsible parties for remedial action or removal at a specific site, except as otherwise provided by law.

Comment. Section 60490 restates former Section 25173.6(a) without substantive change. See Sections 60160 (“department”), 60165 (“director”).

Notes. (1) Section 25173.6(a) is restated to eliminate redundancy, group similar types of funds, and improve consistency and clarity.

When restating this provision, the following changes were made:

(A) Section 25173.6(a)(2) refers to “fees collected pursuant to Section 25187.2, to the extent that those fees are for oversight of a removal or remedial action taken under Chapter 6.86 (commencing with Section 25396), or Part 2 (commencing with Section 78000) of Division 45.” As described in the Note to proposed Section 60450, Section 25187.2 provides for the payment of “the department’s costs incurred in overseeing or carrying out the corrective action.” To improve consistency with Section 25187.2, proposed Section 60490(a)(2) restates existing language to refer to “funds” collected pursuant to Section 25187.2, where those funds are payments for oversight costs.

Absent comment, the proposed restatement of this provision will be presumed correct.

Section 25173.6(a)(2) also refers to oversight of a “removal or remedial action,” whereas Section 25187.2 refers to oversight of “corrective action.” While making this terminology consistent would be preferable, it is not clear whether the terms “corrective action” and “removal or remedial action” are equivalent (i.e., does this provision only apply to a subset of funds collected under Section 25187.2 for oversight of actions under Chapter 6.8?)

The Commission welcomes comment on this issue.

(B) Section 25173.6 contains several redundant provisions. Section 25173.6(a) provides, in part:

[The following funds shall be deposited into the Toxic Substances Control Account]:

...

(3) Fines or penalties collected pursuant to this chapter, Chapter 6.8 (commencing with Section 25300) or Chapter 6.86 (commencing with Section 25396), except as directed otherwise by Section 25192.

...

(7) All penalties recovered pursuant to Section 25214.3, except as provided by Section 25192.

(8) All penalties recovered pursuant to Section 25214.22.1, except as provided by Section 25192.

(9) All penalties recovered pursuant to Section 25215.82, except as provided by Section 25192.

The penalties referred to in paragraphs (7)-(9) are all penalties provided for in sections found in Chapter 6.5. Given that, these penalties would also be required to be deposited into the account pursuant to paragraph (3). Section 25192 contains a rule for apportioning all “penalties collected pursuant to [Chapter 6.5].” For this reason, Section 25192 does not appear to be relevant to the penalties collected pursuant to Chapter 6.8 or Chapter 6.86. These quoted fine and penalty provisions have been consolidated and restated in proposed paragraphs (b)(3) and (b)(7).

(2) Section 25173.6(a)(12) refers to “[m]oney received from responsible parties for remedial action or removal at a specific site.” This provision appears to be referring to remedial or removal actions conducted pursuant to Part 2 of Division 45. Assuming that is the case, it would be helpful to specify that the definitions of the relevant terms (“responsible party,” “remedial action,” “removal”) in Part 2 of Division 45 apply to this provision. See Note to Heading for this proposed chapter.

The Commission welcomes comment on this issue.

§ 60495. Appropriations from account

60495. (a) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

(A) Part 2 (commencing with Section 78000) of Division 45, except that funds shall not be expended from the Toxic Substances Control Account for purposes of Article 16 (commencing with Section 79350) of Chapter 5 of Part 2 of Division 45.

(B) Chapter 6.86 (commencing with Section 25396) of Division 20.

(C) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the Public Utilities Code, to the extent the department has been delegated responsibilities by the secretary for implementing that article.

(D) **Article 10 (commencing with Section 25210), Article 10.01 (commencing with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article 10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article 10.4 (commencing with Section 25214.11), Article 10.5 (commencing with Section 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5 (commencing with Section 25250.50), Article 14 (commencing with Section 25251), and Section 25214.10.**

(E) Green chemistry (**Article 14 (commencing with Section 25251)**).

(2) The administration of the following units, and successor organizations of those units, within the department, and the implementation of programs administered by those units or successor organizations:

(A) The Human and Ecological Risk Office.

(B) The Environmental Chemistry Laboratory.

(C) The Office of Pollution Prevention and Technology Development.

(D) The Safer Consumer Products Program.

(3) For allocation to the Office of Environmental Health Hazard Assessment, pursuant to an interagency agreement, to assist the department as needed in

administering the programs described in subparagraphs (A) and (B) of paragraph (1).

(4) For allocation to the California Department of Tax and Fee Administration to pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation Code.

(5) For the state share mandated pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

(6) For the purchase by the state, or by a local agency with the prior approval of the director, of hazardous substance response equipment and other preparations for response to a release of hazardous substances. However, all equipment shall be purchased in a cost-effective manner after consideration of the adequacy of existing equipment owned by the state or the local agency, and the availability of equipment owned by private contractors.

(7) For payment of all costs of removal and remedial action incurred by the state, or by a local agency with the approval of the director, in response to a release or threatened release of a hazardous substance, to the extent the costs are not reimbursed by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(8) For payment of all costs of actions taken pursuant to Section 78650, to the extent that these costs are not paid by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(9) For all costs incurred by the department in cooperation with the Agency for Toxic Substances and Disease Registry established pursuant to subsection (i) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of health effects studies undertaken regarding specific sites or specific substances at specific sites. Funds appropriated for this purpose shall not exceed five hundred thousand dollars (\$500,000) in a single fiscal year. However, these actions shall not duplicate reasonably available federal actions and studies.

(10) For repayment of the principal of, and interest on, bonds sold pursuant to Article 5 (commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.

(11) Direct site remediation costs.

(12) For the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

(13) For the administration and collection of the fees imposed pursuant to **Section 25205.6**.

(14) For allocation to the office of the Attorney General, pursuant to an interagency agreement or similar mechanism, for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of Part 2 (commencing with Section 78000) of Division 45, Chapter 6.86

(commencing with Section 25396) of Division 20, **Article 10 (commencing with Section 25210)**, **Article 10.01 (commencing with Section 25210.5)**, **Article 10.02 (commencing with Section 25210.9)**, **Article 10.1.1 (commencing with Section 25214.1)**, **Article 10.1.2 (commencing with Section 25214.4.3)**, **Article 10.2.1 (commencing with Section 25214.8.1)**, **Article 10.4 (commencing with Section 25214.11)**, **Article 10.5 (commencing with Section 25215)**, **Article 10.5.1 (commencing with Section 25215.8)**, **Article 13.5 (commencing with Section 25250.50)**, **Article 14 (commencing with Section 25251)**, and **Section 25214.10**.

(15) For funding the California Environmental Contaminant Biomonitoring Program established pursuant to Chapter 8 (commencing with Section 105440) of Part 5 of Division 103.

(16) As provided in **Sections 25214.3 and 25215.82** and, with regard to penalties recovered pursuant to **Section 25214.22.1**, to implement and enforce **Article 10.4 (commencing with Section 25214.11)**.

(17) For the costs of performance or review of analyses of past, present, or potential environmental public health effects related to extremely hazardous waste, as defined in Section 60210, and hazardous waste, as defined in Section 60345.

(18) For costs incurred by the board in the administration and implementation of its duties and responsibilities established in **Article 2.1 (commencing with Section 25125)**.

(b) The funds deposited in the Toxic Substances Control Account may be appropriated by the Legislature to the Office of Environmental Health Hazard Assessment and the State Department of Public Health for the purposes of carrying out their duties pursuant to the California Environmental Contaminant Biomonitoring Program (Chapter 8 (commencing with Section 105440) of Part 5 of Division 103).

Comment. Section 60495 continues former Section 25173.6(b) and (c) without substantive change.

An obsolete cross-reference to Section 25215.7 in former Section 25173.6(b)(16) was corrected in Section 60495(a)(16) to refer to Section 25215.82. See 2019 Cal. Stat. ch. 497, § 164.

See Sections 60088 (“board”); 60160 (“department”), 60165 (“director”), 60195 (“extremely hazardous waste”), 60210 (“hazardous waste”), 60345 (“secretary”).

Notes. (1) Section 25173.6(b)(18) refers to the “Board of Environmental Safety.” Proposed Section 60495(a)(18) replaces that reference with the defined term “board.” See proposed Section 60088 (“board”).

(2) Section 25173.6(b) and (c) use a number of terms that are defined in Part 2 of Division 45 without reference to those definitions. In many cases, it seems very likely that the meaning provided in Part 2 of Division 45 is intended.

For example, Section 25173.6(b)(11) allows appropriations for “direct site remediation costs.” This is a defined term used in Part 2 of Division 45. It appears likely that the defined meaning was intended here. See Section 25173.7(a)(2) (referring to direct site remediation costs “as defined in Section 78260.”)

This issue has been added to the list of substantive issues for possible future study. See Note to the heading for this proposed chapter.

(3) Section 25173.6 cross-references Section 25215.7. Former Section 25215.7 was renumbered as Section 25215.82. See 2019 Cal. Stat. ch. 497, § 164. The cross-reference has been updated accordingly.

(4) Section 25173.6(b)(16) appears to allow appropriations to implement and enforce the Toxics in Packaging Prevention Act (Article 10.4). However, this provision cross-refers to two sections that are not located in that article (Sections 25214.3 and 25215.82). It appears that this provision is erroneous and needs to be corrected. Both of the referenced sections provide penalties for violations of their respective articles and specify that any penalties collected should be used to implement and enforce only those respective articles. See Sections 25214.3(c) (from Article 10.1.1. Metal-Containing Jewelry) and 25215.82 (from Article 10.5.1. Lead Wheel Weights). **The Commission welcomes comment on this issue.**

§ 60500. Expenditures

60500. (a) The director shall expend federal funds in the Toxic Substances Control Account consistent with the requirements specified in Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604), upon appropriation by the Legislature, for the purposes for which they were provided to the state.

(b) Money in the Toxic Substances Control Account shall not be expended to conduct removal or remedial actions if a significant portion of the hazardous substances to be removed or remedied originated from a source outside the state.

Comment. Section 60500 continues former Section 25173.6(d) and (e) without substantive change. An erroneous reference to “Section 114 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9614)” was corrected to refer to “Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604).”

See Section 60165 (“director”).

Note. Section 25173.6(d) refers to requirements for expending federal funds in Section 114 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This reference appears to be erroneous, as CERCLA Section 114 does not appear to place requirements on the expenditures of federal funds.

In proposed Section 60500, this reference was adjusted to refer instead to Section 104 of CERCLA. CERCLA Section 104(c)(3) precludes federal cleanup actions, unless a state pays a specified share of the cleanup costs.

In the course of the Commission’s work on Chapter 6.8, the Commission encountered an erroneous reference to Section 114(c) of CERCLA, which was corrected to refer to Section 104(c) of CERCLA. Two other provisions in this draft also refer to Section 104 of CERCLA. See proposed Sections 60495, 60580.

For these reasons, Section 104 of CERCLA appears to be the appropriate reference for this provision.

Absent comment, this proposed cross-reference correction will be presumed correct.

§ 60505. Loans to account

60505. The Director of Finance, upon request of the director, may make a loan from the General Fund to the Toxic Substances Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

Comment. Section 60505 continues former Section 25173.6(f) without substantive change.
See Section 60165 (“director”).

§ 60510. Account as successor fund

60510. (a) The Toxic Substances Control Account established pursuant to Section 60490 is the successor fund of all of the following:

(1) The Hazardous Substance Account established pursuant to Section 25330, as that section read on June 30, 2006.

(2) The Hazardous Substance Clearing Account established pursuant to Section 25334, as that section read on June 30, 2006.

(3) The Hazardous Substance Cleanup Fund established pursuant to Section 25385.3, as that section read on June 30, 2006.

(4) The Superfund Bond Trust Fund established pursuant to Section 25385.8, as that section read on June 30, 2006.

(b) On and after July 1, 2006, all assets, liabilities, and surplus of the accounts and funds listed in subdivision (a), shall be transferred to, and become a part of, the Toxic Substances Control Account, as provided by Section 16346 of the Government Code. All existing appropriations from these accounts, to the extent encumbered, shall continue to be available for the same purposes and periods from the Toxic Substances Control Account.

Comment. Section 60510 continues former Section 25173.6(g) and (h) without substantive change.

§ 60520. Legislative intent regarding appropriations to account

60520. It is the intent of the Legislature that funds deposited in the Toxic Substances Control Account shall be appropriated in the annual Budget Act each year in the following manner:

(a) An amount sufficient to pay for the estimated costs identified by the department in the report submitted pursuant to Section 60580 to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in Section 78260.

(b) Not less than ten million seven hundred fifty thousand dollars (\$10,750,000) to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in Section 78260.

(c) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a) of former Section 25399.1, as added by Section 2 of Chapter 435 of the Statutes of 1994, for purposes of paying the orphan share of response costs pursuant to Chapter 6.86 (commencing with Section 25396) of Division 20.

(d) An amount that does not exceed the costs incurred by the State Board of Equalization, a private party, or other public agency, to administer and collect the fees imposed pursuant to **Article 9.1 (commencing with Section 25205.1)** and deposited into the Toxic Substances Control Account, for the purpose of

reimbursing the State Board of Equalization, public agency, or private party, for those costs.

(e) Not less than one million fifty thousand dollars (\$1,050,000) for purposes of establishing and implementing a program pursuant to **Sections 25244.15.1, 25244.17.1, 25244.17.2, and 25244.22** to encourage hazardous waste generators to implement pollution prevention measures.

(f) Funds not appropriated as specified in subdivisions (a) to (e), inclusive, may be appropriated for any of the purposes specified in subdivision (a) of Section 60495, except the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (13) of, subdivision (a) of Section 60495.

Comment. Section 60520 continues former Section 25173.7(a) without substantive change. See Sections 60160 (“department”), 60210 (“hazardous waste”).

§ 60525. Annual adjustments for cost of living

60525. (a) The amounts specified in subdivisions (b) to (e), inclusive, of Section 60520 shall be adjusted annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(b) Notwithstanding subdivision (a), the department may, upon the approval of the Legislature in a statute or the annual Budget Act, take either of the following actions:

(1) Reduce the amounts specified in subdivisions (a) to (e), inclusive, of Section 60520, if there are insufficient funds in the Toxic Substances Control Account.

(2) Suspend the transfer specified in subdivision (c) of Section 60520, if there are no orphan shares pending payment pursuant to Chapter 6.86 (commencing with Section 25396) of Division 20.

Comment. Section 60525 continues former Section 25173.7(b) without substantive change. See Section 60160 (“department”).

Article 3. Reporting for Budget

§ 60575. Reporting on specified budget amounts

60575. (a) The department shall, at the time of the release of the annual Governor’s Budget, describe the budgetary amounts proposed to be allocated to the California Department of Tax and Fee Administration, as specified in subdivision (b) of Section 60455.

(b) It is the intent of the Legislature that moneys appropriated in the annual Budget Act each year for the purpose of reimbursing the California Department of Tax and Fee Administration, a private party, or other public agency, for the administration and collection of the fees collected pursuant to **Sections 25205.5 and 25205.5.2**, or described in Section **25205.25**, and deposited into the Hazardous Waste Control Account, shall not exceed the costs incurred by the California Department of Tax

and Fee Administration, the private party, or other public agency, for the administration and collection of those fees.

Comment. Section 60575 continues former Section 25174(c) without substantive change. See Section 60160 (“department”).

§ 60580. Report regarding estimated funding for direct site remediation costs

60580. (a) The department shall submit to the Legislature with the Governor’s Budget each year a report that includes an estimate of the funding needed to fund direct site remediation costs at state orphan sites and meet the state’s obligation to pay for direct site remediation costs at federal Superfund orphan sites pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

(b) The estimate shall include projected costs for the current budget year and the two following budget years, including, but not limited to, the state’s 10-percent funding obligation for remedial actions at federal Superfund orphan sites, the state’s 100-percent funding obligation for ongoing operation and maintenance at federal Superfund orphan sites, and ongoing operation and maintenance costs at state orphan sites.

Comment. Section 60580 continues former Section 25173.7(c) without substantive change. See Section 60160 (“department”).

Note. Section 25173.7(c) relates to funding used for activities that are governed by Part 2 of Division 45. This provision uses several terms that are defined in Part 2 of Division 45 without citation to the relevant definitions (e.g., “direct site remediation costs,” “operation and maintenance,” “orphan site,” “remedial action”). It appears that the definitions for these terms in Part 2 of Division 45 were intended to apply to their use in this provision. See Note to the heading of this proposed chapter.

CHAPTER 5. GENERAL POWERS AND DUTIES

Article 1. Contracting

§ 60620. Contracts for specialized training programs

60620. The department shall enter into contracts or agreements with educational, professional, or trade associations, using a competitive bidding process, to establish specialized training programs with a statewide focus to instruct businesses and other entities on compliance with statutes and regulations governing the handling, disposal, transportation, and storage of hazardous waste.

Comment. Section 60620 continues former Section 25172.6 without substantive change. See Sections 60095 (“business”), 60160 (“department”), 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous waste”), 60350 (“storage”).

Article 2. Duties

§ 60635. Department obligations

60635. The department, in performing its duties under this division, shall do all of the following:

(a) Coordinate research and development regarding methods of hazardous waste handling, storage, use, processing, and disposal and may conduct appropriate studies relating to hazardous wastes.

(b) Maintain a technical reference center on hazardous waste management practices, including, but not limited to, hazardous waste disposal, recycling practices, and related information for public and private use.

(c) Establish and maintain a toll-free Toxic Substances Hotline, operating during the regular working hours of the department, to provide information on hazardous waste or appropriate referrals on other toxic substances to the regulated community and the public. The department shall coordinate the Toxic Substances Hotline program with other programs that provide information on hazardous wastes and other toxic substances, including, but not limited to, the technical reference center established pursuant to subdivision (b).

(d) Provide statewide planning for hazardous waste facility site identification and assessment and render technical assistance to state and local agencies in the planning and operation of hazardous waste programs.

(e) Provide for appropriate surveillance of hazardous waste processing, use, handling, storage, and disposal practices in the state.

(f) Coordinate research and study in the technical and managerial aspects of management and use of hazardous wastes, and recycling and recovery of resources from hazardous wastes.

(g) Determine existing and expected rates of production of hazardous waste.

(h) Investigate market potential and feasibility of use of hazardous wastes and recovery of resources from hazardous wastes.

(i) Promote recycling and recovery of resources from hazardous wastes.

(j) Conduct studies for the purpose of improving departmental operations.

(k) Encourage the reduction or exchange, or both, of hazardous waste, including, but not limited to, publishing and distributing both of the following:

(1) Lists of hazardous wastes for the purpose of enabling persons to match the constituents of hazardous waste streams with needs for hazardous materials resources.

(2) Directories of known and permitted commercial hazardous waste recyclers in the state.

(l) Establish and maintain an information clearinghouse, which shall consist of a record of wastes that may be recyclable. Every producer of hazardous waste shall supply the department with information for the clearinghouse. Each producer shall not be required to supply any more information than is required by the manifests provided for in **Section 25160**. The department shall make this information

available to persons who desire to recycle the wastes. The information shall be made available in such a way that the trade secrets of the producer are protected.

(m) Conduct pilot projects, as appropriate, to document the technical performance of emerging technologies that offer potential for ameliorating California’s hazardous waste disposal problems.

(n) Develop and implement an industry education program that shall emphasize small business education and shall include, but not be limited to, all of the following elements:

(1) Preparation of a synopsis of laws and regulations relating to hazardous waste, which the department shall publish by January 1 of each year.

(2) Publication of educational pamphlets for selected types of business explaining selected areas of the law, regulations, or programs concerning hazardous waste.

(3) Audio-visual training programs, as needed.

(4) An annual California Hazardous Waste Management Symposium.

Comment. Section 60635 continues former Section 25170 without substantive change.

See Sections 60095 (“business”), 60160 (“department”), 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60220 (“hazardous waste management” or “management”), 60250 (“manifest”), 60295 (“person”), 60300 (“processing”), 60305 (“producer”), 60325 (“recycling”), 60350 (“storage”), 60390 (“waste”).

Note. Section 25170(l) cross-refers to Section 25160 for the purpose of identifying the required contents of manifests under that section. The definitions contained in Section 25160 have been proposed for recodification in this draft, but those proposed sections do not include the substantive information about the manifest’s required contents. This cross-reference will be updated when the remainder of Section 25160 is proposed for recodification.

Article 3. Information Distribution

§ 60650. Reporting and distribution of information

60650. (a) The department may report findings and results of an investigation that the department undertakes pertaining to subject matter governed by this division, except for trade secrets as provided in Section 60655.

(b) The department may distribute such information as it considers necessary for the protection of the public or for the protection of human health, domestic livestock, wildlife, and the environment and to ensure the best use of natural resources.

(c) The department may publish reports summarizing or containing any order of the director or any judgment or court order that has been rendered pursuant to this division, including the nature of the charge and its disposition.

Comment. Section 60650 continues former Section 25177 without substantive change.

See Sections 60160 (“department”), 60165 (“director”), 60260 (“natural resources”).

§ 60655. Protection of trade secrets

60655. (a)(1) The department shall establish procedures to ensure that trade secrets used by a person regarding methods of hazardous waste handling and

disposal are utilized by the director, the department, or any authorized representative of the department only in connection with the responsibilities of the department pursuant to this division.

(2) The procedures established pursuant to paragraph (1) shall also ensure that trade secrets are not otherwise disseminated by the director, the department, or any authorized representative of the department without the consent of the person.

(3) Notwithstanding paragraphs (1) and (2), any information shall be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information.

(b) “Trade secrets,” as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that meets all of the following criteria:

(1) It is not patented.

(2) It is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value.

(3) It gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Comment. Section 60655 restates former Section 25173 without substantive change.

See Sections 60095 (“business”), 60160 (“department”), 60165 (“director”), 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous waste”), 60295 (“person”).

Note. Section 25173 is restated to improve consistency and readability and eliminate the word “such,” which is disfavored in legislative drafting.

Currently, Section 25173 provides:

“The department shall establish procedures to ensure that trade secrets used by a person regarding methods of hazardous waste handling and disposal are utilized by the director, the department, or any authorized representative of the department only in connection with the responsibilities of the department pursuant to this chapter and that such trade secrets are not otherwise disseminated by the director, the department, or any authorized representative of the department without the consent of the person. However, any information shall be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information.

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

In addition to these changes, subdivision and paragraph designators were added and uses of the word “which” were corrected to “that.”

Absent comment, the proposed restatement of this section will be presumed correct.

Article 4. Regulations and Standards

§ 60670. Hazardous waste management to protect against hazards to public health, to domestic livestock, to wildlife, or to the environment

60670. (a) The department shall adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to the public health, to domestic livestock, to wildlife, or to the environment.

(b) The department and the local officers and agencies authorized to enforce this division pursuant to **subdivision (a) of Section 25180** shall apply the standards and regulations adopted pursuant to subdivision (a) to the management of hazardous waste.

(c) Except as provided in subdivision (d), the department may limit the application of the standards and regulations adopted or revised pursuant to subdivision (a) at facilities operating pursuant to a hazardous waste facilities permit or other grant of authorization issued by the department in any manner that the department determines to be appropriate, including, but not limited to, requiring these facilities to apply for, and receive, a permit modification prior to the application of the standards and regulations.

(d) The department shall not adopt or revise standards and regulations that result in the imposition of any requirement for the management of a RCRA waste that is less stringent than a corresponding requirement adopted by the United States Environmental Protection Agency pursuant to the federal act.

(e) The department shall adopt, and revise when appropriate, regulations for the recycling of hazardous waste to protect against hazards to the public health, domestic livestock, wildlife, or to the environment, and to encourage the best use of natural resources.

(f) Before the adoption of regulations, the department shall notify all agencies of interested local governments, including, but not limited to, certified unified program agencies, local governing bodies, local planning agencies, local health authorities, local building inspection departments, the Department of Pesticide Regulation, the Department of the California Highway Patrol, the Department of Fish and Wildlife, the Department of Industrial Relations, the Division of Occupational Safety and Health, the State Air Resources Board, the State Water Resources Control Board, the Office of the State Fire Marshal, regional water quality control boards, the California Building Standards Commission, the Office of Environmental Health Hazard Assessment, and the Department of Resources Recycling and Recovery.

Comment. Section 60670 continues former Section 25150 without substantive change. Several of the listed state agency names were outdated and have been corrected to refer to the current name of the relevant agency. See Fish & Game Code § 700; Health & Safety Code §§ 13100, 18920; Lab. Code § 56; Pub. Res. Code § 40400.

See Sections 60105 (“certified unified program agency” or “CUPA”), 60160 (“department”), 60200 (“federal act”), 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60220 (“hazardous waste management” or “management”), 60245 (“local officer”), 60260 (“natural resources”), 60325 (“recycling”), 60390 (“waste”).

Notes. (1) Section 25150(d) refers to a requirement for the management of a “RCRA waste” that is less stringent than a requirement adopted by the “Environmental Protection Agency pursuant to the federal act.”

For clarity, this proposed section specifies that the relevant agency is the “United States Environmental Protection Agency.”

The term “RCRA waste” is similar to the defined term “RCRA hazardous waste.” See proposed Section 60310. However, it is unclear whether this provision is intended to be limited to only hazardous wastes that are regulated by RCRA (RCRA also governs non-hazardous solid waste). “RCRA” is not itself a defined term, so, if any waste governed by RCRA was intended, the Commission would recommend restating this provision to refer to a “waste regulated by the federal act.” If only RCRA hazardous wastes are intended, the defined term, “RCRA hazardous waste,” could be substituted here.

The Commission welcomes comment on this issue.

(2) Section 25150(f) refers to a number of local and state agencies. Several of the state agency names were outdated and have been corrected to refer to the current name of the relevant agency. See Fish & Game Code § 700; Health & Safety Code §§ 13100, 18920; Lab. Code § 56; Pub. Res. Code § 40400.

Absent comment, these proposed corrections will be presumed correct.

(3) Section 25150(f) appears to state a general rule about the adoption of regulations (i.e., not limited to regulations adopted pursuant to this section). If that is the case, subdivision (f) should be recodified in a separate section. If not, the provision should specify that it applies before the adoption of regulations “pursuant to this section.”

The Commission welcomes comment on this issue.

§ 60675. Authority to adopt varying regulations

60675. (a) The department, when adopting regulations pursuant to Section 60670, may adopt varying regulations for different areas of the state depending on population density, climate, geology, types and volumes of hazardous waste generated in the area, types of waste treatment technology available in the area, and other factors relevant to hazardous waste handling, processing, storing, recycling, and disposal.

(b) This section does not apply to building standards.

Comment. Section 60675 continues former Section 25151 without substantive change.

See Sections 60160 (“department”), 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous waste”), 60300 (“processing”), 60325 (“recycling”), 60365 (“treatment”), 60390 (“waste”).

Note. Section 25151 is restated for clarity. Currently, Section 25151 provides:

The department may adopt varying regulations pursuant to Section 25150, other than building standards for different areas of the state depending on population density, climate, geology, types and volumes of hazardous waste generated in the area, types of waste treatment technology available in the area, and other factors relevant to hazardous waste handling, processing, storing, recycling, and disposal.

Absent comment, the proposed restatement of this section will be presumed correct.

§ 60680. Regulations adopted prior to January 1, 2008

60680. Any regulation adopted prior to January 1, 2008, pursuant to former Section 25150.6, that exempts a hazardous waste management activity from one or more of the requirements of this division shall remain valid unless repealed.

Comment. Section 60680 restates former Section 25150.65 without substantive change. See Section 60220 (“hazardous waste management” or “management”).

Notes. (1) Section 25150.65 is restated to improve readability. Currently, Section 25150.65 provides:

“Any regulation that was adopted prior to January 1, 2008, pursuant to former Section 25150.6, exempting a hazardous waste management activity from one or more of the requirements of this chapter, shall remain valid unless repealed.”

Absent comment, the proposed restatement of this provision will be presumed correct.

(2) Section 25150.65 refers to a regulation adopted prior to January 1, 2008, pursuant to former Section 25150.6. Former Section 25150.6 was added in 1998 and amended twice prior to 2008. See 1998 Cal. Stat. ch. 676, § 1; 2001 Cal. Stat. ch. 605, § 4; 2004 Cal. Stat. ch. 175, § 1. For this reference, no statutory citation was provided to avoid an implication that only certain regulations are covered by this provision (i.e., those regulations adopted when a specified version of the section was in effect).

§ 60685. Public hearing on proposed regulations

60685. (a) Before adopting building standards or adopting or revising other standards and regulations for the handling, processing, storing, use, recycling, and disposal of hazardous and extremely hazardous wastes, the department shall hold at least one public hearing in Sacramento, or in a city within the area of the state to be affected by the proposed regulations.

(b) Except as provided in Section 18930, the department shall adopt the proposed regulations after making changes or additions that are appropriate in view of the evidence and testimony presented at the public hearing or hearings.

Comment. Section 60685 continues former Section 25152 without substantive change.

See Sections 60160 (“department”), 60175 (“disposal”), 60195 (“extremely hazardous waste”), 60205 (“handling”), 60210 (“hazardous waste”), 60300 (“processing”), 60325 (“recycling”).

§ 60690. Permissible format for contingency plan

60690. On or before July 1, 1995, the department shall revise any standard or regulation it has adopted that requires the preparation of a contingency plan, as that term is defined in Section 66260.10 of Title 22 of the California Code of Regulations, to allow the person preparing the contingency plan to use the format adopted pursuant to former Section 25503.4, if that person elects to use that format.

Comment. Section 60690 continues former Section 25150.5 without substantive change.

See Sections 60160 (“department”), 60295 (“person”).

Notes. (1) Section 25150.5 involves an obligation of the department that was supposed to occur in 1995. It is unclear whether this provision has any continuing effect.

The Commission welcomes comment on this issue.

(2) Assuming this section has continuing effect, it is unclear how the reference to Section 25503.4 should be updated. This section requires the department to permit use of a contingency plan format adopted pursuant to “Section 25503.4.” Section 25503.4 has been repealed. 2013 Cal. Stat. ch. 419, § 2.

In proposed Section 60690, the reference has been adjusted to refer to “former” Section 25503.4. The Commission considered whether to provide a statutory cite, but was unsure whether the relevant version of Section 25503.4 should have been the one in effect on July 1, 1995 (the date

specified in the statute) or the last amended version. See 1993 Cal. Stat. ch. 630, § 6; 2013 Cal. Stat. ch. 352, § 359.

More broadly, it is unclear whether the contingency plan format adopted pursuant to former Section 25503.4 has any ongoing validity (i.e., can contingency plans being prepared now use the format adopted pursuant to former law?). If so, is there a current regulatory provision that describes this format that could be referenced here (as opposed to former law)?

If this section has continuing effect, the Commission welcomes comment on how the reference to the repealed section, “Section 25503.4,” should be updated.

Article 5. Reporting

§ 60700. Information to be posted online

60700. On or before January 1 of each odd-numbered year, the department shall post on its internet website, 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 division 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 (b) of Section 25197.1**, and Article 9 (commencing with Section 78575) of Chapter 3 of Part 2 of Division 45.

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

Comment. Section 60700 continues former Section 25178 without substantive change. An erroneous reference to “paragraph (4) of subdivision (a) of Section 25197.1” was corrected to refer to Section [XXXXX], which continues Section 25197.1(b)(4).

See Sections 60160 (“department”), 60175 (“disposal”), 60200 (“federal act”), 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60220 (“hazardous waste management” or “management”), 60315 (“recyclable material”), 60390 (“waste”).

Notes. (1) Section 25178(b)(2) specifies that a “hazardous waste facility,” which is a defined term for this division, 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.”

The main definition of “hazardous waste facility” seems to be much broader. It is defined to mean “all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste.”

It is unclear whether these competing definitions cause problems in practice.

The Commission welcomes comment on this issue.

(2) Section 25178(l) refers to the information specified in “paragraph (4) of subdivision (a) of Section 25197.1.” That reference appears to be an error, as Section 25197.1(a) does not contain paragraphs. However, Section 25197.1(b)(4) identifies information that should be included “in the biennial report specified in Section 25178.” In this proposed section, the reference has been corrected to refer to paragraph (4) of subdivision (b).

(3) The Independent Review Panel (“IRP”) concluded that this section appears to be at least partially obsolete. See DTSC Independent Review Panel Recommendations to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f) 31 (January 8, 2018), available at <https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/04/IRP-Annual-Report-January-8-218.pdf>. Specifically, the IRP Report notes that this section “requires the posting of numerous reports on the DTSC website that were considered important to post thirteen years ago and which, in [subdivision (l)], refers to a non-existent code section.”

This issue has been added to the list of substantive issues for possible future study (with attribution to the IRP).

CHAPTER 6. LABORATORY ANALYSIS

Note. Proposed Chapter 6 recodifies Section 25198. Subdivision (a) of this section defines “state department” for the purposes of the section to mean the “State Department of Health Services.” The term “state department” is only used once in the section. Given the term’s similarity to the defined term “department” and the single use of the defined term “state department,” the proposed legislation would not continue the definition for “state department” and would simply substitute the full agency name in the one spot where “state department” is currently used.

Further, as indicated below, the reference to the “state department” appears to be out of date. See Note to proposed Section 60720.

Absent comment, the proposed elimination of the “state department” definition and substitution of the full agency name will be presumed correct.

§ 60720. Laboratory accreditation for analyses

60720. Except as provided in subdivision (a) of Section 60725, the analysis of any material required by this division 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 60720 restates the first part of former Section 25198(b) without substantive change. The reference to the “state department” (defined as the “State Department of Health Services”) in former Section 25198 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).

Notes. Subdivision (b) of Section 25198 provides as follows:

“Except as provided in subdivision (c), the analysis of any material required by this chapter shall be performed by a laboratory certified by the state department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101, except that laboratories previously issued a certificate under this section shall be deemed certified until the time that certification under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 has been either granted or denied, but not beyond the expiration date shown on the certificate previously issued under this section.”

(1) Proposed Section 60720 would restate the first part of this subdivision to make the terminology consistent with Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

In addition, proposed Section 60720 would replace a reference to the “state department” (defined as 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).

Absent comment, this restatement will be presumed correct.

As in its prior work on Chapter 6.8, the Commission did not simply delete the agency name, which could prevent future discrepancies from arising if the accrediting agency changes. See proposed Section 78510 in *Hazardous Substance Account Recodification Act*, __ Cal. L. Revision Comm’n Reports __ (2021). 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 division.

The Commission welcomes comment on this issue.

(2) Section 25198(b) includes a rule about the certification of a laboratory previously issued a certificate under “this section.” This rule is not proposed for continuation as it appears to be long obsolete.

The Commission researched prior versions of Section 25198 to determine which prior version of the statute authorized the issuance of laboratory certificates. Prior to 1988, Section 25198 authorized the issuance of laboratory certifications under specified conditions, consistent with implementing regulations. See 1982 Cal. Stat. ch. 1209, § 2.

In 1988, the Environmental Laboratory Improvement Act of 1988 was enacted, which consolidated, reorganized, and revised the laboratory certification functions. See 1988 Cal. Stat. ch. 894, § 1. At that time, Section 25198 was amended to refer to laboratories that were previously issued certificates under the section. See 1988 Cal. Stat. ch. 894, § 6. The rule in Section 25198 deems laboratories previously issued a certificate under this section to be certified “until the time that [the new] certification ... has been granted or denied, *but not beyond the expiration date shown*

on the certificate previously issued under this section” (emphasis added). It seems almost certain that a laboratory certification issued over 30 years ago would have expired in the intervening years. See former Section 25198.3, as enacted by 1982 Cal. Stat. ch. 1209, § 2 (“The department shall issue a certificate valid for two years from the date of issue to a laboratory when the department determines that the laboratory is competent and equipped to conduct the type of analysis for which certification is sought.”).

The Commission welcomes comment on whether the rule pertaining to laboratories previously issued certification under Section 25198 has any ongoing validity.

§ 60725. Exceptions to certification requirements

60725. (a) The requirements of Section 60720 shall not apply to analyses performed by a laboratory pursuant to the facility’s waste analysis plan if all of the following conditions are met:

(1) The laboratory is owned or operated by the same person who owns or operates the facility at which the waste will be managed, and the facility is a hazardous waste treatment, storage, or disposal facility that is required to obtain a hazardous waste facilities permit pursuant to **Article 9 (commencing with Section 25200)**.

(2) The analysis is conducted for any of the following purposes:

(A) To determine whether a facility will accept the hazardous waste for transfer, storage, or treatment, as described in paragraph (3) of subdivision (a) of Section 66264.13 of, and paragraph (3) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of Regulations, as those sections read on January 1, 2001.

(B) To ensure that the analysis used to determine whether a facility will accept the hazardous waste for transfer, storage, or treatment is accurate and up to date, as described in paragraph (4) of subdivision (a) of Section 66264.13 of, and paragraph (4) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of Regulations, as those sections read on January 1, 2001.

(C) To determine whether the hazardous waste received at the facility for transfer, storage, or treatment matches the identity of the hazardous waste designated on an accompanying manifest or shipping paper, as described in paragraph (5) of subdivision (a) of Section 66264.13 of, and paragraph (5) of subdivision (a) of Section 66265.13 of, the California Code of Regulations, as those sections read on January 1, 2001.

(3) The facility’s waste analysis plan is prepared in accordance with the regulations adopted by the department pursuant to this division.

(b)(1) An analysis performed in accordance with subdivision (a) is not an analysis performed for regulatory purposes within the meaning of paragraph (9) of subdivision (c) of Section 100825.

(2) The exemption provided by subdivision (a) does not exempt the analyses of waste for purposes of disposal from the requirements of Section 60720 requiring certified laboratory analyses. The analyses described in subdivision (a) are not exempt from any other requirement of law, regulation, or guideline governing quality assurance and quality control.

Comment. Section 60725 restates former Section 25198(c), (d), and (e) without substantive change. An erroneous cross-reference to Section 100825(c)(19) was corrected to refer to Section 100825(c)(9).

See Sections 60160 (“department”), 60175 (“disposal”), 60210 (“hazardous waste”), 60215 (“hazardous waste facility”), 60250 (“manifest”), 60295 (“person”), 60350 (“storage”), 60365 (“treatment”), 60390 (“waste”).

Notes. (1) The introductory clause of Section 25198(c) provides as follows:

“The requirements of subdivision (b) shall not apply to analyses performed by a laboratory pursuant to the facility’s waste analysis plan, that is prepared in accordance with the regulations adopted by the Department of Toxic Substances Control pursuant to this chapter, if both of the following conditions are met:”

This provision is restated for readability and to make clear that the waste analysis plan being prepared in accordance with the regulations is a condition that must be satisfied for this rule to apply.

Absent comment, this proposed restatement will be presumed correct.

In addition, the reference to the “Department of Toxic Substances Control” in Section 25198(c) was replaced with the defined term “department.” See proposed Section 60160.

(2) Section 25198(d) refers to an “analysis performed for regulatory purposes within the meaning of paragraph (19) of subdivision (c) of Section 100825.” This reference appears to be erroneous, as the definition of “regulatory purposes” is found in paragraph (9) of Section 100825(c). The reference has been corrected accordingly.

Absent comment, this correction will be presumed correct.

(3) Section 25198(c)(1) refers to a “hazardous waste treatment, storage, or disposal facility.” This term is similar to the defined term “hazardous waste facility.” See proposed Section 60215; see also proposed Section 60180 (defining another similar term, “disposal site”). A “hazardous waste facility” means “all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste.”

The Commission welcomes comment on whether the defined term “hazardous waste facility” could be substituted here or whether this reference intends a narrower set of facilities (e.g., not hazardous waste recycling facilities).

§ 60730. Certification required for contracts for laboratory analyses

60730. No person or public entity of the state shall contract with a laboratory for environmental analyses for which certification is required pursuant to this division, unless the laboratory holds a valid certificate.

Comment. Section 60730 continues former Section 25198(f) without substantive change.

See Section 60295 (“person”).

Note. Section 25198(f) refers to a “person or public entity of the state.” “Person” is a defined term, which seems to include public entities of the state. Specifically, proposed Section 60295 provides that “person” includes “the state or any department, agency, or political subdivision thereof.” It is unclear what the “or public entity of the state” adds to this provision. It appears to be redundant.

The Commission welcomes comment on this issue.

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PART 2. BOARD OF ENVIRONMENTAL SAFETY

CHAPTER 1. PRELIMINARY PROVISIONS

Article 1. Establishment of Board

§ 61000. Appointment of board members

61000. (a) The Board of Environmental Safety is hereby established in the department consisting of five voting members as follows:

(1) Three members shall be appointed by the Governor subject to confirmation by the Senate.

(2) One member shall be appointed by the Senate Committee on Rules.

(3) One member shall be appointed by the Speaker of the Assembly.

(b) The members of the board shall be appointed on the basis of their demonstrated interest in the fields of hazardous waste management, site remediation, or pollution prevention and reduction, shall possess understanding of the needs of the general public in connection with the risks posed by hazardous materials and the management of hazardous waste, and shall possess experience in at least one of the following:

(1) Environmental law.

(2) Environmental science, including toxicology, chemistry, geology, industrial hygiene, or engineering.

(3) Public health.

(4) Cumulative impact assessment and management.

(5) Regulatory permitting.

(c) No more than two members of the board may represent a single category of qualification described in paragraphs (1) to (5), inclusive, of subdivision (b) at any one time.

Comment. Section 61000 continues former Section 25125(a)-(c) without substantive change.

See Sections 60088 (“board”), 60160 (“department”), 60210 (“hazardous waste”), 60220 (“hazardous waste management”).

§ 61005. Role of board members

61005. The board members shall represent the general public interest and act to protect public health and reduce risks of toxic exposure with a particular focus on disproportionately burdened and vulnerable communities.

Comment. Section 61005 continues former Section 25125(d) without substantive change.

See Section 60088 (“board”).

§ 61010. Terms

61010. (a) Except as provided in subdivision (c), a board member shall be appointed for a term of four years.

(b) A vacancy in the board shall be immediately filled by the appointing authority for the unexpired portion of the term in which the vacancy occurs.

(c) The terms of the board members shall be staggered, as follows:

(1) One of the initial members appointed by the Governor and the initial member appointed by the Speaker of the Assembly shall serve a two-year term and the remaining three initial members shall serve a four-year term.

(2) The chairperson of the board, appointed by the Governor pursuant to Section 61015, shall serve a four-year term.

(3) The Governor shall determine which of the initial members appointed by the Governor shall serve a two-year term and which shall serve a four-year term.

Comment. Section 61010 restates former Section 25125(f) without substantive change. See Section 60088 (“board”).

Note. Proposed Section 61010 would restate Section 25125(f), which presently reads as follows, to improve readability:

“(f)(1) Except as provided in paragraph (2), a board member shall be appointed for a term of four years. A vacancy in the board shall be immediately filled by the appointing authority for the unexpired portion of the term in which the vacancy occurs.

(2) The terms of the board members shall be staggered. One of the initial members appointed by the Governor and the initial member appointed by the Speaker of the Assembly shall serve a two-year term and the remaining three initial members shall serve a four-year term. The chairperson of the board, appointed by the Governor pursuant to subdivision (m), shall serve a four-year term. The Governor shall determine which of the initial members appointed by the Governor shall serve a two-year term and which shall serve a four-year term.”

Absent comment, the proposed restatement will be presumed correct.

§ 61015. Appointment of chair, workload and compensation of members

61015. (a) The chairperson of the board, who is appointed by the Governor, shall serve full time and shall receive the salary provided for in Section 11553 of the Government Code.

(b) All other members of the board shall serve half time and shall receive one-half of the salary provided for in Section 11553.5 of the Government Code.

Comment. Section 61015 continues former Section 25125(m) without substantive change. See Section 60088 (“board”).

§ 61025. Liaison with United States Department of Defense

61025. Due to the unique nature of permitting federal facilities, the chairperson of the board shall designate one board member to serve as the liaison between the board and the United States Department of Defense.

Comment. Section 61025 continues former Section 25125(o) without substantive change. See Section 60088 (“board”).

§ 61030. Litigation counsel

61030. (a) The Attorney General shall represent the board in litigation concerning the affairs of the board unless the Attorney General represents another state agency

that is a party to the action, in which case, the Attorney General may represent the board with the written consent of the board and the other state agency.

(b) If the Attorney General is not representing the board, the board may contract for the service of outside counsel to represent the board or in-house counsel of the board may represent the board, subject to Section 11040 of the Government Code.

Comment. Section 61030 continues former Section 25125(l) without substantive change. See Section 60088 (“board”).

Article 2. Conducting of Business

§ 61060. Voting and quorum requirements

61060. (a) Three board members constitute a quorum for the transaction of business of the board.

(b) An affirmative vote of a majority of board members present at a meeting of the board shall be required for the board to take any action or pass any motion.

Comment. Section 61060 continues former Section 25125(e) without substantive change. See Sections 60088 (“board”), 60095 (“business”).

§ 61065. Compliance with other acts

61065. (a) The board shall conduct its business, including adjourning to, or meeting solely in, closed session, pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) The board shall conduct administrative adjudications, including, but not limited to, permit appeals pursuant to Section 61205, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including the prohibition against ex parte communications.

Comment. Subdivision (a) of Section 61065 continues former Section 25125(i) without substantive change.

Subdivision (b) continues subdivision (k) of former Section 25125 without substantive change. See Sections 60088 (“board”), 60095 (“business”).

§ 61070. Adoption of rules relating to conduct

61070. (a) The board shall adopt rules for the conduct of its affairs.

(b) The rules for conduct adopted by the board shall require, at a minimum, that a board member adhere to all of the following principles:

(1) A board member shall faithfully discharge the duties, responsibilities, and quasi-judicial actions of the board.

(2) A board member shall conduct their affairs in the public’s best interest, following principles of fundamental fairness and due process of law.

(3) A board member shall conduct their affairs in an open, objective, and impartial manner, free of undue influence and the abuse of power and authority.

(4) A board member shall understand that the programs implemented by the department require public awareness, understanding, and support of, and participation and confidence in, the board and its practices and procedures.

(5) A board member shall preserve the public’s welfare and the integrity of the board, and act to maintain the public’s trust in the board and the implementation of its regulations and policies.

(6) A board member shall not conduct themselves in a manner that reflects discredit upon state laws, policies, or regulations, or principles of the board.

(c) The rules adopted pursuant to this section are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 61070 continues former Section 25125(j) without substantive change. See Section 60088 (“board”).

§ 61075. External interactions relating to board matters

61075. (a) Members of the board, or representatives authorized by the board to do so, may hold, attend, or otherwise participate in conferences or hearings, official or unofficial, within or out of the state, with interested persons, agencies, or officers, of this or any other state, or with Congress, congressional committees, or officers of the federal government, concerning any matter within the scope of the power and duties of the board.

(b) This section does not create an exception to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

Comment. Section 61075 continues former Section 25125(n) without substantive change. See Sections 60088 (“board”), 60295 (“person”).

§ 61080. Conflict of interest

61080. A board member shall not make, participate in making, or in any way attempt to use the board member’s official position to influence a board decision in which the board member knows or has reason to know they have a financial interest within the meaning of Section 87103 of the Government Code.

Comment. Section 61080 continues former Section 25125(h) without substantive change. See Section 60088 (“board”).

§ 61085. Removal of board member

61085. (a) A board member appointed by the Governor may be removed by the Governor for neglect of duty, misconduct, or malfeasance in office. Before removal from office, a member shall be provided with a written statement of the charges and an opportunity to be heard.

(b) A board member appointed by the Governor or the Legislature may be removed after trial for knowingly violating a provision of this chapter based on a complaint filed in a county superior court by the Attorney General alleging that the

board member knowingly violated a provision of this chapter and asking that the board member be removed from the board. Further proceedings shall be in accordance as near as may be with rules governing civil actions.

(c) A board member shall not miss three consecutive meetings as unexcused absences. Missing three consecutive meetings as unexcused absences shall constitute grounds for removal under subdivision (a) or (b).

Comment. Section 61085 continues former Section 25125(g) without substantive change. See Section 60088 (“board”).

CHAPTER 2. MEETING PROCESS

§ 61130. Number and location of meetings

61130. (a) Beginning January 1, 2022, the board shall conduct no fewer than six public meetings per year, at least three of which shall be held outside the greater Sacramento area.

(b) For those meetings held outside the greater Sacramento area, the board shall meet in different geographic areas within the state to facilitate the participation by the businesses and sites regulated by the department, as well as members of the communities impacted by the businesses and sites regulated by the department.

Comment. Section 61130 continues former Section 25125.2(a) without substantive change. See Sections 60088 (“board”), 60095 (“business”), 60160 (“department”).

Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61130 would continue existing language that will not be changed by the new version.

§ 61135. Use of advisory subcommittees

61135. (a) The board may form advisory subcommittees of its membership to work on any topic within the board’s jurisdiction, including, but not limited to, environmental justice and fee structure.

(b) Subcommittees formed pursuant to this section are authorized to do both of the following:

(1) Seek information and feedback from any stakeholder or constituencies subject to the authorities implemented by the department or impacted by the department’s implementation of its authorities.

(2) Present recommendations of the subcommittee to the full board for its consideration and action.

(c) The full board is not required to act on any recommendation presented by a subcommittee of the board.

Comment. Section 61135 continues former Section 25125.3 without substantive change. See Sections 60088 (“board”), 60160 (“department”).

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(c) The director shall provide annual updates on progress toward meeting the priorities and performance metrics.

Comment. Section 61215 continues former Section 25125.2(b)(4) without substantive change. See Sections 60088 (“board”), 60160 (“department”), 60165 (“director”).

Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61215 would continue existing language that will not be changed by the new version.

§ 61220. Analysis of department activity fee structure

61220. The board shall conduct an analysis of the fee structure supporting the department’s activities funded by the Hazardous Waste Control Account, the Hazardous Waste Facilities Account, and the Toxic Substances Control Account and, to the extent necessary, develop recommendations for funding the department’s activities that accomplish all of the following:

(1) Provides for protection for public health and safety and the environment.

(2) Provides adequate funding to ensure the timely remediation of contaminated sites, including the remediation of orphan sites.

(3) Provides adequate funding for the enforcement of this division and Part 2 (commencing with Section 78000) of Division 45.

(4) Provides adequate funding for the programs and regulatory efforts that protect consumers from potentially harmful chemicals in products or workplaces.

(5) Provides for a reasonable distribution of costs among the businesses that contribute to the need for management of hazardous waste in the state.

(6) Provides a level of funding that will enable the department and the board to implement and carry out their duties and responsibilities, including the department’s performance metrics approved by the board pursuant to this section.

(7) Considers increasing fee rates, decreasing fee rates, consolidating fees, eliminating fees, or creating new fees, as appropriate, as well as the option to identify any other funding sources that may be appropriate for use by the department in performing its duties and responsibilities. The board may consider where tiered rates may be appropriate to align the department’s regulatory costs with different volumes or types of hazardous waste.

(8) Considers the creation of graduated fee rates that could be used to encourage or discourage waste generation or specific higher risk or hazard waste management activities.

(9) Considers additional funding amounts that may be needed for the department to implement the responsibilities identified in **Article 11.8 (commencing with Section 25244) and Article 11.9 (commencing with Section 25244.12)**, in whole or in part.

(10) Considers additional funding amounts that may be needed for the department to implement programs that further support the collection and appropriate management of hazardous wastes that may pose a higher risk of being illegally disposed.

Comment. Section 61220 continues former Section 25125.2(b)(5) without substantive change. See Sections 60088 (“board”), 60160 (“department”), 60210 (“hazardous waste”), 60390 (“waste”).

Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61220 would continue that new version.

§ 61225. Evaluation of department programs and development of recommendations

61225. The board shall conduct an analysis of the department’s programs, the relationship between those programs and related programs in other regulatory agencies, including, but not limited to, the State Water Resources Control Board, the California regional water quality control boards, and the Department of Resources Recycling and Recovery, and, to the extent necessary, develop recommendations to improve coordination between programs, and to reduce or eliminate duplication or overlap.

Comment. Section 61225 continues former Section 25125.2(b)(6) without substantive change. See Sections 60088 (“board”), 60160 (“department”).

Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61225 would continue existing language that will not be changed by the new version.

§ 61230. Development of long-term goals for departmental activities

61230. The board shall develop, in consultation with the director and with consideration of available resources, a multiyear schedule for the discussion of long-term goals for the following departmental activities:

(1) The department’s processing of hazardous waste facility permits and proposals to improve the efficiency of the permitting process, the relationship between the efficiency of the process and the time needed to review permit applications and reach permit decisions, and the amount of reimbursement required of permit applicants in the course of the permitting process.

(2) The department’s duties and responsibilities in law and proposals to improve the department’s ability to meet those duties and responsibilities.

(3) The site mitigation program and proposals for the prioritization of the cleanup of contaminated properties.

(4) The department’s implementation of its enforcement activities.

Comment. Section 61230 continues former Section 25125.2(b)(7) without substantive change. See Sections 60085 (“applicant”), 60088 (“board”), 60160 (“department”), 60165 (“director”), 60215 (hazardous waste facility”), 60300 (“processing”).

Note. A new version of Section 25125.2 will operate on January 1, 2024. See 2022 Cal. Stat. ch. 258. Proposed Section 61230 would continue existing language that will not be changed by the new version.

§ 61235. Annual review of department and director performance

61235. The board shall annually prepare and transmit to the secretary an annual review of the department’s performance as compared to its objectives, including, but not limited to, the performance of the director.

Comment. Section 61235 continues former Section 25125.7 without substantive change.
See Sections 60088 (“board”), 60160 (“department”), 60165 (“director”), 60345 (“secretary”).

§ 61240. Appearance before legislative policy committees

61240. The director and the chairperson of the board shall, when requested, but no less than annually, appear before the appropriate policy committees in the Assembly and Senate to provide an update on the department’s performance as compared to its objectives, including, but not limited to, metrics established pursuant to Section 61215, the department’s progress in implementing any reform measures, and any other information the committees request.

Comment. Section 61240 continues former Section 25125.9 without substantive change.
See Sections 60088 (“board”), 60160 (“department”), 60165 (“director”).

CHAPTER 4. AUTHORITY OF BOARD

§ 61300. Adoption of regulations

61300. (a) The board shall have the authority to adopt, amend, or repeal, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations as may be necessary to enable it to carry into effect this part, including the authority to adopt regulations establishing fees as required pursuant to Section 61200.

(b) Except as provided in Section 61070, a regulation adopted pursuant to this part may be adopted as an emergency regulation 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, including Section 11349.6 of the Government Code, the adoption of regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the board pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law, and shall remain in effect until repealed by the board.

Comment. Section 61300 continues former Section 25125.4 without substantive change.
See Section 60088 (“board”).

CHAPTER 5. OMBUDSPERSON

§ 61350. Establishment of office

61350. There is established within the board an office of the ombudsperson.

Comment. Section 61350 continues the first sentence of former Section 25125.8(a) without substantive change.

See Section 60088 (“board”).

§ 61355. Appointment

61355. The board shall appoint an ombudsperson who shall serve full time at the pleasure of the board.

Comment. Section 61355 continues the second sentence of former Section 25125.8(a) without substantive change.

See Section 60088 (“board”).

§ 61360. Responsibilities

61360. The office of the ombudsperson shall serve as an impartial resource to the public, including stakeholders, by doing the following:

(a) Receive complaints and suggestions from the public.

(b) Evaluate complaints.

(c) Report findings and make recommendations to the director and the board.

(d) Render assistance to the public, when appropriate.

Comment. Section 61360 continues former Section 25125.8(b) without substantive change.

See Sections 60088 (“board”), 60165 (“director”).

§ 61365. Determination of responsibilities

61365. The board, in consultation with the director, may determine the activities, in addition to those specified in Section 61360, the ombudsperson can undertake.

Comment. Section 61365 continues former Section 25125.8(c) without substantive change.

See Sections 60088 (“board”), 60165 (“director”).

§ 61370. Establishment of procedures

61370. The board shall establish procedures governing the exercise of the ombudsperson’s duties, including all of the following:

(a) Methods to encourage the submission of complaints or suggestions and safeguards to ensure confidentiality.

(b) Forms to submit complaints and suggestions to the ombudsperson.

(c) Criteria for prioritization of complaints and suggestions submitted to the ombudsperson.

(d) Access to information and resources to improve understanding of the department’s activities and opportunities for involvement in the department’s regulatory processes.

Comment. Section 61370 continues former Section 25125.8(d) without substantive change.

See Sections 60088 (“board”), 60160 (“department”).

1 **§ 61375. Submission of complaint or suggestion**

2 61375. Any person may submit a complaint or make a suggestion to the
3 ombudsperson regarding any action, program, or policy of the department.

4 **Comment.** Section 61375 continues former Section 25125.8(e) without substantive change.
5 See Sections 60160 (“department”), 60295 (“person”).

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this cumulative draft, of provisions in Chapter 6.5 of Division 20 of the Health and Safety Code (§§ 25100-25259), as that law existed on January 1, 2023. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

| Existing Provision | New Provision |
|--|----------------------|
| 25100 | 60000 |
| 25101 | 60005 |
| 25103 | 60010 |
| 25105 | 60015 |
| 25106 | 60020 |
| 25110 | 60075 |
| 25110.02 | 60080 |
| 25110.1 | 60085 |
| 25110.2 | not cont'd |
| 25110.3 | 60088 |
| 25110.4 | 60090 |
| 25110.5 | 60095 |
| 25110.8 | 60100 |
| 25110.8.5 (except 2nd sentence of subd. (b)) | 60110 |
| 25110.8.5, 2nd sentence of subd. (b) | 60115 |
| 25110.9(b) | 60135 |
| 25110.9(a) | 60130 |
| 25110.9.1(b) | 60125 |
| 25110.9.1(a) | 60120 |
| 25110.9.3 | 60140 |
| 25110.10(a) | 60150 |
| 25110.10(b)-(e) | [not yet recodified] |
| 25110.10.1 | not cont'd |
| 25110.11 | 60155 |
| 25111 | 60160 |
| 25111.1 | not cont'd |
| 25112 | 60165 |
| 25112.5(a) (preceding numbered paragraphs) | 60170 |
| 25112.5(a)(1)-(d) | [not yet recodified] |
| 25113 | 60175 |
| 25114 | 60180 |
| 25114.5 | 60190 |
| 25115 | 60195 |
| 25115.1 | 60200 |
| 25116 | 60205 |
| 25116.5 | 60220 |
| 25117(a)-(c) | 60210(a) |
| 25117(d) | [not yet recodified] |
| 25117.1 | 60215 |
| 25117.10 | 60235 |

| Existing Provision | New Provision |
|--|----------------------|
| 25117.11 | 60275 |
| 25117.12 | 60280 |
| 25117.13 | 60230 |
| 25117.14 | 60290 |
| 25117.2 | 60220 |
| 25117.3 | [not yet recodified] |
| 25117.4.1(b) | 60245 |
| 25117.4.1(a) | 60240 |
| 25117.5 | 60210(b) |
| 25117.6 | 60255 |
| 25117.8 | 60260 |
| 25117.9 | 60265 |
| 25117.9.1 | 60270 |
| 25117.10 | 60235 |
| 25117.11 | 60275 |
| 25117.12 | 60280 |
| 25117.13 | 60230 |
| 25117.14 | 60290 |
| 25118 | 60295 |
| 25119 | 60300 |
| 25120 | 60305 |
| 25120.2 | 60310 |
| 25120.5 | 60315 |
| 25120.55 | [not yet recodified] |
| 25121 | 60320 |
| 25121.1 | 60325 |
| 25121.2 | 60228 |
| 25121.3(a) | 60330 |
| 25121.3(b), (c) | [not yet recodified] |
| 25121.5 | 60335 |
| 25122.7 | 60340 |
| 25122.8 | not cont'd |
| 25122.9 | 60345 |
| 25123 | 60350 |
| 25123.3(a) | [not yet recodified] |
| 25123.3(b), initial clause | 60355 |
| 25123.3(b) (remainder of subdivision), (c)-(i) | [not yet recodified] |
| 25123.4 | 60360 |
| 25123.5 | 60365 |
| 25123.6 | 60385 |
| 25123.7(a) | 60375 |
| 25123.7(b) | 60105 |
| 25123.7(c) | 60285 |
| 25123.7(d) | 60370 |
| 25123.8 | 60380 |
| 25124 | 60390 |
| 25125(a), (b), (c) | 61000 |
| 25125(d) | 61005 |

| Existing Provision | New Provision |
|-------------------------------|----------------------|
| 25125(e)..... | 61060 |
| 25125(f)..... | 61010 |
| 25125(g)..... | 61085 |
| 25125(h)..... | 61080 |
| 25125(i)..... | 61065(a) |
| 25125(j)..... | 61070 |
| 25125(k)..... | 61065(b) |
| 25125(l)..... | 61030 |
| 25125(m), 1st sentence..... | 61015 |
| 25125(m), 2nd sentence..... | 61020 |
| 25125(n)..... | 61075 |
| 25125(o)..... | 61025 |
| 25125.2(a)..... | 61130 |
| 25125(b)(1)..... | 61200 |
| 25125(b)(2)..... | 61205 |
| 25125(b)(3)..... | 61210 |
| 25125(b)(4)..... | 61215 |
| 25125(b)(5)..... | 61220 |
| 25125(b)(6)..... | 61225 |
| 25125(b)(7)..... | 61230 |
| 25125.3..... | 61135 |
| 25125.4..... | 61300 |
| 25125.5..... | 61000 |
| 25125.6..... | 61140 |
| 25125.7..... | 61235 |
| 25125.8(a), 1st sentence..... | 61350 |
| 25125.8(a), 2nd sentence..... | 61355 |
| 25125.8(b)..... | 61360 |
| 25125.8(c)..... | 61365 |
| 25125.8(d)..... | 61370 |
| 25125.8(e)..... | 61375 |
| 25125.9..... | 61240 |
| 25130-25149.7..... | [not yet recodified] |
| 25150..... | 60670 |
| 25150.1 – 25150.4..... | [not yet recodified] |
| 25150.5..... | 60690 |
| 25150.65..... | 60680 |
| 25150.82 – 25150.86..... | [not yet recodified] |
| 25151..... | 60675 |
| 25152..... | 60685 |
| 25152.5 – 25159.25..... | [not yet recodified] |
| 25160(a)(2)..... | 60185 |
| 25160(a)(1), (3)..... | 60250 |
| 25160(b)-(g) – 25169.9..... | [not yet recodified] |
| 25170..... | 60635 |
| 25172.6..... | 60620 |
| 25173..... | 60655 |
| 25173.5..... | [not yet recodified] |

| Existing Provision | New Provision |
|----------------------------|----------------------|
| 25173.6(a)..... | 60490 |
| 25173.6(b), (c) | 60495 |
| 25173.6(a)..... | 60490 |
| 25173.6(d), (e) | 60500 |
| 25173.6(f) | 60505 |
| 25173.6(g), (h) | 60510 |
| 25173.6(i) | not cont'd |
| 25173.7(a)..... | 60520 |
| 25173.7(b)..... | 60525 |
| 25173.7(c)..... | 60580 |
| 25174(a)..... | 60450 |
| 25174(b) | 60455 |
| 25174(c)..... | 60575 |
| 25174(d) | 60465 |
| 25174.01 – 25174.8.1 | [not yet recodified] |
| 25174.9 | 60475 |
| 25175 | [not yet recodified] |
| 25177 | 60650 |
| 25178 | 60700 |
| 25178.1 – 25197.3..... | [not yet recodified] |
| 25198(a)..... | not cont'd |
| 25198(b), 1st part | 60720 |
| 25198(b), 2nd part..... | not cont'd |
| 25198(c)-(e) | 60725 |
| 25198(f) | 60730 |

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in proposed Division 44 of Health and Safety Code, as reflected in this cumulative draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

| New Provision | Existing Provision |
|----------------|--|
| 60000 | 25100 |
| 60005 | 25101 |
| 60010 | 25103 |
| 60015 | 25105 |
| 60020 | 25106 |
| 60035 | new |
| 60040 | new |
| 60045 | new |
| 60050 | new |
| 60055 | new |
| 60060 | new |
| 60075 | 25110 |
| 60080 | 25110.02 |
| 60085 | 25110.1 |
| 60088 | 25110.3 |
| 60090 | 25110.4 |
| 60095 | 25110.5 |
| 60100 | 25110.8 |
| 60105 | 25123.7(b) |
| 60110 | 25110.8.5 (except 2nd sentence of subd. (b)) |
| 60115 | 25110.8.5, 2nd sentence of subd. (b) |
| 60120 | 25110.9.1(a) |
| 60125 | 25110.9.1(b) |
| 60130 | 25110.9(a) |
| 60135 | 25110.9(b) |
| 60140 | 25110.9.3 |
| 60150 | 25110.10(a) |
| 60155 | 25110.11 |
| 60160 | 25111 |
| 60165 | 25112 |
| 60170 | 25112.5(a) (preceding numbered paragraphs) |
| 60175 | 25113 |
| 60180 | 25114 |
| 60185 | 25160(a)(2) |
| 60190 | 25114.5 |
| 60195 | 25115 |
| 60200 | 25115.1 |
| 60205 | 25116 |
| 60210(a) | 25117(a)-(c) |
| 60210(b) | 25117.5 |
| 60215 | 25117.1 |

| New Provision | Existing Provision |
|---------------|----------------------------|
| 60220 | 25117.2 |
| 60225 | 25116.5 |
| 60228 | 25121.2 |
| 60230 | 25117.13 |
| 60235 | 25117.10 |
| 60240 | 25117.4.1(a) |
| 60245 | 25117.4.1(b) |
| 60250 | 25160(a)(1), (3) |
| 60255 | 25117.6 |
| 60260 | 25117.8 |
| 60265 | 25117.9 |
| 60270 | 25117.9.1 |
| 60275 | 25117.11 |
| 60280 | 25117.12 |
| 60285 | 25123.7(c) |
| 60290 | 25117.14 |
| 60295 | 25118 |
| 60300 | 25119 |
| 60305 | 25120 |
| 60310 | 25120.2 |
| 60315 | 25120.5 |
| 60320 | 25121 |
| 60325 | 25121.1 |
| 60330 | 25121.3(a) |
| 60335 | 25121.5 |
| 60340 | 25122.7 |
| 60345 | 25122.9 |
| 60350 | 25123 |
| 60355 | 25123.3(b), initial clause |
| 60360 | 25123.4 |
| 60365 | 25123.5 |
| 60370 | 25123.7(d) |
| 60375 | 25123.7(a) |
| 60380 | 25123.8 |
| 60385 | 25123.6 |
| 60390 | 25124 |
| 60450 | 25174(a) |
| 60455 | 25174(b) |
| 60465 | 25174(d) |
| 60475 | 25174.9 |
| 60490 | 25173.6(a) |
| 60495 | 25173.6(b), (c) |
| 60500 | 25173.6(d), (e) |
| 60505 | 25173.6(f) |
| 60510 | 25173.6(g), (h) |
| 60520 | 25173.7(a) |
| 60525 | 25173.7(b) |
| 60575 | 25174(c) |

| New Provision | Existing Provision |
|----------------|--------------------------|
| 60580 | 25173.7(c) |
| 60620 | 25172.6 |
| 60635 | 25170 |
| 60650 | 25177 |
| 60655 | 25173 |
| 60670 | 25150 |
| 60675 | 25151 |
| 60680 | 25150.65 |
| 60685 | 25152 |
| 60690 | 25150.5 |
| 60700 | 25178 |
| 60720 | 25198(b), 1st part |
| 60725 | 25198(c), (d), (e) |
| 60730 | 25198(f) |
| 61000 | 25125(a), (b), (c) |
| 61005 | 25125(d) |
| 61010 | 25125(f) |
| 61015 | 25125(m), 1st sentence |
| 61020 | 25125(m), 2nd sentence |
| 61025 | 25125(o) |
| 61030 | 25125(l) |
| 61060 | 25125(e) |
| 61065(a) | 25125(i) |
| 61065(b) | 25125(k) |
| 61070 | 25125(j) |
| 61075 | 25125(n) |
| 61080 | 25125(h) |
| 61085 | 25125(g) |
| 61130 | 25125.2(a) |
| 61135 | 25125.3 |
| 61140 | 25125.6 |
| 61200 | 25125.2(b)(1) |
| 61205 | 25125.2(b)(2) |
| 61210 | 25125.2(b)(3) |
| 61215 | 25125.2(b)(4) |
| 61220 | 25125.2(b)(5) |
| 61225 | 25125.2(b)(6) |
| 61230 | 25125.2(b)(7) |
| 61235 | 25125.7 |
| 61240 | 25125.9 |
| 61300 | 25125.4 |
| 61350 | 25125.8(a), 1st sentence |
| 61355 | 25125.8(a), 2nd sentence |
| 61360 | 25125.8(b) |
| 61365 | 25125.8(c) |

New Provision

Existing Provision

| | |
|-------------|------------|
| 61370 | 25125.8(d) |
| 61375 | 25125.8(e) |

SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapter 6.5 of Division 20 of the Health and Safety Code, the Legislature 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 2021 Cal. Stat. res. ch. 108. 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 6.5, the Commission has identified the substantive issues listed below for possible future study. Unless otherwise indicated, all statutory citations refer to provisions of the Health & Safety Code. All references to proposed provisions refer to provisions of the proposed legislation in this recommendation.

- (1) Should the provisions defining different types of violations (see proposed Sections 60110, 60115, and 60255, which define “class I violation,” “class II violation,” and “minor violation,” respectively) be revised for consistency and clarity?
- (2) Should the definition of “treatment” (proposed Section 60365) be restated for clarity?
- (3) Should the use of terms that are undefined in proposed Division 44, but are defined in Part 2 of Division 45, be addressed by incorporating the definitions from Part 2 of Division 45 by reference (either individually or globally)?
- (4) Should proposed Section 60700, which specifies materials that the department is obligated to post on its website, be revised to eliminate obsolescence (see DTSC Independent Review Panel Recommendations to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f), p. 31 (January 8, 2018))?

