

MEMORANDUM 2024-44

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

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In the current phase of this study, the Commission,<sup>1</sup> pursuant to legislative directive,<sup>2</sup> is preparing a nonsubstantive recodification of [Chapter 6.5 \(commencing with Section 25100\) of Division 20 of the Health and Safety Code](#).

This memorandum presents a cumulative draft of recodified provisions of Chapter 6.5 that the Commission has previously provisionally approved for inclusion in a future tentative recommendation in the study. The primary purpose of the cumulative draft, which will be presented to the Commission on a continuing basis, is to provide a reference for Commissioners and other interested persons indicating the current status of the proposed recodification. Unless otherwise indicated in the accompanying memorandum, presentation of a cumulative draft will normally not require any decision from the Commission.

Each time the Commission provisionally approves a new set of recodified provisions, the staff will update the cumulative draft to include the newly approved provisions and will thereafter present the cumulative draft at the next Commission meeting at which this study is on the meeting agenda.<sup>3</sup>

Respectfully submitted,

Steve Cohen  
Staff Counsel

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://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 [2024 Cal. Stat. res. ch. 138 \(ACR 169 \(Kalra\)\)](#). 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. The recodified provisions of Chapter 6.5 most recently approved by the Commission, and added to this cumulative draft, were presented to the Commission on August 15, 2024, in the [First Supplement to Memorandum 2024-36](#).



## 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. Those 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).

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## 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 LC<sub>50</sub>,” “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.

§ 60155. “Contained gaseous material”

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

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

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

**Notes. (1)** Section 25110.11(a) specifies that the definition of “contained gaseous material” is “for purposes of subdivision (a) of Section 25124 or any other provision of this chapter.” This language appears to be redundant. 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 60155 does not continue the language specifying that the definition applies “for purposes of subdivision (a) of Section 25124 or any other provision of this chapter.”

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

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

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

§ 60160. “Department”

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

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

§ 60165. “Director”

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

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

§ 60170. “Disclosure statement”

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

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

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

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

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

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.

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

4     **§ 60275. “Offsite facility”**

5     60275. “Offsite facility” means a hazardous waste facility that is not an onsite  
6     facility.

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

9     **§ 60280. “Onsite facility”**

10    60280. “Onsite facility” means a hazardous waste facility at which a hazardous  
11    waste is produced and that is owned by, leased to, or under the control of, the  
12    producer of the waste.

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

16    **§ 60285. “Participating Agency” or “PA”**

17    60285. “Participating Agency” or “PA” means an agency that has a written  
18    agreement with the CUPA pursuant to **subdivision (d) of Section 25404.3**, and is  
19    approved by the secretary, to implement or enforce one or more of the unified  
20    program elements specified in **paragraph (1) of subdivision (c) of Section 25404**,  
21    in accordance with the provisions of **Sections 25404.1 and 25404.2**.

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

24    **§ 60290. “Permit-by-rule”**

25    60290. “Permit-by-rule” means a provision of the regulations adopted pursuant to  
26    this division stating that a facility or activity is deemed to have a hazardous waste  
27    facilities permit if it meets the requirements of that provision.

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

30    **§ 60295. “Person”**

31    60295. “Person” means an individual, trust, firm, joint stock company, business  
32    concern, partnership, limited liability company, association, and corporation,  
33    including, but not limited to, a government corporation. “Person” also includes any  
34    city, county, district, commission, the state or any department, agency, or political  
35    subdivision thereof, any interstate body, and the federal government or any  
36    department or agency thereof to the extent permitted by law.

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

§ 60300. “Processing”

60300. “Processing” means treatment.

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

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

§ 60305. “Producer”

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

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

§ 60310. “RCRA hazardous waste”

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

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

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

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

§ 60315. “Recyclable material”

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

(a) A residue.

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

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

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

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

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

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

**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

1 administering the programs described in subparagraphs (A) and (B) of paragraph  
2 (1).

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

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

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

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

20 (8) For payment of all costs of actions taken pursuant to Section 78650, to the  
21 extent that these costs are not paid by the federal Comprehensive Environmental  
22 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.  
23 9601 et seq.).

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

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

34 (11) Direct site remediation costs.

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

38 (13) For the administration and collection of the fees imposed pursuant to **Section**  
39 **25205.6**.

40 (14) For allocation to the office of the Attorney General, pursuant to an  
41 interagency agreement or similar mechanism, for the support of the Toxic Substance  
42 Enforcement Program in the office of the Attorney General, in carrying out the  
43 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.

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

3     **§ 60510. Account as successor fund**

4     60510. (a) The Toxic Substances Control Account established pursuant to Section  
5     60490 is the successor fund of all of the following:

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

8     (2) The Hazardous Substance Clearing Account established pursuant to Section  
9     25334, as that section read on June 30, 2006.

10    (3) The Hazardous Substance Cleanup Fund established pursuant to Section  
11    25385.3, as that section read on June 30, 2006.

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

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

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

22    **§ 60520. Legislative intent regarding appropriations to account**

23    60520. It is the intent of the Legislature that funds deposited in the Toxic  
24    Substances Control Account shall be appropriated in the annual Budget Act each  
25    year in the following manner:

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

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

33    (c) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site  
34    Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a)  
35    of former Section 25399.1, as added by Section 2 of Chapter 435 of the Statutes of  
36    1994, for purposes of paying the orphan share of response costs pursuant to Chapter  
37    6.86 (commencing with Section 25396) of Division 20.

38    (d) An amount that does not exceed the costs incurred by the State Board of  
39    Equalization, a private party, or other public agency, to administer and collect the  
40    fees imposed pursuant to **Article 9.1 (commencing with Section 25205.1)** and  
41    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”).

#### § 61020. Liaison with United States Department of Defense

61020. 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 61020 continues former Section 25125(o) without substantive change. See Section 60088 (“board”).

#### § 61025. Litigation counsel

61025. (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 61025 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”).

### § 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”).

### § 61140. Director participation

61140. The director, or a designee, shall present and respond to the board, if requested by the board, on any issue or item brought forward by a member of the public, the ombudsperson, or a board member.

**Comment.** Section 61140 continues former Section 25125.6 without substantive change.

1 See Sections 60088 (“board”), 60165 (“director”).

2 CHAPTER 3. BOARD RESPONSIBILITIES

3 **§ 61200. Setting of fees**

4 61200. The board shall set fees pursuant to Sections **25205.2.1, 25205.5.01, and**  
5 **25205.6.1.**

6 **Comment.** Section 61200 continues former Section 25125.2(b)(1) without substantive change.  
7 See Section 60088 (“board”).

8 **§ 61205. Hazardous waste facility permit appeals**

9 61205. The board shall hear and decide appeals of hazardous waste facility permit  
10 decisions.

11 **Comment.** Section 61205 continues former Section 25125.2(b)(2) without substantive change.  
12 See Sections 60088 (“board”), 60215 (“hazardous waste facility”).

13 **§ 61210. Public hearings**

14 61210. The board shall provide opportunities for public hearings on individual  
15 permitted or remediation sites.

16 **Comment.** Section 61210 continues former Section 25125.2(b)(3) without substantive change.  
17 See Section 60088 (“board”).

18 **§ 61215. Evaluation of director priorities and adoption of performance metrics**

19 61215. (a) The board shall review and consider for approval the director’s annual  
20 priorities for each program under the department and, after consulting with the  
21 director, adopt clear performance metrics for the department and each of the  
22 department’s programs.

23 (b) The board’s responsibilities under this section shall be conducted at a public  
24 hearing.

25 (c) The director shall provide annual updates on progress toward meeting the  
26 priorities and performance metrics.

27 **Comment.** Section 61215 continues former Section 25125.2(b)(4) without substantive change.  
28 See Sections 60088 (“board”), 60160 (“department”), 60165 (“director”).

29 **§ 61220. Analysis of department activity fee structure**

30 61220. The board shall conduct an analysis of the fee structure supporting the  
31 department’s activities funded by the Hazardous Waste Control Account, the  
32 Hazardous Waste Facilities Account, and the Toxic Substances Control Account  
33 and, to the extent necessary, develop recommendations for funding the department’s  
34 activities that accomplish all of the following:

35 (1) Provides for protection for public health and safety and the environment.

36 (2) Provides adequate funding to ensure the timely remediation of contaminated  
37 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").

#### **§ 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").

**§ 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”).

**§ 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”).



1 **§ 61365. Determination of responsibilities**

2 61365. The board, in consultation with the director, may determine the activities,  
3 in addition to those specified in Section 61360, the ombudsperson can undertake.

4 **Comment.** Section 61365 continues former Section 25125.8(c) without substantive change.  
5 See Sections 60088 (“board”), 60165 (“director”).

6 **§ 61370. Establishment of procedures**

7 61370. The board shall establish procedures governing the exercise of the  
8 ombudsperson’s duties, including all of the following:

9 (a) Methods to encourage the submission of complaints or suggestions and  
10 safeguards to ensure confidentiality.

11 (b) Forms to submit complaints and suggestions to the ombudsperson.

12 (c) Criteria for prioritization of complaints and suggestions submitted to the  
13 ombudsperson.

14 (d) Access to information and resources to improve understanding of the  
15 department’s activities and opportunities for involvement in the department’s  
16 regulatory processes.

17 **Comment.** Section 61370 continues former Section 25125.8(d) without substantive change.  
18 See Sections 60088 (“board”), 60160 (“department”).

19 **§ 61375. Submission of complaint or suggestion**

20 61375. Any person may submit a complaint or make a suggestion to the  
21 ombudsperson regarding any action, program, or policy of the department.

22 **Comment.** Section 61375 continues former Section 25125.8(e) without substantive change.  
23 See Sections 60160 (“department”), 60295 (“person”).

24 **PART 3. TOXICS REDUCTION**

25 **CHAPTER 1. GREEN CHEMISTRY**

26 **Article 1. Definitions**

27 **63500. Application**

28 63500. The definitions in this article apply for purposes of this chapter.

29 **Comment.** Section 63500 restates the introductory text of former Section 25251 without  
30 substantive change.

31 **Staff Note.** The introductory text of Section 25251 is restated by proposed Section 63500 as a  
32 distinct code section, to allow the definitions in Section 25251 to be recodified as distinct code  
33 sections. The introductory text of Section 25251 currently provides:

34 25251. For purposes of this article, the following definitions apply:

35 **Absent comment, this proposed restatement will be presumed correct.**

**63505. “Chemical manufacturer”**

63505. “Chemical manufacturer” means a person who manufactures a chemical or chemical ingredient that is used in a consumer product.

**Comment.** Section 63505 continues former Section 25251(a) without substantive change. See Sections 60295 (“person”), 63515 (“consumer product”).

**63510. “Clearinghouse”**

63510. “Clearinghouse” means the Toxics Information Clearinghouse established pursuant to Article 8 (commencing with Section 63750).

**Comment.** Section 63510 is new. It is added to enhance the clarity of other provisions of this chapter that refer to the Toxics Information Clearinghouse as “the clearinghouse.”

**Staff Note.** This nonsubstantive definitional provision, similar to Section 25251(e) (proposed Section 63530) defining the term “panel,” is added for clarity.

**63515. “Consumer product”**

63515. (a) Except as provided in subdivision (b), “consumer product” means a product or part of the product that is used, brought, or leased for use by a person for any purpose.

(b) “Consumer product” does not include any of the following items:

(1) A “dangerous drug” or “dangerous device,” as defined in Section 4022 of the Business of Professions Code.

(2) “Dental restorative materials,” as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

(3) A “device,” as defined in Section 4023 of the Business of Professions Code.

(4) The packaging associated with an item specified in paragraph (1), (2), or (3).

(5) “Food,” as defined in subdivision (a) of Section 109935.

(6) A “pesticide,” as defined in Section 12753 of the Food and Agricultural Code or as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

**Comment.** Section 63515 restates former Section 25251(b) without substantive change. See Section 60295 (“person”).

**Staff Note.** Section 25251(b) is restated by proposed Section 63515 for clarity. Section 25251(b) currently provides:

25251. (b) “Consumer product” means a product or part of the product that is used, brought, or leased for use by a person for any purposes. “Consumer product” does not include any of the following:

(1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of Professions Code.

(2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

(3) A device as defined in Section 4023 of the Business of Professions Code.

(4) A food as defined in subdivision (a) of Section 109935.

(5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

(6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

**Absent comment, this proposed restatement will be presumed correct.**

**63520. “Council”**

63520. “Council” means the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

**Comment.** Section 63520 continues former Section 25251(c) without substantive change.

**63525. “Office”**

63525. “Office” means the Office of Environmental Health Hazard Assessment.

**Comment.** Section 63525 continues former Section 25251(d) without substantive change.

**63530. “Panel”**

63530. “Panel” means the Green Ribbon Science Panel established pursuant to Article 4 (commencing with Section 63595).

**Comment.** Section 63530 continues former Section 25251(e) without substantive change.

**63535. “Product manufacturer”**

63535. “Product manufacturer” means a person who manufactures, controls the manufacturing process for, or specifies the use of a chemical to be included in, a consumer product.

**Comment.** Section 63535 restates former Section 25251(f) without substantive change.

See Sections 60295 (“person”), 63515 (“consumer product”).

**Staff Note.** Section 25251(f) is restated by proposed Section 63535 for clarity. Section 25251(f) currently provides:

25251. (f) “Product manufacturer” means a person who manufactures a consumer product or a person who controls the manufacturing process for, or specifies the use of a chemical to be included in, a consumer product.

**Absent comment, this proposed restatement will be presumed correct.**

**Article 2. Relationship of Chapter to Other Authority**

**63550. Authority relating to hazardous materials generally**

63550. This chapter does not limit and shall not be construed to limit the existing authority of the department, or the existing authority of any other department or agency, over hazardous materials.

**Comment.** Section 63550 restates former Section 25257.1(a) without substantive change.

See Section 60160 (“department”).

**Staff Notes. (1)** Section 25257.1(a) is restated by proposed Section 63550 for clarity. Section 25257.1(a) currently provides:

25257.1. (a) This article does not limit and shall not be construed to limit the department’s or any other department’s or agency’s existing authority over hazardous materials.

**Absent comment, this proposed restatement will be presumed correct.**

(2) Section 25257.1(a) refers to “hazardous materials,” which is not a defined term in Chapter 6.5. although the term is defined in a chapter of Part 2 of Division 45 (formerly Chapter 6.8), “for purposes of [that] chapter.” See Sections 80200, 80235.

The question of whether definitional provisions in Part 2 of Division 45 (formerly Chapter 6.8) should be incorporated to apply when terms are used without definition in proposed Division 44 has already been added to the cumulative list of substantive issues for possible future study.

#### **63555. Regulatory authority of other departments or agencies**

63555. This chapter does not authorize the department to supersede the regulatory authority of any other department or agency.

**Comment.** Section 63555 continues former Section 25257.1(b) without substantive change. See Section 60160 (“department”).

#### **63560. Duplication or adoption of conflicting regulations**

63560. The department shall not duplicate or adopt conflicting regulations for product categories already regulated or subject to pending regulation consistent with the purposes of this chapter.

**Comment.** Section 63560 continues former Section 25257.1(c) without substantive change. See Section 60160 (“department”).

### Article 3. Priorities

#### **63570. Policy**

63570. The Legislature hereby declares that it is the policy goal of the state to ensure the safety of consumer products sold in California through timely administrative and legislative action on consumer products and chemicals of concern in those products, particularly those products that may have disproportionate impacts on sensitive populations.

**Comment.** Section 63570 continues former Section 25253.6 without substantive change. See Section 63515 (consumer product).

#### **63575. Priority Product Work Plan of 2015-17**

63575. The department shall revise its 2015–17 Priority Product Work Plan to include lead acid batteries for consideration and evaluation as a potential priority product.

**Comment.** Section 63575 continues former Section 25253.5 without substantive change.

**Staff Note.** This provision requires that a specific product be addressed in a revision to the 2015-17 Priority Product Work Plan. That plan and two subsequent plans have been prepared. See <https://dtsc.ca.gov/scp/priority-product-work-plan/>. It is unclear whether the revision required by this provision was undertaken (and, if so, whether this provision is now obsolete).

**Comment on this issue is welcome.**

**63580. Priority Product Work Plans**

63580. Subject to an appropriation by the Legislature for purposes of this section, the department shall include in each Priority Product Work Plan, commencing with the 2024–26 Priority Product Work Plan, in addition to any other information that the department is required to include pursuant to Section 69503.4 of Title 22 of the California Code of Regulations, or any successor regulation, a brief description of all of the following information:

(a) Information that the department has at the time the work plan is issued on the chemicals or chemical ingredients that may be chemicals of concern that are contained in consumer products within each product category or subcategory.

(b) Any additional ingredient information that is needed for the department to evaluate the safety of those consumer products, including, but not limited to, the information specified in Article 9 (commencing with Section 63800).

(c) Information specifying how the department plans to collect the additional information, if any, described in subdivision (b).

(d)(1) Timelines for completion of all of the following with regard to at least five product categories or subcategories in each work plan:

(A) The collection of information described in subdivision (b).

(B) All actions required pursuant to this chapter for a consumer product that contains a chemical of concern, including, but not limited to, the listing of that product as a priority product, the completion of an alternatives analysis for the product, and the finalization of regulatory response determinations.

(2) The length of a timeline pursuant to paragraph (1) shall not exceed seven years from the date of issuance of the work plan.

(3) In determining the data needed and actions required pursuant to paragraph (1), the department shall take into account all chemicals that are known to serve or can potentially serve the same function in the product categories or subcategories, such as surfactants, preservatives, or plasticizers, in order to avoid the substitution of one chemical with another chemical on the candidate chemical list.

(4) An action to enforce the timelines shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

**Comment.** Section 63580 continues former Section 25253.9 without substantive change. See Sections 60160 (“department”), 63515 (“consumer product”).

**Article 4. Green Ribbon Science Panel****63595. Establishment of panel**

63595. (a) In implementing this chapter, the department shall establish a Green Ribbon Science Panel. The panel shall be composed of members whose expertise shall encompass all of the following disciplines:

(1) Chemistry.

(2) Chemical engineering.

- 1 (3) Environmental law.
- 2 (4) Toxicology.
- 3 (5) Public policy.
- 4 (6) Pollution prevention.
- 5 (7) Cleaner production methods.
- 6 (8) Environmental health.
- 7 (9) Public health.
- 8 (10) Risk analysis.
- 9 (11) Materials science.
- 10 (12) Nanotechnology.
- 11 (13) Chemical synthesis.
- 12 (14) Research.
- 13 (15) Maternal and child health.
- 14 (b) The department shall appoint all members to the panel on or before July 1,
- 15 2009.
- 16 (c) The department shall appoint the members for staggered three-year terms, and
- 17 may reappoint a member for additional terms, without limitation.
- 18 (d) The department shall provide for staff and administrative support to the panel.
- 19 **Comment.** Subdivision (a) of Section 63595 continues former Section 25254(a) without
- 20 substantive change.
- 21 Subdivision (b) continues the first sentence of former Section 25254(b) without substantive
- 22 change.
- 23 Subdivision (c) continues the second sentence of former Section 25254(b) without substantive
- 24 change.
- 25 Subdivision (d) continues the second sentence of former Section 25254(c) without substantive
- 26 change.
- 27 See Sections 60160 (“department”), 63530 (“panel”).

28 **Staff Note.** Section 25254(b) (which would be continued by proposed Section 63595(b)) requires  
29 that all members of the Green Ribbon Science Panel be appointed by July 1, 2009. It is unclear  
30 whether this required appointment has occurred (and, if so, whether this provision is now obsolete).  
31 **Comment on this issue is welcome.**

## 32 **63600. Meetings**

33 63600. (a) The panel shall meet as often as the department deems necessary, with  
34 consideration of available resources, but not less than twice each year.

35 (b) The panel meetings shall be open to the public and are subject to the Bagley-  
36 Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter  
37 1 of Part 1 of Division 3 of Title 2 of the Government Code).

38 **Comment.** Subdivision (a) of Section 63600 continues the first sentence of former Section  
39 25254(c) without substantive change.

40 Subdivision (b) continues former Section 25254(d) without substantive change.

41 See Sections 60610 (“department”), 63535 (“panel”).

## 42 **63605. Authorized action by panel**

43 63605. The panel may take any of the following actions:

(a) Advise the department and the council on scientific and technical matters in support of the goals of this chapter of significantly reducing adverse health and environmental impacts of chemicals used in commerce, as well as the overall costs of those impacts to the state’s society, by encouraging the redesign of consumer products, manufacturing processes, and approaches.

(b) Assist the department in developing green chemistry and chemicals policy recommendations and implementation strategies and details, and ensure these recommendations are based on a strong scientific foundation.

(c) Advise the department and make recommendations for chemicals the panel views as priorities for which hazard traits and toxicological end-point data should be collected.

(d) Advise the department in the adoption of regulations required by this chapter.

(e) Advise the department on any other pertinent matter in implementing this chapter, as determined by the department.

**Comment.** Section 63605 continues former Section 25255 without substantive change.

See Sections 60610 (“department”), 63515 (“consumer product”), 63520 (“council”), 63535 (“panel”).

## Article 5. Regulations Identifying and Prioritizing Chemicals of Concern

### 63620. Adoption of regulations

63620. (a) On or before January 1, 2011, the department shall adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, in accordance with the review process specified in Article 7 (commencing with Section 63710).

(b) The department shall adopt these regulations in consultation with the office and all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment.

**Comment.** Section 63620 continues the first two sentences of former Section 25252(a) without substantive change.

See Sections 60160 (“department”), 63515 (“consumer product”), 63525 (“office”).

### 63630. Identification and prioritization process

63630. The regulations adopted pursuant to this article shall establish an identification and prioritization process that includes, but is not limited to, all of the following considerations:

(a) The volume of the chemical in commerce in this state.

(b) The potential for exposure to the chemical in a consumer product.

(c) Potential effects on sensitive subpopulations, including infants and children.

**Comment.** Section 63630 continues the third sentence of former Section 25252(a) without substantive change.

1 See Section 63515 (“consumer product”).

2 **63635. Development of evaluation criteria**

3 63635. (a) In adopting regulations pursuant to this article, the department shall  
4 develop criteria by which chemicals and their alternatives may be evaluated.

5 (b) These criteria shall include, but not be limited to, the traits, characteristics, and  
6 endpoints that are referenced in Article 8 (commencing with Section 63750).

7 **Comment.** Section 63635 continues former Section 25252(b)(1) without substantive change.  
8 See Section 60160 (“department”).

9 **63640. Reference and use of information from other sources**

10 63640. (a) In adopting regulations pursuant to this article, the department shall  
11 reference and use, to the maximum extent feasible, available information from other  
12 nations, governments, and authoritative bodies that have undertaken similar  
13 chemical prioritization processes, so as to leverage the work and costs already  
14 incurred by those entities and to minimize costs and maximize benefits for the  
15 state’s economy.

16 (b) Subdivision (a) does not require the department, when adopting regulations  
17 pursuant to this article, to reference and use only the available information specified  
18 in subdivision (a).

19 **Comment.** Section 63640 continues former Section 25252(b)(2) and (b)(3) without substantive  
20 change.  
21 See Section 60160 (“department”).

22 Article 6. Regulations Evaluating Chemicals of Concern

23 **63660. Adoption of regulations**

24 63660. (a) On or before January 1, 2011, the department shall adopt regulations  
25 pursuant to this article that establish a process for evaluating chemicals of concern  
26 in consumer products, and their potential alternatives, to determine how best to limit  
27 exposure or to reduce the level of hazard posed by a chemical of concern, in  
28 accordance with the review process specified in Article 9 (commencing with Section  
29 63800).

30 (b) The department shall adopt the regulations in consultation with all appropriate  
31 state agencies and after conducting one or more public workshops for which the  
32 department provides public notice and provides an opportunity for all interested  
33 parties to comment.

34 **Comment.** Section 63660 continues former Section 25253(a)(1) without substantive change.  
35 See Sections 60160 (“department”), 63515 (“consumer product”).

36 **63670. Process for evaluation**

37 63670. The regulations adopted pursuant to this article shall establish a process  
38 that includes all of the following:



(a) An evaluation of the availability of potential alternatives and potential hazards posed by those alternatives.

(b) An evaluation of critical exposure pathways.

(c) Life cycle assessment tools that take into consideration, but shall not be limited to, all of the following:

(1) Product function or performance.

(2) Useful life.

(3) Materials and resource consumption.

(4) Water conservation.

(5) Water quality impacts.

(6) Air emissions.

(7) Production, in-use, and transportation energy inputs.

(8) Energy efficiency.

(9) Greenhouse gas emissions.

(10) Waste and end-of-life disposal.

(11) Public health impacts, including potential impacts to sensitive subpopulations, including infants and children.

(12) Environmental impacts.

(13) Economic impacts.

**Comment.** Section 63670 continues former Section 25253(a)(2) without substantive change. See Sections 60175 (“disposal”), 60390 (“waste”).

**Staff Note.** Section 25253(a)(2) is restated by proposed Section 63670 for clarity. Section 25253(a)(2) currently provides:

25253. (a)(2) The regulations adopted pursuant to this section shall establish a process that includes an evaluation of the availability of potential alternatives and potential hazards posed by those alternatives, as well as an evaluation of critical exposure pathways. This process shall include life cycle assessment tools that take into consideration, but shall not be limited to, all of the following:

(A) Product function or performance.

(B) Useful life.

(C) Materials and resource consumption.

(D) Water conservation.

(E) Water quality impacts.

(F) Air emissions.

(G) Production, in-use, and transportation energy inputs.

(H) Energy efficiency.

(I) Greenhouse gas emissions.

(J) Waste and end-of-life disposal.

(K) Public health impacts, including potential impacts to sensitive subpopulations, including infants and children.

(L) Environmental impacts.

(M) Economic impacts.

**Absent comment, this proposed restatement will be presumed correct.**

**63675. Use of tools**

63675. (a) The department, in developing the processes and regulations pursuant to this article, shall ensure that the tools available are in a form that allows for ease of use and transparency of application.

(b) The department shall also make every feasible effort to devise simplified and accessible tools that consumer product manufacturers, consumer product distributors, product retailers, and consumers can use to make consumer product manufacturing, sales, and purchase decisions.

**Comment.** Section 63675 continues former Section 25253(c) without substantive change.

See Sections 60160 (“department”), 63515 (“consumer product”), 63535 (“product manufacturers”).

**Staff Note.** Are the “tools” referenced in Section 25253(c) intended to be a shorthand reference to the life cycle assessment tools discussed in Section 25253(a)(2)? If not, is the meaning of the term “tools” as used in Section 25253(c) sufficiently clear in practice?

**Comment is welcome on this issue. Depending on the comment received, the issue may be added to the list of substantive issues for possible future study.**

**63680. Range of regulatory responses**

63680. The regulations adopted pursuant to this article shall specify the range of regulatory responses that the department may take following the completion of the alternatives analysis, including, but not limited to, any of the following actions:

- (a) Not requiring any action.
- (b) Imposing requirements to provide additional information needed to assess a chemical of concern and its potential alternatives.
- (c) Imposing requirements on the labeling or other type of consumer product information.
- (d) Imposing a restriction on the use of the chemical of concern in the consumer product.
- (e) Prohibiting the use of the chemical of concern in the consumer product.
- (f) Imposing requirements that control access to or limit exposure to the chemical of concern in the consumer product.
- (g) Imposing requirements for the manufacturer to manage the product at the end of its useful life, including recycling or responsible disposal of the consumer product.
- (h) Imposing a requirement to fund green chemistry challenge grants where no feasible safer alternative exists.
- (i) Any other outcome the department determines accomplishes the requirements of this chapter.

**Comment.** Section 63680 continues former Section 25253(b) without substantive change.

See Sections 60160 (“department”), 60175 (“disposal”), 63515 (“consumer product”).

**63685. Reliance on studies or evaluations in lieu of alternatives analysis**

63685. (a) In lieu of requiring an analysis of alternatives, as specified in Sections 63660, 63670, and 63680, the department may instead rely on all or part of one or

1 more applicable publicly available studies or evaluations of alternatives to the  
2 chemical of concern under consideration in a consumer product, in existence at the  
3 time of consideration, and may proceed directly to a regulatory response.

4 (b) Any study or evaluation that the department proposes to rely on pursuant to  
5 this section shall satisfy one of the reliability criteria in paragraphs (1) to (3),  
6 inclusive, of subparagraph (A) of paragraph (57) of subdivision (a) of, and also meet  
7 the requirements of subparagraph (B) of paragraph (57) of subdivision (a) of,  
8 Section 69501.1 of Title 22 of the California Code of Regulations.

9 (c)(1) The department shall provide public notice and an opportunity for comment  
10 from the public, including responsible entities, on the proposal to rely on the studies  
11 or evaluations.

12 (2) The proposal may be combined with the proposal to list a chemical-product  
13 combination as a priority product.

14 (d)(1) The proposal shall address any relevant factors listed in subdivision (c) of  
15 Section 69506 of Title 22 of the California Code of Regulations, as that section may  
16 be amended, that product manufacturers would be required to address as part of the  
17 regulatory response.

18 (2) If the department determines that a study or evaluation upon which it is relying  
19 pursuant to this section does not address one or more relevant factors, the  
20 department may augment the study or evaluation with additional information that  
21 addresses the relevant factors as part of the proposal to rely on the studies or  
22 evaluations.

23 (e)(1) Following public notice and comment, the department shall make a formal  
24 determination of whether the studies or evaluations are applicable and meet the  
25 reliability criteria and requirements specified in subdivision (b), and whether all  
26 relevant factors have been addressed.

27 (2) The department shall publish a summary of its determination, including  
28 whether the department plans to proceed to regulatory responses. If regulatory  
29 responses are planned, the summary shall not be judicially reviewable until  
30 regulatory responses are finalized.

31 (f)(1) Following a formal determination pursuant to subdivision (e), the  
32 department may issue regulatory responses based on the studies or evaluations, after  
33 providing public notice and an opportunity for comment from the public, including  
34 responsible entities, on the regulatory responses.

35 (2) The department shall respond to all comments it receives.

36 **Comment.** Section 63685 continues former Section 25253(d) without substantive change.

37 See Sections 60160 (“department”), 63515 (“consumer product”), 63535 (“product  
38 manufacturers”).

### 39 **63690. Public involvement**

40 63690. (a) The department shall amend Sections 69504 and 69504.1 of Title 22  
41 of the California Code of Regulations to allow a person to petition the department  
42 for a regulatory response pursuant to Section 63685.

(b) The revision of regulations pursuant to subdivision (a) shall be deemed to be a change without regulatory effect.

(c) If the department provides public notice of a proposed regulation pursuant to this chapter and an opportunity to comment prior to the adoption of the regulation, the dispute resolution procedures specified in Sections 69507.1 and 69507.2 of Title 22 of the California Code of Regulations, as those sections read on January 1, 2021, shall not be available to a person who seeks to dispute the regulation and the requirement to exhaust administrative remedies in subdivision (b) of Section 69507 of Title 22 of the California Code of Regulations does not apply.

**Comment.** Subdivision (a) of Section 63690 continues former Section 25253(e)(1) without substantive change.

Subdivision (b) continues former Section 25253(e)(2) without substantive change.

Subdivision (c) continues former Section 25253(f) without substantive change.

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

## Article 7. Multimedia Life Cycle Evaluation

### 63710. “Multimedia life cycle evaluation”

63710. For the purposes of this article, “multimedia life cycle evaluation” means the identification and evaluation of a significant adverse impact on public health or the environment, including air, water, or soil, that may result from the production, use, or disposal of a consumer product or consumer product ingredient.

**Comment.** Section 63710 continues former Section 25252.5(g) without substantive change.

See Sections 60175 (“disposal”), 63515 (“consumer product”).

### 63715. Preparation of evaluation

63715. (a) Except as provided in subdivision (c), the department, in adopting the regulations pursuant to Article 5 (commencing with Section 63620) and Article 6 (commencing with Section 63660), shall prepare a multimedia life cycle evaluation conducted by affected agencies and coordinated by the department, and shall submit the regulations and the multimedia life cycle evaluation to the council for review.

(b) In coordinating a multimedia life cycle evaluation pursuant to subdivision (a), the department shall consult with other boards and departments within the California Environmental Protection Agency, the State Department of Public Health, the State and Consumer Services Agency, the Department of Homeland Security, the Department of Industrial Relations, and other state agencies with responsibility for, or expertise regarding, impacts that could result from the production, use, or disposal of consumer products and the ingredients they may contain.

(c) Notwithstanding subdivision (a), the department may adopt regulations pursuant to Article 5 (commencing with Section 63620) and Article 6 (commencing with Section 63660) without subjecting the proposed regulation to a multimedia life cycle evaluation if the council, following an initial evaluation of the proposed

regulation, conclusively determines that the regulation will not have any significant adverse impact on public health or the environment.

**Comment.** Subdivision (a) of Section 63715 continues former Section 25252.5(a) without substantive change.

Subdivision (b) continues former Section 25252.5(e) without substantive change.

Subdivision (c) continues former Section 25252.5(f) without substantive change.

See Sections 60160 (“department”), 60175 (“disposal”), 63515 (“consumer product”), 63520 (“council”), 63710 (“multimedia life cycle evaluation”).

#### **63720. Basis of evaluation**

63720. The multimedia life cycle evaluation prepared in accordance with this article shall be based on the best available scientific data, written comments submitted by interested persons, and information collected by the department in preparation for adopting the regulations, and shall address, but is not limited to, the impacts associated with all the following:

(a) Emissions of air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and greenhouse gases.

(b) Contamination of surface water, groundwater, and soil.

(c) Disposal or use of the byproducts and waste materials.

(d) Worker safety and impacts to public health.

(e) Other anticipated impacts to the environment.

**Comment.** Section 63720 restates former Section 25252.5(b) without substantive change.

See Sections 60160 (“department”), 60295 (“person”), 60175 (“disposal”), 63710 (“multimedia life cycle evaluation”).

**Staff Note.** The introduction to Section 25252.5(b) is restated by proposed Section 63720 for clarity. The introduction to Section 25252.5(b) currently provides:

25252.5. (b) The multimedia evaluation shall be based on the best available scientific data, ....

**Absent comment, this proposed restatement will be presumed correct.**

#### **63725. Review by council**

63725. (a) The council shall complete its review of the multimedia life cycle evaluation prepared in accordance with this article within 90 calendar days following notice from the department that it intends to adopt regulations.

(b) If the council determines that the proposed regulations will cause a significant adverse impact on the public health or the environment, or that alternatives exist that would be less adverse, the council shall recommend alternative measures that the department or other state agencies may take to reduce the adverse impact on public health or the environment.

(c) The council shall make all information relating to its review available to the public.

**Comment.** Section 63725 restates former Section 25252.5(c) without substantive change.

See Sections 60160 (“department”), 63520 (“council”), 63710 (“multimedia life cycle evaluation”).

**Staff Note.** The first sentence of Section 25252.5(c) is restated by proposed Section 63725(a) for clarity. The first sentence of Section 25252.5(c) currently provides:

25252.5. (c) The council shall complete its review of the multimedia evaluation within 90 calendar days following notice from the department that it intends to adopt regulations.

**Absent comment, this proposed restatement will be presumed correct.**

#### **63730. Significant adverse impact determination**

63730. Within 60 days of receiving notification from the council of a determination of significant adverse impact, the department shall adopt revisions to the proposed regulation to avoid or reduce the adverse impact, or the affected agencies shall take appropriate action that will, to the extent feasible, mitigate the adverse impact so that, on balance, there is no significant adverse impact on public health or the environment.

**Comment.** Section 63730 continues former Section 25252.5(d) without substantive change. See Sections 60160 (“department”), 63520 (“council”).

### Article 8. Toxics Information Clearinghouse

#### **63750. Establishment of clearinghouse**

63750. The department shall establish the Toxics Information Clearinghouse, which shall provide a decentralized, Web-based system for the collection, maintenance, and distribution of specific chemical hazard trait and environmental and toxicological end-point data.

**Comment.** Section 63750 continues the first sentence of former Section 25256 without substantive change.

See Section 60160 (“department”).

#### **63755. Data to be initially included in clearinghouse**

63755. (a) On or before January 1, 2011, the office shall evaluate and specify the hazard traits and environmental and toxicological end-points and any other relevant data that are to be included in the clearinghouse.

(b) The office shall conduct this evaluation in consultation with the department and all appropriate state agencies, after one or more public workshops, and an opportunity for all interested parties to comment.

(c) The office may seek information from other states, the federal government, and other nations in implementing this section.

**Comment.** Section 63755 continues former Section 25256.1 without substantive change.

See Sections 60160 (“department”), 63510 (“clearinghouse”), 63525 (“office”), 63750 (“clearinghouse”).

#### **63760. Operation of clearinghouse**

63760. (a) The department shall develop requirements and standards related to the design of the clearinghouse and data quality and test methods that govern the data that is eligible to be available through the clearinghouse.

(b) The department may phase in the access to eligible information and data in the clearinghouse as that information and data become available.

(c) The department shall ensure the clearinghouse is capable of displaying updated information as new data becomes available.

**Comment.** Section 63760 continues former Section 25256.2 without substantive change. See Sections 60160 (“department”), 63510 (“clearinghouse”).

#### **63765. Department consultation with other governmental entities**

63765. The department shall consult with other states, the federal government, and other nations to identify available data related to hazard traits and environmental and toxicological end-points, and to facilitate the development of regional, national, and international data sharing arrangements to be included in the clearinghouse.

**Comment.** Section 63665 continues former Section 25256.3 without substantive change. See Sections 60160 (“department”), 63510 (“clearinghouse”).

#### **63770. Accessibility to the public**

63770. The department shall make the clearinghouse accessible to the public through a single internet web portal.

**Comment.** Section 63770 continues the first part of the second sentence of former Section 25256 without substantive change.

See Sections 60160 (“department”), 63510 (“clearinghouse”).

#### **63775. Operational cost**

63775. The department shall, to the maximum extent possible, operate the clearinghouse at the least possible cost to the state.

**Comment.** Section 63775 continues the second part of the second sentence of former Section 25256 without substantive change.

See Sections 60160 (“department”), 63510 (“clearinghouse”).

### **Article 9. Department Requests for Information**

#### **63800. Request for information from product manufacturers**

63800. (a) The department may issue a formal request for information from product manufacturers.

(b) The request shall be accompanied by a brief statement on why the department is requesting the information.

(c) The department’s request may include, but is not limited to, all of the following:

(1) Information on ingredient chemical identity, concentration, and functional use.

(2) Existing information, if any, related to the use of the products by children, pregnant women, or other sensitive populations.

(3) Data on state product sales, or national product sales in the absence of state product sales data.

**Comment.** Subdivision (a) of Section 63800 continues the first sentence of former Section 25253.7(a)(1) without substantive change.

Subdivision (b) continues the second sentence of former Section 25253.7(a)(1) without substantive change.

Subdivision (c) continue the fourth sentence of former Section 25253.7(a)(1) without substantive change.

See Sections 60160 (“department”), 63535 (“product manufacturer”).

#### **63805. Response by product manufacturer**

63805. (a) A product manufacturer shall provide to the department data and information on the ingredients and use of a consumer product upon the department’s request within the time specified in Section 63820.

(b) If the product manufacturer certifies in writing that it does not have access to information requested pursuant to Section 63800, in whole or in part, and that it has attempted to, but cannot, obtain that information from one or more suppliers or chemical manufacturers, the product manufacturer shall provide the identity and contact information of those suppliers or chemical manufacturers to the department.

(c) To the extent that the product manufacturer satisfies the requirements of subdivision (b), the product manufacturer shall be considered to be in compliance with the requirement to provide the data and information specified in Section 63800, with respect to the information that the product manufacturer has attempted to obtain from the supplier or chemical manufacturer, and shall be absolved of liability for violating this article as it pertains to the provision of that information.

**Comment.** Subdivision (a) of Section 63805 continues the third sentence of former Section 25253.7(a)(1) without substantive change.

Subdivision (b) continues former Section 25253.7(a)(2)(A) without substantive change.

Subdivision (c) continues former Section 25253.7(a)(2)(B) without substantive change.

See Sections 60160 (“department”), 63505 (“chemical manufacturer”), 63515 (“consumer product”), 63535 (“product manufacturer”).

#### **63810. Request for information from supplier or chemical manufacturer**

63810. (a) The department may issue an independent information request to a supplier or chemical manufacturer identified by the product manufacturer pursuant to subdivision (b) of Section 63805 for the unknown information that the product manufacturer certifies it does not have access to, as well as for the identity and contact information of other suppliers or chemical manufacturers, as necessary to access the information requested pursuant to Section 63800.

(b) Upon the department’s request, a supplier or chemical manufacturer shall provide the information requested pursuant to this section to the department.

(c) The supplier or chemical manufacturer shall be considered to be in violation of this section, and is liable for civil penalties pursuant to Section 63830, to the extent that it fails to comply with an information request, pursuant to subdivisions (b) or (c) of Section 63805, in its entirety.



**Comment.** Section 63810 continues former Section 25253.7(a)(2)(C) without substantive change.

See Sections 60160 (“department”), 63505 (“chemical manufacturer”), 63535 (“product manufacturer”).

**Staff Note.** The last sentence of Section 25253.7(a)(2)(C) (which would be continued by proposed Section 63810(c)) provides that a supplier or chemical manufacturer shall be considered in violation of Section 25253.7, and liable for civil penalties, “to the extent that it fails to comply with an information request, pursuant to subparagraph (A) or (B), in its entirety.”

However, neither of the two cross-referenced subparagraphs, which would be continued by proposed subdivisions (b) and (c) of Section 63805, seem to impose any obligation on a supplier or chemical manufacturer.

**Comment is welcome on this issue. Depending on the comment received, the issue may be added to the list of substantive issues for possible future study.**

#### **63815. Request for information for category in Priority Product Work Plan**

63815. The department may seek data and information pursuant to Sections 63800, 63805, and 63810 for any product category or subcategory published in a previous Priority Product Work Plan or being considered for inclusion in an upcoming Priority Product Work Plan.

**Comment.** Section 63815 continues former Section 25253.7(a)(3) without substantive change. See Section 60160 (“department”).

#### **63820. Allowed time for response to request**

63820. (a) The department shall provide 30 days for a response to a request for data or information, unless the department concludes additional time is necessary for the entity to obtain the necessary information.

(b) If the department determines that a longer time is required, it shall identify the deadline for response, which shall not exceed 120 days.

(c) If the entity is in communication with the department and is working in good faith to fulfill the department’s request, the department may exceed 120 days by granting additional time in an amount not to exceed 60 days.

**Comment.** Section 63820 continues former Section 25253.7(a)(4) without substantive change. See Section 60160 (“department”).

#### **63825. Assertion of trade secret claims**

63825. In providing data or information in response to a request from the department, a product manufacturer, chemical manufacturer, or supplier may raise trade secret claims in accordance with Article 10 (commencing with Section 63850).

**Comment.** Section 63825 continues former Section 25253.7(a)(5) without substantive change. See Sections 60160 (“department”), 63505 (“chemical manufacturer”), 63535 (“product manufacturer”).

#### **63830. Penalties for noncompliance**

63830. (a) A person who violates this article shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for each separate violation or, for continuing violations, for each day that violation continues.

(b) Liability under this section may be imposed in a civil action or may be imposed administratively.

(c) A penalty collected pursuant to this section shall be deposited in the Toxic Substances Control Account in the General Fund.

(d) In imposing an administrative penalty pursuant to this section, the department shall take into consideration the nature, circumstances, extent, and gravity of the violation, the history of previous violations, the violator's ability to pay the penalty, and the deterrent effect of the penalty.

(e) Nothing in this section shall be construed to impose liability for a civil penalty pursuant to subdivision (a) for a violation of this article resulting from another party's failure to comply with an independent information request issued by the department pursuant to Section 63810.

**Comment.** Section 63830 continues former Section 25253.7(b) without substantive change. See Sections 60160 ("department"), 60295 ("person").

## Article 10. Trade Secrets

### 63850. Claim of trade secret

63850. (a) A person providing information pursuant to this chapter may, at the time of submission, identify a portion of the information submitted to the department as a trade secret and, upon the written request of the department, shall provide support for the claim that the information is a trade secret.

(b) Except as provided in Section 63860, a state agency shall not release to the public, subject information supplied pursuant to this chapter that is a trade secret, and that is so identified at the time of submission, in accordance with Sections 7924.510 and 7924.700 of the Government Code and Section 1060 of the Evidence Code.

(c) Information not identified as a trade secret pursuant to subdivisions (a) or (b) shall be available to the public unless exempted from disclosure by other provisions of law.

(d) The fact that information is claimed to be a trade secret is public information.

**Comment.** Subdivision (a) of Section 63850 continues the first sentence of former Section 25257(a) without substantive change.

Subdivision (b) continues the second sentence of former Section 25257(a) without substantive change.

Subdivision (c) continues the first sentence of former Section 25257(c) without substantive change.

Subdivision (d) continues the second sentence of former Section 25257(c) without substantive change.

See Sections 60160 ("department"), 60295 ("person").

**Staff Note.** In the second sentence of Section 25257(a) (continued by proposed Section 63850(b)), the meaning of the term "subject information" is unclear.

**Comment on this issue is welcome. Depending on the comment received, the issue may be added to the list of substantive issues for possible future study.**

**63855. Duty of department employees**

63855. An employee of the department that has access to a properly designated trade secret shall maintain the confidentiality of that trade secret by complying with this section.

**Comment.** Section 63855 continues the second sentence of former Section 25257(b) without substantive change.

See Section 60160 (“department”).

**63860. Request for release of information claimed to be trade secret**

63860. (a) Upon receipt of a request for the release of information that has been claimed to be a trade secret, the department shall immediately notify the person who submitted the information.

(b) Based on the request, the department shall determine whether or not the information claimed to be a trade secret is to be released to the public.

(c) The department shall make the determination specified in subdivision (b), no later than 60 days after the department receives the request for disclosure, but not before 30 days following the notification of the person who submitted the information.

(d) If the department decides that the information requested pursuant to this section should be made public, the department shall provide the person who submitted the information 30 days’ notice prior to public disclosure of the information, unless, prior to the expiration of the 30-day period, the person who submitted the information obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection under this article or for a preliminary injunction prohibiting disclosure of the information to the public and promptly notifies the department of that action.

**Comment.** Section 63860 continues former Section 25257(d) without substantive change.

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

**Staff Note.** Two aspects of the text of Section 25257(d)(3) (which would be continued by proposed Section 63860(d)) are somewhat unclear:

1. The required calculation of the 30-day notice period, based on the intended application of the text of the provision beginning with the word “unless.”

2. The reference to a specified person “obtain[ing]” a specified action in an appropriate court, which might be understood as either (a) *commencing* an action, or (b) obtaining one of the specified *results* in an action.

**Comment on whether these issues should be added to the list of substantive issues for possible future study is welcome.**

**63865. Exchange of information between public agencies**

63865. This article does not prohibit the exchange of a properly designated trade secret between public agencies, if the trade secret is relevant and necessary to the exercise of the agency’s jurisdiction and the public agency exchanging the trade secrets complies with this section.

**Comment.** Section 63865 continues the first sentence of former Section 25257(b) without substantive change.

**63870. Refusal to disclose information to department**

63870. This article does not authorize a person to refuse to disclose to the department information required to be submitted to the department pursuant to this article.

**Comment.** Section 63870 continues the first sentence of former Section 25257(e) without substantive change.

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

**63875. Application of article to hazardous trait submissions**

63875. This article does not apply to hazardous trait submissions for chemicals and chemical ingredients pursuant to this chapter.

**Comment.** Section 63875 continues the first sentence of former Section 25257(f) without substantive change.

See Section 60160 (“department”).

Article 11. Healthy Nail Salon Recognition

**63900. Publication of guidelines**

63900. The department shall, by January 1, 2018, publish guidelines for healthy nail salon recognition (HNSR) programs voluntarily implemented by local cities and counties.

**Comment.** Section 63900 continues former Section 25257.2(a) without substantive change.

See Section 60160 (“department”).

**63905. Content of guidelines**

63905. The guidelines for an HNSR program adopted pursuant to Section 63900 may include, but shall not be limited to, all of the following:

(a) A list of specific chemical ingredients that should not be used by a nail salon seeking recognition. In determining whether to include a chemical on the list, the department shall consider:

(1) Whether the chemical is identified as a candidate chemical pursuant to the regulations adopted pursuant to Section 25252.

(2) Whether an existing healthy nail salon program has restricted the use of the chemical.

(3) The potential for exposure of nail salon workers and customers to the chemical.

(4) The availability of existing, safer alternatives to the chemical in products available to nail salons in California.

(b) Specific best practices for minimizing exposure to hazardous chemicals, including:

(1) A list of specific personal protective equipment that should be used by personnel in a salon seeking recognition and guidance on when and how to use it.

(2) Engineering controls that should be adopted by salons seeking recognition, including specific ventilation practices and equipment.

(3) Prohibiting nail polishes that contain dibutyl phthalate, formaldehyde, or toluene.

(4) Prohibiting nail polish thinners that contain methyl ethyl ketone or toluene.

(5) Prohibiting nail polish removers that contain ethyl or butyl acetate.

(c) A list of specific training topics for salon owners and staff, whether on payroll or contract, on safer practices delineated in the HNSR program guidelines.

(d) Criteria for the use of outside products brought in by clients.

(e) Verification that a salon seeking recognition is in compliance with Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code, and all applicable regulations enforced by the State Board of Barbering and Cosmetology.

(f) Any other guidelines or best practices determined by the department to further the goals of an HNSR program.

**Comment.** Section 63905 continues former Section 25257.2(b) without substantive change. See Section 60160 (“department”).

#### **63910. Criteria for cities and counties adopting program**

63910. (a) The guidelines adopted pursuant to Section 63900 shall include criteria for cities and counties that adopt an HNSR program.

(b) The criteria referred to in subdivision (a) may cover, but are not limited to:

(1) Coordination with other local HNSR programs to assist businesses in achieving and moving beyond regulatory compliance.

(2) Training and certification requirements for the salon owners and staff to ensure thorough knowledge of safe and environmentally friendly procedures.

(3) Issuance of an approved seal or certificate to salons that have met certification requirements.

(4) The process by which a salon can enroll in an HNSR program and be verified by the local entity.

(5) The frequency at which the local entity shall verify continued compliance by a salon that has previously met all specified requirements.

**Comment.** Section 63910 continues former Section 25257.2(c) without substantive change. See Section 60095 (“business”).

#### **63915. Consultation with other agencies**

63915. In developing guidelines pursuant to Section 63900, the department shall consult with the Division of Occupational Safety and Health, the State Department of Public Health, and the State Board of Barbering and Cosmetology.

**Comment.** Section 63915 continues former Section 25257.2(d) without substantive change. See Section 60160 (“department”).

**63920. Promotion of guidelines**

63920. In collaboration with existing healthy nail salon programs, the department shall promote the HNSR guidelines developed pursuant to Section 63900 by doing all of the following:

(a) Developing and implementing a consumer education program.

(b) Presenting the HNSR guidelines to local health officers, local environmental health departments, and other local agencies as appropriate.

(c) Developing and either distributing or posting on its internet website information for local entities, including, but not limited to the following:

(1) Suggestions for successful implementation of HNSR programs.

(2) Resource lists that include names and contact information of vendors, consultants, or providers of financial assistance or loans for purchases of ventilation equipment.

(d) Developing an internet website or a section on the department's internet website that links to county HNSR internet websites.

**Comment.** Section 63920 restates former Section 25257.2(e) without substantive change. See Section 60610 ("department").

**Staff Note.** Section 25257.2(e)(3) is restated by proposed Section 63920(c) for clarity. The existing provision currently provides:

25257. (e) In collaboration with existing healthy nail salon programs, the department shall promote the HNSR guidelines developed pursuant to subdivision (a) by doing all of the following:

...

(3) Developing and either distributing or posting on its Internet Web site information for local entities, including, but not limited to, suggestions for successful implementation of HNSR programs and resource lists that include names and contact information of vendors, consultants, or providers of financial assistance or loans for purchases of ventilation equipment.

**Absent comment, this proposed restatement will be presumed correct.**

**63925. Outreach**

63925. The department may prioritize its outreach to those counties that have the greatest number of nail salons.

**Comment.** Section 63925 continues former Section 25257.2(f) without substantive change. See Section 60160 ("department").

**63930. Violation of regulation by salon**

63930. (a) The State Board of Barbering and Cosmetology may notify the city, county, or city and county if a recognized salon is found in violation of Article 12 (commencing with Section 977) of Division 9 of Title 16 of the California Code of Regulations.

(b) A violation shall result in the removal of healthy nail salon recognition from that salon.

**Comment.** Section 63930 restates former Section 25257.2(g) without substantive change.

1   **63935. Local rules and ordinances**

2       63935. This article does not prevent the adoption or enforcement of any local rules  
3   or ordinances.

4       **Comment.** Section 63935 continues former Section 25257.2(h) without substantive change.

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## 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, 2024. 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

Existing Provision	New Provision
25125(d) .....	61005
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) .....	61025
25125(m) .....	61015
25125(n) .....	61075
25125(o) .....	61020
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) – 25169.9 .....	[not yet recodified]
25170 .....	60635
25172.6 .....	60620
25173 .....	60655

Existing Provision	New Provision
25173.5.....	[not yet recodified]
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
25198.1 – 25250.65 .....	[not yet recodified]
25251 (intro) .....	63500
25251(a) .....	63505
25251(b) .....	63515
25251(c) .....	63520
25251(d) .....	63525
25251(e) .....	63530
25251(f) .....	63535
25252(a), 1st and 2nd sent .....	63620
25252(a), 3rd sent .....	63630
25252(b)(1) .....	63635
25252(b)(2), (b)(3) .....	63640
25252.5(a) .....	63715(a)
25252.5(b) .....	63720
25252.5(c) .....	63725
25252.5(d) .....	63730
25252.5(e) .....	63715(b)
25252.5(f) .....	63715(c)
25252.5(g) .....	63710
25253(a)(1) .....	63660
25253(a)(2) .....	63670

Existing Provision	New Provision
25253(b) .....	63680
25253(c) .....	63675
25253(d) .....	63685
25253(e)(1) .....	63690(a)
25253(e)(2) .....	63690(b)
25253(f) .....	63690(c)
25253.5 .....	63575
25253.6 .....	63570
25253.7(a)(1), 1st sent .....	63800(a)
25253.7(a)(1), 2nd sent .....	63800(b)
25253.7(a)(1), 3rd sent .....	63805(a)
25253.7(a)(1), 4th sent .....	63800(c)
25253.7(a)(2)(A) .....	63805(b)
25253.7(a)(2)(B) .....	63805(c)
25253.7(a)(2)(C) .....	63810
25253.7(a)(3) .....	63815
25253.7(a)(4) .....	63820
25253.7(a)(5) .....	63825
25253.7(b) .....	63830
25253.9 .....	63580
25254(a) .....	63595(a)
25254(b), 1st sent .....	63595(b)
25254(b), 2nd sent .....	63595(c)
25254(c), 1st sent .....	63600(a)
25254(c), 2nd sent .....	63595(d)
25254(d) .....	63600(b)
25255 .....	63605
25256, 1st sent .....	63750
25256, 2nd sent, 1st part .....	63770
25256, 2nd sent, 2nd part .....	63775
25256.1 .....	63755
25256.2 .....	63760
25256.3 .....	63765
25257(a), 1st sent .....	63850(a)
25257(a), 2nd sent .....	63850(b)
25257(b) .....	63855
25257(c), 1st sent .....	63850(c)
25257(c), 2nd sent .....	63850(d)
25257(d) .....	63860
25257(e) .....	63870
25257(f) .....	63875
25257.1(a) .....	63550
25257.1(b) .....	63555
25257.1(c) .....	63560
25257.2(a) .....	63900
25257.2(b) .....	63905
25257.2(c) .....	63910

Existing Provision	New Provision
25257.2(d) .....	63915
25257.2(e) .....	63920
25257.2(f) .....	63925
25257.2(g) .....	63930
25257.2(h) .....	63935

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## 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

New Provision	Existing Provision
60215 .....	25117.1
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)

New Provision	Existing Provision
60525 .....	25173.7(b)
60575 .....	25174(c)
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)
61020 .....	25125(o)
61025 .....	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)
61370 .....	25125.8(d)



New Provision	Existing Provision
61375 .....	25125.8(e)
63500 .....	25251 (intro)
63505 .....	25251(a)
63510 .....	new
63515 .....	25251(b)
63520 .....	25251(c)
63525 .....	25251(d)
63530 .....	25251(e)
63535 .....	25251(f)
63550 .....	25257.1(a)
63555 .....	25257.1(b)
63560 .....	25257.1(c)
63570 .....	25253.6
63575 .....	25253.5
63580 .....	25253.9
63595(a) .....	25254(a)
63595(b) .....	25254(b), 1st sent
63595(c) .....	25254(b), 2nd sent
63595(d) .....	25254(c), 2nd sent
63600(a) .....	25254(c), 1st sent
63600(b) .....	25254(d)
63605 .....	25255
63620 .....	25252(a), 1st and 2nd sent
63630 .....	25252(a), 3rd sent
63635 .....	25252(b)(1)
63640 .....	25252(b)(2), (b)(3)
63660 .....	25253(a)(1)
63670 .....	25253(a)(2)
63675 .....	25253(c)
63680 .....	25253(b)
63685 .....	25253(d)
63690(a) .....	25253(e)(1)
63690(b) .....	25253(e)(2)
63690(c) .....	25253(f)
63710 .....	25252.5(g)
63715(a) .....	25252.5(a)
63715(b) .....	25252.5(e)
63715(c) .....	25252.5(f)
63720 .....	25252.5(b)
63725 .....	25252.5(c)
63730 .....	25252.5(d)
63750 .....	25256, 1st sent
63755 .....	25256.1
63760 .....	25256.2
63765 .....	25256.3
63770 .....	25256, 2nd sent, 1st part
63775 .....	25256, 2nd sent, 2nd part

New Provision	Existing Provision
63800(a).....	25253.7(a)(1), 1st sent
63800(b) .....	25253.7(a)(1), 2nd sent
63800(c).....	25253.7(a)(1), 4th sent
63805(a).....	25253.7(a)(1), 3rd sent
63805(b) .....	25253.7(a)(2)(A)
63805(c).....	25253.7(a)(2)(B)
63810 .....	25253.7(a)(2)(C)
63815 .....	25253.7(a)(3)
63820 .....	25253.7(a)(4)
63825 .....	25253.7(a)(5)
63830 .....	25253.7(b)
63850(a).....	25257(a), 1st sent
63850(b) .....	25257(a), 2nd sent
63850(c).....	25257(c), 1st sent
63850(d) .....	25257(c), 2nd sent
63855 .....	25257(b), 2nd sent
63860 .....	25257(d)
63865 .....	25257(b), 1st sent
63870 .....	25257(e)
63875 .....	25257(f)
63900 .....	25257.2(a)
63905 .....	25257.2(b)
63910 .....	25257.2(c)
63915 .....	25257.2(d)
63920 .....	25257.2(e)
63925 .....	25257.2(f)
63930 .....	25257.2(g)
63935 .....	25257.2(h)



## 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 2024 Cal. Stat. res. ch. 138. 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))?

