

## MEMORANDUM 2025-25

### **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 all proposed recodified provisions of Chapter 6.5 provisionally approved by the Commission to date for eventual inclusion in a tentative recommendation.

The primary rationale for the recurring presentation of the updated cumulative draft is to provide an ongoing reference for Commissioners and other interested persons indicating the current status of the proposed recodification. Each time the Commission provisionally approves additional proposed recodified provisions for inclusion in a tentative recommendation, the provisions are incorporated in the cumulative draft,<sup>3</sup> and an updated draft is then presented to the Commission at the next Commission meeting at which this study is on the meeting agenda.<sup>4</sup>

In presenting these cumulative drafts, the staff also wishes to acknowledge and express appreciation to Department of Toxics Substances Control (DTSC) staff for their ongoing informal suggestions relating to the most workable and logical organization of the many technical provisions in existing Chapter 6.5 that have been recodified and included in the drafts.

Unless otherwise noted in the memorandum presenting the draft, the presentation of a

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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. 16](#) (ACR 169). Commission recommendations recodifying former Chapter 6.8 of Division 20 were previously submitted to and thereafter enacted by the Legislature. See [Hazardous Substance Account Recodification Act \(Pre-Print\)](#) (Feb. 2021), [2022 Cal. Stat. ch. 257](#) (AB 2293); [Hazardous Substance Account Recodification Act: Conforming Revisions \(Pre-Print\)](#) (Feb. 2021), [2022 Cal. Stat. ch. 258](#) (AB 2327).

3. The draft is also regularly updated to incorporate new legislation impacting the chapter of the Health and Safety Code being recodified. However, these updates, as well as any others aside from routine conforming changes, are noted and presented to the Commission for approval in the memorandum presenting the cumulative draft.

4. The recodified provisions most recently approved by the Commission, which have been included in the cumulative draft attached to this memorandum, were presented to the Commission in [Memorandum 2025-17](#), and approved on April 3, 2025.

cumulative draft normally will not require any Commission decisions. However, comments relating to the draft are always welcome.

Respectfully submitted,

Steve Cohen  
Senior Staff Counsel

## CUMULATIVE DRAFT OF PROPOSED DIVISION 46 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 46 of the Health & Safety Code, see [Memorandum 2020-13](#), Exhibit pp. 3-5, [Memorandum 2023-33](#), pp. 2-3, and [Memorandum 2025-16](#). 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 46 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

**Health & Safety Code §§ 83000-[XXXXX] (added). Toxics Reduction and Management**  
SEC. \_\_\_\_\_. Division 46 (commencing with Section 83000) is added to the Health  
and Safety Code, to read:

### DIVISION 46. HAZARDOUS SUBSTANCES AND WASTE MANAGEMENT

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

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

## PART 1. GENERAL PROVISIONS

### CHAPTER 1. FINDINGS AND DECLARATIONS

#### **§ 83000. Legislative findings**

83000. The Legislature finds that:

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

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

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

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

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

**Comment.** Section 83000 continues former Section 25100 without substantive change.

See Sections 83205 (“handling”), 83210 (“hazardous waste”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”).

1   **§ 83005. Legislative declarations**

2       83005. The Legislature therefore declares that:

3       (a) In order to protect the public health and the environment and to conserve  
4       natural resources, it is in the public interest to establish regulations and incentives  
5       which ensure that the generators of hazardous waste employ technology and  
6       management practices for the safe handling, treatment, recycling, and destruction  
7       of their hazardous wastes prior to disposal.

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

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

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

28       **Comment.** Section 83005 continues former Section 25101 without substantive change. Obsolete  
29       references to the “Hazardous Waste Management Council” and associated cross-referenced  
30       provisions have been retained for ease of historical reference.

31       See Sections 83165 (“director”), 83205 (“handling”), 83210 (“hazardous waste”), 83220  
32       (“hazardous waste management” or “management”), 83260 (“natural resources”), 83325  
33       (“recycling”), 83370 (“treatment”).

34   **§ 83010. Findings related to access to public records**

35       83010. The Legislature has found that access by the people of this state to public  
36       records is a fundamental and necessary right. The Legislature finds that it is  
37       necessary to further the public’s right of access to public records pertaining to  
38       hazardous waste management, information, and cleanup, to assure the fullest  
39       opportunity for public participation in permitting and other decisions in order to  
40       protect public health and the environment.

41       **Comment.** Section 83010 continues former Section 25103 without substantive change.

42       See Section 83220 (“hazardous waste management” or “management”).



1   **§ 83015. Construction of division related to state or local agency enforcement or**  
 2       **administration**

3       83015. No provision of this division shall limit the authority of any state or local  
 4       agency in the enforcement or administration of any provision of law that it is  
 5       specifically permitted or required to enforce and administer.

6       **Comment.** Section 83015 continues former Section 25105 without substantive change.

7   **§ 83020. Relationship of division with law governing administrative regulations and**  
 8       **rulemaking**

9       83020. Except as expressly provided by statute, this division does not supersede  
 10       or modify Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
 11       Title 2 of the Government Code.

12       **Comment.** Section 83020 continues former Section 25106 without substantive change.

13                                   CHAPTER 2. EFFECT OF RECODIFICATION

14   **§ 83035. Short title**

15       83035. This division recodifies the provisions of former Chapter 6.5  
 16       (commencing with Section 25100) of Division 20. The act that added this division,  
 17       and the act that consists of conforming revisions to reflect the addition of this  
 18       division, shall be known and may be cited as the “Hazardous Waste Control  
 19       Recodification Act.”

20       **Comment.** Section 83035 is new. It provides a convenient means of referring to the  
 21       recodification of former Chapter 6.5 (commencing with Section 25100) of Division 20. For  
 22       background, see *Recodification of Hazardous Waste Control Provisions*, \_\_ Cal. L. Revision  
 23       Comm’n Reports \_\_ (20XX).

24   **§ 83040. Nonsubstantive reform**

25       83040. Nothing in the Hazardous Waste Control Recodification Act is intended  
 26       to substantively change the law contained in former Chapter 6.5 (commencing with  
 27       25100) of Division 20. The act is intended to be entirely nonsubstantive in effect.  
 28       Every provision of this division and every other provision of this act, including,  
 29       without limitation, every cross-reference in every provision of the act, shall be  
 30       interpreted consistent with the nonsubstantive intent of the act.

31       **Comment.** Section 83040 is new. It is modeled on Penal Code Section 16005. It makes clear  
 32       that the Hazardous Waste Control Recodification Act has no substantive effect. The act is intended  
 33       solely to make the provisions of former Chapter 6.5 (commencing with Section 25100) of Division  
 34       20 more user-friendly. For background, see *Recodification of Hazardous Waste Control Provisions*,  
 35       \_\_ Cal. L. Revision Comm’n Reports \_\_ (20XX).

36       For specific guidance on the impact of a judicial decision interpreting a predecessor of a  
 37       provision in this division, see Section 83050. For specific guidance on the impact of a judicial  
 38       decision assessing the constitutionality of a predecessor of a provision in this division, see Section  
 39       83055.

40       See Section 83035 (“Hazardous Waste Control Recodification Act”).

1 **§ 83045. Continuation of existing law**

2 83045. (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 83045 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 **§ 83050. Judicial decision interpreting former law**

27 83050. (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 83050 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 83055. For general guidance on the  
44 nonsubstantive impact of the Hazardous Waste Control Recodification Act, see Section 83040.

45 See Section 83035 (“Hazardous Waste Control Recodification Act”).

**Note.** In another recently completed recodification project, the Commission included a section similar to proposed Section 83050 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.**

#### § 83055. Constitutionality

83055. (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 83055 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 83050. For general guidance on the nonsubstantive effect of the Hazardous Waste Control Recodification Act, see Section 83040.

See Section 83035 (“Hazardous Waste Control Recodification Act”).

#### § 83060. Conforming rule change

83060. (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 83060 is new. It is modeled on Section 78030.  
See Section 83160 (“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.**

#### § 83075. Applicable definitions

83075. (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 83075 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 83200.

See Section 83200 (“federal act”).

**Notes.** Subdivision (b) of proposed Section 83075 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 83180 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.**

1   **§ 83080. “Acutely hazardous waste”**

2       83080. “Acutely hazardous waste” means any hazardous waste classified as an  
3   acutely hazardous waste in regulations adopted by the department.

4       **Comment.** Section 83080 continues former Section 25110.02 without substantive change.  
5       See Sections 83160 (“department”), 83210 (“hazardous waste”).

6   **§ 83085. “Applicant”**

7       83085. “Applicant” means any person seeking an original hazardous waste  
8   facilities permit, or an original hazardous waste hauler’s registration from the  
9   department to generate, transport, treat, store, recycle, dispose of or handle  
10   hazardous waste.

11       **Comment.** Section 83085 continues former Section 25110.1 without substantive change.  
12       See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste  
13   facility”), 83295 (“person”).

14   **§ 83090. “Board”**

15       83090. “Board” means the Board of Environmental Safety established pursuant  
16   to **Section 25125**.

17       **Comment.** Section 83090 continues former Section 25110.3 without substantive change.

18   **§ 83095. “Buffer zone”**

19       83095. “Buffer zone” means an area of land that surrounds a hazardous waste  
20   facility and on which certain land uses and activities are restricted to protect the  
21   public health and safety and the environment from existing or potential hazards  
22   caused by the migration of hazardous waste.

23       **Comment.** Section 83095 continues former Section 25110.4 without substantive change.  
24       See Sections 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

25   **§ 83100. “Business”**

26       83100. “Business” means the conduct of activity and is not limited to a  
27   commercial or proprietary activity.

28       **Comment.** Section 83100 continues former Section 25110.5 without substantive change.

29   **§ 83105. “Business concern”**

30       83105. “Business concern” means any sole proprietorship, corporation,  
31   association, firm, partnership, trust, or other form of commercial organization.

32       **Comment.** Section 83105 continues former Section 25110.8 without substantive change.

33   **§ 83110. “Certified Unified Program Agency” or “CUPA”**

34       83110. “Certified Unified Program Agency” or “CUPA” means the agency  
35   certified by the secretary to implement the unified program specified in Chapter  
36   6.11 (commencing with Section 25404) of Division 20 within a jurisdiction.

37       **Comment.** Section 83110 continues former Section 25123.7(b) without substantive change.  
38       See Section 83350 (“secretary”).

1 **§ 83115. “Class I violation”**

2 83115. “Class I violation” means any of the following:

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

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

8 (A) The volume of the waste.

9 (B) The relative hazardousness of the waste.

10 (C) The proximity of the population at risk.

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

13 (A) Ensure that hazardous waste is destined for, and delivered to, an authorized  
14 hazardous waste facility.

15 (B) Prevent releases of hazardous waste or constituents to the environment during  
16 the active or postclosure period of facility operation.

17 (C) Ensure early detection of releases of hazardous waste or constituents.

18 (D) Ensure adequate financial resources in the case of releases of hazardous waste  
19 or constituents.

20 (E) Ensure adequate financial resources to pay for facility closure.

21 (F) Perform emergency cleanup operations of, or other corrective actions for,  
22 releases.

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

25 **Comment.** Section 83115 restates former Section 25110.8.5, with the exception of the second  
26 sentence of subdivision (b), without substantive change.

27 See Sections 83120 (“class II violation”), 83210 (“hazardous waste”), 83215 (“hazardous waste  
28 facility”), 83395 (“waste”).

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

32 “Class I violation” means any of the following:

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

36 ...

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

40 The second sentence of subdivision (b) is continued in proposed Section 83120.

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

2 **§ 83120. “Class II violation”**

3 83120. “Class II violation” has the same meaning as defined in Section 66260.10  
4 of Title 22 of the California Code of Regulations.

5 **Comment.** Section 83120 continues the second sentence of former Section 25110.8.5(b) without  
6 substantive change.

7 See Section 83115 (“class I violation”).

8 **Note.** The scope of application for that definition is not expressly limited to the section. The term  
9 “class II violation” is also used in the provision defining “minor violation.” See proposed Section  
10 83255 (“minor violation”). For ease of use, the definition of “class II violation” is continued as a  
11 separate section.

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

13 **§ 83125. “Conditional authorization”**

14 83125. (a) “Conditional authorization” means a provision of this division that  
15 provides that a person or activity is deemed to be operating pursuant to a grant of  
16 authorization, as required pursuant to **subdivision (a) of Section 25201**, if the  
17 person or activity meets the specified requirements.

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

19 **Comment.** Section 83125 restates former Section 25110.9.1(a) without substantive change.

20 See Section 83295 (“person”).

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

22 25110.9.1. (a) “Conditional authorization” means a provision of this chapter, including, but not  
23 limited to, Section 25200.3, which provides that a person or activity is deemed to be operating  
24 pursuant to a grant of authorization, as required pursuant to subdivision (a) of Section 25201, if the  
25 person or activity meets the requirements of that provision.

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

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

31 **§ 83130. “Conditional exemption”**

32 83130. (a) “Conditional exemption” means a provision of this division that  
33 provides that a person or activity is exempted from, or is otherwise not subject to,  
34 the requirement to obtain a hazardous waste facilities permit or other grant of  
35 authorization if the person or activity meets the requirements of that provision.

36 (b) “Conditional exemption” includes, but is not limited to, **Sections 25144.6,**  
37 **25201.5, 25201.8, and 25201.13.**

38 **Comment.** Section 83130 restates former Section 25110.9.1(b) without substantive change.

39 See Sections 83215 (“hazardous waste facility”), 83295 (“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.**

#### § 83135. “Conditionally exempt small quantity treatment”

83135. “Conditionally exempt small quantity treatment” means the operations of a generator conditionally exempted pursuant to **subdivision (a) of Section 25201.5**.

**Comment.** Section 83135 continues former Section 25110.9(a) without substantive change.

#### § 83140. “Conditionally exempt specified waste stream”

83140. “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 83140 continues former Section 25110.9(b) without substantive change. See Section 83395 (“waste”).

#### § 83145. “Consolidated manifest”

83145. “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 83145 restates former Section 25110.9.3 without substantive change. See Sections 83210 (“hazardous waste”), 83250 (“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 83075 (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 83145 does not continue the “[f]or purposes of this chapter” language.

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

1   **§ 83150. “Consolidation site”**

2       83150. “Consolidation site” means a site to which hazardous waste initially  
3 collected at a remote site is transported.

4       **Comment.** Section 83150 restates former Section 25110.10(a) without substantive change.  
5       See Sections 83210 (“hazardous waste”), 83335 (“remote site”).

6       **Notes. (1)** Section 25110.10(a) includes a clause specifying that “remote site” is “as defined in  
7 Section 25121.3.” The “as defined in Section 25121.3” language appears to be redundant. “Remote  
8 site” is defined in Section 25121.3 and that definition governs this division. See proposed Section  
9 83075. For this reason, the clause cross-referencing the remote site definition was not continued.

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

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

13   **§ 83155. “Contained gaseous material”**

14       83155. (a) “Contained gaseous material” means any gas that is contained in an  
15 enclosed cylinder or other enclosed container.

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

20       **Comment.** Section 83155 restates former Section 25110.11 without substantive change.

21       **Notes. (1)** Section 25110.11(a) specifies that the definition of “contained gaseous material” is  
22 “for purposes of subdivision (a) of Section 25124 or any other provision of this chapter.” This  
23 language appears to be redundant. Proposed Section 83075 (Section 25110) provides that the  
24 definitions in this chapter govern “only the construction of this division [existing Chapter 6.5].”  
25 For this reason, proposed Section 83155 does not continue the language specifying that the  
26 definition applies “for purposes of subdivision (a) of Section 25124 or any other provision of this  
27 chapter.”

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

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

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

34   **§ 83160. “Department”**

35       83160. “Department” means the Department of Toxic Substances Control.

36       **Comment.** Section 83160 continues former Section 25111 without substantive change.

37   **§ 83165. “Director”**

38       83165. “Director” means the Director of Toxic Substances Control.

39       **Comment.** Section 83165 continues former Section 25112 without substantive change.

1    **§ 83170. “Disclosure statement”**

2       83170. “Disclosure statement” means a statement submitted to the department by  
3    an applicant, signed by the applicant under penalty of perjury, that includes all of  
4    the information specified in [Section XXXXX].

5       **Comment.** Section 83170 restates the portion of former Section 25112.5(a) that precedes the  
6    numbered paragraphs without substantive change.

7       See Sections 83085 (“applicant”), 83160 (“department”).

8       **Notes. (1)** Section 25112.5 contains the definition of “disclosure statement,” along with  
9    supporting rules about the contents of the disclosure statement. Proposed Section 83170 recodifies  
10   the portion of Section 25112.5 that defines disclosure statement, which provides:

11       “(a) ‘Disclosure statement’ means a statement submitted to the department by an applicant,  
12   signed by the applicant under penalty of perjury, which includes all of the following information:  
13   ....”

14       Proposed Section 83170 would restate this portion of Section 25112.5(a) to include a  
15   (placeholder) cross-reference to the proposed provision(s) that will recodify the remainder of  
16   Section 25112.5(a).

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

19    **§ 83175. “Disposal”**

20       83175. (a) “Disposal” means either of the following:

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

25       (2) The abandonment of any waste.

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

29       **Comment.** Section 83175 restates former Section 25113 without substantive change.

30       See Section 83395 (“waste”).

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

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

35    **§ 83180. “Disposal site”**

36       83180. “Disposal site” means the location where any final deposition of hazardous  
37   waste occurs.

38       **Comment.** Section 83180 continues former Section 25114 without substantive change.

39       See Section 83210 (“hazardous waste”).

1 **§ 83185. “Electronic manifest system” or “e-Manifest system”**

2 83185. “Electronic manifest system” or “e-Manifest system” means the United  
3 States Environmental Protection Agency’s national information technology system  
4 through which an electronic manifest may be obtained, completed, transmitted, and  
5 distributed to users of the electronic manifest, and to regulatory agencies.

6 **Comment.** Section 83185 restates former Section 25160(a)(2) without substantive change.  
7 See Section 83250 (“manifest”).

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

12 The prefatory “[f]or purposes of this chapter” text is redundant and therefore is not continued.  
13 Proposed Section 83075 (Section 25110) provides that the definitions in this chapter govern “only  
14 the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 83185  
15 does not continue the “[f]or purposes of this chapter” language.

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

17 **§ 83190. “Environmental assessor”**

18 83190. “Environmental assessor” means an environmental professional as defined  
19 in Section 312.10 of Title 40 of the Code of Federal Regulations. Notwithstanding  
20 Section 83075, this definition shall apply for all California statutes, unless the  
21 context requires otherwise.

22 **Comment.** Section 83190 continues former Section 25114.5 without substantive change.

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

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

28 **§ 83195. “Extremely hazardous waste”**

29 83195. “Extremely hazardous waste” means any hazardous waste or mixture of  
30 hazardous wastes that, if human exposure should occur, may likely result in death,  
31 disabling personal injury or serious illness caused by the hazardous waste or mixture  
32 of hazardous wastes because of its quantity, concentration, or chemical  
33 characteristics.

34 **Comment.** Section 83195 continues former Section 25115 without substantive change.  
35 See Section 83210 (“hazardous waste”).

36 **§ 83200. “Federal act”**

37 83200. “Federal act” means the federal Resource Conservation and Recovery Act  
38 of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

39 **Comment.** Section 83200 continues former Section 25115.1 without substantive change.

1    **§ 83205. “Handling”**

2       83205. (a) “Handling” means either of the following:

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

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

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

7       **Comment.** Section 83205 restates former Section 25116 without substantive change.

8       See Sections 83210 (“hazardous waste”), 83300 (“processing”), 83395 (“waste”).

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

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

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

14    **§ 83210. “Hazardous waste”**

15       83210. (a)(1) Except as provided in **subdivision (d) [of Section 25117]**,  
16   “hazardous waste” means a waste that meets any of the criteria for the identification  
17   of a hazardous waste adopted by the department pursuant to **Section 25141**.

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

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

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

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

28       **Comment.** Subdivision (a) of Section 83210 continues former Section 25117(a)-(c) without  
29   substantive change.

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

31       See Sections 83080 (“acutely hazardous waste”), 83160 (“department”), 83195 (“extremely  
32   hazardous waste”), 83310 (“RCRA hazardous waste”), 83395 (“waste”).

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

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

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

40      “(b) Biohazardous waste that meets the conditions specified in subdivision (f) or (g) of Section  
41   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.**

#### **§ 83215. “Hazardous waste facility”**

83215. (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 83215 continues former Section 25117.1 without substantive change.

See Sections 83175 (“disposal”), 83210 (“hazardous waste”), 83220 (“hazardous waste management” or “management”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”).

#### **§ 83220. “Hazardous waste management” or “management”**

83220. “Hazardous waste management” or “management” means the transportation, transfer, recycling, recovery, disposal, handling, processing, storage, and treatment of hazardous waste.

**Comment.** Section 83220 continues former Section 25117.2 without substantive change.

See Sections 83175 (“disposal”), 83205 (“handling”), 83210 (“hazardous waste”), 83300 (“processing”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”).

#### **§ 83225. “Intermediate manufacturing process stream”**

83225. (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 83225 continues former Section 25116.5 without substantive change.

See Sections 83200 (“federal act”), 83295 (“person”), 83315 (“recyclable material”), 83370 (“treatment”).

#### § 83230. “Land use restriction”

83230. “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 83230 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 83230 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).

#### § 83235. “License”

83235. “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 83235 continues former Section 25117.10 without substantive change.

See Sections 83175 (“disposal”), 83205 (“handling”), 83210 (“hazardous waste”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”).

#### § 83240. “Local health officer”

83240. “Local health officer” means county health officers, city health officers, and district health officers, as defined in this code.

**Comment.** Section 83240 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.**



1   **§ 83245. “Local officer”**

2       83245. “Local officer” means a local public officer authorized to implement this  
3   division pursuant to **subdivision (a) of Section 25180**.

4       **Comment.** Section 83245 continues former Section 25117.4.1(b) without substantive change.

5       **Notes. (1)** Section 25117.4.1(b) defines “local officer” as a “local public officer authorized to  
6   implement [Chapter 6.5] pursuant to” Section 25180(a). This definition differs from that of a  
7   “designated local public officer,” which is defined in Section 25111.1 as “a local public officer  
8   designated by the director pursuant to subdivision (a) of Section 25180.” The definition of  
9   “designated local public officer” is not proposed for continuation, as the term is not used in Chapter  
10   6.5. However, given that both of these defined terms rely on authority in Section 25180, it is helpful  
11   to consider them together in assessing who would be a “local officer” under this proposed section.

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

14       (1) For provisions of this chapter that are part of the unified program (see Section 25404(c)(1))  
15   and where there is a Certified Unified Program Agency (CUPA), the unified program agencies are  
16   “authorized to enforce” the chapter’s requirements that are part of the unified program. (Section  
17   25180(a)(2)(B)). See proposed Section 83375 (defining “unified program agency”).

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

21       (3) For provisions of this chapter that are not part of the unified program, “any local health officer  
22   or any local public officer designated by the director” may enforce this chapter’s standards. (Section  
23   25180(a)(1)).

24       It appears that a “local officer” is an officer *authorized* as described in paragraph (2), while a  
25   “designated local public officer” is a local public officer *designated* as described in paragraph (3).  
26   If this is the case, it would seem to be helpful to offer a pinpoint cite to the relevant provision of  
27   Section 25180. Otherwise, it may not be clear whether “local officer” includes *any* local officer  
28   that is either designated or authorized pursuant to Section 25180(a), particularly in the absence of  
29   the contrasting definition of “designated local public health officer.”

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

36       **The Commission welcomes comment on these issues.**

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

38       First, it is not clear why this defined term includes only officers (and not agencies). As indicated  
39   above, Section 25180(a)(2)(A) provides for authorizing either “an officer or agency.” In Chapter  
40   6.5, the term “local officer” is consistently used in combination with a reference to an “agency  
41   authorized ... pursuant to Section 25180(a).” See, e.g., proposed Section 83255(b)(2), Sections  
42   25110.10(e), 25150(b), 25201.8(b). Given that, defining a term for an “authorized local officer or  
43   agency” would provide significant drafting convenience, as it better reflects how these  
44   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.**

## § 83250. “Manifest”

83250. (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 83250 restates former Section 25160(a)(1) and (a)(3) without substantive change.

See Sections 83160 (“department”), 83185 (“electronic manifest system,” “e-manifest system”), 83210 (“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 83075 (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 83250 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 83185.

#### § 83255. “Minor violation”

83255. (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 83255 continues former Section 25117.6 without substantive change.

See Sections 83115 (“class I violation”), 83120 (“class II violation”), 83160 (“department”), 83245 (“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 83115. 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.**

#### § 83260. “Natural resources”

83260. “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 83260 continues former Section 25117.8 without substantive change.

See Sections 83180 (“disposal site”), 83210 (“hazardous waste”).

1 **§ 83265. “Non-RCRA hazardous waste”**

2 83265. (a) “Non-RCRA hazardous waste” means all hazardous waste regulated in  
3 the state, other than RCRA hazardous waste.

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

7 **Comment.** Section 83265 restates former Section 25117.9 without substantive change.

8 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83310 (“RCRA hazardous  
9 waste”).

10 **Note.** Section 25117.9 is restated to add subdivision designators and delete redundant language  
11 at the end of the first sentence specifying that RCRA hazardous waste is “as defined in Section  
12 25120.2 [proposed Section 83310].” Proposed Section 83075 (Section 25110) provides that the  
13 definitions in this chapter govern “the construction of this division [existing Chapter 6.5].”

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

15 **§ 83270. “Notice to comply”**

16 83270. “Notice to comply” means a written method of alleging a minor violation  
17 that is in compliance with all of the following requirements:

18 (a) The notice to comply is written in the course of conducting an inspection of a  
19 facility by an authorized representative of the department or by a local officer or  
20 agency authorized to enforce this division pursuant to **subdivision (a) of Section**  
21 **25180.**

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

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

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

31 **Comment.** Section 83270 continues former Section 25117.9.1 without substantive change.

32 See Sections 83160 (“department”), 83245 (“local officer”), 83255 (“minor violation”), 83295  
33 (“person”).

34 **§ 83275. “Offsite facility”**

35 83275. “Offsite facility” means a hazardous waste facility that is not an onsite  
36 facility.

37 **Comment.** Section 83275 continues former Section 25117.11 without substantive change.

38 See Sections 83215 (“hazardous waste facility”), 83280 (“onsite facility”).

1   **§ 83280. “Onsite facility”**

2       83280. “Onsite facility” means a hazardous waste facility at which a hazardous  
3 waste is produced and that is owned by, leased to, or under the control of, the  
4 producer of the waste.

5       **Comment.** Section 83280 continues former Section 25117.12 without substantive change.

6       See Sections 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83305  
7 (“producer”), 83395 (“waste”).

8   **§ 83285. “Participating Agency” or “PA”**

9       83285. “Participating Agency” or “PA” means an agency that has a written  
10 agreement with the CUPA pursuant to **subdivision (d) of Section 25404.3**, and is  
11 approved by the secretary, to implement or enforce one or more of the unified  
12 program elements specified in **paragraph (1) of subdivision (c) of Section 25404**,  
13 in accordance with the provisions of **Sections 25404.1 and 25404.2**.

14       **Comment.** Section 83285 continues former Section 25123.7(c) without substantive change.

15       See Section 83110 (“certified unified program agency” or “CUPA”), 83350 (“secretary”).

16   **§ 83290. “Permit-by-rule”**

17       83290. “Permit-by-rule” means a provision of the regulations adopted pursuant to  
18 this division stating that a facility or activity is deemed to have a hazardous waste  
19 facilities permit if it meets the requirements of that provision.

20       **Comment.** Section 83290 continues former Section 25117.14 without substantive change.

21       See Section 83215 (“hazardous waste facility”).

22   **§ 83295. “Person”**

23       83295. “Person” means an individual, trust, firm, joint stock company, business  
24 concern, partnership, limited liability company, association, and corporation,  
25 including, but not limited to, a government corporation. “Person” also includes any  
26 city, county, district, commission, the state or any department, agency, or political  
27 subdivision thereof, any interstate body, and the federal government or any  
28 department or agency thereof to the extent permitted by law.

29       **Comment.** Section 83295 continues former Section 25118 without substantive change.

30       See Sections 83105 (“business concern”), 83160 (“department”).

31   **§ 83300. “Processing”**

32       83300. “Processing” means treatment.

33       **Comment.** Section 83300 restates former Section 25119 without substantive change.

34       See Section 83370 (“treatment”).

35       **Note.** Section 25119 is restated to delete redundant language at the end of the sentence specifying  
36 that treatment is “as defined in Section 25123.5 [proposed Section 83370].” Proposed Section  
37 83075 (Section 25110) provides that the definitions in this chapter govern “the construction of this  
38 division [existing Chapter 6.5].”

1   **§ 83305. “Producer”**

2       83305. “Producer” means any person who generates a waste material.

3       **Comment.** Section 83305 continues former Section 25120 without substantive change.

4       See Sections 83295 (“person”), 83395 (“waste”).

5   **§ 83310. “RCRA hazardous waste”**

6       83310. “RCRA hazardous waste” means all waste identified as a hazardous waste  
7       in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter I of Title  
8       40 of the Code of Federal Regulations and appendixes thereto.

9       **Comment.** Section 83310 continues former Section 25120.2 without substantive change. The  
10       reference to the Code of Federal Regulations was revised to use roman numerals for the chapter  
11       designation, consistent with the numbering practice used in the federal regulations.

12       See Sections 83210 (“hazardous waste”), 83395 (“waste”).

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

17   **§ 83315. “Recyclable material”**

18       83315. “Recyclable material” means a hazardous waste that is capable of being  
19       recycled, including, but not limited to, any of the following:

20       (a) A residue.

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

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

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

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

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

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

33       **Comment.** Section 83315 continues former Section 25120.5 without substantive change.

34       See Sections 83160 (“department”), 83210 (“hazardous waste”), 83340 (“retrograde material”),  
35       83370 (“treatment”).

36   **§ 83320. “Recycled material”**

37       83320. (a) “Recycled material” means a recyclable material that has been used or  
38       reused, or reclaimed.

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

41       **Comment.** Section 83320 continues former Section 25121 without substantive change.

See Sections 83225 (“intermediate manufacturing process stream”), 83315 (“recyclable material”).

**§ 83325. “Recycling”**

83325. (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 83325 continues former Section 25121.1 without substantive change.

See Sections 83205 (“handling”), 83300 (“processing”), 83315 (“recyclable material”), 83320 (“recycled material”).

**Note.** Section 25121.1(b) refers to fees, taxes, and charges imposed “pursuant to Article 7 (commencing with Section 25170).” The recodified provisions of Article 7 that impose fees, taxes, and charges are proposed to be located in parts of this recodification that have not yet been drafted.

**However, once recodification of those provisions from Article 7 are proposed, the Commission welcomes comment on whether the proposed recodification of Section 25121.1(b) should be moved from this location, and relocated to appear with those recodified provisions from Article 7.**

**§ 83330. “Release”**

83330. “Release” has the same definition as in Section 78105.

**Comment.** Section 83330 continues former Section 25121.2 without substantive change.

**§ 83335. “Remote site”**

83335. (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 83335 restates former Section 25121.3(a) without substantive change.

See Section 83210 (“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.

#### § 83340. “Retrograde material”

83340. (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 83340 continues former Section 25121.5 without substantive change. See Sections 83160 (“department”), 83175 (“disposal”).

#### § 83345. “Restricted hazardous waste”

83345. “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

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

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

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

6 **Comment.** Section 83345 continues former Section 25122.7 without substantive change.

7 See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”).

8 **§ 83350. “Secretary”**

9 83350. “Secretary” means the Secretary for Environmental Protection.

10 **Comment.** Section 83350 continues former Section 25122.9 without substantive change.

11 **§ 83355. “Storage”**

12 83355. “Storage” means the holding of hazardous wastes, for a temporary period.

13 **Comment.** Section 83355 continues former Section 25123 without substantive change.

14 See Section 83210 (“hazardous waste”).

15 **§ 83360. “Storage facility”**

16 83360. “Storage facility” means a hazardous waste facility that is identified as a  
17 storage facility pursuant to **Article ZZZ of Chapter ZZZ**.

18 **Comment.** Section 83360 continues the initial clause of former Section 25123.3(b) without  
19 substantive change.

20 See Section 83215 (“hazardous waste facility”).

21 **Notes. (1)** Proposed Section 83360 continues only the initial clause of Section 25123.3(b). The  
22 remainder of this section contains substantive requirements for hazardous waste storage, as well as  
23 supporting definitions (that only apply for the purposes of the section).

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

26 **§ 83365. “Transportable hazardous waste treatment unit” or “transportable treatment  
27 unit”**

28 83365. “Transportable hazardous waste treatment unit” or “transportable  
29 treatment unit” means mobile equipment that performs treatment, is transported  
30 onto a facility to perform treatment, and is not permanently stationed at a single  
31 facility.

32 **Comment.** Section 83365 continues former Section 25123.4 without substantive change.

See Section 83370 (“treatment”).

**§ 83370. “Treatment”**

83370. (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 83370 continues former Section 25123.5 without substantive change.  
See Sections 83160 (“department”), 83200 (“federal act”), 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83355 (“storage”), 83395 (“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.**

#### § 83375. “Unified Program Agency” or “UPA”

83375. (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 83375 continues former Section 25123.7(d) without substantive change.  
See Sections 83110 (“certified unified program agency” or “CUPA”), 83160 (“department”), 83285 (“participating agency” or “PA”), 83350 (“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.**

#### § 83380. “Unified Program Facility”

83380. “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 83380 continues former Section 25123.7(a) without substantive change.

#### § 83385. “Universal waste”

83385. “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 83385 continues former Section 25123.8 without substantive change.

See Section 83210 (“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.**

1   **§ 83390. “Volatile organic compound”**

2       83390. “Volatile organic compound” means a compound that is a volatile organic  
3 compound according to Method No. 8240 in the United States Environmental  
4 Protection Agency Document No. Solid Waste 846 (1982) or any equivalent,  
5 alternative method acceptable to the department.

6       **Comment.** Section 83390 continues former Section 25123.6 without substantive change.  
7       See Section 83160 (“department”).

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

11       In proposed Section 83390, “United States” was added to indicate that this section is referring to  
12 the federal agency, as opposed to the state Environmental Protection Agency.

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

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

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

26   **§ 83395. “Waste”**

27       83395. (a) Except as provided in subdivision (c), “waste” means any discarded  
28 material, including solid, liquid, semisolid, or contained gaseous material, that is not  
29 excluded by this division or by regulations adopted pursuant to this division.

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

32       (1) Relinquished by being any of the following:

33       (A) Disposed of.

34       (B) Burned or incinerated.

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

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

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

41       (3) Poses a threat to public health or the environment and meets either, or both, of  
42 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 83395 restates former Section 25124 without substantive change.

See Sections 83155 (“contained gaseous material”), 83160 (“department”), 83175 (“disposal”), 83200 (“federal act”), 83210 (“hazardous waste”), 83225 (“intermediate manufacturing process stream”), 83325 (“recycling”), 83355 (“storage”), 83370 (“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 83155 (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.**

## PART 2. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

### CHAPTER 1. GENERAL POWERS AND DUTIES

#### Article 1. Preliminary Provisions

##### § 83420. Department obligations

83420. 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 83420 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 2. Regulations and Standards

### **§ 83450. Hazardous waste management to protect against hazards to public health, to domestic livestock, to wildlife, or to the environment**

83450. (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 83450 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.**

## § 83455. Authority to adopt varying regulations

83455. (a) The department, when adopting regulations pursuant to Section 83450, 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 83455 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.**

**§ 83460. Regulations adopted prior to January 1, 2008**

83460. 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 83460 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).

**§ 83465. Public hearing on proposed regulations**

83465. (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 83465 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”).

**§ 83470. Permissible format for contingency plan**

83470. 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 83470 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 83470, 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 3. Information Distribution

#### § 83500. Reporting and distribution of information

83500. (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 83505.

(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 83500 continues former Section 25177 without substantive change. See Sections 60160 (“department”), 60165 (“director”), 60260 (“natural resources”).

#### § 83505. Protection of trade secrets

83505. (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 83505 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. Reporting

### § 83550. Information to be posted online

83550. 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 83550 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).**

## Article 5. Contracting

### § 83575. Contracts for specialized training programs

83575. 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 83575 continues former Section 25172.6 without substantive change.

See Sections 60095 (“business”), 60160 (“department”), 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous waste”), 60350 (“storage”).

## CHAPTER 2. BOARD OF ENVIRONMENTAL SAFETY

### Article 1. Establishment of Board

#### § 83650. Appointment of board members

83650. (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 (1) Environmental law.
- 2 (2) Environmental science, including toxicology, chemistry, geology, industrial
- 3 hygiene, or engineering.
- 4 (3) Public health.
- 5 (4) Cumulative impact assessment and management.
- 6 (5) Regulatory permitting.
- 7 (c) No more than two members of the board may represent a single category of
- 8 qualification described in paragraphs (1) to (5), inclusive, of subdivision (b) at any
- 9 one time.

10 **Comment.** Section 83650 continues former Section 25125(a)-(c) without substantive change.  
 11 See Sections 83090 (“board”), 83160 (“department”), 83210 (“hazardous waste”), 83220  
 12 (“hazardous waste management”).

### 13 § 83655. Role of board members

14 83655. The board members shall represent the general public interest and act to  
 15 protect public health and reduce risks of toxic exposure with a particular focus on  
 16 disproportionately burdened and vulnerable communities.

17 **Comment.** Section 83655 continues former Section 25125(d) without substantive change.  
 18 See Section 83090 (“board”).

### 19 § 83660. Terms

20 83660. (a) Except as provided in subdivision (c), a board member shall be  
 21 appointed for a term of four years.

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

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

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

28 (2) The chairperson of the board, appointed by the Governor pursuant to Section  
 29 83665, shall serve a four-year term.

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

32 **Comment.** Section 83660 restates former Section 25125(f) without substantive change.  
 33 See Section 83090 (“board”).

34 **Note.** Proposed Section 83660 would restate Section 25125(f), which presently reads as follows,  
 35 to improve readability:

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

39 (2) The terms of the board members shall be staggered. One of the initial members appointed by  
 40 the Governor and the initial member appointed by the Speaker of the Assembly shall serve a two-  
 41 year term and the remaining three initial members shall serve a four-year term. The chairperson of  
 42 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.**

**§ 83665. Appointment of chair, workload and compensation of members**

83665. (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 83665 continues former Section 25125(m) without substantive change. See Section 83090 (“board”).

**§ 83670. Liaison with United States Department of Defense**

83670. 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 83670 continues former Section 25125(o) without substantive change. See Section 83090 (“board”).

**§ 83675. Litigation counsel**

83675. (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 83675 continues former Section 25125(l) without substantive change. See Section 83090 (“board”).

**Article 2. Conducting of Business**

**§ 83700. Voting and quorum requirements**

83700. (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 83700 continues former Section 25125(e) without substantive change. See Sections 83090 (“board”), 83100 (“business”).

**§ 83705. Compliance with other acts**

83705. (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 83780, 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 83705 continues former Section 25125(i) without substantive change.

Subdivision (b) continues subdivision (k) of former Section 25125 without substantive change.

See Sections 83090 (“board”), 83100 (“business”).

#### § 83710. Adoption of rules relating to conduct

83710. (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 83710 continues former Section 25125(j) without substantive change.

See Section 83090 (“board”).

#### § 83715. External interactions relating to board matters

83715. (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 83715 continues former Section 25125(n) without substantive change. See Sections 83090 (“board”), 83295 (“person”).

#### § 83720. Conflict of interest

83720. 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 83720 continues former Section 25125(h) without substantive change. See Section 83090 (“board”).

#### § 83725. Removal of board member

83725. (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 83725 continues former Section 25125(g) without substantive change. See Section 83090 (“board”).

### Article 3. Meeting Process

#### § 83750. Number and location of meetings

83750. (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 83750 continues former Section 25125.2(a) without substantive change. See Sections 83090 (“board”), 83100 (“business”), 83160 (“department”).

1   **§ 83755. Use of advisory subcommittees**

2       83755. (a) The board may form advisory subcommittees of its membership to  
3       work on any topic within the board’s jurisdiction, including, but not limited to,  
4       environmental justice and fee structure.

5       (b) Subcommittees formed pursuant to this section are authorized to do both of  
6       the following:

7           (1) Seek information and feedback from any stakeholder or constituencies subject  
8           to the authorities implemented by the department or impacted by the department’s  
9           implementation of its authorities.

10          (2) Present recommendations of the subcommittee to the full board for its  
11          consideration and action.

12       (c) The full board is not required to act on any recommendation presented by a  
13       subcommittee of the board.

14       **Comment.** Section 83755 continues former Section 25125.3 without substantive change.  
15       See Sections 83090 (“board”), 83160 (“department”).

16   **§ 83760. Director participation**

17       83760. The director, or a designee, shall present and respond to the board, if  
18       requested by the board, on any issue or item brought forward by a member of the  
19       public, the ombudsperson, or a board member.

20       **Comment.** Section 83760 continues former Section 25125.6 without substantive change.  
21       See Sections 83090 (“board”), 83165 (“director”).

22                                   Article 4. Board Responsibilities

23   **§ 83775. Setting of fees**

24       83775. The board shall set fees pursuant to Sections **25205.2.1, 25205.5.01, and**  
25       **25205.6.1.**

26       **Comment.** Section 83775 continues former Section 25125.2(b)(1) without substantive change.  
27       See Section 83090 (“board”).

28   **§ 83780. Hazardous waste facility permit appeals**

29       83780. The board shall hear and decide appeals of hazardous waste facility permit  
30       decisions.

31       **Comment.** Section 83780 continues former Section 25125.2(b)(2) without substantive change.  
32       See Sections 83090 (“board”), 83215 (“hazardous waste facility”).

33   **§ 83785. Public hearings**

34       83785. The board shall provide opportunities for public hearings on individual  
35       permitted or remediation sites.

36       **Comment.** Section 83785 continues former Section 25125.2(b)(3) without substantive change.  
37       See Section 83090 (“board”).

1   **§ 83790. Evaluation of director priorities and adoption of performance metrics**

2       83790. (a) The board shall review and consider for approval the director’s annual  
3 priorities for each program under the department and, after consulting with the  
4 director, adopt clear performance metrics for the department and each of the  
5 department’s programs.

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

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

10      **Comment.** Section 83790 continues former Section 25125.2(b)(4) without substantive change.  
11      See Sections 83090 (“board”), 83160 (“department”), 83165 (“director”).

12   **§ 83795. Analysis of department activity fee structure**

13       83795. The board shall conduct an analysis of the fee structure supporting the  
14 department’s activities funded by the Hazardous Waste Control Account, the  
15 Hazardous Waste Facilities Account, and the Toxic Substances Control Account  
16 and, to the extent necessary, develop recommendations for funding the department’s  
17 activities that accomplish all of the following:

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

19       (2) Provides adequate funding to ensure the timely remediation of contaminated  
20 sites, including the remediation of orphan sites.

21       (3) Provides adequate funding for the enforcement of this division and Part 2  
22 (commencing with Section 78000) of Division 45.

23       (4) Provides adequate funding for the programs and regulatory efforts that protect  
24 consumers from potentially harmful chemicals in products or workplaces.

25       (5) Provides for a reasonable distribution of costs among the businesses that  
26 contribute to the need for management of hazardous waste in the state.

27       (6) Provides a level of funding that will enable the department and the board to  
28 implement and carry out their duties and responsibilities, including the department’s  
29 performance metrics approved by the board pursuant to this section.

30       (7) Considers increasing fee rates, decreasing fee rates, consolidating fees,  
31 eliminating fees, or creating new fees, as appropriate, as well as the option to  
32 identify any other funding sources that may be appropriate for use by the department  
33 in performing its duties and responsibilities. The board may consider where tiered  
34 rates may be appropriate to align the department’s regulatory costs with different  
35 volumes or types of hazardous waste.

36       (8) Considers the creation of graduated fee rates that could be used to encourage  
37 or discourage waste generation or specific higher risk or hazard waste management  
38 activities.

39       (9) Considers additional funding amounts that may be needed for the department  
40 to implement the responsibilities identified in **Article 11.8 (commencing with**  
41 **Section 25244) and Article 11.9 (commencing with Section 25244.12)**, in whole  
42 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 83795 continues former Section 25125.2(b)(5) without substantive change. See Sections 83090 (“board”), 83160 (“department”), 83210 (“hazardous waste”), 83395 (“waste”).

#### § 83800. Evaluation of department programs and development of recommendations

83800. 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 83800 continues former Section 25125.2(b)(6) without substantive change. See Sections 83090 (“board”), 83160 (“department”).

#### § 83805. Development of long-term goals for departmental activities

83805. 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 83805 continues former Section 25125.2(b)(7) without substantive change. See Sections 83085 (“applicant”), 83090 (“board”), 83160 (“department”), 83165 (“director”), 83215 (hazardous waste facility), 83300 (“processing”).

#### § 83810. Annual review of department and director performance

83810. 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 83810 continues former Section 25125.7 without substantive change. See Sections 83090 (“board”), 83160 (“department”), 83165 (“director”), 83350 (“secretary”).

1 **§ 83815. Appearance before legislative policy committees**

2 83815. The director and the chairperson of the board shall, when requested, but  
3 no less than annually, appear before the appropriate policy committees in the  
4 Assembly and Senate to provide an update on the department’s performance as  
5 compared to its objectives, including, but not limited to, metrics established  
6 pursuant to Section 83790, the department’s progress in implementing any reform  
7 measures, and any other information the committees request.

8 **Comment.** Section 83815 continues former Section 25125.9 without substantive change.  
9 See Sections 83090 (“board”), 83160 (“department”), 83165 (“director”).

10 Article 5. Authority of Board

11 **§ 83835. Adoption of regulations**

12 83835. (a) The board shall have the authority to adopt, amend, or repeal, in  
13 accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with  
14 Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code),  
15 regulations as may be necessary to enable it to carry into effect this part, including  
16 the authority to adopt regulations establishing fees as required pursuant to Section  
17 83775.

18 (b) Except as provided in Section 83710, a regulation adopted pursuant to this part  
19 may be adopted as an emergency regulation in accordance with Chapter 3.5  
20 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the  
21 Government Code, and for purposes of that chapter, including Section 11349.6 of  
22 the Government Code, the adoption of regulations is an emergency and shall be  
23 considered by the Office of Administrative Law as necessary for the immediate  
24 preservation of the public peace, health, and safety, and general welfare.

25 (c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of  
26 Division 3 of Title 2 of the Government Code, an emergency regulation adopted by  
27 the board pursuant to this section shall be filed with, but not be repealed by, the  
28 Office of Administrative Law, and shall remain in effect until repealed by the board.

29 **Comment.** Section 83835 continues former Section 25125.4 without substantive change.  
30 See Section 83090 (“board”).

31 Article 6. Ombudsperson

32 **§ 83845. Establishment of office**

33 83845. There is established within the board an office of the ombudsperson.

34 **Comment.** Section 83845 continues the first sentence of former Section 25125.8(a) without  
35 substantive change.

36 See Section 83090 (“board”).

37 **§ 83850. Appointment**

38 83850. The board shall appoint an ombudsperson who shall serve full time at the  
39 pleasure of the board.

1     **Comment.** Section 83850 continues the second sentence of former Section 25125.8(a) without  
2 substantive change.

3     See Section 83090 (“board”).

4     **§ 83855. Responsibilities**

5     83855. The office of the ombudsperson shall serve as an impartial resource to the  
6 public, including stakeholders, by doing the following:

7     (a) Receive complaints and suggestions from the public.

8     (b) Evaluate complaints.

9     (c) Report findings and make recommendations to the director and the board.

10    (d) Render assistance to the public, when appropriate.

11    **Comment.** Section 83855 continues former Section 25125.8(b) without substantive change.

12    See Sections 83090 (“board”), 83165 (“director”).

13    **§ 83860. Determination of responsibilities**

14    83860. The board, in consultation with the director, may determine the activities,  
15 in addition to those specified in Section 83855, the ombudsperson can undertake.

16    **Comment.** Section 83860 continues former Section 25125.8(c) without substantive change.

17    See Sections 83090 (“board”), 83165 (“director”).

18    **§ 83865. Establishment of procedures**

19    83865. The board shall establish procedures governing the exercise of the  
20 ombudsperson’s duties, including all of the following:

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

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

24    (c) Criteria for prioritization of complaints and suggestions submitted to the  
25 ombudsperson.

26    (d) Access to information and resources to improve understanding of the  
27 department’s activities and opportunities for involvement in the department’s  
28 regulatory processes.

29    **Comment.** Section 83865 continues former Section 25125.8(d) without substantive change.

30    See Sections 83090 (“board”), 83160 (“department”).

31    **§ 83870. Submission of complaint or suggestion**

32    83870. Any person may submit a complaint or make a suggestion to the  
33 ombudsperson regarding any action, program, or policy of the department.

34    **Comment.** Section 83870 continues former Section 25125.8(e) without substantive change.

35    See Sections 83160 (“department”), 83295 (“person”).



## PART 3. FINANCIAL PROVISIONS

**Note.** This proposed Part contains a number of provisions that relate to laws other than Chapter 6.5. In particular, proposed Chapter 2, relating 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 chapter use defined terms from Part 2 of Division 45 without citing to those definitions. See, e.g., proposed Section 84000 (Note #2), proposed Section 84005 (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.**

### CHAPTER 1. HAZARDOUS WASTE CONTROL ACCOUNT

#### Article 1. General Provisions

##### § 83900. Funds to be deposited in account

83900. (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 83900 restates former Sections 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 83900 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.**

#### § 83905. Appropriations from account

83905. 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 83905 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 83905(e) replaces that reference with the defined term “board.” See proposed Section 60088 (“board”).

#### **§ 83910. Loans from general fund to account**

83910. (a) 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.

(b) 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 83910 continues former Section 25174(d) without substantive change. See Section 60165 (“director”).

#### **§ 83915. Successor fund to Federal Receipts Account**

83915. (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 83915 continues former Section 25174.9 without substantive change.

## Article 2. Hazardous Waste Facilities Account (*Section 25174.01*)

### CHAPTER 2. TOXIC SUBSTANCES CONTROL ACCOUNT

#### § 84000. Funds to be deposited in account

84000. (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 84000 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 83900, 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 84000(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.**

#### **§ 84005. Appropriations from account**

84005. (a) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

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

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

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

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

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

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

(A) The Human and Ecological Risk Office.

(B) The Environmental Chemistry Laboratory.

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

(D) The Safer Consumer Products Program.

(3) For allocation to the Office of Environmental Health Hazard Assessment, pursuant to an interagency agreement, to assist the department as needed in administering the programs described in subparagraphs (A) and (B) of paragraph (1).

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

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

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

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

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

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

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

(11) Direct site remediation costs.

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

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

(14) For allocation to the office of the Attorney General, pursuant to an interagency agreement or similar mechanism, for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of Part 2 (commencing with Section 78000) of Division 45, Chapter 6.86 (commencing with Section 25396) of Division 20, **Article 10 (commencing with Section 25210), Article 10.01 (commencing with Section 25210.5), Article 10.02 (commencing with Section 25210.9), Article 10.1.1 (commencing with Section 25214.1), Article 10.1.2 (commencing with Section 25214.4.3), Article 10.2.1 (commencing with Section 25214.8.1), Article 10.4 (commencing with Section 25214.11), Article 10.5 (commencing with Section 25215), Article 10.5.1 (commencing with Section 25215.8), Article 13.5 (commencing with Section 25250.50), Article 14 (commencing with Section 25251), and Section 25214.10.**

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

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

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

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

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

**Comment.** Section 84005 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 84005(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 84005(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 (existing 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.**

#### § 84010. Expenditures

84010. (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 84010 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 84010, 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 84005, 84050.

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.**

#### § 84015. Loans to account

84015. The Director of Finance, upon request of the director, may make a loan from the General Fund to the Toxic Substances Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

**Comment.** Section 84015 continues former Section 25173.6(f) without substantive change.

See Section 60165 (“director”).

1   **§ 84020. Account as successor fund**

2       84020. (a) The Toxic Substances Control Account established pursuant to Section  
3   84000 is the successor fund of all of the following:

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

6       (2) The Hazardous Substance Clearing Account established pursuant to Section  
7   25334, as that section read on June 30, 2006.

8       (3) The Hazardous Substance Cleanup Fund established pursuant to Section  
9   25385.3, as that section read on June 30, 2006.

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

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

18      **Comment.** Section 84020 continues former Section 25173.6(g) and (h) without substantive  
19   change.

20   **§ 84025. Legislative intent regarding appropriations to account**

21      84025. It is the intent of the Legislature that funds deposited in the Toxic  
22   Substances Control Account shall be appropriated in the annual Budget Act each  
23   year in the following manner:

24      (a) An amount sufficient to pay for the estimated costs identified by the  
25   department in the report submitted pursuant to Section 84050 to the Site  
26   Remediation Account in the General Fund for direct site remediation costs, as  
27   defined in Section 78260.

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

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

36      (d) An amount that does not exceed the costs incurred by the State Board of  
37   Equalization, a private party, or other public agency, to administer and collect the  
38   fees imposed pursuant to **Article 9.1 (commencing with Section 25205.1)** and  
39   deposited into the Toxic Substances Control Account, for the purpose of  
40   reimbursing the State Board of Equalization, public agency, or private party, for  
41   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 84005, except the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (13) of, subdivision (a) of Section 84005.

**Comment.** Section 84025 continues former Section 25173.7(a) without substantive change. See Sections 60160 (“department”), 60210 (“hazardous waste”).

#### § 84030. Annual adjustments for cost of living

84030. (a) The amounts specified in subdivisions (b) to (e), inclusive, of Section 84025 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 84025, if there are insufficient funds in the Toxic Substances Control Account.

(2) Suspend the transfer specified in subdivision (c) of Section 84025, if there are no orphan shares pending payment pursuant to Chapter 6.86 (commencing with Section 25396) of Division 20.

**Comment.** Section 84030 continues former Section 25173.7(b) without substantive change. See Section 60160 (“department”).

### CHAPTER 3. DEPARTMENT RESPONSIBILITIES AND AUTHORITY

#### Article 1. Reporting on Budget

#### § 84045. Reporting on specified budget amounts

84045. (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 83905.

(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 84045 continues former Section 25174(c) without substantive change. See Section 60160 (“department”).

#### § 84050. Report regarding estimated funding for direct site remediation costs

84050. (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 84050 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.

## Article 2. Assumption of Administration of Contracts

#### § 84075. Authority relating to required payments generally

84075. (a) Notwithstanding anything to the contrary in this division or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, the department, with the approval of the secretary, may take either of the following actions relating to fees, surcharges, fines, penalties, or funds required to be deposited in the Hazardous Waste Control Account, the Hazardous Waste Facilities Account, or the Toxic Substances Control Account:

(1) Assume responsibility, or contract with a private party or another public agency other than the California Department of Tax and Fee Administration, for the collection of any fees, surcharges, fines, penalties or funds described in Part 2 (commencing with Section 78000) of Division 45 for deposit in the Toxic Substances Control Account.

(2) Administer, or contract with a private party or another public agency for, determinations and functions for which the California Department of Tax and Fee Administration is responsible pursuant to Part 2 (commencing with Section 78000) of Division 45, or pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, if those determinations and functions become the responsibility of either the department or, by mutual agreement, a contractor selected by the department.

(b) Notwithstanding subdivision (a), final responsibility for the administrative adjustment of fee rates or the administrative appeal of any fees or penalty assessments made pursuant to this article may be assigned by the department only to a public agency.

**Comment.** Subdivision (a) of Section 84075 restates former Section 25174.02(a) without substantive change.

Subdivision (b) restates the second sentence of former Section 25174.02(b) without substantive change.

See Sections 83160 (“department”), 83350 (“secretary”).

**Staff Note.** Proposed Section 84075 would restate and combine existing Section 25174.02(a) and the final sentence of Section 25174.02(b), for clarity. Those existing provisions read as follows:

25174.02. (a) Notwithstanding this chapter, or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines, penalties, and funds that are required to be deposited into the Hazardous Waste Control Account, the Hazardous Waste Facilities Account, or the Toxic Substances Control Account, the department, with the approval of the secretary, may take either of the following actions:

(1) Assume responsibility for, or enter into a contract with a private party or with another public agency, other than the California Department of Tax and Fee Administration, for the collection of any fees, surcharges, fines, penalties and funds described in Part 2 (commencing with Section 78000) of Division 45, for deposit into the Toxic Substances Control Account.

(2) Administer, or by mutual agreement, contract with a private party or another public agency, for the making of those determinations and the performance of functions that would otherwise be the responsibility of the California Department of Tax and Fee Administration pursuant to Part 2 (commencing with Section 78000) of Division 45, or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, if those activities and functions for which the California Department of Tax and Fee Administration would otherwise be responsible become the responsibility of the department or, by mutual agreement, the contractor selected by the department.”

(b)... Final responsibility for the administrative adjustment of fee rates and the administrative appeal of any fees or penalty assessments made pursuant to this section may only be assigned by the department to a public agency.

**The staff welcomes comment on whether this restatement of these provisions of existing Section 25174.02 improves the clarity of the provisions without substantively changing their meaning.**

#### § 84080. Due process rights

84080. If, pursuant to Section 84075, the department, or a private party or another public agency, pursuant to a contract with the department, performs the

1 determinations and functions that would otherwise be the responsibility of the  
2 California Department of Tax and Fee Administration, the department shall be  
3 responsible for ensuring that persons subject to the fees specified in Section 84075  
4 have equivalent rights to public notice and comment, and procedural and substantive  
5 rights of appeal, as afforded by the procedures of the California Department of Tax  
6 and Fee Administration pursuant to Part 22 (commencing with Section 43001) of  
7 Division 2 of the Revenue and Taxation Code.

8 **Comment.** Section 84080 continues the first sentence of former Section 25174.02(b) without  
9 substantive change.

10 See Section 83160 (“department”).

11 **§ 84085. Authority to make collections and enforce judgments**

12 84085. (a) If, pursuant to Section 84075, the department, or a private party or  
13 another public agency, pursuant to a contract with the department, performs the  
14 determinations and functions that would otherwise be the responsibility of the  
15 California Department of Tax and Fee Administration, the department shall have  
16 equivalent authority to make collections and enforce judgments as provided to the  
17 California Department of Tax and Fee Administration pursuant to Part 22  
18 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

19 (b) Unpaid amounts, including penalties and interest, shall be a perfected and  
20 enforceable state tax lien in accordance with Section 43413 of the Revenue and  
21 Taxation Code.

22 **Comment.** Section 84085 continues former Section 25174.02(c) without substantive change.

23 See Section 83160 (“department”).

24 **§ 84090. Assignment of administrative functions**

25 84090. The department, with the concurrence of the secretary, shall determine  
26 which administrative functions should be retained by the California Department of  
27 Tax and Fee Administration, administered by the department, or assigned to another  
28 public agency or private party pursuant to Sections 84075, 84080, and  
29 84085.

30 **Comment.** Section 84090 continues former Section 25174.02(d) without substantive change.

31 See Sections 83160 (“department”), 83350 (“secretary”).

32 **§ 84095. Adoption of regulations**

33 84095. The department may adopt regulations to implement this article.

34 **Comment.** Section 84095 continues former Section 25174.02(e) without substantive change.

35 See Section 83160 (“department”).

## CHAPTER 4. FACILITY AND GENERATOR FEES

### Article 1. Definitions

#### § 84150. Application of definitions

84150. For purposes of this chapter, the definitions in this article shall apply.

**Comment.** Section 84150 continues the introductory clause of former Section 25205.1 without substantive change.

**Staff Note.** Proposed Section 84150 would restate the introductory clause of existing Section 25205.1 for clarity. The existing clause reads as follows:

25205.1. For purposes of this article, the following definitions apply:

**The staff welcomes comment on whether this restatement of this clause improves its clarity without substantively changing its meaning.**

#### § 84155. “Board”

84155. “Board” means the State Board of Equalization.

**Comment.** Section 84155 continues former Section 25205.1(a) without substantive change.

**Staff Note.** The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that the definition of the term “Board” in subdivision (a) of that section is intended to apply “for purposes of” the article in which Section 25205.1 appears. However, existing Section 25110.3 provides a different definition of the term “Board,” and existing Section 25110 provides that different definition is intended to govern the entirety of Chapter 6.5.

**The staff welcomes public comment on whether statutory text should be added to proposed Section 84155, clarifying that the definition of the term “Board” in proposed Section 84155 is intended to apply to the proposed chapter in which Section 84155 appears, notwithstanding the overarching definition of the term in existing Section 25110.3.**

#### § 84160. “Class 1 modification”

84160. “Class 1 modification” has the meaning provided in regulations adopted by the department.

**Comment.** Section 84160 continues the part of former Section 25205.1(l) applicable to Class 1 modifications without substantive change.

See Section 83160 (“department”).

**Staff Note.** Proposed Section 84160 would restate the part of existing Section 25205.1(l) applicable to the term “class 1 modification” for clarity. Existing Section 25205.1(l) reads as follows:

25205.1(l) “Class 1 modification,” “class 2 modification,” and “class 3 modification” have the meanings provided in regulations adopted by the department.

**The staff welcomes comment on whether this restatement of this provision improves its clarity without substantively changing its meaning.**

1    **§ 84165. “Class 2 modification”**

2       84165. “Class 2 modification” has the meaning provided in regulations adopted  
3    by the department.

4       **Comment.** Section 84165 continues the part of former Section 25205.1(*l*) applicable to Class 2  
5    modifications without substantive change.

6       See Section 83160 (“department”).

7       **Staff Note.** Proposed Section 84165 would restate the part of existing Section 25205.1(*l*)  
8    applicable to the term “class 2 modification” for clarity. Existing Section 25205.1(*l*) reads as  
9    follows:

10       25205.1(*l*) “Class 1 modification,” “class 2 modification,” and “class 3 modification” have the  
11    meanings provided in regulations adopted by the department.

12       **The staff welcomes comment on whether this restatement of this provision improves its**  
13    **clarity without substantively changing its meaning.**

14    **§ 84170. “Class 3 modification”**

15       84170. “Class 3 modification” has the meaning provided in regulations adopted  
16    by the department.

17       **Comment.** Section 84170 continues the part of former Section 25205.1(*l*) applicable to Class 3  
18    modifications without substantive change.

19       See Section 83160 (“department”).

20       **Staff Note.** Proposed Section 84170 would restate the part of existing Section 25205.1(*l*)  
21    applicable to the term “class 3 modification” for clarity. Existing Section 25205.1(*l*) reads as  
22    follows:

23       25205.1(*l*) “Class 1 modification,” “class 2 modification,” and “class 3 modification” have the  
24    meanings provided in regulations adopted by the department.

25       **The staff welcomes comment on whether this restatement of this provision improves its**  
26    **clarity without substantively changing its meaning.**

27    **§ 84175. “Disposal”**

28       84175. “Disposal” means only the placement of hazardous waste satisfying all of  
29    the following criteria:

30       (1) The placement is engaged in at a facility pursuant to and requiring a permit or  
31    grant of interim status issued by the department pursuant to **Article 9 (commencing**  
32    **with Section 25200).**

33       (2) The placement is onto or into the ground for permanent disposition.

34       (3) The placement is not onto or into the ground solely for purposes of land  
35    treatment.

36       (4) The placement is not in surface impoundments, as defined in regulations  
37    adopted by the department.

38       **Comment.** Section 84175 restates the part of former Section 25205.1(*o*) applicable to the  
39    definition of “disposal” without substantive change.

40       See Sections 83160 (“department”), 84180 (“facility”), 84190 (“hazardous waste”), 84240  
41    (“treatment”).



**Staff Notes.** (1) Proposed Section 84240 would restate the part of existing Section 25214.12(o) applicable to the definition of “disposal” for clarity. Existing Section 25214.12(o) reads as follows:

25205.1(o) “Treatment,” “storage,” and “disposal” mean only that treatment, storage, or disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment, storage, or disposal that does not require this permit or grant of interim status shall not be considered treatment, storage, or disposal for purposes of this article.

(1) “Disposal” includes only the placement of hazardous waste onto or into the ground for permanent disposition and does not include the placement of hazardous waste in surface impoundments, as defined in regulations adopted by the department, or the placement of hazardous waste onto or into the ground solely for purposes of land treatment.

(2) “Storage” does not include the ongoing presence of hazardous wastes in the ground or in surface impoundments after the facility has permanently discontinued accepting new hazardous wastes for placement into the ground or into surface impoundments. **The staff welcomes comment on whether this restatement of the part of existing Section 25214.12(o) applicable to the definition of “disposal” improves its clarity without substantively changing its meaning.**

(2) The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that the definition of the term “disposal” in existing Section 25205.1(o) is intended to apply “for purposes of” the article in which Section 25205.1 appears. However, existing Section 25113 provides a different definition of the term “disposal,” and existing Section 25110 provides that definition in Section 25113 is intended to govern the entirety of Chapter 6.5.

**The staff welcomes public comment on whether statutory text should be added to proposed Section 84175, or perhaps to Section 84150, clarifying that the definition of the term “disposal” in proposed Section 84175 is intended to apply to the proposed chapter in which Section 84175 appears, notwithstanding the overarching definition of the term that presently appears in existing Section 25113.**

#### § 84180. “Facility”

84180, “Facility” means any units or other structures, and all contiguous land, used for the treatment, storage, disposal, or recycling of hazardous waste, for which a permit or a grant of interim status has been issued by the department for that activity pursuant to **Article 9 (commencing with Section 25200).**

**Comment.** Section 84180 continues former Section 25205.1(b) without substantive change. See Sections 83160 (“department”) 84175 (“disposal”), 84190 (“hazardous waste”), 84235 (“storage”), 84240 (“treatment”).

#### § 84185. “Generator”

84185. “Generator” means a person who generates hazardous waste at an individual site commencing on or after July 1, 1988. ~~A generator includes, but is , including but~~ not limited to, a person ~~who is~~ identified on a manifest as the generator and whose identification number is listed on that manifest, if that identifying information was provided by that person or by an agent or employee of that person.

**Comment.** Section 84185 continues former Section 25205.1(e) without substantive change. See Sections 83160 (“department”), 83295 (“person”), 84190 (“hazardous waste”).

1   **§ 84190. “Hazardous waste”**

2       84190. (a) “Hazardous waste” has the meaning provided in **Section 25117**.

3       (b) The total tonnage of hazardous waste, unless otherwise provided by law,  
4 includes the hazardous substance as well as any soil or other substance that is  
5 commingled with the hazardous substance.

6       **Comment.** Section 84190 continues former Section 25205.1(m) without substantive change.

7       **Staff Note.** The second sentence of existing Section 25205.1(m), which would be continued as  
8 subdivision (b) of proposed Section 84190, appears to be out of place as a substantive provision  
9 within a statutory section or article otherwise containing only broadly applicable definitional  
10 provisions.

11       In addition, the intended application of this substantive provision, disconnected from provisions  
12 in which “the total tonnage of hazardous waste” is relevant, is also less than clear.

13       **The staff welcomes comment on the application of this substantive provision, as well as**  
14 **whether its application might be clarified if recodified in a different location than in this**  
15 **article of the proposed recodification.**

16   **§ 84195. “Land treat”**

17       84195. “Land treat” means to apply hazardous waste onto or incorporate it into  
18 the soil surface for the sole and express purpose of degrading, transforming, or  
19 immobilizing the hazardous constituents.

20       **Comment.** Section 84195 continues former Section 25205.1(n) without substantive change.

21       See Section 84190 (“hazardous waste”).

22   **§ 84200. “Large storage facility”**

23       84200. “Large storage facility” means the following:

24       (a) In those cases in which total storage capacity is provided in a permit, interim  
25 status document, or federal Part A application for the facility, “large storage facility”  
26 means a storage facility with capacity to store 1,000 or more tons of hazardous  
27 waste.

28       (b) In those cases in which total storage capacity is not provided in a permit,  
29 interim status document, or federal Part A application for the facility, “large storage  
30 facility” means a storage facility that stores 1,000 or more tons of hazardous waste  
31 during any one month of the current reporting period commencing on or after July  
32 1, 1991.

33       **Comment.** Section 84200 restates former Section 25205.1(c) without substantive change.

34       See Sections 83360 (“storage facility”), 84180 (“facility”), 84190 (“hazardous waste”), 84235  
35 (“storage”).

36       **Staff Note.** Proposed Section 84200 would restate existing Section 25205.1(c) for clarity. The  
37 existing provision reads as follows:

38       25205.1. (c) “Large storage facility,” in those cases in which total storage capacity is provided  
39 in a permit, interim status document, or federal Part A application for the facility, means a storage  
40 facility with capacity to store 1,000 or more tons of hazardous waste. In those cases in which it is  
41 not so provided, “large storage facility” means a storage facility that stores 1,000 or more tons of

hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**The staff welcomes comment on whether this restatement of existing Section 25205.1(c) improves its clarity without substantively changing its meaning.**

#### § 84205. “Large treatment facility”

84205. “Large treatment facility” means the following:

(a) In those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, “large treatment facility” means a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste.

(b) In those cases in which total treatment capacity is not provided in a permit, interim status document, or federal Part A application for the facility, “large treatment facility” a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**Comment.** Section 84205 restates former Section 25205.1(d) without substantive change.

See Sections 84180 (“facility”), 84190 (“hazardous waste”), 84195 (“land treat”), 84240 (“treatment”).

**Staff Note.** Proposed Section 84205 would restate existing Section 25205.1(d) for clarity. The existing provision reads as follows:

25205.1. (d) “Large treatment facility,” in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, “large treatment facility” means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**The staff welcomes comment on whether this restatement of existing Section 25205.1(d) improves its clarity without substantively changing its meaning.**

#### § 84210. “Mini-storage facility”

84210. “Mini-storage facility” means the following:

(a) In those cases in in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, a storage facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous waste.

(b) In those cases in which total storage capacity is not provided in a permit, interim status document, or federal Part A application for the facility, a storage facility that stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**Comment.** Section 84210 restates former Section 25205.1(f) without substantive change.

See Sections 83360 (“storage facility”), 84180 (“facility”), 84190 (“hazardous waste”), 84235 (“storage”).

**Staff Note.** Proposed Section 84210 would restate existing Section 25205.1(f) for clarity. The existing provision reads as follows:

25205.1. (f) “Ministorage facility,” in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, “ministorage facility” means a storage facility that stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**The staff welcomes comment on whether this restatement of existing Section 25205.1(f) improves its clarity without substantively changing its meaning.**

#### § 84215. “Mini-treatment facility”

84215. “Mini-treatment facility” means the following:

(a) In those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, a treatment facility with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of hazardous waste.

(b) In those cases in total treatment capacity is not provided in a permit, interim status document, or federal Part A application for the facility, a treatment facility that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**Comment.** Section 84215 continues former Section 25205.1(g) without substantive change.

See Sections 84180 (“facility”), 84190 (“hazardous waste”), 84195 (“land treat”), 84240 (“treatment”).

**Staff Note.** Proposed Section 84215 would restate existing Section 25205.1(g) for clarity. The existing provision reads as follows:

25205.1. (g) “Minitreatment facility,” in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, “minitreatment facility, means a treatment facility that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**The staff welcomes comment on whether this restatement of existing Section 25205.1(g) improves its clarity without substantively changing its meaning.**

#### § 84220. “Site”

84220. “Site” means the location of an operation that generates hazardous wastes and is noncontiguous to any other location of these operations owned by the generator.

**Comment.** Section 84220 former Section 25205.1(h) without substantive change.

See Sections 84185 (“generator”), 84190 (“hazardous waste”).

**Staff Note.** Existing Section 25205.1(h), unlike most other provisions in Section 25205.1, expressly refers to “hazardous wastes,” rather than “hazardous waste.”

**The staff welcomes comment on whether the term “hazardous wastes” in this existing provision is intended to have a different meaning than the term “hazardous waste,” and if not, whether the clarity of the provision could be improved by revising the existing reference to instead refer to “hazardous waste.”**

**§ 84225. “Small storage facility”**

84225. “Small storage facility” means the following:

(a) In those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, a storage facility with capacity to store more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste.

(b) In those cases in which total storage capacity is not provided in a permit, interim status document, or federal Part A application for the facility, a storage facility that stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**Comment.** Section 84225 continues former Section 25205.1(i) without substantive change.

See Sections 83360 (“storage facility”), 84180 (“facility”), 84190 (“hazardous waste”), 84235 (“storage”).

**Staff Note.** Proposed Section 84225 would restate existing Section 25205.1(i) for clarity. The existing provision reads as follows:

25205.1. (i) “Small storage facility,” in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which it is not so provided, “small storage facility” means a storage facility that stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

**The staff welcomes comment on whether this restatement of existing Section 25205.1(i) improves its clarity without substantively changing its meaning.**

**§ 84230. “Small treatment facility”**

84230. “Small treatment facility” means the following:

(a) In those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste.

(b) In those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, a treatment facility that treats, land treats, or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month of the current reporting period commencing on or after July 1, 1991.

**Comment.** Section 84230 continues former Section 25205.1(j) without substantive change.

See Sections 84195 (“land treat”), 84180 (“facility”), 84190 (“hazardous waste”), 84240 (“treatment”).

**Staff Note.** Proposed Section 84230 would restate existing Section 25205.1(j) for clarity. The existing provision reads as follows:

25205.1. (j) “Small treatment facility,” in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which this is not provided, “small treatment facility” means a treatment facility that treats, land treats, or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month of the current reporting period commencing on or after July 1, 1991.

**The staff welcomes comment on whether this restatement of existing Section 25205.1(j) improves its clarity without substantively changing its meaning.**

#### § 84235. “Storage”

84235. “Storage” means only the storage of hazardous waste satisfying both of the following criteria:

(1) The storage is engaged in at a facility pursuant to and requiring a permit or grant of interim status issued by the department pursuant to **Article 9 (commencing with Section 25200)**.

(2) The storage does not include the ongoing presence of hazardous wastes in the ground or in surface impoundments after the facility has permanently discontinued accepting new hazardous wastes for placement into the ground or into surface impoundments.

**Comment.** Section 84235 restates the part of former Section 25205.1(o) applicable to the definition of “storage” without substantive change.

See Sections 83160 (“department”), 84180 (“facility”), 84190 (“hazardous waste”).

**Staff Notes. (1)** Proposed Section 84235 would restate the part of existing Section 25214.12(o) applicable to the definition of “storage” for clarity. Existing Section 25214.12(o) reads as follows:

25205.1.(o) “Treatment,” “storage,” and “disposal” mean only that treatment, storage, or disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment, storage, or disposal that does not require this permit or grant of interim status shall not be considered treatment, storage, or disposal for purposes of this article.

(1) “Disposal” includes only the placement of hazardous waste onto or into the ground for permanent disposition and does not include the placement of hazardous waste in surface impoundments, as defined in regulations adopted by the department, or the placement of hazardous waste onto or into the ground solely for purposes of land treatment.

(2) “Storage” does not include the ongoing presence of hazardous wastes in the ground or in surface impoundments after the facility has permanently discontinued accepting new hazardous wastes for placement into the ground or into surface impoundments.

**The staff welcomes comment on whether this restatement of the part of existing Section 25214.12(o) applicable to the definition of “storage” improves its clarity without substantively changing its meaning.**

(2) Existing Section 25205.1(o), unlike most other provisions in Section 25205.1, expressly refers to “hazardous wastes,” rather than “hazardous waste.”

The staff welcomes comment on whether the term “hazardous wastes” in this existing provision is intended to have a different meaning than the term “hazardous waste,” and if not, whether the clarity of the provision could be improved by revising the existing reference to instead refer to “hazardous waste.”

(3) The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that the definition of the term “storage” in existing Section 25205.1(o) is intended to apply “for purposes of” the article in which Section 25205.1 appears. However, existing Section 25123 provides a different definition of the term “storage,” and existing Section 25110 provides that different definition is intended to govern the entirety of Chapter 6.5.

The staff welcomes public comment on whether statutory text should be added to proposed Section 84235, or perhaps to Section 84150, clarifying that the definition of the term “storage” in proposed Section 84235 is intended to apply to the proposed chapter in which Section 84235 appears, notwithstanding the overarching definition of the term that presently appears in existing Section 25113.

#### § 84240. “Treatment”

84240. “Treatment” means only the treatment of hazardous waste engaged in at a facility pursuant to and requiring a permit or grant of interim status issued by the department pursuant to **Article 9 (commencing with Section 25200)**.

**Comment.** Section 84240 restates the part of former Section 25205.1(o) applicable to the definition of “treatment” without substantive change.

See Sections 83160 (“department”), 84180 (“facility”), 84190 (“hazardous waste”).

**Staff Notes. (1)** Proposed Section 84240 would restate the part of existing Section 25214.12(o) applicable to the definition of “treatment” for clarity. Existing Section 25214.12(o) reads as follows:

25205.1(o) “Treatment,” “storage,” and “disposal” mean only that treatment, storage, or disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment, storage, or disposal that does not require this permit or grant of interim status shall not be considered treatment, storage, or disposal for purposes of this article.

(1) “Disposal” includes only the placement of hazardous waste onto or into the ground for permanent disposition and does not include the placement of hazardous waste in surface impoundments, as defined in regulations adopted by the department, or the placement of hazardous waste onto or into the ground solely for purposes of land treatment.

(2) “Storage” does not include the ongoing presence of hazardous wastes in the ground or in surface impoundments after the facility has permanently discontinued accepting new hazardous wastes for placement into the ground or into surface impoundments.

The staff welcomes comment on whether this restatement of the part of existing Section 25214.12(o) applicable to the definition of “treatment” improves its clarity without substantively changing its meaning.

(2) The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that the definition of the term “treatment” in existing Section 25205.1(o) is intended to apply “for purposes of” the article in which Section 25205.1 appears. However, existing Section 25123.5 provides a different definition of the term “treatment,” and existing Section 25110 provides that different definition is intended to govern the entirety of Chapter 6.5.

The staff welcomes public comment on whether statutory text should be added to proposed Section 84240, or perhaps to Section 84150, clarifying that the definition of the term “treatment” in proposed Section 84240 is intended to apply to the proposed chapter in which Section 84240 appears, notwithstanding the overarching definition of the term that presently appears in existing Section 25113.5.

§ 84245. “Unit”

84245. (a) “Unit” means a hazardous waste management unit, as defined in regulations adopted by the department.

(b) If an area is designated as a hazardous waste management unit in a permit, it shall be conclusively presumed that the area is a “unit.”

**Comment.** Section 84245 continues former Section 25205.1(k) without substantive change. See Sections 83160 (“department”), 84190 (“hazardous waste”).

**Staff Note.** The second sentence of existing Section 25205.1(k), which would be continued by as subdivision (b) of proposed Section 84245, indicates that the designation of an area in a permit as a hazardous waste management unit creates a conclusive presumption that the area is a “unit” for purposes of at least the statutory article in which this provision appears.

The staff welcomes comment on (1) whether the indication of this conclusive presumption is intended to convey some different meaning than a much simpler statement that an area “designated as a hazardous waste management unit in a permit” is a “unit,” and (2) if there is no different meaning intended, whether the provision should be revised to state its intended meaning more clearly, without reference to a presumption.

Article 2. xxx

CHAPTER 3. ENVIRONMENTAL FEES

Article 3. xxx

CHAPTER 4. METAL SHREDDING FEES

Article 3. xxx

CHAPTER 5. OTHER HAZARDOUS WASTE FEES

Article 3. xxx

PART 4. TOXICS REDUCTION

CHAPTER 1. GREEN CHEMISTRY



## Article 1. Definitions

### 84400. Application

84400. The definitions in this article apply for purposes of this chapter.

**Comment.** Section 84400 restates the introductory text of former Section 25251 without substantive change.

**Note.** The introductory text of Section 25251 is restated by proposed Section 84400 as a distinct code section, to allow the definitions in Section 25251 to be recodified as distinct code sections. The introductory text of Section 25251 currently provides:

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

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

### 84405. “Chemical manufacturer”

84405. “Chemical manufacturer” means a person who manufactures a chemical or chemical ingredient that is used in a consumer product.

**Comment.** Section 84405 continues former Section 25251(a) without substantive change. See Sections 83295 (“person”), 84415 (“consumer product”).

### 84410. “Clearinghouse”

84410. “Clearinghouse” means the Toxics Information Clearinghouse established pursuant to Article 8 (commencing with Section 84630).

**Comment.** Section 84410 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.”

**Note.** This nonsubstantive definitional provision, similar to Section 25251(e) (proposed Section 84430) defining the term “panel,” is added for clarity.

### 84415. “Consumer product”

84415. (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 84415 restates former Section 25251(b) without substantive change.

1 See Section 83295 (“person”).

2 **Note.** Section 25251(b) is restated by proposed Section 84415 for clarity. Section 25251(b)  
3 currently provides:

4 25251. (b) “Consumer product” means a product or part of the product that is used, brought, or  
5 leased for use by a person for any purposes. “Consumer product” does not include any of the  
6 following:

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

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

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

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

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

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

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

17 **84440. “Council”**

18 84440. “Council” means the California Environmental Policy Council established  
19 pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

20 **Comment.** Section 84440 continues former Section 25251(c) without substantive change.

21 **84425. “Office”**

22 84425. “Office” means the Office of Environmental Health Hazard Assessment.

23 **Comment.** Section 84425 continues former Section 25251(d) without substantive change.

24 **84430. “Panel”**

25 84430. “Panel” means the Green Ribbon Science Panel established pursuant to  
26 Article 4 (commencing with Section 84500).

27 **Comment.** Section 84430 continues former Section 25251(e) without substantive change.

28 **84435. “Product manufacturer”**

29 84435. “Product manufacturer” means a person who manufactures, controls the  
30 manufacturing process for, or specifies the use of a chemical to be included in, a  
31 consumer product.

32 **Comment.** Section 84435 restates former Section 25251(f) without substantive change.

33 See Sections 83295 (“person”), 84415 (“consumer product”).

34 **Note.** Section 25251(f) is restated by proposed Section 84435 for clarity. Section 25251(f)  
35 currently provides:

36 25251. (f) “Product manufacturer” means a person who manufactures a consumer product or a  
37 person who controls the manufacturing process for, or specifies the use of a chemical to be included  
38 in, a consumer product.

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

## Article 2. Relationship of Chapter to Other Authority

**84455. Authority relating to hazardous materials generally**

84455. 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 84455 restates former Section 25257.1(a) without substantive change. See Section 83160 (“department”).

**Notes. (1)** Section 25257.1(a) is restated by proposed Section 84455 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 46 has already been added to the cumulative list of substantive issues for possible future study.

**84460. Regulatory authority of other departments or agencies**

84460. This chapter does not authorize the department to supersede the regulatory authority of any other department or agency.

**Comment.** Section 84460 continues former Section 25257.1(b) without substantive change. See Section 83160 (“department”).

**84465. Duplication or adoption of conflicting regulations**

84465. 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 84465 continues former Section 25257.1(c) without substantive change. See Section 83160 (“department”).

## Article 3. Priorities

**84480. Policy**

84480. 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 84480 continues former Section 25253.6 without substantive change. See Section 84415 (consumer product).

**84485. Priority Product Work Plan of 2015-17**

84485. 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 84485 continues former Section 25253.5 without substantive change.

**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.**

**84490. Priority Product Work Plans**

84490. 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 84670).

(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.

1 **Comment.** Section 84490 continues former Section 25253.9 without substantive change.  
2 See Sections 83160 (“department”), 84415 (“consumer product”).

3 Article 4. Green Ribbon Science Panel

4 **84500. Establishment of panel**

5 84500. (a) In implementing this chapter, the department shall establish a Green  
6 Ribbon Science Panel. The panel shall be composed of members whose expertise  
7 shall encompass all of the following disciplines:

- 8 (1) Chemistry.
- 9 (2) Chemical engineering.
- 10 (3) Environmental law.
- 11 (4) Toxicology.
- 12 (5) Public policy.
- 13 (6) Pollution prevention.
- 14 (7) Cleaner production methods.
- 15 (8) Environmental health.
- 16 (9) Public health.
- 17 (10) Risk analysis.
- 18 (11) Materials science.
- 19 (12) Nanotechnology.
- 20 (13) Chemical synthesis.
- 21 (14) Research.
- 22 (15) Maternal and child health.

23 (b) The department shall appoint all members to the panel on or before July 1,  
24 2009.

25 (c) The department shall appoint the members for staggered three-year terms, and  
26 may reappoint a member for additional terms, without limitation.

27 (d) The department shall provide for staff and administrative support to the panel.

28 **Comment.** Subdivision (a) of Section 84500 continues former Section 25254(a) without  
29 substantive change.

30 Subdivision (b) continues the first sentence of former Section 25254(b) without substantive  
31 change.

32 Subdivision (c) continues the second sentence of former Section 25254(b) without substantive  
33 change.

34 Subdivision (d) continues the second sentence of former Section 25254(c) without substantive  
35 change.

36 See Sections 83160 (“department”), 84430 (“panel”).

37 **Note.** Section 25254(b) (which would be continued by proposed Section 84500(b)) requires that  
38 all members of the Green Ribbon Science Panel be appointed by July 1, 2009. It is unclear whether  
39 this required appointment has occurred (and, if so, whether this provision is now obsolete).

40 **Comment on this issue is welcome.**

**84505. Meetings**

84505. (a) The panel shall meet as often as the department deems necessary, with consideration of available resources, but not less than twice each year.

(b) The panel meetings shall be open to the public and are subject 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.** Subdivision (a) of Section 84505 continues the first sentence of former Section 25254(c) without substantive change.

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

See Sections 60610 (“department”), 84430 (“panel”).

**84510. Authorized action by panel**

84510. 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 84510 continues former Section 25255 without substantive change.

See Sections 60610 (“department”), 84415 (“consumer product”), 84440 (“council”), 84430 (“panel”).

**Article 5. Regulations Identifying and Prioritizing Chemicals of Concern****84525. Adoption of regulations**

84525. (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 84595).

(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 84525 continues the first two sentences of former Section 25252(a) without substantive change.

See Sections 83160 (“department”), 84415 (“consumer product”), 84425 (“office”).

#### **84530. Identification and prioritization process**

84530. 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 84530 continues the third sentence of former Section 25252(a) without substantive change.

See Section 84415 (“consumer product”).

#### **84535. Development of evaluation criteria**

84535. (a) In adopting regulations pursuant to this article, the department shall develop criteria by which chemicals and their alternatives may be evaluated.

(b) These criteria shall include, but not be limited to, the traits, characteristics, and endpoints that are referenced in Article 8 (commencing with Section 84630).

**Comment.** Section 84535 continues former Section 25252(b)(1) without substantive change.

See Section 83160 (“department”).

#### **84540. Reference and use of information from other sources**

84540. (a) In adopting regulations pursuant to this article, the department shall reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritization processes, so as to leverage the work and costs already incurred by those entities and to minimize costs and maximize benefits for the state’s economy.

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

**Comment.** Section 84540 continues former Section 25252(b)(2) and (b)(3) without substantive change.

See Section 83160 (“department”).

### **Article 6. Regulations Evaluating Chemicals of Concern**

#### **84555. Adoption of regulations**

84555. (a) On or before January 1, 2011, the department shall adopt regulations pursuant to this article that establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, in

accordance with the review process specified in Article 9 (commencing with Section 84670).

(b) The department shall adopt the regulations in consultation with 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 84555 continues former Section 25253(a)(1) without substantive change. See Sections 83160 (“department”), 84415 (“consumer product”).

#### **84560. Process for evaluation**

84560. The regulations adopted pursuant to this article shall establish a process 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 84560 continues former Section 25253(a)(2) without substantive change. See Sections 83175 (“disposal”), 83395 (“waste”).

**Note.** Section 25253(a)(2) is restated by proposed Section 84560 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.**

#### 84565. Use of tools

84565. (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 84565 continues former Section 25253(c) without substantive change. See Sections 83160 (“department”), 84415 (“consumer product”), 84435 (“product manufacturers”).

**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.**

#### 84570. Range of regulatory responses

84570. 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 84570 continues former Section 25253(b) without substantive change.

See Sections 83160 (“department”), 83175 (“disposal”), 84415 (“consumer product”).

#### **84575. Reliance on studies or evaluations in lieu of alternatives analysis**

84575. (a) In lieu of requiring an analysis of alternatives, as specified in Sections 84555, 84560, and 84570, the department may instead rely on all or part of one or more applicable publicly available studies or evaluations of alternatives to the chemical of concern under consideration in a consumer product, in existence at the time of consideration, and may proceed directly to a regulatory response.

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

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

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

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

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

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

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

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

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

**Comment.** Section 84575 continues former Section 25253(d) without substantive change.

See Sections 83160 (“department”), 84415 (“consumer product”), 84435 (“product manufacturers”).

#### **84580. Public involvement**

84580. (a) The department shall amend Sections 69504 and 69504.1 of Title 22 of the California Code of Regulations to allow a person to petition the department for a regulatory response pursuant to Section 84575.

(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 84580 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 83160 (“department”), 83295 (“person”).

### **Article 7. Multimedia Life Cycle Evaluation**

#### **84595. “Multimedia life cycle evaluation”**

84595. 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 84595 continues former Section 25252.5(g) without substantive change.

See Sections 83175 (“disposal”), 84415 (“consumer product”).

#### **84600. Preparation of evaluation**

84600. (a) Except as provided in subdivision (c), the department, in adopting the regulations pursuant to Article 5 (commencing with Section 84525) and Article 6 (commencing with Section 84555), 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 84525) and Article 6 (commencing with Section 84555) 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 84600 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 83160 (“department”), 83175 (“disposal”), 84415 (“consumer product”), 84440 (“council”), 84595 (“multimedia life cycle evaluation”).

#### **84605. Basis of evaluation**

84605. 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 84605 restates former Section 25252.5(b) without substantive change.

See Sections 83160 (“department”), 83295 (“person”), 83175 (“disposal”), 84595 (“multimedia life cycle evaluation”).

**Note.** The introduction to Section 25252.5(b) is restated by proposed Section 84605 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.**

**84610. Review by council**

84610. (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 84610 restates former Section 25252.5(c) without substantive change.

See Sections 83160 (“department”), 84440 (“council”), 84595 (“multimedia life cycle evaluation”).

**Note.** The first sentence of Section 25252.5(c) is restated by proposed Section 84610(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.**

**84615. Significant adverse impact determination**

84615. 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 84615 continues former Section 25252.5(d) without substantive change.

See Sections 83160 (“department”), 84440 (“council”).

**Article 8. Toxics Information Clearinghouse**

**84630. Establishment of clearinghouse**

84630. 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 84630 continues the first sentence of former Section 25256 without substantive change.

See Section 83160 (“department”).

**84635. Data to be initially included in clearinghouse**

84635. (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 84635 continues former Section 25256.1 without substantive change.

See Sections 83160 (“department”), 84410 (“clearinghouse”), 84425 (“office”), 84630 (“clearinghouse”).

**84640. Operation of clearinghouse**

84640. (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 84640 continues former Section 25256.2 without substantive change.

See Sections 83160 (“department”), 84410 (“clearinghouse”).

**84645. Department consultation with other governmental entities**

84645. 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 84645 continues former Section 25256.3 without substantive change.

See Sections 83160 (“department”), 84410 (“clearinghouse”).

**84650. Accessibility to the public**

84650. The department shall make the clearinghouse accessible to the public through a single internet web portal.

**Comment.** Section 84650 continues the first part of the second sentence of former Section 25256 without substantive change.

See Sections 83160 (“department”), 84410 (“clearinghouse”).

**84655. Operational cost**

84655. The department shall, to the maximum extent possible, operate the clearinghouse at the least possible cost to the state.

**Comment.** Section 84655 continues the second part of the second sentence of former Section 25256 without substantive change.

1 See Sections 83160 (“department”), 84410 (“clearinghouse”).

2 Article 9. Department Requests for Information

3 **84670. Request for information from product manufacturers**

4 84670. (a) The department may issue a formal request for information from  
5 product manufacturers.

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

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

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

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

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

16 **Comment.** Subdivision (a) of Section 84670 continues the first sentence of former Section  
17 25253.7(a)(1) without substantive change.

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

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

22 See Sections 83160 (“department”), 84435 (“product manufacturer”).

23 **84675. Response by product manufacturer**

24 84675. (a) A product manufacturer shall provide to the department data and  
25 information on the ingredients and use of a consumer product upon the department’s  
26 request within the time specified in Section 84690.

27 (b) If the product manufacturer certifies in writing that it does not have access to  
28 information requested pursuant to Section 84670, in whole or in part, and that it has  
29 attempted to, but cannot, obtain that information from one or more suppliers or  
30 chemical manufacturers, the product manufacturer shall provide the identity and  
31 contact information of those suppliers or chemical manufacturers to the department.

32 (c) To the extent that the product manufacturer satisfies the requirements of  
33 subdivision (b), the product manufacturer shall be considered to be in compliance  
34 with the requirement to provide the data and information specified in Section 84670,  
35 with respect to the information that the product manufacturer has attempted to  
36 obtain from the supplier or chemical manufacturer, and shall be absolved of liability  
37 for violating this article as it pertains to the provision of that information.

38 **Comment.** Subdivision (a) of Section 84675 continues the third sentence of former Section  
39 25253.7(a)(1) without substantive change.

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

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

See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84415 (“consumer product”), 84435 (“product manufacturer”).

**84680. Request for information from supplier or chemical manufacturer**

84680. (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 84675 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 84670.

(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 84700, to the extent that it fails to comply with an information request, pursuant to subdivisions (b) or (c) of Section 84675, in its entirety.

**Comment.** Section 84680 continues former Section 25253.7(a)(2)(C) without substantive change.

See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84435 (“product manufacturer”).

**Note.** The last sentence of Section 25253.7(a)(2)(C) (which would be continued by proposed Section 84680(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 84675, 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.**

**84685. Request for information for category in Priority Product Work Plan**

84685. The department may seek data and information pursuant to Sections 84670, 84675, and 84680 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 84685 continues former Section 25253.7(a)(3) without substantive change. See Section 83160 (“department”).

**84690. Allowed time for response to request**

84690. (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 84690 continues former Section 25253.7(a)(4) without substantive change. See Section 83160 (“department”).

#### **84695. Assertion of trade secret claims**

84695. 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 84720).

**Comment.** Section 84695 continues former Section 25253.7(a)(5) without substantive change. See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84435 (“product manufacturer”).

#### **84700. Penalties for noncompliance**

84700. (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 84680.

**Comment.** Section 84700 continues former Section 25253.7(b) without substantive change. See Sections 83160 (“department”), 83295 (“person”).

### **Article 10. Trade Secrets**

#### **84720. Claim of trade secret**

84720. (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 84730, 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 84720 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 83160 (“department”), 83295 (“person”).

**Note.** In the second sentence of Section 25257(a) (continued by proposed Section 84720(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.**

#### **84725. Duty of department employees**

84725. 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 84725 continues the second sentence of former Section 25257(b) without substantive change.

See Section 83160 (“department”).

#### **84730. Request for release of information claimed to be trade secret**

84730. (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 84730 continues former Section 25257(d) without substantive change. See Sections 83160 (“department”), 83295 (“person”).

**Note.** Two aspects of the text of Section 25257(d)(3) (which would be continued by proposed Section 84730(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.**

#### **84735. Exchange of information between public agencies**

84735. 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 84735 continues the first sentence of former Section 25257(b) without substantive change.

#### **84740. Refusal to disclose information to department**

84740. 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 84740 continues the first sentence of former Section 25257(e) without substantive change.

See Section 83160 (“department”), 83295 (“person”).

#### **84745. Application of article to hazardous trait submissions**

84745. This article does not apply to hazardous trait submissions for chemicals and chemical ingredients pursuant to this chapter.

**Comment.** Section 84745 continues the first sentence of former Section 25257(f) without substantive change.

See Section 83160 (“department”).

### **Article 11. Healthy Nail Salon Recognition Programs**

#### **84765. Publication of guidelines**

84765. 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 84765 continues former Section 25257.2(a) without substantive change.

See Section 83160 (“department”).

**84770. Content of guidelines**

84770. The guidelines for an HNSR program adopted pursuant to Section 84765 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 84770 continues former Section 25257.2(b) without substantive change. See Section 83160 (“department”).

**84775. Criteria for cities and counties adopting program**

84775. (a) The guidelines adopted pursuant to Section 84765 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 84775 continues former Section 25257.2(c) without substantive change. See Section 83100 (“business”).

#### 84780. Consultation with other agencies

84780. In developing guidelines pursuant to Section 84765, 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 84780 continues former Section 25257.2(d) without substantive change. See Section 83160 (“department”).

#### 84785. Promotion of guidelines

84785. In collaboration with existing healthy nail salon programs, the department shall promote the HNSR guidelines developed pursuant to Section 84765 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 84785 restates former Section 25257.2(e) without substantive change. See Section 60610 (“department”).

**Note.** Section 25257.2(e)(3) is restated by proposed Section 84785(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.**

#### **84790. Outreach**

84790. The department may prioritize its outreach to those counties that have the greatest number of nail salons.

**Comment.** Section 84790 continues former Section 25257.2(f) without substantive change. See Section 83160 (“department”).

#### **84795. Violation of regulation by salon**

84795. (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 84795 restates former Section 25257.2(g) without substantive change.

#### **84800. Local rules and ordinances**

84800. This article does not prevent the adoption or enforcement of any local rules or ordinances.

**Comment.** Section 84800 continues former Section 25257.2(h) without substantive change.

## **CHAPTER 2. POLLUTION PREVENTION AND HAZARDOUS WASTE SOURCE REDUCTION AND MANAGEMENT REVIEW ACT**

### **Article 1. Preliminary Provisions**

#### **§ 84850. Short title**

84850. This chapter shall be known and may be cited as the Pollution Prevention and Hazardous Waste Source Reduction and Management Review Act.

**Comment.** Section 84850 continues former Section 25244.12 without substantive change.

#### **§ 84855. Legislative findings and declarations**

84855. The Legislature finds and declares as follows:

(a) Existing law requires the department and the State Water Resources Control Board to promote the reduction of generated hazardous waste. This policy, in combination with hazardous waste land disposal bans, requires the rapid development of new programs and incentives for achieving the goal of optimal minimization of the generation of hazardous wastes. Substantial improvements and

1 additions to the state's hazardous waste reduction program are required to be made  
2 if these goals are to be achieved.

3 (b) Hazardous waste source reduction provides substantial benefits to the state's  
4 economy by maximizing use of materials, avoiding generation of waste materials,  
5 improving business efficiency, enhancing revenues of companies that provide  
6 products and services in the state, increasing the economic competitiveness of  
7 businesses located in the state, and protecting the state's precious and valuable  
8 natural resources.

9 (c) It is the intent of the Legislature to expand the state's pollution prevention  
10 activities beyond those directly associated with source reduction evaluation reviews  
11 and plans. The expanded program, which is intended to accelerate pollution  
12 prevention, shall include programs to promote implementation of pollution  
13 prevention measures using education, outreach, and other effective voluntary  
14 techniques demonstrated in California or other states.

15 (d) It is the intent of the Legislature for the department to maximize the use of its  
16 available resources in implementing the pollution prevention program through  
17 cooperation with other entities, including, but not limited to, CUPAs, small business  
18 development corporations, business environmental assistance centers, and other  
19 regional and local government environmental programs. To the extent feasible, the  
20 department shall utilize cooperative programs with entities that routinely contact  
21 small business to expand its support of small business pollution prevention  
22 activities.

23 (e) It is the goal of this chapter to do all of the following:

24 (1) Reduce the generation of hazardous waste.

25 (2) Reduce the release into the environment of chemical contaminants that have  
26 adverse and serious health or environmental effects.

27 (3) Document hazardous waste management information and make that  
28 information available to state and local government.

29 (f) It is the intent of this chapter to promote the reduction of hazardous waste at  
30 its source, and wherever source reduction is not feasible or practicable, to encourage  
31 recycling. Where it is not feasible to reduce or recycle hazardous waste, the waste  
32 should be treated in an environmentally safe manner to minimize the present and  
33 future threat to health and the environment.

34 (g) It is the intent of the Legislature not to preclude the regulation of  
35 environmentally harmful releases to all media, including air, land, surface water,  
36 and groundwater, and to encourage and promote the reduction of these releases to  
37 air, land, surface water, and groundwater.

38 (h) It is the intent of the Legislature to encourage all state departments and  
39 agencies, especially the State Water Resources Control Board, the California  
40 regional water quality control boards, the State Air Resources Board, the air  
41 pollution control districts, and the air quality management districts, to promote the  
42 reduction of environmentally harmful releases to all media.

43 **Comment.** Section 84855 continues former Section 25244.13 without substantive change.

See Sections 84895 (“business”), 83110 (“CUPA”), 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83260 (“natural resources”), 83325 (“recycling”), 83330 (“release”), 84915 (“pollution prevention”), 83395 (“waste”).

#### § 84860. Application of chapter

84860. (a) This chapter establishes a program for pollution prevention, including, but not limited to, hazardous waste source reduction.

(b) The department shall coordinate the activities of all state agencies with responsibilities and duties relating to hazardous waste and shall promote coordinated efforts to encourage the reduction of hazardous waste. Coordination between the program and other relevant state agencies and programs shall, to the fullest extent possible, include joint planning processes and joint research and studies.

(c) The department shall adopt regulations to carry out the requirements imposed upon generators pursuant to this chapter.

(d)(1) Except as provided in paragraph (3), **Sections 25244.19, 25244.20, and 25244.21** apply only to generators who, by site, routinely generate, through ongoing processes and operations, more than 12,000 kilograms of hazardous waste in a calendar year, or more than 12 kilograms of extremely hazardous waste in a calendar year.

(2) The department shall adopt regulations to establish procedures for exempting generators from the requirements of this chapter where the department determines that no source reduction opportunities exist for the generator.

(3) Notwithstanding paragraph (1), **Sections 25244.19, 25244.20, and 25244.21** do not apply to any generator whose hazardous waste generating activity consists solely of receiving offsite hazardous wastes and generating residuals from the processing of those hazardous wastes.

**Comment.** Section 84860 continues former Section 25244.15 without substantive change.

See Sections 83160 (“department”), 83195 (“extremely hazardous waste”), 83210 (“hazardous waste”), 83300 (“processing”), 84915 (“pollution prevention”).

**Note.** Existing Section 25244.15, as well as several other sections in this proposed chapter, frequently refer to the undefined term “generators.”

**Should a statutory definition of this term be added to this proposed chapter, and if so, what definition should be added?**

#### § 84865. Funding contingency

63695. (a) The department’s duties to implement this chapter are contingent upon, and limited to, the availability of funding.

(b) Subdivision (a) does not eliminate a requirement of this chapter that is imposed upon a generator.

**Comment.** Section 84865 continues former Section 25244.13.1 without substantive change.

See Section 83160 (“department”).



Article 2. Definitions

§ 84880. Definitions

84880. For purposes of this chapter, the definitions in this article shall apply.

**Comment.** Section 84880 continues the introductory clause of former Section 25244.14 without substantive change.

§ 84885. “Advisory Committee”

84885. “Advisory committee” means the California Pollution Prevention Advisory Committee established pursuant to **Section 25244.15.1**.

**Comment.** Section 84885 continues former Section 25244.14(a) without substantive change.

§ 84890. “Appropriate local agency”

84890. “Appropriate local agency” means a county, city, or regional association that has adopted a hazardous waste management plan pursuant to **Article 3.5 (commencing with Section 25135)**.

**Comment.** Section 84890 continues former Section 25244.14(b) without substantive change.  
See Section 83220 (“hazardous waste management”).

§ 84895. “Business”

84895. “Business” has the same meaning as defined in **Section 25501**.

**Comment.** Section 84895 continues former Section 25244.14(c) without substantive change.

§ 84900. “Hazardous waste management approaches”

84900. “Hazardous waste management approaches” means approaches, methods, and techniques of managing the generation and handling of hazardous waste, including source reduction, recycling, and the treatment of hazardous waste.

**Comment.** Section 84900 continues former Section 25244.14(d) without substantive change.

See Sections 83205 (“handling”), 83210 (“hazardous waste”), 83220 (“hazardous waste management”), 83325 (“recycling”), 83370 (“treatment”), 84925 (“source reduction”).

§ 84905. “Hazardous waste management performance report” or “report”

84905. “Hazardous waste management performance report” or “report” means the report required by **subdivision (b) of Section 25244.20** to document and evaluate the results of hazardous waste management practices.

**Comment.** Section 84905 continues former Section 25244.14(e) without substantive change.

See Section 83220 (“hazardous waste management”).

§ 84910. “NAICS Code”

84910. “NAICS Code” means the identification number assigned to specific types of businesses by the North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

**Comment.** Section 84910 continues former Section 25244.14(f) without substantive change.

See Section 84895 (“business”).

1   **§ 84915. “Pollution prevention”**

2       84915. “Pollution prevention” means the reduction of chemical sources that have  
3       adverse impacts on public health and the environment, including, but not limited to,  
4       source reduction.

5       **Comment.** Section 84915 continues former Section 25244.14(g) without substantive change.  
6       See Section 84925 (“source reduction”).

7   **§ 84920. “SIC Code”**

8       84920. “SIC Code” means the identification number assigned to specific types of  
9       businesses by the Standard Industrial Classification (SIC) system established by the  
10      United States Department of Commerce.

11      **Comment.** Section 84920 continues former Section 25244.14(h) without substantive change.  
12      See Section 84895 (“business”).

13   **§ 84925. “Source reduction”**

14      84925. (a) “Source reduction” means either of the following:

15          (1) An action that causes a net reduction in the generation of hazardous waste.

16          (2) An action taken before the hazardous waste is generated that results in a  
17          lessening of the properties that cause it to be classified as a hazardous waste.

18      (b) “Source reduction” includes, but is not limited to, each of the following:

19          (1) “Input change,” which means a change in raw materials or feedstocks used in  
20          a production process or operation so as to reduce, avoid, or eliminate the generation  
21          of hazardous waste.

22          (2) “Operational improvement,” which means improved site management so as  
23          to reduce, avoid, or eliminate the generation of hazardous waste.

24          (3) “Production process change,” which means a change in a process, method, or  
25          technique that is used to produce a product or a desired result, including the return  
26          of materials or their components, for reuse within the existing processes or  
27          operations, so as to reduce, avoid, or eliminate the generation of hazardous waste.

28          (4) “Product reformulation,” which means changes in design, composition, or  
29          specifications of end products, including product substitution, so as to reduce, avoid,  
30          or eliminate the generation of hazardous waste.

31      (c) “Source reduction” does not include any of the following:

32          (1) Actions taken after a hazardous waste is generated.

33          (2) Actions that merely concentrate the constituents of a hazardous waste to  
34          reduce its volume or that dilute the hazardous waste to reduce its hazardous  
35          characteristics.

36          (3) Actions that merely shift hazardous wastes from one environmental medium  
37          to another environmental medium.

38          (4) Treatment.

39      **Comment.** Section 84925 continues former Section 25244.14(i) without substantive change.  
40      See Section 83210 (“hazardous waste”), 83370 (“treatment”).

1 **§ 84930. “Source reduction evaluation review and plan” or “review and plan”**

2 84930. “Source reduction evaluation review and plan” or “review and plan”  
3 means a review conducted by the generator of the processes, operations, and  
4 procedures in use at a generator’s site, in accordance with the format established by  
5 the department pursuant to **subdivision (a) of Section 25244.16**, and that does both  
6 of the following:

7 (a) Determines any alternatives to, or modifications of, the generator’s processes,  
8 operations, and procedures that may be implemented to reduce the amount of  
9 hazardous waste generated.

10 (b) Includes a plan to document and implement source reduction measures for the  
11 hazardous wastes specified in subdivision (a) that are technically feasible and  
12 economically practicable for the generator, including a reasonable implementation  
13 schedule.

14 **Comment.** Section 84930 continues former Section 25244.14(j) without substantive change.  
15 See Sections 83160 (“department”), 83210 (“hazardous waste”), 84925 (“source reduction”).

16 **§ 84935. Generally defined terms**

17 84935. The following terms have the same meanings as defined in **Article 2**  
18 **(commencing with Section 25110)**:

19 (a) “Hazardous waste.”

20 (b) “Person.”

21 (c) “Recycle.”

22 (d) “Treatment.”

23 **Comment.** Section 84935 restates former Section 25244.14(k) without substantive change.  
24 See Sections 83210 (“hazardous waste”), 83295 (“person”), 83370 (“treatment”).

25 **Note.** Proposed Section 84935 would restate existing Section 25244.14(k) for clarity. The  
26 existing subdivision reads as follows:

27 “Hazardous waste,” “person,” “recycle,” and “treatment” have the same meanings as defined  
28 in Article 2 (commencing with Section 25110).

29 **Absent comment to the contrary, the Commission will presume this proposed restatement**  
30 **does not substantively change the meaning of the existing subdivision.**

31 **Article 3. California Pollution Prevention Advisory Committee**

32 **§ 84950. Creation and membership**

33 84950. The California Pollution Prevention Advisory Committee is hereby  
34 created and consists of the following members:

35 (a) The Executive Director of the State Air Resources Board, as an ex officio  
36 member.

37 (b) The Executive Director of the State Water Resources Control Board, as an ex  
38 officio member.

39 (c) The Director of Toxic Substances Control, as an ex officio member.

40 (d) The Director of Resources Recycling and Recovery, as an ex officio member.

(e) The Chairperson of the California Environmental Policy Council established pursuant to Section 71017 of the Public Resources Code, as an ex officio member.

(f) The Director of Pesticide Regulation, as an ex officio member.

(g) Ten public members with experience in pollution prevention as appointed by the department, which shall include all of the following:

(1) Two representatives of local governments from different regions of the state.

(2) One representative of a publicly owned treatment works.

(3) Two representatives of industry.

(4) One representative of small business.

(5) One representative of organized labor.

(6) Two representatives of statewide environmental advocacy organizations.

(7) One representative of a statewide public health advocacy organization.

(h) The department may appoint up to two additional public members with experience in pollution prevention and detailed knowledge of one of the priority categories of businesses selected in accordance with **Section 25244.17.1**.

**Comment.** Section 84950 continues former Section 25244.15.1(a) without substantive change. See Sections 84895 (“business”), 83160 (“department”), 83370 (“treatment”).

#### **§ 84955. Chairperson**

84955. The advisory committee shall select one member to serve as chairperson.

**Comment.** Section 84955 continues former Section 25244.15.1(b) without substantive change. See Section 84885 (“advisory committee”).

#### **§ 84960. Compensation and expense reimbursement**

84960. The members of the advisory committee shall serve without compensation, but each member, other than officials of the state, upon request, shall be reimbursed for all reasonable expenses incurred in the performance of their duties, as authorized by the department.

**Comment.** Section 84960 continues former Section 25244.15.1(c) without substantive change. See Sections Section 84885 (“advisory committee”), 83160 (“department”).

#### **§ 84965. Public forum**

84965. When convened by the department, the advisory committee shall provide a public forum for discussion and deliberation on matters pertaining to the implementation of this division.

**Comment.** Section 84965 continues former Section 25244.15.1(d) without substantive change. See Sections Section 84885 (“advisory committee”), 83160 (“department”).

#### **§ 84970. Committee responsibilities**

84970. The advisory committee’s responsibilities shall include, but not be limited to, the following:

(1) Reviewing and providing consultation and guidance in the preparation of the work plan authorized by **Section 25244.22**.

(2) Evaluating the performance and progress of the department’s pollution prevention program.

(3) Making recommendations to the department concerning program activities and funding priorities, and legislative changes, if needed.

(4) Making recommendations to the department concerning strategies to more effectively align its pollution prevention program with the goals of the department’s green chemistry program, including the implementation of **Article 14 (commencing with Section 25251)**.

**Comment.** Section 84970 continues former Section 25244.15.1(e) without substantive change. See Sections 84885 (“advisory committee”), 83160 (“department”).

#### Article 4. Publication of Prepared Material

##### **§ 84985. Draft work plan**

84985. (a) The department may, on a periodic basis, prepare and make available for public review a draft work plan for the department’s operations and activities in carrying out this chapter.

(b) The department shall prepare the work plan in consultation with the advisory committee and with other interested parties, including local government, industry, labor, health, and environmental organizations.

(c) The department shall hold a public meeting of the advisory committee to discuss the draft work plan before finalizing the work plan.

(d) The work plan shall include an outline of the department’s proposed operations and activities under this chapter.

(e) The department shall use the data summary analysis prepared pursuant to Section 84990 to develop criteria for the selection of targets for pollution prevention efforts.

(f) When identifying activities for inclusion in the work plan, the department shall consider potential benefits to human health and the environment, available resources, feasibility of applying pollution prevention techniques, and availability of related resources from other entities, such as other states, the federal government, local governments, and other organizations.

**Comment.** Section 84985 continues former Section 25244.22(a) without substantive change. See Sections Section 84885 (“advisory committee”), 83160 (“department”).

##### **§ 84990. Publication of data summary analysis**

84990. (a) The department may periodically prepare, and make available to the public on its Internet Web site, a summary analysis of readily available data on the state’s hazardous waste generation and management patterns.

(b) The analysis may include information from various data sources including hazardous waste manifests, biennial generator reports, and United States Environmental Protection Agency Toxics Release Inventory reports.

(c) The department shall estimate the quantities of hazardous waste generated in the state, by hazardous waste stream, the amounts of hazardous waste generated in the state, by industry SIC or NAICS Code, and the amounts of hazardous waste that state generators sent offsite for management, by management method.

**Comment.** Section 84990 continues former Section 25244.22(b) without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”), 83250 (“manifest”), 84910 (“NAICS Code”).

**Note.** Existing Section 25244.22(b), which would be continued by proposed Section 84990, indicates in its first sentence, which would be continued by subdivision (a) of proposed Section 84990, that the department “may” prepare a summary analysis as described in that first sentence.

Section 25244.22(b) then provides in its second sentence, which would be continued by subdivision (b) of proposed Section 84990, that the analysis referenced in the first sentence of the section “may” include information specified in the second sentence.

Finally, Section 25244.22(b) provides in its third sentence, which would be continued by subdivision (c) of proposed Section 84990, that the department “shall” estimate quantities of various categories of hazardous waste by various identified methods.

This phrasing of Section 25244.22(b) raises the following questions:

1. Is the use of the word “may” in the second sentence of Section 25244.22(b) intended to be a *limitation* on what may be included in the summary analysis described in the first sentence of the section, or simply a permissive and non-exclusive authorization of what may be included?

2. Is the different use of the word “shall” in the third sentence of Section 25244.22(b) intended to *require* the department to include quantities of hazardous waste as described in the sentence, in any summary analysis prepared pursuant to Section 25244.22(b), or is the word “shall” intended only to compel the department to use the methods identified for measuring hazardous waste, *if* the department includes estimates of hazardous waste in a prepared analysis?

**The Commission welcomes comment on these questions.**

## Article 5. Pollution Prevention

### § 85000. Technical and Research Assistance Programs

85000. (a) The department may establish a technical and research assistance program to assist businesses in identifying and applying methods of pollution prevention.

(b) The program shall emphasize the following subjects:

(1) Assistance to smaller businesses that have inadequate technical and financial resources for obtaining information.

(2) Assessing pollution prevention methods.

(3) Developing and applying pollution prevention techniques.

(c) The program may include, but is not limited to, each of the following:

(1) Programs by private or public consultants, including onsite consultation at sites or locations where hazardous waste is generated, to aid those generators requiring assistance in developing and implementing the review and plan, the plan summary, the report, and the report summary required by this chapter.

(2) Seminars, workshops, training programs, and other similar activities to assist businesses to evaluate pollution prevention alternatives and to identify opportunities for pollution prevention.

(3) Assembling, cataloging, and disseminating information about pollution prevention methods, available consultant services, and regulatory requirements.

(4) The identification of a range of generic and specified technical pollution prevention solutions that can be applied by particular types of businesses.

**Comment.** Section 85000 continues former Section 25244.17 without substantive change.

See Sections 84895 (“business”), 83160 (“department”), 83210 (“hazardous waste”), 84930 (“review and plan”).

**Note.** Existing Section 25244.17(a), which would be continued by proposed Section 85000(c)(1), references an undescribed “report” and “report summary.”

**Are these references to a “Hazardous waste management performance report” or “report” defined by existing Section 25244.14(e) (which would be continued by proposed Section 84905)?**

#### § 85005. Implementation of model pollution prevention in priority business categories

85005. (a) The department may establish a technical assistance and outreach program to promote implementation of model pollution prevention measures in priority business categories.

(b) In the work plan described in **Section 25244.22**, the department may, in consultation with the advisory committee, identify priority categories of businesses by SIC or NAICS Code, in compliance with the following requirements:

(1) At least one identified category of businesses shall be a category that consists primarily of small businesses.

(2) At least one identified category of businesses shall be a category that consists primarily of businesses affected by an action taken by the department pursuant to **Article 14 (commencing with Section 25251)**.

(c) For each priority business category identified pursuant to subdivision (b), the department may implement a cooperative pollution prevention technical assistance and outreach program that includes the following elements:

(1) Effective pollution prevention measures for each business category.

(2) The most effective technical assistance and outreach methods to promote implementation of the pollution prevention measures identified in paragraph (1).

(3) Appropriate measures for evaluating the effectiveness of the technical assistance and outreach measures, including quantitative measures when feasible.

**Comment.** Section 85005 continues former Section 25244.17.1 without substantive change.

See Sections 84885 (“advisory committee”), 84895 (“business”), 83160 (“department”), 84910 (“NAICS Code”), 84915 (“pollution prevention”).

## Article 6. Outreach by Department

**§ 85015. Pollution prevention training and resources**

85015. (a) The department may provide pollution prevention training and resources to CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs to enable those entities to provide technical assistance to businesses in identifying and applying methods of pollution prevention.

(b) The activities conducted pursuant to paragraph (a) shall emphasize activities necessary to implement **Sections 25244.17 and 25244.17.1**.

(c) The department may determine, in consultation with the advisory committee, the most effective methods to promote implementation of pollution prevention education programs by CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs, the elements of which may include, but are not limited to, all of the following:

(1) Sponsoring workshops, conferences, technology fairs, and other training events.

(2) Sponsoring regional training groups, such as the regional hazardous waste reduction committees.

(3) Developing and distributing educational materials, such as short descriptions of successful pollution prevention projects and materials explaining how pollution prevention has been used by businesses to achieve compliance with environmental laws enforced by local governments.

(4) Developing site review checklists, training manuals, and technical resource manuals and using those resources to train CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs.

(5) Preparing and distributing resource lists such as lists of vendors, consultants, or providers of financial assistance for pollution prevention projects.

(6) Serving as an information clearinghouse to support telephone and onsite consultants with local governments.

**Comment.** Subdivisions (a) and (b) of Section 85015 continue former Section 25244.17.2(a) without substantive change.

Subdivision (c) continues former Section 25244.17.2(d) without substantive change.

See Sections 84885 (“advisory committee”), 84895 (“business”), 83110 (“CUPA”), 83160 (“department”), 84915 (“pollution prevention”).

**§ 85020. California Green Business Program**

85020. (a) As part of implementing the program authorized by this article, the department may develop a California Green Business Program would voluntarily certify small businesses that adopt environmentally preferable business practices, including, but not limited to, increased energy efficiency, reduced greenhouse gas emissions, promotion of water conservation, and reduced waste generation, and that



1 provides support and assistance to programs operated by local governments to meet  
2 the following requirements:

3 (1) The program will be operated by a local government or its designee.

4 (2) The program will adopt industry-specific standards for green business  
5 certification, or its equivalent, in consultation with the other participants in the  
6 California Green Business Program.

7 (3) The program will grant a small business that voluntarily applies to the program  
8 a green business certification or its equivalent, only upon a determination by the  
9 program operator or designee that the business is a small business, as determined by  
10 the program, and complies with the industry-specific standards for green business  
11 certification adopted pursuant to paragraph (2).

12 (4) The program will grant a green business certification, or its equivalent, to  
13 small businesses, as determined by the program, in accordance with all of the  
14 following requirements:

15 (A) Before the program grants green business certification or its equivalent, the  
16 program conducts an evaluation to verify compliance with the appropriate green  
17 business certification standards adopted pursuant to paragraph (2).

18 (B) A green business certification or its equivalent is granted only to an individual  
19 location of a small business.

20 (C) A green business certification or its equivalent is granted to an individual  
21 small business only for a limited time period, and, after the elapse of that time  
22 period, the small business is required to reapply for that certification.

23 (D) Compliance with applicable federal, state, and local environmental laws and  
24 regulations is required as a condition of receiving a green business certification or  
25 its equivalent.

26 (b) The California Green Business Program may also do any or all of the  
27 following:

28 (1) Assist the network of statewide local government programs in implementing  
29 guidelines and structures that establish and promote a level of consistency among  
30 green business programs across the state.

31 (2) Support, through staffing and contracts, the development and maintenance of  
32 a statewide database to register small businesses granted green business  
33 certification, or its equivalent, pursuant to a local government program, and track  
34 measurable pollution reductions and cost savings.

35 (3) Solicit participation of additional local programs and facilitate the startup of  
36 new local programs.

37 (4) Develop technical guidance on pollution prevention measures, conduct  
38 industry studies and pilot projects, and provide policy coordination for the  
39 participating local programs.

40 (5) Collaborate with relevant state agencies that operate small business efficiency  
41 and economic development programs, including, but not limited to, the Department  
42 of Resources Recycling and Recovery, the Public Utilities Commission, the State

Energy Resources Conservation and Development Commission, the State Air Resources Board, and the Department of Water Resources.

**Comment.** Subdivision (a) of Section 85020 combines and restates the first sentence of former Section 25244.17.2(b) and former Section 25244.17.2(c), without substantive change.

Subdivision (b) continues the second sentence of former Section 25244.17.2(b) without substantive change.

See Sections 84895 (“business”), 83160 (“department”) , 84915 (“pollution prevention”).

**Notes. (1)** Proposed Section 85020(a) would combine and restate the first sentence of existing Section 25244.17.2(b), and 25244.17.2(c). That text in the existing section reads as follows:

“(b) As part of implementing the program authorized by this section, the department may develop a California Green Business Program that provides support and assistance to programs operated by local governments to meet the requirement of subdivision (c) and that would voluntarily certify small businesses that adopt environmentally preferable business practices, including, but not limited to, increased energy efficiency, reduced greenhouse gas emissions, promotion of water conservation, and reduced waste generation. [...]”

(c) The department may provide support and assistance to a local government program to enable the program to meet all of the following requirements:

(1) The program will be operated by a local government or its designee.

(2) The program will adopt industry-specific standards for green business certification, or its equivalent, in consultation with the other participants in the California Green Business Program.

(3) The program will grant a small business that voluntarily applies to the program a green business certification or its equivalent, only upon a determination by the program operator or designee that the business is a small business, as determined by the program, and complies with the industry-specific standards for green business certification adopted pursuant to paragraph (2).

(4) The program will grant a green business certification, or its equivalent, to small businesses, as determined by the program, in accordance with all of the following requirements:

(A) Before the program grants green business certification or its equivalent, the program conducts an evaluation to verify compliance with the appropriate green business certification standards adopted pursuant to paragraph (2).

(B) A green business certification or its equivalent is granted only to an individual location of a small business.

(C) A green business certification or its equivalent is granted to an individual small business only for a limited time period, and, after the elapse of that time period, the small business is required to reapply for that certification.

(D) Compliance with applicable federal, state, and local environmental laws and regulations is required as a condition of receiving a green business certification or its equivalent.”

**The Commission welcomes comment on this restatement of existing text in Section 25244.17.2.**

(2) Existing Section 25244.17.2(b), which would be continued in part by proposed Section 85020(a), begins with the phrase “As part of implementing the program authorized by this section, ....”

**The Commission welcomes clarification as to what specific “program” is intended to be referenced by that phrase, and welcomes comment as to whether this reference can be clarified without substantively changing the intended meaning of the phrase.**

(3) Even after this proposed recodification, this section remains quite difficult to parse. Part of that difficulty is attributable to the phrasing of subdivision (a) of the existing section, which does

not make clear whether the California Green Business Program that the department is authorized to develop must satisfy TWO prerequisites — supporting and assisting specified local government programs AND voluntarily certifying specifying small businesses — or whether the program need provide only ONE of those two services.

**The Commission welcomes comment on this question.**

## Article 7. Generator Requirements

### § 85030. Source reduction evaluation review and plan

85030. (a) On or before September 1, 1991, and every four years thereafter, each generator shall conduct a source reduction evaluation review and plan pursuant to subdivision (b).

(b) Except as provided in subdivision (c), the source reduction evaluation review and plan required by subdivision (a) shall be conducted and completed for each site pursuant to the format adopted pursuant to **subdivision (a) of Section 25244.16** and shall include, at a minimum, all of the following:

(1) The name and location of the site.

(2) The SIC Code of the site.

(3) Identification of all routinely generated hazardous waste streams that annually weigh 600 kilograms or more and that result from ongoing processes or operations and exceed 5 percent of the total yearly weight of hazardous waste generated at the site, or, for extremely hazardous waste, that annually weigh 0.6 kilograms or more and exceed 5 percent of the total yearly weight of extremely hazardous waste generated at the site. For purposes of this paragraph, a hazardous waste stream identified pursuant to this paragraph shall also meet one of the following criteria:

(A) It is processed in a wastewater treatment unit that discharges to a publicly owned treatment works or under a national pollutant discharge elimination system (NPDES) permit, as specified in the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1251 and following).

(B) It is not processed in a wastewater treatment unit, and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less the weight of any hazardous waste stream identified in subparagraph (A).

(4) For each hazardous waste stream identified in paragraph (3), the review and plan shall include all of the following information:

(A) An estimate of the quantity of hazardous waste generated.

(B) An evaluation of source reduction approaches available to the generator that are potentially viable. The evaluation shall consider at least all of the following source reduction approaches:

(i) Input change.

(ii) Operational improvement.

(iii) Production process change.

(iv) Product reformulation.

1 (5) A specification of, and a rationale for, the technically feasible and  
2 economically practicable source reduction measures that will be taken by the  
3 generator with respect to each hazardous waste stream identified in paragraph (3).  
4 The review and plan shall fully document any statement explaining the generator's  
5 rationale for rejecting any available source reduction approach identified in  
6 paragraph (4).

7 (6) An evaluation, and, to the extent practicable, a quantification, of the effects of  
8 the chosen source reduction method on emissions and discharges to air, water, or  
9 land.

10 (7) A timetable for making reasonable and measurable progress towards  
11 implementation of the selected source reduction measures specified in paragraph  
12 (5).

13 (8) Certification pursuant to subdivision (d).

14 (9) A generator subject to this chapter shall include in its source reduction  
15 evaluation review and plan four-year numerical goals for reducing the generation of  
16 hazardous waste streams through the approaches provided for in subparagraph (B)  
17 of paragraph (4), based upon its best estimate of what is achievable in that four-year  
18 period.

19 (10) A summary progress report that briefly summarizes and, to the extent  
20 practicable, quantifies, in a manner that is understandable to the general public, the  
21 results of implementing the source reduction methods identified in the generator's  
22 review and plan for each waste stream addressed by the previous plan over the  
23 previous four years. The report shall also include an estimate of the amount of  
24 reduction that the generator anticipates will be achieved by the implementation of  
25 source reduction methods during the period between the preparation of the review  
26 and plan and the preparation of the generator's next review and plan.

27 (c) If a generator owns or operates multiple sites with similar processes,  
28 operations, and waste streams, the generator may prepare a single multisite review  
29 and plan addressing all of these sites.

30 (d) Every review and plan conducted pursuant to this section shall be submitted  
31 by the generator for review and certification by an engineer who is registered as a  
32 professional engineer pursuant to Section 6762 of the Business and Professions  
33 Code and who has demonstrated expertise in hazardous waste management, by an  
34 individual who is responsible for the processes and operations of the site, or by an  
35 environmental assessor who has demonstrated expertise in hazardous waste  
36 management. The engineer, individual, or environmental assessor shall certify the  
37 review and plan only if the review and plan meet all of the following requirements:

38 (1) The review and plan addresses each hazardous waste stream identified  
39 pursuant to paragraph (3) of subdivision (b).

40 (2) The review and plan addresses the source reduction approaches specified in  
41 subparagraph (B) of paragraph (4) of subdivision (b).

42 (3) The review and plan clearly sets forth the measures to be taken with respect to  
43 each hazardous waste stream for which source reduction has been found to be

1 technically feasible and economically practicable, with timetables for making  
 2 reasonable and measurable progress, and properly documents the rationale for  
 3 rejecting available source reduction measures.

4 (4) The review and plan does not merely shift hazardous waste from one  
 5 environmental medium to another environmental medium by increasing emissions  
 6 or discharges to air, water, or land.

7 (e) At the time a review and plan is submitted to the department or the unified  
 8 program agency, the generator shall certify that the generator has implemented, is  
 9 implementing, or will be implementing, the source reduction measures identified in  
 10 the review and plan in accordance with the implementation schedule contained in  
 11 the review and plan. A generator may determine not to implement a measure  
 12 selected in paragraph (5) of subdivision (b) only if the generator determines, upon  
 13 conducting further analysis or due to unexpected circumstances, that the selected  
 14 measure is not technically feasible or economically practicable, or if attempts to  
 15 implement that measure reveal that the measure would result in, or has resulted in,  
 16 any of the following:

17 (1) An increase in the generation of hazardous waste.

18 (2) An increase in the release of hazardous chemicals to other environmental  
 19 media.

20 (3) Adverse impacts on product quality.

21 (4) A significant increase in the risk of an adverse impact to human health or the  
 22 environment.

23 (f) If the generator elects not to implement the review and plan, including, but not  
 24 limited to, a selected measure pursuant to subdivision (e), the generator shall amend  
 25 its review and plan to reflect that election and include in the review and plan proper  
 26 documentation identifying the rationale for that election.

27 **Comment.** Section 85030 continues former Section 25244.19 without substantive change.

28 See Sections 83160 (“department”), 83190 (“environmental assessor”), 83195 (“extremely  
 29 hazardous waste”), 83210 (“hazardous waste”), 83330 (“release”), 83370 (“treatment”), 83375  
 30 (“unified program agency”), (“SIC Code”), 84930 (“review and plan”), 84925 (“source reduction”),  
 31 83395 (“waste”).

32 **Notes. (1)** Several provisions in existing Section 25244.19, which would be continued by  
 33 proposed Section 85030, refer to an unspecified “generator.” One of those existing provisions,  
 34 Section 25244.19(a)(9), which would be continued by proposed Section 85030(a)(9), refers to “[a]  
 35 generator subject to this article.”

36 Another section in the existing article, Section 25244.14, specifies a number of definitions that  
 37 apply for purposes of the article, but the list of definitions does not include the term “generator.”

38 However, the term “generator” *is* defined, expressly for purposes of *another* existing statutory  
 39 article, by existing Section 25205.1(e).

40 **The Commission welcomes comment on two issues relating to the use of the term**  
 41 **“generator” in existing Section 25244.19:**

42 1. Despite apparent statutory language to the contrary, is the definition of the term “generator”  
 43 in existing Section 25205.1(e) meant to define that term as used throughout existing Section  
 44 25244.19?

2. What is the intended meaning of the term “generator subject to this article” in existing Section 25244.19(a)(9)?

(2) Existing Section 25244.19(e), which would be continued by proposed Section 85030(f), begins with the phrase “At the time a review and plan is submitted to the department or the unified program agency,....”

**The Commission welcomes comment on whether there is a statutory provision, which could be cross-referenced in the recodification of Section 25244.29(e), specifying when the referenced review and plan is required to be submitted to the department or unified program agency.**

#### **§ 85035. Hazardous waste management performance report**

85035. (a) On or before September 1, 1991, and every four years thereafter, each generator shall prepare a hazardous waste management performance report documenting hazardous waste management approaches implemented by the generator.

(b) Except as provided in subdivision (d), the hazardous waste management performance report required by subdivision (a) shall be prepared for each site in accordance with the format adopted pursuant to **subdivision (a) of Section 25244.16** and shall include all of the following:

(1) The name and location of the site.

(2) The SIC Code for the site.

(3) All of the following information for each waste stream identified pursuant to **paragraph (3) of subdivision (b) of Section 25244.19**:

(A) An estimate of the quantity of hazardous waste generated and the quantity of hazardous waste managed, both onsite and offsite, during the current reporting year and the baseline year, as specified in subdivision (c).

(B) An abstract for each source reduction, recycling, or treatment technology implemented from the baseline year through the current reporting year, if the reporting year is different from the baseline year.

(C) A description of factors during the current reporting year that have affected hazardous waste generation and onsite and offsite hazardous waste management since the baseline year, including, but not limited to, any of the following:

(i) Changes in business activity.

(ii) Changes in waste classification.

(iii) Natural phenomena.

(iv) Other factors that have affected either the quantity of hazardous waste generated or onsite and offsite hazardous waste management requirements.

(4) The certification of the report pursuant to subdivision (e).

(c) For purposes of subdivision (b), the following definitions apply:

(1) The current reporting year is the calendar year immediately preceding the year in which the report is to be prepared.

(2) The baseline year is either of the following, whichever is applicable:

(A) For the initial report, the baseline year is the calendar year selected by the generator for which substantial hazardous waste generation, or onsite or offsite management, data is available prior to 1991.

(B) For all subsequent reports, the baseline year is the current reporting year of the immediately preceding report.

(d) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite report addressing all of these sites.

(e) Every report completed pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the report only if the report identifies factors that affect the generation and onsite and offsite management of hazardous wastes and summarizes the effect of those factors on the generation and onsite and offsite management of hazardous wastes.

**Comment.** Section 85035 continues former Section 25244.20 without substantive change.

Sections 84895 (“business”), 83190 (“environmental assessor”), 83210 (“hazardous waste”), 83325 (“recycling”), 83370 (“treatment”), 84900 (“hazardous waste management approaches”), 84905 (“hazardous waste management performance report”), 84920 (“SIC Code”), 84925 (“source reduction”), 83395 (“waste”).

#### § 85040. Generator retention of review and plan and report

85040. (a) Every generator shall retain the original of the current review and plan and report, shall maintain a copy of the current review and plan and report at each site, or, for a multisite review and plan or report, at a central location, and upon request, shall make it available to any authorized representative of the department or the unified program agency conducting an inspection pursuant to **Section 25185**.

(b) If a generator fails, within five days, to make available to the inspector the review and plan or report, the department, the unified program agency, or any authorized representative of the department, or of the unified program agency, conducting an inspection pursuant to **Section 25185**, shall, if appropriate, impose a civil penalty pursuant to **Section 25187**, in an amount not to exceed one thousand dollars (\$1,000) for each day the violation of this chapter continues, notwithstanding **Section 25189.2**.

(c) If a generator fails to respond to a request for a copy of its review and plan or report made by the department or a unified program agency pursuant to **subdivision (a) of Section 25244.18**, or by a local agency pursuant to **subdivision (e) of Section 25244.18**, within 30 days from the date of the request, the department or unified program agency shall, if appropriate, assess a civil penalty pursuant to **Section 25187**, in an amount not to exceed one thousand dollars (\$1,000) for each day the violation of this chapter continues, notwithstanding **Section 25189.2**.

1 **Comment.** Section 85040 continues former Section 25244.21(a) and (b) without substantive  
2 change.

3 See Sections 83160 (“department”), 83375 (“unified program agency”), 84905 (“report”), 84930  
4 (“review and plan”).

5 **§ 85045. Evaluation of generator review and plan or report**

6 85045. (a) The department or the unified program agency may request from any  
7 generator, and the generator shall provide within 30 days from the date of the  
8 request, a copy of the generator’s review and plan or report conducted and  
9 completed pursuant to **Section 25244.19 or 25244.20**.

10 (b) The department or the unified program agency may evaluate any of those  
11 documents submitted to the department or the unified program agency to determine  
12 whether it satisfies the requirements of this chapter.

13 (c) If the department or the unified program agency determines that a generator  
14 has not completed the review and plan in the manner required by **Section 25244.19**,  
15 or the report in the manner required by **Section 25244.20**, the department or the  
16 unified program agency shall provide the generator with a notice of noncompliance,  
17 specifying the deficiencies in the review and plan or report identified by the  
18 department.

19 (d) If the department or the unified program agency finds that the review and plan  
20 does not comply with **Section 25244.19**, the department or the unified program  
21 agency shall consider the review and plan to be incomplete.

22 (e) A generator shall file a revised review and plan or report correcting the  
23 deficiencies identified by the department or the unified program agency within 60  
24 days from the date of the receipt of the notice.

25 (f) The department or the unified program agency may grant, in response to a  
26 written request from the generator, an extension of the 60-day deadline, for cause,  
27 except that the department or the unified program agency shall not grant that  
28 extension for more than an additional 60 days.

29 (g) If a generator fails to submit a revised review and plan or report complying  
30 with the requirements of this chapter within the required period, or if the department  
31 or unified program agency determines that a generator has failed to implement the  
32 measures included in the generator’s review and plan for reducing the generator’s  
33 hazardous waste, in accordance with **Section 25244.19**, the department or the  
34 unified program agency may impose civil penalties pursuant to **Section 25187**, in  
35 an amount not to exceed one thousand dollars (\$1,000) for each day the violation of  
36 this chapter continues, notwithstanding **Section 25189.2**, seek an order directing  
37 compliance pursuant to **Section 25181**, or enter into a consent agreement or a  
38 compliance schedule with the generator.

39 (h) If a generator fails to implement a measure specified in the review and plan  
40 pursuant to **paragraph (5) of subdivision (b) of Section 25244.19**, the generator  
41 shall not be deemed to be in violation of **Section 25244.19** for not implementing the  
42 selected measure if the generator does both of the following:



(1) The generator finds that, upon further analysis or as a result of unexpected consequences, the selected measure is not technically feasible or economically practicable, or if the selected approach has resulted in any of the following:

- (A) An increase in the generation of hazardous waste.
- (B) An increase in the release of hazardous chemical contaminants to other media.
- (C) Adverse impacts on product quality.
- (D) A significant increase in the risk of an adverse impact to human health or the environment.

(2) The generator revises the review and plan to comply with the requirements of **Section 25244.19**.

(i) When taking enforcement action pursuant to this chapter, the department or the unified program agency shall not judge the appropriateness of any decisions or proposed measures contained in a review and plan or report, but shall only determine whether the review and plan or report is complete, prepared, and implemented in accordance with this chapter.

(j) In addition to the unified program agency, an appropriate local agency that has jurisdiction over a generator's site may request from the generator, and the generator shall provide within 30 days from the date of that request, a copy of the generator's current review and plan and report.

(k) In carrying out this chapter, the department shall not disseminate information determined to be a trade secret pursuant to **Section 25244.23**.

**Comment.** Section 85045 continues former Section 25244.18 without substantive change.

See Sections 84890 ("appropriate local agency"), 83160 ("department"), 83210 ("hazardous waste"), 83330 ("release"), 83375 ("unified program agency"), 84905 ("report"), 84930 ("review and plan").

## **§ 85050. Request for certification of generator compliance**

85050. (a) A person may request the department to certify that a generator is in compliance with this chapter by having the department certify that the generator has properly completed the review and plan and report required pursuant to **Sections 25244.19 and 25244.20**.

(b) The department shall respond within 60 days to a request for certification.

(c) Upon receiving a request for certification, the department shall request from the generator, who is the subject of the request, a copy of the generator's review and plan and report, pursuant to **subdivision (a) of Section 25244.18**, if the department does not have these documents.

(d) The department shall forward a copy of the review and plan and report to the person requesting certification, within 10 days from the date that the department receives the request for certification or receives the review and plan and report, whichever is later.

(e) The department shall protect trade secrets in accordance with **Section 25244.23** in a review and plan or report, requested to be released pursuant to this section.

(f) This section does not prohibit any person from directly requesting from a generator a copy of the review and plan or report.

(g) Solely for the purposes of responding to a request pursuant to this section, the department shall deem the review and plan or report to be a public record subject to **Section 25152.5**, and shall act in compliance with that **section**.

**Comment.** Section 85050 continues former Section 25244.21(c) without substantive change. See Sections 83160 (“department”), 83295 (“person”), 84905 (“report”), 84930 (“review and plan”).

## Article 8. Department Responsibilities

### § 85065. Department adoption of format to be used by generators

85065. (a) The department shall adopt a format to be used by generators for completing the review and plan required by **Section 25244.19**, and the report required by **Section 25244.20**.

(b) The format shall include at least all of the factors the generator is required to include in the review and plan and the report.

(c) The department may include any other factor determined by the department to be necessary to carry out this chapter.

(d) The adoption of a format pursuant to this subdivision is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**Comment.** Section 85065 continues former Section 25244.16(a) without substantive change. See Sections 83160 (“department”), 84905 (“report”), 84930 (“review and plan”).

### § 85070. Department establishment of system to process generator information

85070. (a) The department shall establish a data and information system to be used by the department for processing and evaluating the source reduction and other hazardous waste management information submitted by generators pursuant to **Section 25244.18**.

(b) In establishing the data and information system, the department shall do all of the following:

(1) Establish methods and procedures for appropriately processing or managing hazardous waste source reduction and management information.

(2) Use the data management expertise, resources, and forms of already established environmental protection programs, to the extent practicable.

(3) Establish computerized data retrieval and data processing systems, including safeguards to protect trade secrets designated pursuant to **Section 25244.23**.

(4) Identify additional data and information needs of the program.

**Comment.** Section 85070 continues former Section 25244.16(b) without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”), 83220 (“hazardous waste management”), 83300 (“processing”), 84925 (“source reduction”).

1   **§ 85075. Protection of trade secrets**

2       85075. (a) The department shall adopt regulations to ensure that trade secrets  
3       designated by a generator in all or a portion of the review and plan or the report  
4       required by this chapter are utilized by the director, the department, the unified  
5       program agency, or the appropriate local agency only in connection with the  
6       responsibilities of the department pursuant to this chapter, and that those trade  
7       secrets are not otherwise disseminated by the director, the department, the unified  
8       program agency, or any authorized representative of the department, or the  
9       appropriate local agency, without the consent of the generator.

10      (b) Any information subject to this section shall be made available to  
11      governmental agencies for use in making studies and for use in judicial review or  
12      enforcement proceedings involving the person furnishing the information.

13      (c) As provided by **Section 25159.5**, the regulations adopted pursuant to  
14      subdivision (a) shall conform with the corresponding trade secret regulations  
15      adopted by the Environmental Protection Agency pursuant to the federal act, except  
16      that the regulations adopted by the department may be more stringent or more  
17      extensive than the federal trade secret regulations.

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

25      (e) The department, the unified program agency, and the appropriate local agency  
26      shall protect from disclosure any trade secret designated by the generator pursuant  
27      to this section. The department shall make available information concerning  
28      pollution prevention approaches that have proved successful, and that do not  
29      constitute a trade secret, when carrying out **subdivision (c) of Section 25244.17**.

30      (f) This section does not permit a generator to refuse to disclose the information  
31      required pursuant to this chapter to the department, the unified program agency, or  
32      the appropriate local agency, an officer or employee of the department, the unified  
33      program agency, or the appropriate local agency, in connection with the official  
34      duties of that officer or employee under this chapter.

35      (g) Any officer or employee of the department, the unified program agency, or the  
36      appropriate local agency, or any other person, who, because of their employment or  
37      official position, has possession of, or has access to, confidential information, and  
38      who, knowing that disclosure of the information to the general public is prohibited  
39      by this section, knowingly and willfully discloses the information in any manner to  
40      any person not entitled to receive it, is guilty of a misdemeanor and, upon conviction  
41      thereof, shall be punished by imprisonment in the county jail not exceeding six  
42      months, by a fine not exceeding one thousand dollars (\$1,000), or by both the fine  
43      and imprisonment.

1     **Comment.** Section 85075 continues former Section 25244.23 without substantive change.  
2     See Sections 84890 (“appropriate local agency”), 84895 (“business”), 83160 (“department”),  
3     83165 (“director”), 83200 (“federal act”), 83295 (“person”), 84915 (“pollution prevention”), 84905  
4     (“report”), 84930 (“review and plan”).

## 5                                   CHAPTER 3. TOXICS IN PACKAGING

### 6                                   Article 1. Preliminary Provisions

#### 7     **§ 85150. Short title**

8     85150. This chapter shall be known and may be cited as the Toxics in Packaging  
9     Prevention Act.

10    **Comment.** Section 85150 continues former Section 25214.11(b) without substantive change.

#### 11    **§ 85155. Legislative findings and declarations**

12    85155. The Legislature finds and declares all of the following:

13    (a) The management of solid waste can pose a wide range of hazards to public  
14    health and safety and to the environment.

15    (b) Packaging comprises a significant percentage of the overall solid waste  
16    stream.

17    (c) The presence of heavy metals in packaging is a part of the total concern  
18    regarding the disposal of hazardous constituents in the solid waste stream, in light  
19    of the presence of heavy metals in emissions or ash when packaging is incinerated,  
20    or in leachate when packaging is disposed of in a solid waste landfill.

21    (d) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available  
22    scientific and medical evidence, are of particular concern.

23    (e) It is desirable, as a first step in reducing the toxicity of packaging waste, and  
24    reducing the hazardous materials that may be disposed of in solid waste landfills, to  
25    eliminate the addition of these heavy metals to packaging.

26    (f) The intent of this chapter is to achieve this reduction in toxicity without  
27    impeding or discouraging the expanded use of recycled materials in the production  
28    of packaging and its components.

29    **Comment.** Section 85155 continues former Section 25214.11(a) without substantive change.

30    See Sections 60175 (“disposal”), 60320 (“recycled material”), 60390 (“waste”).

#### 31    **§ 85160. Severability of provisions**

32    85160. (a) The provisions of this chapter are severable, and if a court holds that  
33    a phrase, clause, sentence, or provision of this chapter is invalid, or that its  
34    applicability to a person or circumstance is invalid, the remainder of the chapter and  
35    its applicability to other persons and circumstances may not be affected.

36    (b) The provisions of this chapter shall be liberally construed to give effect to the  
37    purposes of this chapter.

38    **Comment.** Section 85160 continues former Section 25214.20 without substantive change.

1 See Section 60295 (“person”).

2 **§ 85165. Nonapplication of chapter**

3 85165. This chapter does not do any of the following:

4 (a) Affect a duty or other requirement imposed under federal or state law.

5 (b) Alter or diminish a legal obligation otherwise required in common law or by  
6 statute or regulation.

7 (c) Create or enlarge a defense in an action to enforce a legal obligation otherwise  
8 required in common law or by statute or regulation.

9 **Comment.** Section 85165 continues former Section 25214.19 without substantive change.

10 Article 2. Definitions

11 **§ 85180. Application of definitions**

12 85180. For purposes of this chapter, the definitions in this article shall apply.

13 **Comment.** Section 85180 continues the introductory clause of former Section 25214.12 without  
14 substantive change.

15 **§ 85185. “ASTM”**

16 85185. “ASTM” means the American Society for Testing and Materials.

17 **Comment.** Section 85185 continues former Section 25214.12(b) without substantive change.

18 **§ 85190. “Authorized official”**

19 85190. “Authorized official” means a representative of a manufacturer or supplier  
20 who is authorized pursuant to the laws of this state to bind the manufacturer or  
21 supplier regarding the accuracy of the content of a certificate of compliance.

22 **Comment.** Section 85190 continues former Section 25214.12(a) without substantive change.  
23 See Section 85210 (“manufacturer”) , 85245 (“supplier”).

24 **§ 85195. “Distribution”**

25 85195. (a) “Distribution” means the practice of taking title to a package or a  
26 packaging component for promotional purposes or resale.

27 (b) A person involved solely in delivering a package or a packaging component  
28 on behalf of a third party is not engaging in distribution.

29 **Comment.** Section 85195 continues former Section 25214.12(c) without substantive change.  
30 See Sections 85220 (“package”), 85225 (“packaging component”), 60295 (“person”).

31 **§ 85200. “Incidental presence”**

32 85200. “Incidental presence” means the presence of a regulated metal as an  
33 unintended or undesired ingredient of a package or packaging component.

34 **Comment.** Section 85200 continues former Section 25214.12(e) without substantive change.  
35 See Sections 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”).

1   **§ 85205. “Intentional introduction”**

2       85205. (a) “Intentional introduction,” except as provided in subdivision (b),  
3       means the act of deliberately utilizing a regulated metal in the formation of a  
4       package or packaging component where its continued presence is desired in the final  
5       package or packaging component to provide a specific characteristic, appearance,  
6       or quality.

7       (b) “Intentional introduction” does not include either of the following:

8       (1) The use of a regulated metal as a processing agent or intermediate to impart  
9       certain chemical or physical changes during manufacturing, where the incidental  
10      retention of a residue of that metal in the final package or packaging component is  
11      not desired or deliberate, if the final package or packaging component is in  
12      compliance with subdivision (b) of Section 85310.

13      (2) The use of recycled materials as feedstock for the manufacture of new  
14      packaging materials, where some portion of the recycled materials may contain  
15      amounts of a regulated metal, if the new package or packaging component is in  
16      compliance with subdivision (b) of Section 85310.

17      **Comment.** Section 85205 continues former Section 25214.12(d) without substantive change.

18      See Sections 85220 (“package”), 85225 (“packaging component”), 85215 (“manufacturing”),  
19      85235 (“recycled material”), 85240 (“regulated metal”).

20   **§ 85210. “Manufacturer”**

21       85210. “Manufacturer” means any person, firm, association, partnership, or  
22       corporation producing a package or packaging component.

23      **Comment.** Section 85210 continues former Section 25214.12(f) without substantive change.

24      See Sections 85220 (“package”), 85225 (“packaging component”), 60295 (“person”).

25   **§ 85215. “Manufacturing”**

26       85215. “Manufacturing” means the physical or chemical modification of a  
27       material to produce packaging or a packaging component.

28      **Comment.** Section 85215 continues former Section 25214.12(g) without substantive change.

29      See Sections 85220 (“package”), 85225 (“packaging component”).

30   **§ 85220. “Package”**

31       85220. (a) “Package,” except as provided in subdivision (c), means any container,  
32       produced either domestically or in a foreign country, providing a means of  
33       marketing, protecting, or handling a product from its point of manufacture to its sale  
34       or transfer to a consumer, including a unity package, an intermediate package, or a  
35       shipping container, as defined in the ASTM specification D 996.

36       (b) “Package” also includes, but is not limited to, unsealed receptacles, including  
37       carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping  
38       films, bags, and tubs.

39       (c) “Package” does not include a reusable bag, as defined in subdivision (d) of  
40       Section 42250 of the Public Resources Code.

41      **Comment.** Section 85220 continues former Section 25214.12(h) without substantive change.

**Staff Notes. (1)** Existing Section 25214.12(h), which would be continued by proposed Section 85220, as well as existing Section 25214.14(d)(2), which would be continued by proposed Section 85330(c), and existing Section 25214.15(e), which would be continued by proposed Section 85365, all contain at least one reference to “handling” a product, or a package’s contents.

Existing Section 25116, which would be continued by proposed Section 60205, defines the term “handling” to mean “the transporting or transferring from one place to another, or pumping, processing, storing, or packaging of hazardous waste, but does not include the handling of any substance before it becomes a waste.” And existing Section 25110, which would be continued by proposed Section 60075, states that the definition of “handling” in existing Section 25116 “governs the construction” of the entirety of Chapter 20 of the Health and Safety Code, which includes existing Section 25214.12(h).

Based on this chapter-wide assignment of this definition, the use of the term “handling” in existing Section 25214.14(d)(2), (e), and (h) raises two questions:

1. Is the term “handling” as used in existing Section 25214.14(d)(2), (e), or (h) intended to be defined as provided by existing Section 25116?

2. If not, would any statutory resolution of this issue in proposed Section 85220, 85330, or 85365 be helpful? For example, a synonym for “handling” could be substituted in the three proposed sections, or each provision could be revised to provide that the term “handling” as used in the section is not intended as a defined term.

**The staff welcomes comment on these questions.**

**(2)** Existing Section 25214.12(h) excludes from the definition of “package” a “reusable bag, as defined in subdivision (d) of Section 42250 of the Public Resources Code.”

However, Section 42250 of the Public Resources Code was repealed in 2012, and its provided definition of “reusable bag” does not appear to have been continued in any other code section. The definition that section provided prior to its repeal was as follows:

“Reusable bag” means either of the following:

(1) A bag made of cloth or other machine washable fabric that has handles.

(2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

**The staff welcomes comment on whether the definition of “reusable bag” above should be incorporated in the text of proposed Section 85220 or offering another suggestion as to how to address this recodification issue.**

### § 85225. “Packaging component”

85225. (a) “Packaging component” means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives.

(b) Tin-plated steel that meets the ASTM specification A 623, shall be considered as a single package component.

(c) Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

**Comment.** Section 85225 continues former Section 25214.12(i) without substantive change. See Section 85220 (“package”).

**Staff Note.** The intended meaning of the third sentence of existing Section 25214.12(i), which would be continued as proposed Section 85225(c), is unclear. The staff has two questions:

(1) Is the direction in that sentence that the steel specified in that sentence “shall be treated in the same manner as tin-plated steel” intended to mean that the steel specified is to be considered a single package component?

(2) If so, is the reference in that third sentence to “tin-plated steel” intended to refer to *any* tin-plated steel, or only to “tin-plated steel that meets the ASTM specification A 623,” as referenced in the second sentence of existing Section 25214.12(i), which would be continued by proposed Section 85215(b)?

**The staff welcomes comment on these questions.**

#### § 85230. “Purchaser”

85230. “Purchaser” means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

**Comment.** Section 85230 continues former Section 25214.12(j) without substantive change.

See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 60295 (“person”), 85245 (“supplier”).

#### § 85235. “Recycled material”

85235. (a) “Recycled material,” except as provided in subdivision (c), means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock.

(b) Recycled material includes paper, plastic, wood, glass, ceramics, metals, and other materials, except as provided in subdivision (c).

(c) Recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

**Comment.** Section 85235 continues former Section 25214.12(k) without substantive change.

See Sections 60325 (“recycling”), 85240 (“regulated metal”), 60390 (“waste”).

#### § 85240. “Regulated metal”

85240. “Regulated metal” means lead, mercury, cadmium, or hexavalent chromium.

**Comment.** Section 85240 continues former Section 25214.12(l) without substantive change.

#### § 85245. “Supplier”

85245. (a) “Supplier,” except as provided in subdivision (b), means a person who does or is one or more of the following:

(1) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(2) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.



(3) Acts as an intermediary for the purchase of a package or packaging component for resale from a manufacturer located in another country to a purchaser located in this state, and who may receive a commission or a fee on that sale.

(4) Listed as the importer of record on a United States Customs Service form for an imported package or packaging component.

(b) “Supplier” does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

**Comment.** Section 85245 continues former Section 25214.12(m) without substantive change.

See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 60295 (“person”), 85230 (“purchaser”).

#### § 85250. “Toxics in Packaging Clearinghouse”

64323. “Toxics in Packaging Clearinghouse” means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

**Comment.** Section 85250 continues former Section 25214.12(n) without substantive change.

### Article 3. Department Authority and Responsibilities

#### § 85270. Enforcement of chapter

85270. (a) The department may enforce the requirements of this chapter pursuant to its authority to enforce this division under all applicable provisions of law.

(b) The department may also adopt regulations to implement this chapter, as deemed necessary to further the purposes of this chapter.

**Comment.** Subdivision (a) of Section 85270 continues former Section 25214.21 without substantive change.

Subdivision (b) continues former Section 25214.26 without substantive change.

See Section 60160 (“department”).

#### § 85275. Entry and inspection

85275. (a) For the purpose of administering and enforcing this chapter, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(1) Enter a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold.

(2) Enter a vehicle that is being used to transport, hold, or sell the package or packaging component.

(3) Enter a place where a package or packaging component is suspected of being held or sold in violation of this chapter.

(4) Inspect a factory, warehouse, establishment, vehicle, or place described in paragraph (1), (2), or (3) and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place.

(5) Inspect, in the case of a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold, any record, file, paper, process, control, and facility that has a bearing on whether the package, packaging component, or product in a package is being manufactured, packed, held, transported, sold, offered for sale, or offered for promotional purposes in violation of this chapter.

(6) Access all records of a carrier in commerce relating to the movement in commerce of a package or packaging component, or the holding of that package or packaging component during or after the movement, and the quantity, shipper, and consignee of the package or packaging component.

(b) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

**Comment.** Section 85275 continues former Section 25214.23 with the exception of the second sentence of Section 25214.23(a)(3), without substantive change.

The second sentence of Section 25214.23(a)(3) is continued by Section 85395.

See Section 60160 (“department”), 85220 (“package”), 85225 (“packaging component”).

#### § 85280. Securing of samples

85280. (a) When taking an action authorized pursuant to Section 85275, an authorized representative of the department may secure a sample of a package, packaging component, or product in a package. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(b) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(c) A sample that is secured in compliance with this section and found in compliance with this chapter that is destroyed during testing shall be subject to a claim for reimbursement.

**Comment.** Section 85280 continues former Section 25214.24 without substantive change.

See Section 60160 (“department”), 85220 (“package”), 85225 (“packaging component”).

#### § 85285. Recommendations to Governor and Legislature

85285. If the department determines that other substances contained in packaging should be added as regulated metals to the list set forth in Section 85240 in order to further reduce the toxicity of packaging waste, the department may submit recommendations to the Governor and the Legislature for additions to the list, along with a description of the nature of the substitutes used in lieu of the recommended additions to the list.

**Comment.** Section 85285 continues former Section 25214.18 without substantive change.

See Sections 60160 (“department”), 85240 (“regulated metal”), 60390 (“waste”).

1 **§ 85290. Public access to information**

2 85290. Except as provided in Section 85295, the department, pursuant to the  
3 California Public Records Act (Division 10 (commencing with Section 7920.000)  
4 of Title 1 of the Government Code), shall provide the public with access to all  
5 information relating to a package or packaging component that has been submitted  
6 to the department by a manufacturer or supplier of a package or packaging  
7 component pursuant to this chapter.

8 **Comment.** Section 85290 continues former Section 25214.17(a) without substantive change.  
9 See Sections 60160 (“department”), 85240 (“regulated metal”), 60390 (“waste”).

10 **§ 85295. Trade secrets**

11 85295. (a) A manufacturer or supplier providing information to the department  
12 pursuant to this article shall, at the time of submission, identify all information that  
13 the manufacturer or supplier believes is a trade secret as defined in **Section 25173**.

14 (b) The department shall keep confidential any information identified by the  
15 manufacturer or supplier as a trade secret in accordance with departmental  
16 procedures that have been adopted pursuant to **Section 25173**, if the department  
17 determines that the information is a trade secret as defined in **Section 25173**.

18 (c) The department shall make available to the public any information identified  
19 by the manufacturer or supplier as a trade secret that the department determines is  
20 not a trade secret.

21 **Comment.** Section 85295 restates former Section 25214.17(b) without substantive change.

22 See Section 60160 (“department”), 85210 (“manufacturer”), 85220 (“package”), 85225  
23 (“packaging component”), 85245 (“supplier”).

24 **Staff Notes. (1)** Proposed Section 85295 would restate existing Section 25214.17 for clarity.  
25 The existing section reads as follows:

26 “(a) Except as provided in subdivision (b), the department, pursuant to the California Public  
27 Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government  
28 Code), shall provide the public with access to all information relating to a package or packaging  
29 component that has been submitted to the department by a manufacturer or supplier of a package  
30 or packaging component pursuant to this article.

31 (b)(1) The department shall keep confidential any information identified by the manufacturer or  
32 supplier, pursuant to paragraph (2), as a trade secret, as defined in Section 25173, in accordance  
33 with departmental procedures that have been adopted pursuant to Section 25173, if the department  
34 determines that this information meets that definition of a trade secret.

35 (2) A manufacturer or supplier providing information to the department pursuant to this article  
36 shall, at the time of submission, identify all information that the manufacturer or supplier believes  
37 is a trade secret. The department shall make available to the public any information that is not a  
38 trade secret.”

39 **The staff welcomes comment on whether this restatement of existing Section 25214.17**  
40 **improves the clarity of the section without substantively changing its meaning.**

41 (2) The second sentence of existing Section 25214.17(b)(2) (which would be continued by  
42 proposed Section 85295(c)) provides that if a manufacturer or supplier identifies information that  
43 it believes to be a trade secret, and the department determines the identified information is *not* a  
44 trade secret, the department “shall make [that information] available to the public.” This second

sentence, read in conjunction with the text of existing Section 25214.17(a) (which would be continued by proposed Section 85290), suggests that information provided pursuant to existing Section 25214.17(b)(2) that the department determined was not a trade secret would then need to be made available to the public without consideration of any other exemptions from disclosure under the California Public Records Act, such as those listed in Part 6 (commencing with Section 7930.000) of Division 10 of title 1 of the Government Code.

**The staff welcomes comment on whether that construction of the two existing subdivisions is correct, and if not, whether and how the text of the existing section should be clarified.**

#### Article 4. Prohibited Offering of Item for Sale or Promotional Purposes

##### § 85310. Generally applicable prohibitions

85310. Except as provided in Section 85330, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state any of the following:

(a) A product in a package that includes a regulated metal in the package, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(b) A package, packaging component, or product in a package if the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component exceeds 100 parts per million by weight.

**Comment.** Subdivision (a) of Section 85310 continues former Section 25214.13(b) without substantive change.

Subdivision (b) continues former Section 25214.13(c) without substantive change.

See Sections 85195 (“distribution”), 85215 (“manufacturing”), 60295 (“person”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”).

**Staff Note.** Existing Section 25214.13, which would be continued by proposed Sections 85310 and 85315, prohibit the “offer for sale or for promotional purposes in this state” of a number of specified items.

The phrasing of the quoted text above fails to make clear whether the act that must occur “in this state” to trigger the prohibition of the section is the *making of the offer* identified in the quoted text, or the *sale or promotional purpose*. For example, an offer could be made in a state other than California, to arrange for a prohibited item to be delivered in California where it could be used for a promotional purpose. Alternatively, the reverse scenario could occur. To which scenarios are the prohibitions in Section 25214.13 intended to apply?

**The staff welcomes comment clarifying this possible ambiguity in existing Section 25214.13.**

##### § 85315. Additional manufacturer or supplier prohibitions

85315. Except as provided in Section 85330, on and after January 1, 2006, a manufacturer or supplier may not offer for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been

intentionally introduced into the package or packaging component during manufacturing or distribution.

**Comment.** Section 85315 continues former Section 25214.13(a) without substantive change. See Sections 85195 (“distribution”), 85210 (“manufacturer”), 85215 (“manufacturing”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

## Article 5. Exemptions for Specified Packages or Components

### § 85330. Packages and packaging components

85330. A package or a packaging component is exempt from the requirements of Sections 85310 and 85315, and shall be deemed in compliance with this chapter, if the manufacturer or supplier complies with the applicable documentation requirements specified in Article 6 (commencing with Section 85350 Section 25214.15 and the package or packaging component meets any of the following conditions:

(a) The package or packaging component is marked with a code indicating a date of manufacture prior to January 1, 2006.

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or safety requirements of a federal or state law.

(c) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process for a use, other than for purposes of marketing, for which a regulated metal is essential to the protection, safe handling, or function, of the package’s contents, and technical constraints preclude the substitution of other materials.

**Comment.** Section 85330 continues former Section 25214.14(a), (b), and (d) without substantive change.

See Sections 85195 (“distribution”), 85210 (“manufacturer”), 85215 (“manufacturing”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

**Staff Note.** See Staff Note following proposed Section 85220 relating to the use of the term “handling” in proposed Section 85330(c).

### § 85335. Expired exemptions

85335. The following exemptions to the requirements of former Section 25214.13, which had been available pursuant to former Section 25214.14, expired on January 1, 2010:

(a) A package or packaging component contains no intentionally introduced regulated metals but exceeds the applicable maximum concentration level set forth in subdivision (c) of former Section 25214.13 only because of the addition of a recycled material.

(b) A package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration

level set forth in subdivision (c) of former Section 25214.13, and all of the following apply:

(1) The product being conveyed by the package, the package, or packaging component is otherwise regulated under a federal or state health or safety requirement.

(2) The transportation of the packaged product is regulated under federal or state transportation requirements.

(3) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(c) A package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(d) A packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead, does not contain mercury, and is not a glass bottle package with paint or applied ceramic decoration on the bottle and the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

**Comment.** Section 85335 would restate former Section 25214.14(c), (e), (f), (g) without substantive change.

See Sections 60175 (“disposal”), 85195 (“distribution”), 85220 (“package”), 85225 (“packaging component”), 85235 (“recycled material”), 85240 (“regulated metal”).

**Staff Note.** The text of existing Section 25214.14 lists several exemptions from the prohibitions of existing Section 25214.13 that expired in 2010. Proposed Section 85335 would preserve the published record of these expired exemptions to allow for a claimed exemption for conduct that occurred prior to 2010.

**The staff welcomes comment on whether this preservation is necessary, and if so, whether the restatement of these expired exemptions in proposed Section 85335 continues the provisions establishing the exemptions without substantive change.**

## Article 6. Documentation Required for Exemptions

### § 85350. Biennially updated information

85350. A package or packaging component qualifies for an exemption pursuant to Section 85330 or Section 85335 only if the manufacturer or supplier prepares, retains, and biennially updates documentation containing all of the following information for that package or packaging component:

(a) A statement that the documentation applies to an exemption from any applicable requirements of Sections 85310 and 85315.

(b) The name, position, and contact information for the person who is the manufacturer's or supplier's contact person on all matters concerning the exemption.

(c) An identification of the exemption and a reference to the applicable subdivision in Section 85330 or Section 85335 setting forth the conditions for the exemption.

(d) A description of the type of package or packaging component to which the exemption applies.

(e) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(f) An explanation of the reason for the exemption.

(g) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(h) Any other required documentation specified in this article.

**Comment.** Section 85350 restates former Section 25214.15(a) without substantive change.

See Sections 85210 ("manufacturer"), 85220 ("package"), 85225 ("packaging component"), 60295 ("person"), 85240 ("regulated metal"), 85245 ("supplier").

**Staff Notes. (1)** Proposed Section 85350(h) is intended to restate existing Section 25214.15(a)(8) without substantive change. The existing paragraph reads as follows:

"The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption."

**The staff welcomes comment on this restatement of existing Section 25214.5(a)(8).**

(2) Several subdivisions of existing Section 25214.15 referenced in subdivision (a)(8) of that section specify documentation required for exemptions that were previously authorized under Section 25214.14 but expired in 2010. See existing Section 25214.14(c)(2), (e)(2), (f)(2), (g)(3). Based on their apparent obsolescence for that reason, subdivisions (d), (f), (g), and (h) of Section 25214.15 would not be continued in this recodification.

**The staff welcomes comment on the discontinuation of those subdivisions.**

## **§ 85355. Additional information required for exemption under subdivision (a) of Section 85330**

85355. In addition to the requirements specified in Section 85350, if an exemption is being claimed under subdivision (a) of Section 85330, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(a) Date of manufacture.

(b) Estimated time needed to exhaust current inventory.

(c) Alternative package or packaging component that meets the requirements of Sections 85310 and 85315.

**Comment.** Section 85355 continues former Section 25214.15(b) without substantive change.

See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85245 (“supplier”).

**§ 85360. Additional information required for exemption under subdivision (b) of Section 85330**

85360. In addition to the requirements specified in Section 85350, if an exemption is being claimed under subdivision (b) of Section 85330, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(a) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(b) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to subdivision (a).

(c) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(d) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to subdivision (a).

**Comment.** Section 85360 continues former Section 25214.15(c) without substantive change.

See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

**§ 85365. Additional information required for exemption under subdivision (c) of Section 85330**

85365. In addition to the requirements specified in Section 85350, if an exemption is being claimed under subdivision (c) of Section 85330, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(a) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package’s contents.

(b) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(c) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

(d) Documentation that the regulated metal is not being used for the purposes of marketing.



**Comment.** Section 85365 continues former Section 25214.15(e) without substantive change.  
See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”) , 85245 (“supplier”).

**Staff Note.** See Staff Note following proposed Section 85220 relating to the use of the term “handling” in proposed Section 85365(a).

#### § 85370. Submission of required documentation

85370. A manufacturer or supplier shall submit the documentation required pursuant to this article to the department, as follows:

(a) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:

(1) Submit the required documentation to the department.

(2) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department’s request.

(b) If the department finds that the documentation supplied pursuant to subdivision (a) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.

(c) If a manufacturer or supplier fails to comply with subdivision (a) or (b) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:

(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.

(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Sections 85310 and 85315, in accordance with a schedule approved in writing by the department.

(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.

**Comment.** Subdivisions (a) and (b) of Section 85370 continues former Section 25214.15(i) without substantive change.

Subdivision (c) continues former Section 25214.15(j) without substantive change.

See Sections 60160 (“department”), 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”) , 85245 (“supplier”).

#### § 85375. Required furnishing of certificate of compliance

85375. (a) On and after January 1, 2006, each manufacturer or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component, including instances in which the purchaser is also a supplier, stating that

the package or packaging component is in compliance with the requirements of this chapter.

(b) If the package is exempt from the requirements of Sections 85310 and 85315 pursuant to Section 85330, the certificate of compliance shall state the specific basis upon which the exemption is claimed.

(c) The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier.

(d) A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.

(e) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.

(f) The manufacturer or supplier shall furnish to the department a copy of the certificate of compliance for each package or packaging component for which an exemption is claimed under Section 85330 at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser. If no exemption is claimed for a package or packaging component, the manufacturer or supplier shall provide to the department upon request a copy of the certificate of compliance for that package or packaging component.

(g) If a manufacturer or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide the purchaser, and, if the package or packaging component is exempt, the department, with an amended or new certificate of compliance for the reformulated or new package or packaging component.

**Comment.** Section 85375 continues former Section 25214.16 without substantive change.

See Sections 85190 (“authorized official”), 60160 (“department”), 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85230 (“purchaser”), 85245 (“supplier”).

**Staff Note.** The staff welcomes comment on whether the introductory clause of existing Section 25214.16, which reads “On and after January 1, 2006,” may be safely deleted from the recodification of the section.

## Article 7. Exemptions for Specified Persons

### § 85390. Unknowing violation of chapter

85390. (a) Except as provided in subdivision (b), a person who offers for retail sale or for promotional purposes a product in a package or in a packaging component that includes a regulated metal shall not be subject to any administrative or civil penalty for a violation of this chapter, if the person proves, by a preponderance of evidence, all of the following:

(1) The person received a certificate of compliance for the package or packaging component from the manufacturer or supplier.

(2) The certificate of compliance received pursuant to paragraph (1) stated that the package or packaging component is in compliance with the requirements of this chapter.

(3) The person relied on the certificate of compliance and did not know or had no reason to know that the package or packaging component was in violation of this chapter.

(4) Upon receiving a notice of violation from the department, the person took corrective action by immediately removing the package or packaging component from commerce.

(b) The affirmative defense specified in subdivision (a) does not apply to, and may not be raised by, a person who has been found to be in violation of this chapter on at least two prior occasions in the preceding three years from the filing date of the current action.

**Comment.** Section 85390 continues former Section 25214.22 without substantive change.

See Sections 60160 (“department”), 85220 (“package”), 85225 (“packaging component”), 60295 (“person”), 85210 (“manufacturer”), 85240 (“regulated metal”), 85245 (“supplier”).

#### § 85395. Carrier exemption

85395. Except as provided in paragraph (6) of subdivision (a) of Section 85275, a carrier shall not be subject to any provision of this chapter by reason of its receipt, carriage, holding, or delivery of a product in a package or packaging component, in the usual course of business as a carrier.

**Comment.** Section 85395 continues the second sentence of former Section 25214.23(a)(3) without substantive change.

See Sections 85220 (“package”), 85225 (“packaging component”).

### Article 8. Criminal Violations

#### § 85410. Offering package or component in violation of chapter

85410. A manufacturer or supplier of a package or packaging component who knowingly and intentionally offers for sale or for promotional purposes a package or packaging component in violation of this chapter is guilty of a misdemeanor, and punishable by a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000), imprisonment in a county jail for not more than one year, or by both fine and imprisonment.

**Comment.** Section 85410 continues former Section 25214.22.1 without substantive change.

See Section 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85245 (“supplier”).

### CHAPTER 4. PERCHLORATE

#### Article 1. Management (*Article 10.01. Management Of Perchlorate*)

#### Article 2. Contamination (*Article 12.5. The Perchlorate Contamination Prevention Program*)

CHAPTER 5. RULES FOR SPECIFIC PRODUCTS

Article 1. Chemical Toilets, Recreational Vehicles, Vessel Waste Facilities, and Prohibited Chemicals (*Article 10. Prohibited Chemicals*)

Article 2. Lead Wheel Weights (*Article 10.5.1. Lead Wheel Weights*)

Article 3. Lighting (*Article 10.02. Lighting Toxics Reduction*)

Article 4. Mercury-Added Equipment (*Article 10.2.1. Mercury-Added Thermostats, Relays, Switches, And Measuring Devices*)

Article 5. Metal-Containing Jewelry (*Article 10.1.1. Metal-Containing Jewelry*)

Article 6. Motor Vehicle Brake Friction Materials (*Article 13.5. Motor Vehicle Brake Friction Materials*)

Article 7. Batteries (*Article 10.9. Battery Management: Federal Regulation*)]

Article 8. Lead Plumbing (*Article 10.1.2. Lead Plumbing Monitoring and Compliance Testing*)

Article 9. Juvenile Products and PFAS

Article 10. Textiles and PFAS

Article 11. Food Packaging and PFAS

Article 12. Menstrual Products Containing PFAS standards

Article 13. Juvenile Produces and Bisphenols

PART 5. HAZARDOUS WASTE AND SPECIFIC WASTES

CHAPTER 1. IDENTIFICATION OF HAZARDOUS WASTE

Article 1. Listing (*Article 4. Listings*)

Article 2. Identification and Management of Specific Hazardous Waste (*Article 6.6. Hazardous Waste of Concern and Public Safety Act*)

CHAPTER 2. RULES FOR SPECIFIC WASTES

Article 1. Electronic Wastes (*Article 10.3. Electronic Waste*)

Article 2. Household Batteries (*Article 10.6. Management Of Small Household Batteries*)

Article 3. Lead Acid Batteries (*Article 10.5. The Lead-Acid Battery Recycling Act of 2016*)

Article 4. Mercury Thermostats (*Article 10.2.2. Mercury Thermostat Collection Act Of 2008*)

Article 5. Motor Vehicle Switches (*Article 10.2. Motor Vehicle Switches*)

Article 6. Paint (*Article 10.7. Recyclable Latex Paint And Oil-Based Paint*)

Article 7. Photovoltaic Modules (*Article 17. Photovoltaic Modules*)

Article 8. Treated Wood Waste (part of *Article 5. Standards*)

Article 9. Used Oil (*Article 13. Management of Used Oil*)

Article 10. Waste From Discarded Appliances (*Article 10.1. Management of Hazardous Wastes Removed from Discarded Appliances*)

### CHAPTER 3. 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 90000.

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

#### § 90000. Laboratory accreditation for analyses

90000. Except as provided in subdivision (a) of Section 90005, 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 90000 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 90000 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 90000 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.

**§ 90005. Exceptions to certification requirements**

90005. (a) The requirements of Section 90000 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 90000 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 90005 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 83160 ("department"), 83175 ("disposal"), 83210 ("hazardous waste"), 83215 ("hazardous waste facility"), 83250 ("manifest"), 83295 ("person"), 83355 ("storage"), 83370 ("treatment"), 83395 ("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 83160.

**(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 83215; see also proposed Section 83180 (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).**

## **§ 90010. Certification required for contracts for laboratory analyses**

90010. 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 90010 continues former Section 25198(f) without substantive change.

See Section 83295 (“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 83295 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.**



CHAPTER 4. HAZARDOUS WASTE REDUCTION, RECYCLING, AND TREATMENT  
RESEARCH AND DEMONSTRATION ACT OF 1985

Article 1. Preliminary Provisions

§ 90050. Short title

90050. This chapter shall be known and may be cited as the Hazardous Waste Reduction, Recycling, and Treatment Research and Demonstration Act of 1985.

**Comment.** Section 90050 continues former Section 25244 without substantive change.

§ 90055. Legislative findings and intent

90055. (a) The Legislature hereby finds and declares that, whenever possible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible, and that waste that is generated should be recycled, treated, or disposed of in a manner that minimizes any present or future threats to human health or the environment.

(b) The Legislature further finds that there exist many promising but as yet unproven technologies for the reduced generation of hazardous waste and for recycling and treating hazardous waste.

(c) The Legislature further finds that financial commitment by public agencies and private industry for the expeditious development and dispersion of hazardous waste reduction, recycling, and treatment technologies depends upon further research, as well as credible and timely demonstrations of the feasibility, environmental acceptability, and reliability of those technologies.

(d) It is the intent of the Legislature, in enacting this chapter, to promote the research, development, and expeditious demonstration of technologies that have the potential to reduce, recycle, and treat hazardous waste, and to encourage private sector participation in this program to the greatest extent possible.

**Comment.** Section 90055 continues former Section 25244.1 without substantive change.

See Sections 83210 (“hazardous waste”), 83325 (“recycling”), 83355 (“treatment”), 83395 (“waste”).

§ 90060. “Hazardous waste reduction, recycling, and treatment technologies”

90060. (a) For purposes of this chapter, “hazardous waste reduction, recycling, and treatment technologies” means technologies and techniques that have as their primary purpose the reduced generation of hazardous waste, the recycling of hazardous waste, or the conversion of hazardous waste into a less hazardous form.

(b) For purposes of this chapter, “hazardous waste reduction, recycling, and treatment technologies” does not include solidification or treatment occurring directly in or on the land, such as techniques using evaporation, surface impoundments, or land farming.

**Comment.** Section 90060 continues former Section 25244.2 without substantive change.

See Sections 83210 (“hazardous waste”), 83325 (“recycling”), 83355 (“treatment”).

## Article 2. Department Responsibilities

## § 90075. Department duty to implement contingent on funding

90075. (a) Except as provided in subdivision (b), the department's duty to implement this chapter is contingent upon, and limited to, the availability of funding.

(b) Subdivision (a) does not apply to **Section 25244.4**.

**Comment.** Section 90075 continues former Section 25244.01 without substantive change. See Section 83160 ("department").

## § 90080. Hazardous Waste Technology, Research, Development, and Demonstration Program

90080. (a) The department shall establish a Hazardous Waste Technology, Research, Development, and Demonstration Program, which shall consist of all of the following elements:

(1) Contracting with, and providing grants to, universities, governmental agencies, and private organizations for the research and development of hazardous waste reduction, recycling, or treatment technologies pursuant to **Section 25244.10**.

(2) Providing grants, under specified conditions, to cities, counties, and private organizations for the commercial demonstration of hazardous waste reduction, recycling, or treatment technologies pursuant to **Section 25244.6**.

(b)(1) For purposes of this subdivision, "commercially successful technology" means a hazardous waste reduction, recycling, or treatment technology that is proven to be profitable, as determined by the department.

(2) The department shall require any university, governmental agency, or private organization that receives a grant pursuant to paragraph (1) or (2) of subdivision (a) to agree to do the following:

(i) Repay the amount of the grant to the department, if the grant results in the development of a commercially successful technology.

(ii) Pay the department a percentage of any royalties derived from that technology, as negotiated between the department and the grant recipient.

(3) The department shall deposit any funds it receives pursuant to this subdivision in the Hazardous Waste Control Account, and upon appropriation by the Legislature may expend those funds to carry out this chapter.

**Comment.** Section 90080 restates former Section 25244.5 without substantive change.

See Sections 83160 ("department"), 83210 ("hazardous waste"), 90060 ("hazardous waste reduction, recycling, and treatment technologies"), 83325 ("recycling"), 83370 ("treatment").

**Notes. (1)** Subdivision (a)(3) of existing Section 25244.5, referencing grants for the development of local hazardous waste reduction programs "pursuant to Section 25244.1101," is proposed to be discontinued, as Section 25244.1101 was renumbered as Section 25244.11.5 in 1994, and repealed effective January 1, 2000. See 1994 Cal. Stat. ch. 370.

**The Commission welcomes comment on the proposed deletion of existing Section 25244.5(a)(3).**

(2) Proposed Section 90080(b)(2) would restate existing Section 25244.5(b)(2) to clarify that the payment of royalties referenced in that subdivision to the department — as contrasted with the referenced repayment of the amount of the received grant — is *not* contingent on the development of “commercially successful technology.” The existing subdivision reads as follows:

“The department shall require any university, governmental agency, or private organization which receives a grant pursuant to paragraph (1) or (2) of subdivision (a) to agree to repay the department for the amount of the grant, if the grant results in the development of a commercially successful technology, and to additionally pay the department a percentage of any royalties derived from that technology, as negotiated between the department and the grant recipient.”

**The Commission welcomes comment on this restatement of existing Section 25244.5(b)(2).**

(3) Proposed Section 90080(b)(3) would restate existing Section 25244.5(b)(3) for clarity. The existing subdivision reads as follows:

“The department shall deposit any repayments or royalties received by the department pursuant to this subdivision in the Hazardous Waste Control Account, and those funds may be expended by the department, upon appropriation by the Legislature, to carry out this article.”

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing subdivision.**

#### **§ 90085. Department responsibilities requiring consultation with other agencies and parties**

90085. The department, in consultation with the State Water Resources Control Board, the State Air Resources Board, and the California Waste Management Board, shall do all of the following:

(a) Implement a program to research, develop, and demonstrate hazardous waste reduction, recycling, and treatment technologies at appropriate locations throughout the state.

(b) On or before January 1, 1987, in consultation with industry and interested parties, adopt criteria for selecting projects that would receive grants for the construction of equipment that would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies, including provisions requiring the department in assessing each project to consider the feasibility of following matters:

(1) The project’s particular technology.

(2) The research and technical spinoffs likely to be generated by the project.

(3) The degree to which the findings of the projects can be disseminated and evaluated for replication elsewhere.

(4) The consistency and contributions of the project to the state’s hazardous waste management program.

(c) Using the criteria adopted pursuant to subdivision (b), select projects to receive grants to construct equipment that would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies, and meet at least one of the following requirements:

(1) The project has both onsite and offsite potential for the reduction, recycling, or treatment of hazardous waste.

(2) The project has the potential to benefit or be utilized by small businesses.

(3) The project is applicable to a range of industries.

(d) A grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, or Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

**Comment.** Section 90085 restates former Section 25244.6 without substantive change.

See Sections 83160 (“department”), 83210 (“hazardous waste”), 83220 (“hazardous waste management”), 90060 (“hazardous waste reduction, recycling, and treatment technologies”), 83325 (“recycling”), 83370 (“treatment”).

**Notes. (1)** Proposed Section 90085(b)(3) would restate existing Section 25244.6 for clarity. The existing section reads as follows:

“The department, in consultation with the State Water Resources Control Board, the State Air Resources Board, and the California Waste Management Board, shall do all of the following:

(a) Implement a program to research, develop, and demonstrate hazardous waste reduction, recycling, and treatment technologies at appropriate locations throughout the state.

(b) On or before January 1, 1987, and, in consultation with industry and interested parties, adopt criteria for selecting projects which would receive grants to pay for the construction of equipment which would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies. The criteria shall include provisions which require that, in assessing each project, the department consider the feasibility of the project’s particular technology, the research and technical spinoffs likely to be generated by the project, the degree to which the findings of the projects can be disseminated and evaluated for replication elsewhere, and the consistency of, and contributions of, the project to the state’s hazardous waste management program.

(c) Using the criteria adopted pursuant to subdivision (b), select projects to receive grants to construct equipment which would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies. A grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, or Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. The department shall select projects which also meet at least one of the following requirements:

(1) The project has onsite, as well as offsite potential, for the reduction, recycling, or treatment of hazardous waste.

(2) The project has the potential to benefit, or be utilized by, small businesses.

(3) The project is applicable to a range of industries.”

**The Commission welcomes comment on this restatement of existing Section 25244.6.**

**(2)** Existing Section 25244.6(b) requires the department to adopt specified criteria “on or before January 1, 1987.” Is this requirement now obsolete, and if so, can the requirement in the subdivision be deleted from proposed Section 90085 without creating any substantive change to any aspect of existing law?

### Article 3. Grants and Contracts

#### § 90100. Grants and contracts for research and development

90100. (a) The department may issue grants to, and enter into contracts with, universities, governmental agencies, and private organizations to research and develop hazardous waste reduction, recycling, or treatment technology.

(b) Grants issued pursuant to subdivision (a) may be applied to personnel, equipment, and administrative costs and shall, to the extent possible, be used to augment other sources of research and development funding, including federal and private funds.

(c) Any grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code.

(d) Any contract entered into pursuant to this section is subject to all applicable state laws governing contracts.

**Comment.** Section 90100 continues former Section 25244.10 without substantive change.

See Sections 83160 (“department”), 83210 (“hazardous waste”), 90060 (“hazardous waste reduction, recycling, and treatment technologies”), 83325 (“recycling”), 83370 (“treatment”).

**Note.** Proposed Section 90100 would restate existing Section 25244.10 for clarity. The existing section reads as follows:

“The department may issue grants to, and enter into contracts with, universities, governmental agencies, and private organizations to research and develop hazardous waste reduction, recycling, or treatment technology. These grants may be applied to personnel, equipment, and administrative costs and shall, to the extent possible, be used to augment other sources of research and development funding, including federal and private funds. Any grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, but a contract entered into pursuant to this section is subject to all applicable state laws governing contracts.”

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing section.**

#### § 90105. Grant funding for relevant equipment construction

90105. Grant funding for equipment construction needed for demonstration of hazardous waste reduction, recycling, and treatment technologies shall be provided to projects selected pursuant to **Section 25244.6** in four consecutive steps:

(a) Step I grants shall be made to study the feasibility of a proposed project, in accordance with the following:

(1) Ninety percent of the costs of the feasibility study shall be eligible for grant funding, up to a maximum of twenty-five thousand dollars (\$25,000) per grant.

(2) In activities funded by a step I grant, the applicant shall develop information needed to select the waste reduction, recycling, or treatment alternative that would be most cost effective.

(b) Step II grants shall be made for project design, in accordance with the following:

(1) Seventy percent of the costs of the design of the project, or 90 percent if the grant applicant is a small business, shall be eligible for grant funding, up to a maximum of fifty thousand dollars (\$50,000) per grant.

(2) In activities funded by a step II grant, the applicant shall prepare detailed plans and specifications for the selected facilities, establish schedules for implementation, and obtain necessary permits.

(c) Step III grants shall be made for the construction of the facilities, in accordance with the following:

(1) Fifty percent of the costs of constructing the project, or 80 percent if the grant applicant is a small business, shall be eligible for grant funding, up to a maximum of four hundred thousand dollars (\$400,000) per grant.

(2) As a condition of receiving a step III grant, the grantee shall allow the results of the project to be evaluated and the information disseminated to other parties.

(3) In activities funded by a step III grant, the applicant shall construct the facilities as designed under a step II grant, procure needed equipment, and obtain necessary permits to operate the facility.

(d)(1) Step IV grants shall be made for the following activities:

(i) Evaluation of the effectiveness of grant-funded facilities.

(ii) Development of information on compliance with regulatory permits.

(iii) Assessment of applicability of the selected approach to other generators of similar hazardous wastes.

(2) Ninety percent of the costs of the activities identified in paragraph (1), or 100 percent if the grant applicant is a small business, shall be eligible for grant funding, up to a maximum of one hundred thousand dollars (\$100,000) per grant.

**Comment.** Section 90105 restates former Section 25244.8 without substantive change.

See Sections 83085 (“applicant”), 90060 (“hazardous waste reduction, recycling, and treatment technologies”), 83325 (“recycling”), 83370 (“treatment”), 83395 (“waste”).

**Note.** Proposed Section 90105 would restate existing Section 25244.8 for clarity. The existing section reads as follows:

“Grant funding for equipment construction needed for demonstration of hazardous waste reduction, recycling, and treatment technologies shall be provided to projects selected pursuant to Section 25244.6 in four consecutive steps:

(a) Step I grants shall be made to study the feasibility of a proposed project. Ninety percent of the costs of the feasibility study shall be eligible for grant funding up to a maximum of twenty-five thousand dollars (\$25,000) per grant. In activities funded by a step I grant, the applicant shall develop information needed to select the waste reduction, recycling, or treatment alternative, which would be most cost-effective.

(b) Step II grants shall be made for project design. Seventy percent of the costs of the design of the project shall be eligible for grant funding, except that a small business may be eligible for 90 percent of those costs, up to a maximum of fifty thousand dollars (\$50,000) per grant. In activities funded by a step II grant, the applicant shall prepare detailed plans and specifications for the selected facilities, establish schedules for implementation, and obtain necessary permits.

(c) Step III grants shall be made for the construction of the facilities. Fifty percent of the costs of constructing the project shall be eligible for grant funding, except that a small business may be eligible for 80 percent of those costs, up to a maximum of four hundred thousand dollars (\$400,000) per grant. As a condition of receiving a step III grant, the grantee shall allow the results of the project to be evaluated and the information disseminated to other parties. In activities funded by a

step III grant, the applicant shall construct the facilities as designed under a step II grant, procure needed equipment, and obtain necessary permits to operate the facility.

(d) Step IV grants shall be made to evaluate the effectiveness of grant-funded facilities, develop information on compliance with regulatory permits, and assess applicability of the selected approach to other generators of similar hazardous wastes. Ninety percent of the costs of those activities shall be eligible for grant funding, except that a small business may be eligible for 100 percent of those costs, up to a maximum of one hundred thousand dollars (\$100,000) per grant.”

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing section.**

#### § 90110. Compilation and availability of project evaluations

90110. (a) The department shall compile the results of all evaluations of projects funded by step IV grants, as specified in **subdivision (d) of Section 25244.8**, or the evaluations of any other project that are available to the department.

(b) The department shall notify any interested party of the availability of the project evaluations, and make the evaluations available to interested parties as expeditiously as possible.

**Comment.** Section 90110 restates former Section 25244.9 without substantive change.  
See Section 83160 (“department”).

**Notes. (1)** Proposed Section 90110 would restate existing Section 25244.9 for clarity. The existing section reads as follows:

“The department shall compile the results of all evaluations of projects funded by step IV grants, as specified in subdivision (d) of Section 25244.8, or the evaluations of any other project which are available to the department, and shall make them available to interested parties as expeditiously as possible. The department shall notify any interested party of the availability of project evaluations.”

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing section.**

**(2)** The Commission seeks comment on the intended meaning of the phrase in existing Section 25244.9 that reads as follows: “or the evaluations of any other project which are available to the department.” Specifically,

(a) Is the use of the term “or” intended to provide the department an *alternative* to compiling the results of evaluations of projects funded by step IV grants, or should the word “or” be replaced with the word “and”?

(b) What “other projects” are contemplated by this clause?

#### § 90115. Contracting by department for services to carry out chapter

90115. Consistent with Article VII of the California Constitution, the department may contract for services to be performed to carry out this chapter, including but not limited to environmental control assessment, feasibility analysis, review of project design, field management responsibilities, and project scheduling and control.

**Comment.** Section 90115 continues former Section 25244.7 without substantive change.  
See Section 83160 (“department”).

Article 4. Generator Responsibilities

§ 90130. Required waste reduction reports to department

90130. Every generator of hazardous waste shall submit a report to the department, at least once every two years, reporting the changes in volume and toxicity of waste achieved through waste reduction during the period for which the report is issued.

**Comment.** Section 90130 continues former Section 25244.4 without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”), 83395 (“waste”).

PART 5. HAZARDOUS WASTE GENERATION  
AND MANAGEMENT

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Article 1. Hazardous Waste Management Plans (*Article 3.5. Hazardous Waste Management Plans*)

Article 2. Land Use Restrictions (*Article 11.1. Institutional Control*)

Article 3. Cost Reimbursement (*Article 9.2. Cost Reimbursement*)

Article 4. Standards (*part of Article 5. Standards*)

CHAPTER 2. GENERATORS OF HAZARDOUS WASTE

Article 1. Obligations For Hazardous Waste Generation And Management (*parts of Sections 25150-25158.1*)

CHAPTER 3. TRANSPORTATION OF HAZARDOUS WASTE

Article 1. Transportation (*Article 6. Transportation*)

Article 2. Haulers (*Article 6.5. Hazardous Waste Haulers*)

CHAPTER 4. DISPOSAL ON PUBLIC LAND (*ARTICLE 11.5. HAZARDOUS WASTE*)

CHAPTER 5. COLLECTION PROGRAMS

Article 1. Household Hazardous Waste and Conditionally Exempt Small Quantity Generator Waste (*Article 10.8. Household Hazardous Waste And Small Quantity Generator Waste*)



1 Article 2. Banned, Unregistered, or Outdated Agricultural Wastes (*Article 9.4.*  
2 *Banned, Unregistered, or Outdated Agricultural Wastes*)

3 CHAPTER 7. DEVELOPMENT OF HAZARDOUS WASTE FACILITIES

4 Article 1. Approval Procedures for New Facilities (*Article 8.7.*  
5 *Procedures For The Approval Of New Facilities*)

6 Article 2. Development of Facilities on Indian Country (*Article 8.6.*  
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9 CHAPTER 8. HAZARDOUS WASTE FACILITIES

10 Article 1. Permitting (*Article 9. Permitting of Facilities*)

11 Article 2. Existing Facilities as of May 1, 1981 (*Article 4.5. State*  
12 *Regulation of Existing Hazardous Waste Facilities*)

13 CHAPTER 9. RULES FOR SPECIFIC TYPES OF FACILITIES OR TREATMENTS

14 Article 1. Hazardous Waste Treatment Reform Act of 1995 (*Article*  
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16 Article 2. Land Treatment Units (*Article 9.6. Land Treatment Units*)

17 Article 3. Metal Shredding Facilities (*parts of Article 5. Standards*  
18 *Re Metal Shredding Facilities*)

19 Article 4. Solar Evaporators For on-Farm Drainage Management  
20 (*Article 9.7. Integrated on-Farm Drainage Management*)

21 Article 5. Surface Impoundments (*Article 9.5. Surface*  
22 *Impoundments*)

23 Article 6. Toxic Injection Wells (*Article 5.6. The Toxic Injection*  
24 *Well Control Act of 1985*)

25 CHAPTER 10. FACILITY CLOSURE (*ARTICLE 12. FINANCIAL RESPONSIBILITY AND*  
26 *CLOSURE AND MAINTENANCE OF FACILITIES*)

PART 7. ENFORCEMENT

CHAPTER 1. GENERAL ENFORCEMENT PROVISIONS (*ARTICLE 8. ENFORCEMENT*)

Article 1. Definitions (*Section 25186.05*)

Article 2. [*Enforcement provisions not specific to toxics or  
hazardous waste*]

CHAPTER 2. TOXICS REDUCTION

Article 1. PFAS enforcement (*AB 347, Ch. 932, St. 2024*)

Article 2. PFAS enforcement (*AB 2515, Ch. 1008, St. 2024*)

CHAPTER 3. HAZARDOUS WASTE MANAGEMENT

Article 1. Hazardous Waste Enforcement Coordinator and Strike  
Force (*Article 8.3. Hazardous Waste Enforcement Coordinator and  
Strike Force*)

Article 2. Permit Requirements (*Section 25186*)

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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, 2025. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

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25174.02(d).....	84090
25174.02(e) .....	84095
25174.02(f).....	not cont'd
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25174.9.....	83915
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25198(b), 1st part.....	90000
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25214.24.....	85280
25214.26.....	85270(b)
25215 – 25242.3.....	[not yet recodified]
25244.....	90050
25244.01 .....	90075
25244.1 .....	90055
25244.2.....	90060
25244.4.....	90130
25244.5.....	90080
25244.6.....	90085
25244.7.....	90115
25244.8.....	90105
25244.9.....	90110
25244.10.....	90100
25244.12.....	84850
25244.13.....	84855
25244.13.1.....	84865
25244.14 (intro) .....	84880
25244.14(a) .....	84885
25244.14(b) .....	84890
25244.14(c) .....	84895
25244.14(d) .....	84900
25244.14(e) .....	84905
25244.14(f).....	84910
25244.14(g).....	84915
25244.14(h).....	84920
25244.14(i).....	84925
25244.14(j).....	84930
25244.14(k).....	84935
25244.15.....	84860
25244.15.1(a) .....	84950
25244.15.1(b).....	84955
25244.15.1(c).....	84960
25244.15.1(d).....	84965
25244.15.1(e).....	84970
25244.16(a) .....	85065
25244.16(b).....	85050
25244.17.....	85070
25244.17.1.....	85005
25244.17.2(a) .....	85015(a), (b)
25244.17.2(b), (c).....	85020
25244.17.2(d).....	85015(c)
25244.18.....	85045
25244.19.....	85030
25244.20.....	85035
25244.21(a), (b).....	85040
25244.21(c) .....	85050



Existing Provision	New Provision
25244.22(a) .....	84985
25244.22(b) .....	84990
25244.23 .....	85075
25251 (intro) .....	84200
25251(a) .....	84205
25251(b) .....	84215
25251(c) .....	84220
25251(d) .....	84225
25251(e) .....	84230
25251(f) .....	84235
25252(a), 1st and 2nd sent .....	84525
25252(a), 3rd sent .....	84530
25252(b)(1) .....	84535
25252(b)(2), (b)(3) .....	84540
25252.5(a) .....	84600(a)
25252.5(b) .....	84605
25252.5(c) .....	84610
25252.5(d) .....	84615
25252.5(e) .....	84600(b)
25252.5(f) .....	84600(c)
25252.5(g) .....	84595
25253(a)(1) .....	84555
25253(a)(2) .....	84560
25253(b) .....	84570
25253(c) .....	84565
25253(d) .....	84575
25253(e)(1) .....	84580(a)
25253(e)(2) .....	84580(b)
25253(f) .....	84580(c)
25253.5 .....	84485
25253.6 .....	84480
25253.7(a)(1), 1st sent .....	84670(a)
25253.7(a)(1), 2nd sent .....	84670(b)
25253.7(a)(1), 3rd sent .....	84675(a)
25253.7(a)(1), 4th sent .....	84670(c)
25253.7(a)(2)(A) .....	84675(b)
25253.7(a)(2)(B) .....	84675(c)
25253.7(a)(2)(C) .....	84680
25253.7(a)(3) .....	84685
25253.7(a)(4) .....	84690
25253.7(a)(5) .....	84695
25253.7(b) .....	84700
25253.9 .....	84490
25254(a) .....	84500(a)
25254(b), 1st sent .....	84500(b)
25254(b), 2nd sent .....	84500(c)
25254(c), 1st sent .....	84505(a)

Existing Provision	New Provision
25254(c), 2nd sent.....	84500(d)
25254(d).....	84505(b)
25255.....	84510
25256, 1st sent .....	84630
25256, 2nd sent, 1st part .....	84650
25256, 2nd sent, 2nd part.....	84655
25256.1.....	84635
25256.2.....	84640
25256.3.....	84645
25257(a), 1st sent.....	84720(a)
25257(a), 2nd sent.....	84720(b)
25257(b).....	84725
25257(c), 1st sent.....	84720(c)
25257(c), 2nd sent.....	84720(d)
25257(d).....	84730
25257(e).....	84740
25257(f).....	84745
25257.1(a).....	84455
25257.1(b).....	84460
25257.1(c).....	84465
25257.2(a).....	84765
25257.2(b).....	84770
25257.2(c).....	84775
25257.2(d).....	84780
25257.2(e).....	84785
25257.2(f).....	84790
25257.2(g).....	84795
25257.2(h).....	84800

## DERIVATION OF NEW LAW

**Note.** This table shows the derivation of each provision in proposed Division 46 of the 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
83000 .....	25100
83005 .....	25101
83010 .....	25103
83015 .....	25105
83020 .....	25106
83035 .....	new
83040 .....	new
83045 .....	new
83050 .....	new
83055 .....	new
83060 .....	new
83075 .....	25110
83080 .....	25110.02
83085 .....	25110.1
83090 .....	25110.3
83095 .....	25110.4
83100 .....	25110.5
83105 .....	25110.8
83110 .....	25123.7(b)
83115 .....	25110.8.5 (except 2nd sentence of subd. (b))
83120 .....	25110.8.5, 2nd sentence of subd. (b)
83125 .....	25110.9.1(a)
83130 .....	25110.9.1(b)
83135 .....	25110.9(a)
83140 .....	25110.9(b)
83145 .....	25110.9.3
83150 .....	25110.10(a)
83155 .....	25110.11
83160 .....	25111
83165 .....	25112
83170 .....	25112.5(a) (preceding numbered paragraphs)
83175 .....	25113
83180 .....	25114
83185 .....	25160(a)(2)
83190 .....	25114.5
83195 .....	25115
83200 .....	25115.1
83205 .....	25116
83210(a).....	25117(a)-(c)

New Provision	Existing Provision
83210(b).....	25117.5
83215 .....	25117.1
83220 .....	25117.2
83225 .....	25116.5
83230 .....	25117.13
83235 .....	25117.10
83240 .....	25117.4.1(a)
83245 .....	25117.4.1(b)
83250 .....	25160(a)(1), (3)
83255 .....	25117.6
83260 .....	25117.8
83265 .....	25117.9
83270 .....	25117.9.1
83275 .....	25117.11
83280 .....	25117.12
83285 .....	25123.7(c)
83290 .....	25117.14
83295 .....	25118
83300 .....	25119
83305 .....	25120
83310 .....	25120.2
83315 .....	25120.5
83320 .....	25121
83325 .....	25121.1
83335 .....	25121.3(a)
83330 .....	25121.2
83340 .....	25121.5
83345 .....	25122.7
83350 .....	25122.9
83355 .....	25123
83360 .....	25123.3(b), initial clause
83365 .....	25123.4
83370 .....	25123.5
83375 .....	25123.7(d)
83380 .....	25123.7(a)
83385 .....	25123.8
83390 .....	25123.6
83395 .....	25124
83900 .....	25174(a)
83905 .....	25174(b)
83910 .....	25174(d)
83915 .....	25174.9
84000 .....	25173.6(a)
84005 .....	25173.6(b), (c)
84010 .....	25173.6(d), (e)
84015 .....	25173.6(f)
84020 .....	25173.6(g), (h)

New Provision	Existing Provision
84025 .....	25173.7(a)
84030 .....	25173.7(b)
84045 .....	25174(c)
84050 .....	25173.7(c)
83575 .....	25172.6
83420 .....	25170
83500 .....	25177
83505 .....	25173
83450 .....	25150
83455 .....	25151
83460 .....	25150.65
83465 .....	25152
83470 .....	25150.5
83550 .....	25178
84075(a).....	25174.02(a)
84075(b) .....	25174.02(b), 2 <sup>nd</sup> sent.
84080 .....	25174.02(b), 1 <sup>st</sup> sent
84085 .....	25174.02(c)
84090 .....	25174.02(d)
84095 .....	25174.02(e)
84150 .....	25205.1 (intro)
84155 .....	25205.1(a)
84160 .....	25205.1(l) (part applicable to “Class 1 modification”)
84165 .....	25205.1(l) (part applicable to “Class 2 modification”)
84170 .....	25205.1(l) (part applicable to “Class 3 modification”)
84175 .....	25205.1(o) (part applicable to “disposal”)
84180 .....	25205.1(b)
84185 .....	25205.1(e)
84190 .....	25205.1(m)
84195 .....	25205.1(n)
84200 .....	25205.1(c)
84205 .....	25205.1(d)
84210 .....	25205.1(f)
84215 .....	25205.1(g)
84220 .....	25205.1(h)
84225 .....	25205.1(i)
84230 .....	25205.1(j)
84235 .....	25205.1(o) (part applicable to “storage”)
84240 .....	25205.1(o) (part applicable to “treatment”)
84245 .....	25205.1(k)
85150 .....	25214.11(b)
85155 .....	25214.11(a)
85160 .....	25214.20
85165 .....	25214.19
85180 .....	25214.12 (intro)
85185 .....	25214.12(b)
85190 .....	25214.12(a)

New Provision	Existing Provision
85195 .....	25214.12(c)
85200 .....	25214.12(e)
85205 .....	25214.12(d)
85210 .....	25214.12(f)
85215 .....	25214.12(g)
85220 .....	25214.12(h)
85225 .....	25214.12(i)
85230 .....	25214.12(j)
85235 .....	25214.12(k)
85240 .....	25214.12(l)
85245 .....	25214.12(m)
85250 .....	25214.12(n)
85270 .....	25214.21
85275 .....	25214.23 (excepting 2 <sup>nd</sup> sent. of 25214.23(a)(3))
85280 .....	25214.24
85285 .....	25214.18
85290 .....	25214.17(a)
85295 .....	25214.17(b)
85310(a) .....	25214.13(b)
85310(b) .....	25214.13(c)
85315 .....	25214.13(a)
85330 .....	25214.17.14(a), (b), (d)
85335 .....	25214.14(c), (e), (f), (g)
85350 .....	25214.15(a)
85355 .....	25214.15(b)
85360 .....	25214.15(c)
85365 .....	25214.15(e)
85370(a), (b) .....	25214.15(i)
85370(c) .....	25214.15(j)
85375 .....	25214.16
85390 .....	25214.22
85395 .....	2 <sup>nd</sup> sent. of 25214.23(a)(3)
85410 .....	25214.22.1
90000 .....	25198(b), 1st part
90005 .....	25198(c), (d), (e)
90010 .....	25198(f)
90050 .....	25244
90055 .....	25244.1
90060 .....	25244.2
60765 .....	25244.4
90075 .....	25244.01
90080 .....	25244.5
90085 .....	25244.6
90100 .....	25244.10
90105 .....	25244.8
90110 .....	25244.9
90115 .....	25244.7

New Provision	Existing Provision
90130 .....	25244.4
83650 .....	25125(a), (b), (c)
83655 .....	25125(d)
83660 .....	25125(f)
83665 .....	25125(m)
83670 .....	25125(o)
83675 .....	25125(l)
83700 .....	25125(e)
83705(a).....	25125(i)
83705(b).....	25125(k)
83710 .....	25125(j)
83715 .....	25125(n)
83720 .....	25125(h)
83725 .....	25125(g)
83750 .....	25125.2(a)
83755 .....	25125.3
83760 .....	25125.6
83775 .....	25125.2(b)(1)
83780 .....	25125.2(b)(2)
83785 .....	25125.2(b)(3)
83790 .....	25125.2(b)(4)
83795 .....	25125.2(b)(5)
83800 .....	25125.2(b)(6)
83805 .....	25125.2(b)(7)
83810 .....	25125.7
83815 .....	25125.9
83835 .....	25125.4
83845 .....	25125.8(a), 1st sentence
83850 .....	25125.8(a), 2nd sentence
83855 .....	25125.8(b)
83860 .....	25125.8(c)
83865 .....	25125.8(d)
83870 .....	25125.8(e)
84200 .....	25251 (intro)
84205 .....	25251(a)
84210 .....	new
84215 .....	25251(b)
84220 .....	25251(c)
84225 .....	25251(d)
84230 .....	25251(e)
84235 .....	25251(f)
84455 .....	25257.1(a)
84460 .....	25257.1(b)
84465 .....	25257.1(c)
84480 .....	25253.6
84485 .....	25253.5
84490 .....	25253.9

New Provision	Existing Provision
84500(a).....	25254(a)
84500(b).....	25254(b), 1st sent
84500(c).....	25254(b), 2nd sent
84500(d).....	25254(c), 2nd sent
84505(a).....	25254(c), 1st sent
84505(b).....	25254(d)
84510 .....	25255
84525 .....	25252(a), 1st and 2nd sent
84530 .....	25252(a), 3rd sent
84535 .....	25252(b)(1)
84540 .....	25252(b)(2), (b)(3)
84555 .....	25253(a)(1)
84560 .....	25253(a)(2)
84565 .....	25253(c)
84570 .....	25253(b)
84575 .....	25253(d)
84580(a).....	25253(e)(1)
84580(b).....	25253(e)(2)
84580(c).....	25253(f)
84595 .....	25252.5(g)
84600(a).....	25252.5(a)
84600(b).....	25252.5(e)
84600(c).....	25252.5(f)
84605 .....	25252.5(b)
84610 .....	25252.5(c)
84615 .....	25252.5(d)
84630 .....	25256, 1st sent
84635 .....	25256.1
84640 .....	25256.2
84645 .....	25256.3
84650 .....	25256, 2nd sent, 1st part
84655 .....	25256, 2nd sent, 2nd part
84670(a).....	25253.7(a)(1), 1st sent
84670(b).....	25253.7(a)(1), 2nd sent
84670(c).....	25253.7(a)(1), 4th sent
84675(a).....	25253.7(a)(1), 3rd sent
84675(b).....	25253.7(a)(2)(A)
84675(c).....	25253.7(a)(2)(B)
84680 .....	25253.7(a)(2)(C)
84685 .....	25253.7(a)(3)
84690 .....	25253.7(a)(4)
84695 .....	25253.7(a)(5)
84700 .....	25253.7(b)
84720(a).....	25257(a), 1st sent
84720(b).....	25257(a), 2nd sent
84720(c).....	25257(c), 1st sent
84720(d).....	25257(c), 2nd sent



New Provision	Existing Provision
84725 .....	25257(b), 2nd sent
84730 .....	25257(d)
84735 .....	25257(b), 1st sent
84740 .....	25257(e)
84745 .....	25257(f)
84765 .....	25257.2(a)
84770 .....	25257.2(b)
84775 .....	25257.2(c)
84780 .....	25257.2(d)
84785 .....	25257.2(e)
84790 .....	25257.2(f)
84795 .....	25257.2(g)
84800 .....	25257.2(h)
84850 .....	25244.12
84855 .....	25244.13
84860 .....	25244.15
84865 .....	25244.13.1
84880 .....	25244.14 (intro)
84885 .....	25244.14(a)
84890 .....	25244.14(b)
84895 .....	25244.14(c)
84900 .....	25244.14(d)
84905 .....	25244.14(e)
84910 .....	25244.14(f)
84915 .....	25244.14(g)
84920 .....	25244.14(h)
84925 .....	25244.14(i)
84930 .....	25244.14(j)
84935 .....	25244.14(k)
84950 .....	25244.15.1(a)
84955 .....	25244.15.1(b)
84960 .....	25244.15.1(c)
84965 .....	25244.15.1(d)
84970 .....	25244.15.1(e)
84985 .....	25244.22(a)
84990 .....	25244.22(b)
85000 .....	25244.17
85005 .....	25244.17.1
85015 .....	25244.17.2(a), (d)
85020 .....	25244.17.2(b), (c)
85030 .....	25244.19
85035 .....	25244.20
85040 .....	25244.21(a), (b)
85045 .....	25244.18
85050 .....	25244.21(c)
85065 .....	25244.16(a)
85070 .....	25244.16(b)

**New Provision**

**Existing Provision**

85075 ..... 25244.23

## 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 83115, 83120, and 83255, 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 83370) be restated for clarity?
- (3) Should the use of terms that are undefined in proposed Division 46, 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 83550, 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))?

