

MEMORANDUM 2025-26

Recodification of Toxic Substances Statutes: Next Portion

In the current phase of this study, the Commission¹ pursuant to a legislative directive is preparing a nonsubstantive recodification of [Chapter 6.5 \(commencing with Section 25100\) of Division 20 of the Health and Safety Code](#), a chapter addressing multiple aspects of hazardous waste control, along with related provisions, to improve the organization and expression of the law.²

As Chapter 6.5 contains an unusually large amount of statutory material,³ the Commission at each of its meetings has been evaluating proposed recodification of distinct portions of Chapter 6.5, for inclusion in an eventual tentative recommendation proposing recodification of the entire chapter.⁴

This memorandum presents a staff draft of the next portion of that proposed recodification. The draft again includes proposed Commission Comments corresponding to each recodified section, Staff Notes explaining the recodification process and identifying issues seeking public comment, and disposition and derivation tables corresponding to the recodified provisions.

If the Commission provisionally approves the content of the presented draft, it will be incorporated and again presented to the Commission at a future Commission meeting in a

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

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

2. See [2024 Cal. Stat. res. ch. 138](#) (ACR 169), para. (13). Earlier in the study, Commission recommendations recodifying former Chapter 6.8 of Division 20 were submitted to and thereafter enacted by the Legislature. See [Hazardous Substance Account Recodification Act](#) (Preprint) (2021), [2022 Cal. Stat. ch. 257](#) (AB 2293); [Hazardous Substance Account Recodification Act: Conforming Revisions](#) (Preprint) (2021), [2022 Cal. Stat. ch. 258](#) (AB 2327).

3. Chapter 6.5 contains approximately 850 code sections, many of which are quite lengthy, set out in 55 distinct statutory articles. An extrapolation based on the Commission's earlier recodification in this study of former Chapter 6.8 (commencing with Section 25300) of Division 20) of the Health and Safety Code (see [2022 Cal. Stat. ch. 257](#) (AB 2293)), a chapter that contained roughly a fifth the amount of statutory text contained in Chapter 6.5, suggests that a printed final recommendation proposing recodification of Chapter 6.5 could require approximately 1,400 pages in what would likely be two of the Commission's printed bound volumes.

4. Due to the volume of material that will eventually appear in the tentative recommendation, the precise placement of the recodified provisions within the proposed recodification of Chapter 6.5 will remain provisional until the tentative recommendation is fully assembled.

recurring cumulative draft of a proposed recodification of Chapter 6.5.⁵

Unless otherwise indicated, statutory citations in this memorandum are to provisions of the existing Health and Safety Code, and citations to “proposed” provisions are to provisions in the proposed recodification.

Comment on any aspect of the attached draft, including identification of any substantive issue raised by a proposed revision that might be a candidate for possible future study,⁶ is welcome.⁷

GENERAL DRAFTING APPROACH

Consistent with prior draft legislation proposed in this study, the staff has continued to take a conservative approach to drafting proposed recodified provisions.⁸ Except as described below, existing statutory text is repeated verbatim in the proposed recodification of the provision.

In accordance with the Commission’s prior decisions in the study, certain minor changes to existing statutory text continue to be made as a matter of course.⁹ However, other than those changes necessarily made to implement the recodification,¹⁰ these minor changes are still shown in the draft in strikeout and underscore.

On occasion, the staff may determine that the clarity of a provision could be nonsubstantively improved in a manner that does not allow the improvement to be easily presented using only strikeout and underscore. In those instances, a “clean” revision of the provision is proposed in the draft without strikeout or underscore, but with the original text of the provision presented in a boxed Staff Note following the proposed provision, soliciting public comment on the proposed revision.¹¹

Finally, if the staff identifies an interpretation issue or substantive question presented by the text of an existing section, the issue or question is also raised in a boxed Staff Note

5. See e.g., Memorandum [2025-25](#) (on the Commission’s meeting agenda for June 26, 2025).

6. The Commission’s assignment in this study also includes a directive that the Commission’s final report to the Legislature “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](#) (ACR 169), para. 13.

7. Written comments, which may be in any form, are best directed to scohen@clrc.ca.gov. Comments may also be made orally at the Commission meeting at which a draft of recodified provisions is scheduled to be presented to the Commission for provisional approval. The Commission’s meeting agendas can be viewed at http://www.clrc.ca.gov/Menu1_meetings/agenda.html.

8. See Memorandum [2020-13](#), p. 3.

9. See Minutes ([May 2020](#)), p. 4; Memorandum [2020-13](#), p. 4; Memorandum [2021-19](#), pp. 3-4.

10. For example, renumbering and/or redesignating statutory parts, chapters, articles, sections, and components of sections, including cross-references within provisions.

11. See e.g., Staff Notes following proposed Section 95000 as well as several other proposed sections in the attached draft.

following the proposed provision, again soliciting public comment on the issue or question.¹²

Does the Commission provisionally approve the proposed recodification in the attached draft for inclusion in a future tentative recommendation?

Respectfully submitted,

Steve Cohen
Senior Staff Counsel

12. See e.g., Staff Note following proposed Section 95275.

PROPOSED PART 1 AND PART 7 OF DIVISION 46 OF THE HEALTH & SAFETY CODE

Staff Note. The content of this draft, proposing recodification of a portion of Chapter 6.5 of Division 20 of the Health & Safety Code in a new Division 46 of the Health & Safety Code, is a work in progress, and subject to change. For the current provisional outline of the entire proposed organization of new Division 46, see the draft attached as an exhibit to Memorandum 2025-25.

All proposed changes to existing statutory text in this draft other than technical changes are either shown in strikeout and underscore, or described in a Staff Note following the section in which the change is proposed.

Comments. A draft of an official Commission “Comment” follows each proposed code section in the recodification. Comments, which are included in a final Commission recommendation, are phrased as if the corresponding code section had been repealed and replaced with the proposed section. Thus, in Comments, existing code provisions are referred to as “former” provisions.

Comments indicate the source of each recodified code provision, and describe how the recodified provision compares with any predecessor provision. Courts have routinely held that Commission Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation.

Staff Notes. Some provisions in this draft are followed by one or more “Staff Notes.” Staff Notes are intended to be temporary, and normally will not be included in a Commission final recommendation. Unlike Comments, Staff Notes reflect the current state of the law. Thus, in Staff Notes, code provisions are referred to as “existing” and “proposed” provisions.

Staff Notes flag issues requiring special attention or treatment. When a Staff Note in a draft solicits public comment, it will typically be continued in the Commission’s tentative recommendation as a “Note” calling for that same comment. However, if a Staff Note asks for public comment on a proposed revision and the Commission thereafter decides not to propose the revision, the Staff Note will typically not appear in the tentative recommendation.

Cross-references. In many instances the provisions proposed for recodification in this draft cross-refer to other provisions contained in Chapter 6.5. Where that cross-referenced provision has not yet been included in a recodification draft, the section number in the cross-reference is left unchanged, but shown in bold text. Bracketed text designates cross-references that have been updated in form, but may still require further updating to reflect proposed recodification.

Each of these cross-references will be updated as the draft of the recodification progresses.

Tables. A “disposition table” at the end of this draft identifies in tabular form the disposition of every provision of existing Chapter 6.5 that is included in the draft. Following that table is a “derivation table” identifying the statutory derivation of every new provision in the draft.

Substantive Issues for Possible Future Study. Part of the Legislature’s assignment to the Commission in this study was to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” To the extent a recodified provision in this draft raises such an issue, it will appear in a list following the disposition and derivation tables.

Public comment. The Commission welcomes public comment at any time, on any issue relating to the content of this draft or on any other aspect of this study. Comment is best directed to Steve Cohen (scohen@clrc.ca.gov).

Contents

1	DIVISION 46. HAZARDOUS SUBSTANCES AND WASTE MANAGEMENT	1
2	PART 1. GENERAL PROVISIONS	1
3	CHAPTER 3. DEFINITIONS.....	1
4	§ 83288. “Permit”	1
5	PART 7. ENFORCEMENT	1
6	CHAPTER 1. AUTHORITY	1
7	§ 95000. General authority to enforce standards and regulations	1
8	§ 95005. Other persons authorized to enforce specific standards and regulations.....	2
9	§ 95010. Authority of California Highway Patrol.....	3
10	§ 95015. Authority of city attorney	3
11	§ 95020. Equal and consistent treatment of similar violations.....	3
12	CHAPTER 2. PRIORITIES AND COORDINATION.....	3
13	§ 95050. Prioritization of actions affecting most impacted communities	3
14	§ 95055. Required notices to other entities	3
15	§ 95060. Coordination of agencies	5
16	§ 95065. Obligations of prosecuting attorney	5
17	CHAPTER 3. PROCEDURES.....	6
18	Article 1. General Provisions.....	6
19	§ 95075. Activities by authorized representative	6
20	§ 95080. Application for order enjoining or directing compliance	7
21	§ 95085. Judgment to collect administrative penalty	8
22	§ 95090. Reward for providing information.....	8
23	Article 2. Inspections	9
24	§ 95100. Inspection requirements.....	9
25	§ 95105. Extension of time period	10
26	§ 95110. Withholding of information if necessary to investigation.....	10
27	§ 95115. Discussion and review of inspection report.....	11
28	§ 95120. Written response to inspection report.....	11
29	§ 95125. Trade secret issues	12
30	§ 95130. Inspection of hazardous waste or border zone property.....	12
31	Article 3. Compelled Disclosure of Information	13
32	§ 95150. Persons subject to compelled disclosure	13
33	§ 95155. Information relating to ability to pay for or perform corrective action	14
34	§ 95160. Activity relating to hazardous substances, waste or materials	14
35	§ 95165. Costs of photocopying or transmitting information	15
36	§ 95170. Trade secrets	15
37	§ 95175. Order directing compliance for failure to provide information.....	16
38	§ 95180. Disclosure of information by department.....	17
39	§ 95185. Required disclosure statements by hazardous waste licenseholder or applicant.....	17
40	Article 4. Permits	18
41	§ 95200. Proceedings generally relating to permit, registration or certificate	18
42	§ 95205. Special requirement for issuance of hazardous waste facilities permit.....	18
43	§ 95210. Suspension of permit	19
44	CHAPTER 4. SANCTIONS.....	21
45	Article 1. Denial, Suspension, or Revocation of Permit, Registration, or Certificate	21
46	§ 95250. Grounds in general	21
47	§ 95255. Activities relating to federal or state conviction.....	22
48	§ 95260. Obtaining information from other agencies	23

1	§ 95265. Multiple incidents of violation or noncompliance.....	23
2	§ 95270. Proceedings relating to permit, registration or certificate	24
3	§ 95275. Temporary suspension of permit, registration, or certificate due to endangerment	25
4	§ 95280. Temporary suspension of operation of facility with extended permit.....	26
5	§ 95285. Suspension or revocation of other authorizations	26
6	Article 2. Order to Conduct Monitoring, Testing, Analysis, and Reporting	27
7	§ 95300. Basis for order	27
8	§ 95305. Order to previous owner or operator	27
9	§ 95310. Submission of proposal	27
10	§ 95315. Conduct of work by other parties	28
11	§ 95320. Other authorized action	29
12	Article 3. Order Requiring Corrective Action	29
13	§ 95350. “Hazardous waste facility”	29
14	§ 95355. Limitation on orders issued by unified program agency	29
15	§ 95360. Order correcting violation and imposing administrative penalty	30
16	§ 95365. Issuance of order for corrective action	30
17	§ 95370. Preference for remedies under Division 46	31
18	§ 95375. Persons subject to correction action order	33
19	§ 95380. Service and form of order.....	33
20	§ 95385. Request for hearing and filing notice of defense	33
21	§ 95390. Hearing process	34
22	§ 95395. Effective date of order	35
23	§ 95400. Court review of decision	36
24	§ 95405. Collected administrative penalties.....	36
25	§ 95410. Responsibilities of CUPA.....	37
26	§ 95415. Implementation of regulations.....	37
27	§ 95420. Authority of local agency	38
28	Article 4. Financial Assurances	38
29	§ 95450. Corrective action cost estimate.....	38
30	§ 95455. Continuing assurances	38
31	§ 95460. Approved financial assurance mechanisms.....	39
32	§ 95465. Prior financial assurances to water control board.....	39
33	§ 95470. Exemption based on participation in hazardous waste facility regulation and permitting	
34	consolidation program.....	40
35	§ 95475. Impact of State Water Resources Control Board rules and regulations	40
36	Article 5. Corrective Action by Department.....	40
37	§ 95500. Grounds for corrective action by department.....	40
38	§ 95505. Expenditure of funds	40
39	§ 95510. Financial liability to department.....	41
40	§ 95515. Absence of civil or criminal liability for trespass	41
41	§ 95520. Absence of liability for acts occurring before January 1, 1981.....	41
42	Article 6. Quarantine Orders.....	42
43	§ 95550. “Authorized agent of the department”	42
44	§ 95555. Issuance of quarantine order.....	42
45	§ 95560. Notice of quarantine	42
46	§ 95565. Duration of quarantine order	43
47	§ 95570. Revocation of quarantine order	43
48	§ 95575. Removal of hazardous waste subject to quarantine order	43
49	§ 95580. Storage of hazardous waste subject to quarantine order	43
50	Article 7. Notices to Comply	44
51	§ 95600. Issuance of notice	44
52	§ 95605. Notice to contain advisement about reinspection.....	44

1	§ 95610. Compliance with notice	44
2	§ 95615. Enforcement action based on failure to comply with notice	45
3	§ 95620. Multiple violations.....	45
4	§ 95625. Immediate correction of violation in presence of an inspector	45
5	§ 95630. Exclusive means of citation for minor violation	46
6	§ 95635. Additional assessment of civil penalty	46
7	§ 95640. Disagreement with notice to comply.....	46
8	§ 95645. Appeal of enforcement action	46
9	§ 95650. Need for immediate enforcement.....	47
10	§ 95655. Disagreement with notice to comply.....	47
11	CHAPTER 4. LIABILITY	47
12	Article 1. General Provisions.....	47
13	§ 95700. Cumulative remedies permissible.....	47
14	§ 95705. Non-abatement of action or proceeding	47
15	§ 95710. Proceeding relating to withdrawn application.....	47
16	§ 95715. Apportionment of penalties	48
17	§ 95720. Reimbursement to department for overseeing or carrying out corrective action	49
18	Article 2. Civil Liability Generally.....	49
19	§ 95800. Prosecution of civil action	49
20	§ 95805. Venue for civil action	49
21	§ 95810. Temporary restraining order or injunctive relief.....	49
22	§ 95815. Additional liability for costs and expenses.....	50
23	Article 3. Primary Civil Liability [Former Section 25189]	50
24	§ 95850. False statements.....	50
25	§ 95855. Violation of provision of division	51
26	§ 95860. Intentional disposal of hazardous or extremely hazardous waste	51
27	§ 95865. Negligent disposal of hazardous or extremely hazardous waste	51
28	§ 95870. Treatment or storage of hazardous waste	52
29	§ 95875. Separate penalties for separate violations.....	52
30	§ 95880. Duplication of penalties.....	52
31	Article 4. Alternative Civil Liability [Former Section 25189.2]	52
32	§ 95900. False statements.....	52
33	§ 95905. Violation of provision of division	53
34	§ 95910. Unauthorized disposal of hazardous or extremely hazardous waste	53
35	§ 95915. Treatment or storage of hazardous waste	53
36	§ 95920. Exemption from liability under Section 95910 or 95915.....	53
37	§ 95925. Prohibition of double imposition of penalty.....	54
38	§ 95930. Alternative administrative imposition of penalty	54
39	Article 4. Criminal Liability	54
40	§ 95950. Required disclosure of violations by designated government employees.....	54
41	§ 95955. Knowing disposal of hazardous waste	55
42	§ 95960. Treatment, handling, transport, disposal, or storage of hazardous waste.....	56
43	§ 95965. Burning or incineration of hazardous waste	56
44	§ 95970. Violation of provision of division	57
45	§ 95975. Dissemination of protected information.....	57
46	§ 95980. Miscellaneous criminal liability	57
47	§ 95985. Additional misdemeanor violations.....	59
48	Article 4. Miscellaneous Liability	60
49	§ 96000. Additional civil penalty based on prior liability finding	60
50	§ 96005. Violation of Section 25227 or former Section 25221	60
51	§ 96010. Registered waste transporters	60

1	§ 96015. Failure to provide information relating to generated hazardous waste	60
2	§ 96020. Noncompliance with order requiring corrective action	61
3	DISPOSITION OF EXISTING LAW	63
4	DERIVATION OF NEW LAW	69

DRAFT LEGISLATION

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

4 DIVISION 46. HAZARDOUS SUBSTANCES AND WASTE 5 MANAGEMENT

6 . . .

7 PART 1. GENERAL PROVISIONS

8 CHAPTER 3. DEFINITIONS

9 . . .

10 **§ 83288. “Permit”**

11 83288. ~~For purposes of this chapter, “permit”~~ **“Permit”** includes matters deemed
12 to be permits pursuant to **subdivision (c) of Section 25198.6**.

13 **Comment.** Section 83288 continues former Section 25180.1 without substantive change.

14 . . .

15 PART 7. ENFORCEMENT

16 CHAPTER 1. AUTHORITY

17 **§ 95000. General authority to enforce standards and regulations**

18 95000. (a) Except as provided in subdivision (b), the standards in this division and
19 the regulations adopted by the department to implement this division shall be
20 enforced by the department, and by any local health officer or any local public
21 officer designated by the director.

22 (b) The standards of this division listed in **paragraph (1) of subdivision (c) of**
23 **Section 25404**, and the regulations adopted to implement the standards of this
24 division listed in **paragraph (1) of subdivision (c) of Section 25404**, shall be
25 enforced by the department and one of the following:

26 (1) If there is no CUPA, the officer or agency authorized, pursuant to **subdivision**
27 **(f) of Section 25404.3**, to implement and enforce the requirements of this division
28 listed in **paragraph (1) of subdivision (c) of Section 25404**.

(2) Within the jurisdiction of a CUPA, the unified program agencies, to the extent provided by this division and **Sections 25404.1 and 25404.2.**

(c) Within the jurisdiction of a CUPA, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in **paragraph (1) of subdivision (c) of Section 25404.**

Comment. Section 95000 restates former Section 25180(a) without substantive change.

See Sections 83110 (“CUPA”), 83160 (“department”), 83165 (“director”), 83240 (“local health officer”), 83375 (“unified program agency”).

Staff Note. Proposed Section 95000 would restate Section 25180(a) for clarity. Currently, Section 25180(a) provides:

“25180. (a)(1) Except as provided in paragraph (2), the standards in this chapter and the regulations adopted by the department to implement this chapter shall be enforced by the department, and by any local health officer or any local public officer designated by the director.

(2) The standards of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, and the regulations adopted to implement the standards of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, shall be enforced by the department and one of the following:

(A) If there is no CUPA, the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Within the jurisdiction of a CUPA, the unified program agencies, to the extent provided by this chapter and Sections 25404.1 and 25404.2. Within the jurisdiction of a CUPA, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.”

Absent comment, this proposed restatement will be presumed correct.

§ 95005. Other persons authorized to enforce specific standards and regulations

95005. (a) In addition to the persons specified in Section 95000, any traffic officer, as defined by Section 625 of the Vehicle Code, and any peace officer specified in Section 830.1 of the Penal Code, may enforce **Section 25160, subdivision (a) of Section 25163, and Sections 25250.18, 25250.19, and 25250.23.**

(b) Traffic officers and peace officers are authorized representatives of the department for purposes of enforcing the provisions set forth in this section.

(c)(1) A peace officer specified in subdivision (a) of Section 830.37 of the Penal Code may, upon approval of the local district attorney, enforce the standards in this division and regulations adopted by the department to implement this division.

(2) A peace officer authorized to enforce ~~those~~ the standards and regulations referenced in paragraph (1) pursuant to this subdivision shall perform ~~these~~ those duties in coordination with the appropriate local officer or agency authorized to enforce this division pursuant to Section 95000, and shall complete a training program ~~which is~~ equivalent to that required by the department for local officers and agencies authorized to enforce this division pursuant to Section 95000.

Comment. Section 95005 continues former Section 25180(b) without substantive change.

See Section 83160 (“department”).

1 **§ 95010. Authority of California Highway Patrol**

2 95010. Notwithstanding any ~~limitations~~ limitation in Section 95005, a member of
3 the California Highway Patrol may enforce **Sections 25185, 25189, 25189.2,**
4 **25189.5, 25191, and 25195, and Article 6 (commencing with Section 25160) and**
5 **Article 6.5 (commencing with Section 25167.1),** as those provisions relate to the
6 transportation of hazardous waste.

7 **Comment.** Section 95010 continues former Section 25180(c) without substantive change.
8 See Section 83210 (“hazardous waste”).

9 **§ 95015. Authority of city attorney**

10 95015. Actions pursuant to **Sections 25189.5, 25189.6, 25189.7, 25190, and**
11 **25191** may be brought by any city attorney.

12 **Comment.** Section 95015 continues former Section 25191.2 without substantive change.

13 **§ 95020. Equal and consistent treatment of similar violations**

14 95020. In enforcing this division, including, but not limited to, the issuance of
15 orders imposing administrative penalties, the referral of violations to prosecutors
16 for civil or criminal prosecution, the settlement of cases, and the adoption of
17 enforcement policies and standards related to those matters, the department and the
18 local officers and agencies authorized to enforce this division pursuant to Section
19 95000 shall exercise their enforcement authority in such a manner that generators,
20 transporters, and operators of storage, treatment, transfer, and disposal facilities are
21 treated equally and consistently with regard to the same types of violations.

22 **Comment.** Section 95020 continues former Section 25180(d) without substantive change.
23 See Sections 83175 (“disposal”), 83355 (“storage”), 83370 (“treatment”).

24 **CHAPTER 2. PRIORITIES AND COORDINATION**

25 **§ 95050. Prioritization of actions affecting most impacted communities**

26 95050. The department shall prioritize an enforcement action authorized by this
27 division affecting communities that have been identified by the California
28 Environmental Protection Agency as being the most impacted environmental justice
29 communities.

30 **Comment.** Section 95050 continues former Section 25180.2 without substantive change.
31 See Section 83160 (“department”).

32 **§ 95055. Required notices to other entities**

33 95055. (a) The department, the State Water Resources Control Board, and the
34 California regional water quality control boards shall notify the local health officer
35 and director of environmental health of a county, city, or district, and the CUPA for
36 the jurisdiction, as specified in subdivision (c), within 15 days after any of the
37 following occur:

(1) The department's or board's employees are informed or discover that a disposal of hazardous waste has occurred within that county, city, or district and that the disposal violates a state or local law, ordinance, regulation, rule, license, or permit or that the disposal is potentially hazardous to the public health or the environment.

(2) The department or board proposes to issue an abatement order or a cease and desist order, to file a civil or criminal action, or to settle a civil or criminal action, concerning a disposal of hazardous waste within that county, city, or district.

(b) The notice given by the department or board pursuant to subdivision (a) shall include all test results and any relevant information which the department or board has obtained and which do not contain trade secrets, as defined by **Section 25173**, as determined by the department or board.

(c) If the department or board determines that the test results or information cannot be disseminated because of current or potential litigation, the department or board shall inform the local health officer, the director of environmental health, and the CUPA for the jurisdiction that the test results and information shall be used by the local health officer, the director of environmental health, and the unified program agencies only in connection with their statutory responsibilities, and shall not otherwise be released to the public.

Comment. Section 95055 restates former Section 25180.5(a) and (b) without substantive change.

See Sections 83110 ("CUPA"), 83160 ("department"), 83175 ("disposal"), 83210 ("hazardous waste"), 83240 ("local health officer"), 83375 ("unified program agency").

Staff Note. Proposed Section 95055 would restate subdivisions (a) and (b) of Section 25180.5 for clarity. Currently, those subdivisions provide:

"25180.5. (a) The department, the State Water Resources Control Board, and the California regional water quality control boards shall notify the local health officer and director of environmental health of a county, city, or district, and the CUPA for the jurisdiction as specified in subdivision (b), within 15 days after any of the following occur:

(1) The department's or board's employees are informed or discover that a disposal of hazardous waste has occurred within that county, city, or district and that the disposal violates a state or local law, ordinance, regulation, rule, license, or permit or that the disposal is potentially hazardous to the public health or the environment.

(2) The department or board proposes to issue an abatement order or a cease and desist order, to file a civil or criminal action, or to settle a civil or criminal action, concerning a disposal of hazardous waste within that county, city, or district.

(b) The notice given by the department or board pursuant to subdivision (a) shall include all test results and any relevant information which the department or board has obtained and which do not contain trade secrets, as defined by Section 25173, as determined by the department or board. If the department or board determines that the test results or information cannot be disseminated because of current or potential litigation, the department or board shall inform the local health officer, the director of environmental health, and the CUPA for the jurisdiction that the test results and information shall be used by the local health officer, the director of environmental health, and the unified program agencies, only in connection with their statutory responsibilities and shall not otherwise be released to the public."

Absent comment, this proposed restatement will be presumed correct.

1 **§ 95060. Coordination of agencies**

2 95060. The department, the State Water Resources Control Board, and the
3 California regional water quality control boards shall coordinate with the unified
4 program agencies regarding violations of this chapter, or violations of regulations
5 adopted pursuant to this chapter, at a unified program facility.

6 **Comment.** Section 95060 continues former Section 25180.5(c) without substantive change.

7 See Sections 83160 (“department”), 83375 (“unified program agency”), 83380 (“unified
8 program facility”).

9 **§ 95065. Obligations of prosecuting attorney**

10 95065. (a) In any case filed in any court or administrative tribunal, including, but
11 not limited to, the Office of Administrative Hearings, which alleges any violations
12 of this chapter or any statute, regulation, or requirement specified in **Section 25186**,
13 the prosecuting attorney shall, within 30 days of the date of filing, forward, to the
14 office of Attorney General located in the City of Los Angeles, a summary of the
15 case which provides all of the following information:

16 (1) The case name and court or administrative number.

17 (2) The court or administrative tribunal in which the case is being prosecuted.

18 (3) The agency prosecuting the case.

19 (4) The name, business address, and telephone number of the prosecuting
20 attorney.

21 (5) The statutes, regulations, or requirements which are alleged to have been
22 violated.

23 (6) The date of filing and date or dates of alleged violations.

24 (7) A brief summary of the action.

25 (8) The names, addresses, and telephone numbers of all respondents or defendants
26 in the action.

27 (9) The status of the case.

28 (b) Within 30 days of the conclusion of a case specified in subdivision (a) by
29 verdict, award, judgment, dismissal, or settlement, the prosecuting attorney shall
30 forward, to the office of the Attorney General located in the City of Los Angeles,
31 an update of the information required by subdivision (a), including a statement
32 describing the final outcome of the case.

33 (c) The cases subject to this section shall include those cases which are brought
34 for purposes of clarifying, enforcing, limiting, or overturning any case which arose
35 out of a violation of this chapter or statute, regulation, or requirement specified in
36 **Section 25186**, including, but not limited to, appeals, actions for contempt, and
37 revocations of probation.

38 **Comment.** Section 95065 continues former Section 25186.6 without substantive change.

39 See Section 83160 (“department”).

CHAPTER 3. PROCEDURES

Article 1. General Provisions

§ 95075. Activities by authorized representative

95075. (a) In order to carry out the purposes of this chapter, any authorized representative of the department or the local officer or agency authorized to enforce this chapter pursuant to Section 95000, may, at any reasonable hour of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, do any of the following:

(1) Enter and inspect a factory, plant, construction site, disposal site, transfer facility, or any establishment or any other place or environment where hazardous wastes are stored, handled, processed, disposed of, or being treated to recover resources.

(2) Stop and inspect any vehicle reasonably suspected of transporting hazardous wastes when accompanied by a uniformed peace officer in a clearly marked vehicle.

(3) Inspect and copy any records, reports, test results, or other information required to carry out this chapter.

(4) Photograph any waste, waste container, waste container label, vehicle, waste treatment process, waste disposal site, or condition constituting a violation of law found during an inspection.

(5) Carry out any sampling activities necessary to carry out this chapter, including obtaining samples from any individual or taking samples from the property of any person or from any vehicle in which any authorized representative of the department or the local officer or agency authorized to enforce this chapter pursuant to Section 95000 reasonably believes has transported or is transporting hazardous waste.

(b) Upon request, split samples obtained pursuant to paragraph (5) of subdivision (a) shall be given to the person from whom, or from whose property or vehicle, the samples were obtained.

Comment. Section 95075 restates former Section 25185(a) without substantive change.

See Sections 83160 (“department”), 83180 (“disposal site”), 83210 (“hazardous waste”), 83245 (“local officer”), 83370 (“treatment”), 83395 (“waste”).

Staff Note. Proposed Section 95075 would restate existing Section 25185(a) for clarity. Currently, Section 25185(a) provides:

“25185. (a) In order to carry out the purposes of this chapter, any authorized representative of the department or the local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, may, at any reasonable hour of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, do any of the following:

(1) Enter and inspect a factory, plant, construction site, disposal site, transfer facility, or any establishment or any other place or environment where hazardous wastes are stored, handled, processed, disposed of, or being treated to recover resources.

(2) Carry out any sampling activities necessary to carry out this chapter, including obtaining samples from any individual or taking samples from the property of any person or from any vehicle

in which any authorized representative of the department or the local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180 reasonably believes has transported or is transporting hazardous waste. However, upon request, split samples shall be given to the person from whom, or from whose property or vehicle, the samples were obtained.

(3) Stop and inspect any vehicle reasonably suspected of transporting hazardous wastes when accompanied by a uniformed peace officer in a clearly marked vehicle.

(4) Inspect and copy any records, reports, test results, or other information required to carry out this chapter.

(5) Photograph any waste, waste container, waste container label, vehicle, waste treatment process, waste disposal site, or condition constituting a violation of law found during an inspection.”

Absent comment, this proposed restatement will be presumed correct.

§ 95080. Application for order enjoining or directing compliance

95080. (a) If the department determines that a person has engaged in, is engaged in, or is about to engage in any acts or practices that constitute or will constitute a violation of this division, or any rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or executed thereunder, and when requested by the department, the city attorney of the city in which those acts or practices occur, occurred, or will occur, the county counsel or the district attorney of the county in which those acts or practices occur, occurred, or will occur, or the Attorney General may apply to the superior court for an order enjoining those acts or practices, or for an order directing compliance, and upon a showing by the department that the person has engaged in or is about to engage in those acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

(b) If the unified program agency determines that a person has engaged in, is engaged in, or is about to engage in any acts or practices which constitute or will constitute a violation of this division, or any rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or executed thereunder, and when requested by the unified program agency, the city attorney of the city in which those acts or practices occur, occurred, or will occur, the county counsel or the district attorney of the county in which those acts or practices occur, occurred, or will occur, or the Attorney General, may apply to the superior court for an order enjoining those acts or practices, or for an order directing compliance, and upon a showing by the unified program agency that the person has engaged in or is about to engage in those acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

(c) If a county counsel or the district attorney brings an action pursuant to subdivision (a) or (b), the county counsel or the district attorney shall, within seven days of the filing of the action, notify the district attorney or county counsel, as applicable, of the county in which the acts or practices occur, occurred, or will occur.

Comment. Section 95080 continues former Section 25181 without substantive change.

See Sections 83160 (“department”), 83375 (“unified program agency”).

1 **§ 95085. Judgment to collect administrative penalty**

2 95085. (a) If any administrative order or decision that imposes a penalty is issued
3 pursuant to this division or Part 2 (commencing with Section 78000) of Division 45,
4 the administrative order or decision has become final, and, if applicable, a petition
5 for judicial review of the final order or decision has not been filed within the time
6 limits prescribed in Section 11523 of the Government Code, the department may
7 apply to the clerk of the appropriate court for a judgment to collect the
8 administrative penalty.

9 (b) The department's application, which shall include a certified copy of the final
10 administrative order or decision, constitutes a sufficient showing to warrant issuance
11 of the judgment.

12 (c) The court clerk shall enter the judgment immediately in conformity with the
13 application.

14 (d) The judgment so entered has the same force and effect as, and is subject to all
15 the provisions of law relating to, a judgment in a civil action, and may be enforced
16 in the same manner as any other judgment of the court in which it is entered.

17 **Comment.** Section 95085 continues former Section 25184.1 without substantive change.
18 See Section 83160 ("department").

19 **§ 95090. Reward for providing information**

20 95090. (a) A person who provides information that materially contributes to the
21 imposition of a civil penalty or criminal fine against a person for violating this
22 division shall be paid a reward pursuant to regulations adopted by the department
23 under subdivision (j).

24 (b) The reward shall be equal to 10 percent of the amount of the civil penalty or
25 criminal fine collected by the department, district attorney, county counsel, or city
26 attorney.

27 (c) The department shall pay the award to the person who provides information
28 that results in the imposition of a civil penalty, and the county shall pay the award
29 to the person who provides information that results in the imposition of a criminal
30 fine.

31 (d) No reward paid pursuant to this subdivision shall exceed five thousand dollars
32 (\$5,000).

33 (e) No informant shall be eligible for a reward for a violation known to the
34 department, unless the information materially contributes to the imposition of
35 criminal or civil penalties for a violation specified in this section.

36 (f) If there is more than one informant for a single violation, the first notification
37 received by the department shall be eligible for the reward.

38 (g) If the notifications are postmarked on the same day or telephoned notifications
39 are received on the same day, the reward shall be divided equally among those
40 informants.

41 (h) Public officers and employees of the United States, the State of California, or
42 counties and cities in California are not eligible for the reward pursuant to

subdivision (a), unless reporting those violations does not relate in any manner to their responsibilities as public officers or employees.

(i) An informant who is an employee of a business and who provides information that the business violated this division is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

(j) The department shall adopt regulations that establish procedures for the receipt and review of claims for payment of rewards.

(k) All decisions concerning the eligibility for an award and the materiality of the provided information shall be made pursuant to these regulations.

(l) In each case brought under subdivision (a), the department, the office of the city attorney, the county counsel, or the district attorney, whichever office brings the action, shall determine whether the information materially contributed to the imposition of civil or criminal penalties for violations of this division.

(m) The department shall continuously publicize the availability of the rewards pursuant to this section for persons who provide information pursuant to this section.

(n) Claims may be submitted only for those referrals made on or after January 1, 1982.

Comment. Section 95090 continues former Section 25191.7 without substantive change. See Section 83160 ("department").

Article 2. Inspections

§ 95100. Inspection requirements

95100. (a) During ~~the inspection~~ an inspection pursuant to Section 95075, the inspector shall comply with all reasonable security, safety, and sanitation measures; ~~In addition, the inspector shall comply with~~, and reasonable precautionary measures specified by the operator.

(b) At the conclusion of the inspection, the inspector shall deliver to the operator of the facility or site a written summary of all violations alleged by the inspector.

(c) The inspector shall, prior to leaving the facility or site, deliver the written summary to the operator and shall discuss any questions or observations that the operator might have concerning the inspection.

(d) The department or the local officer or agency authorized to enforce this division pursuant to Section 95000 shall prepare an inspection report ~~which~~ that shall fully detail all observations made at the facility or site, all alleged violations, the factual basis for alleging those violations, and any corrective actions that should be taken by the operator of the facility or site.

(e) The department or the local officer or agency shall provide a copy of the inspection report to the operator within five days from the date of the preparation of the inspection report, and, in any event, not later than 65 days from the date of the inspection.

(f) The inspection report shall include all pertinent information, including, but not limited to, documents, photographs, and sampling results concerning the alleged violations.

(g) The department or the local officer or agency shall provide ~~this~~ the information described in subdivision (f) to the operator with the inspection report, including all photographs taken by the department in the course of the inspection and all laboratory results obtained as a result of the inspection.

(h)(1) If sampling or laboratory results are not available at the time that the inspection report is prepared, that fact shall be contained in the report.

~~(2) These results~~ The results referenced in paragraph (1) shall be provided to the operator within 10 working days of their receipt by the department or the local officer or agency.

Comment. Subdivision (a) of Section 95100 continues former Section 25185(b) without substantive change.

Subdivision (b) continues the first sentence of former Section 25185(c)(1) without substantive change.

Subdivision (c) continues the second sentence of former Section 25185(c)(1) without substantive change.

Subdivision (d) continues the first sentence of former Section 25185(c)(2)(A) without substantive change.

Subdivision (e) continues the second sentence of former Section 25185(c)(2)(A) without substantive change.

Subdivision (f) continues the third sentence of former Section 25185(c)(2)(A) without substantive change.

Subdivision (g) continues the fourth sentence of former Section 25185(c)(2)(A) without substantive change.

Paragraph (1) of subdivision (h) continues the fifth sentence of former Section 25185(c)(2)(A) without substantive change.

Paragraph (2) of subdivision (h) continues the sixth sentence of former Section 25185(c)(2)(A) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95105. Extension of time period

95105. ~~The A time period required by subparagraph (A)~~ specified in subdivision (e) or subdivision (h) of Section 95100 may be extended as a result of a natural disaster, inspector illness, or other circumstances beyond the control of the department, or the local officer or agency, if the department or the local officer or agency so notifies the operator within 70 days from the date of the inspection and provides the inspection report to the operator in a timely manner after the reason for the delay is ended.

Comment. Section 95105 continues former Section 25185(c)(2)(B) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95110. Withholding of information if necessary to investigation

95110. Information from the inspection report, or the report itself, may be withheld by the department or the local officer or agency if necessary to a criminal investigation or other ongoing investigation in which the department or the local

1 officer or agency determines, in writing, that disclosure of the information will
2 result in a substantial probability of destruction of evidence, intimidation of
3 witnesses, or other obstruction of justice.

4 **Comment.** Section 95110 continues former Section 25185(c)(2)(C) without substantive change.
5 See Sections 83160 (“department”), 83245 (“local officer”).

6 **§ 95115. Discussion and review of inspection report**

7 95115. The department or the local officer or agency shall, at the operator’s
8 request, discuss the inspection report with the operator and shall, upon the request
9 of the operator, review the inspection report and determine whether the operator’s
10 responses and documented or proposed corrective actions would be sufficient to
11 comply with this division, or if any allegation of a violation is unwarranted.

12 **Comment.** Section 95115 continues former Section 25185(c)(2)(D) without substantive change.
13 See Sections 83160 (“department”), 83245 (“local officer”).

14 **§ 95120. Written response to inspection report**

15 95120. (a) The operator of the site or facility that receives an inspection report
16 pursuant to Section 95100 shall submit a written response to the department or the
17 local officer or agency authorized to enforce this division pursuant to Section 95000
18 within 60 days of receipt of the inspection report, or within a shorter time as the
19 department or the local officer or agency may reasonably require, which shall
20 include a statement documenting corrective actions taken by the operator or
21 proposing corrective actions ~~which~~ that will be taken by the operator, for purposes
22 of compliance with this division, or disputing the existence of the violation.

23 (b) Upon receiving the written response from the operator, the department or the
24 local officer or agency shall, upon the request of the operator, meet and confer with
25 the operator regarding any questions, concerns, or comments that the operator may
26 have concerning the inspection report.

27 (c) The department or the local officer or agency shall, within 30 working days
28 from the date of receipt of a response that documents or proposes corrective action,
29 or which disputes the existence of a violation, determine whether the corrective
30 actions documented or proposed to be taken by the operator, if implemented as
31 stated or proposed, will achieve compliance with this division, or whether a
32 violation is still alleged, as applicable, and shall submit a written copy of that
33 determination to the operator, in the form of a report of violation or other appropriate
34 document.

35 (d) If the department or the local officer or agency fails to make the determination
36 and submit a copy of the determination within 30 working days from the date of
37 receipt of the operator’s response, the department or the local officer or agency may
38 not seek penalties for continuing violations or any alleged new violations caused by
39 the corrective actions taken by the operator, until the department or the local officer
40 or agency submits the determination to the operator and provides the operator with

a reasonable time in which to make necessary operational modifications ~~which~~ that differ from those proposed to the department or local officer or agency.

Comment. Subdivision (a) of Section 95120 continues the first sentence of former Section 25185(c)(3) without substantive change.

Subdivision (b) continues the second sentence of former Section 25185(c)(3) without substantive change.

Subdivision (c) continues the third sentence of former Section 25185(c)(3) without substantive change.

Subdivision (d) continues the fourth sentence of former Section 25185(c)(3) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95125. Trade secret issues

95125. (a) Whenever information, including, but not limited to, documents, photographs, and sampling results, has been gathered pursuant to Section 95075, the department or the local officer or agency shall comply with all procedures established pursuant to **Section 25173** and shall notify the person whose facility was inspected prior to public disclosure of the information, and, upon request of that person, shall submit a copy of any information to that person for the purpose of determining whether trade secret information, as defined in **Section 25173**, or facility security would be revealed by the information.

(b) “Public disclosure,” as used in this section, shall not include review of the information by a court of competent jurisdiction or an administrative law judge. ~~That review, which~~ may be conducted in camera at the discretion of the court or judge.

Comment. Subdivision (a) of Section 95125 continues the first sentence of former Section 25185(d) without substantive change.

Subdivision (b) of Section 95125 continues the second and third sentences of former Section 25185(d) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95130. Inspection of hazardous waste or border zone property

95130. (a) For a property that is designated as a hazardous waste property or border zone property pursuant to **the former Article 11 (commencing with Section 25220)**, an authorized representative of the department may, at any reasonable hour of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, enter and inspect any real property that is within 2,000 feet of a deposit of hazardous waste or a hazardous waste property and do any of the following:

(1) Obtain samples of the soil, vegetation, air, water, and biota on or beneath the land.

(2) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous wastes on, beneath, or toward the land.

(3) Survey and determine the topography and geology of the land.

(4) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (1), (2), or (3), with the photographs subject to the requirements of Section 95125.

(b) This section does not apply to any hazardous waste facility that is required to be permitted pursuant to this division and that is subject to inspection pursuant to Section 95075.

(c) An inspector who inspects pursuant to this section shall do all of the following:

(1) Make a reasonable effort to inform the owner or their authorized representative of the inspection.

(2) Provide split samples to the owner or representative upon request.

(3) Comply with the provisions of subdivision (a) of Section 95100.

Comment. Section 95130 continues former Section 25185.5 without substantive change. See Section 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

Staff Note. Proposed Section 95130 would restate existing Section 25185.5 for clarity. Currently, Section 25185.5 provides:

“25185.5. For a property that is designated as a hazardous waste property or border zone property pursuant to the former Article 11 (commencing with Section 25220), an authorized representative of the department may, at any reasonable hour of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, enter and inspect any real property that is within 2,000 feet of a deposit of hazardous waste or a hazardous waste property and do any of the following:

(a) Obtain samples of the soil, vegetation, air, water, and biota on or beneath the land.

(b) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous wastes on, beneath, or toward the land.

(c) Survey and determine the topography and geology of the land.

(d) Photograph any equipment, sample, activity, or environmental condition described in subdivision (a), (b), or (c). The photographs shall be subject to the requirements of subdivision (d) of Section 25185.

(e) This section does not apply to any hazardous waste facility that is required to be permitted pursuant to this chapter and that is subject to inspection pursuant to Section 25185.

(f) An inspector who inspects pursuant to this section shall make a reasonable effort to inform the owner or his or her authorized representative of the inspection and shall provide split samples to the owner or representative upon request and shall comply with the provisions of subdivision (b) of Section 25185.”

Absent comment, this proposed restatement will be presumed correct.

Article 3. Compelled Disclosure of Information

§ 95150. Persons subject to compelled disclosure

95150. The department or a local officer or agency authorized to enforce this division pursuant to Section 95000, in connection with any action authorized by this division, may require any of the following persons to furnish and transmit, upon reasonable notice, to the designated offices of the department or the local officer or agency, any existing information relating to hazardous substances, hazardous wastes, or hazardous materials:

- 1 (a) Any person who owns or operates any hazardous waste facility.
2 (b) Any person who generates, stores, treats, transports, disposes of, or otherwise
3 handles hazardous waste.
4 (c) Any person who has generated, stored, treated, transported, disposed of, or
5 otherwise handled hazardous waste.
6 (d) Any person who arranges, or has arranged, by contract or other agreement, to
7 store, treat, transport, dispose of, or otherwise handle hazardous waste.
8 (e) Any person who applies, or has applied, for any permit, registration, or
9 certification under this division.

10 **Comment.** Section 95150 continues former Section 25185.6(a)(1) without substantive change.
11 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

12 **§ 95155. Information relating to ability to pay for or perform corrective action**

13 95155. (a) The department, or a local officer or agency authorized to enforce this
14 division pursuant to Section 95000, may require a person described in Section 95150
15 to furnish and transmit, upon reasonable notice, to the designated offices of the
16 department or the local officer or agency, any information relating to the person’s
17 ability to pay for, or to perform, a response or corrective action.

18 (b) Subdivision (a) applies only if there is a reasonable basis to believe that there
19 has been or may be a release or threatened release of a hazardous substance,
20 hazardous wastes, or hazardous material, and only for the purpose of determining
21 under this division how to finance a response or corrective action or otherwise for
22 the purpose of enforcing this division.

23 **Comment.** Section 95155 continues former Section 25185.6(a)(2) without substantive change.
24 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

25 **§ 95160. Activity relating to hazardous substances, waste or materials**

26 95160. (a) The department may require any person who has information regarding
27 the activities of a person described in Section 95150 relating to hazardous
28 substances, hazardous wastes, or hazardous materials to furnish and transmit, upon
29 reasonable notice, that information to the designated offices of the department.

30 (b) (1) The department may require any person who has information regarding the
31 activities of a person described in Section 95150 relating to the ability of the person
32 described in that section to pay for, or to perform, a response or corrective action,
33 upon reasonable notice, to furnish and transmit that information to the designated
34 offices of the department.

35 (2) This subdivision applies only if there is a reasonable basis to believe that there
36 has been or may be a release or threatened release of a hazardous substance,
37 hazardous wastes, or hazardous material, and only for the purpose of determining
38 under this division how to finance a response or corrective action or otherwise for
39 the purpose of enforcing this division.

40 **Comment.** Section 95160 continues former Section 25185.6(b) without substantive change.
41 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

1 **§ 95165. Costs of photocopying or transmitting information**

2 95165. Any person required to furnish information pursuant to this article shall
3 pay any costs of photocopying or transmitting this information.

4 **Comment.** Section 95165 continues former Section 25185.6(c) without substantive change.

5 **§ 95170. Trade secrets**

6 95170. (a) When requested by the person furnishing information pursuant to this
7 article, the department or the local officer or agency shall follow the procedures
8 established under **Section 25173**.

9 (b) A person providing information pursuant to this article shall, at the time of its
10 submission, identify all information that the person believes is a trade secret.

11 (c) Any information or record provided pursuant to this article that is not identified
12 as a trade secret pursuant is available to the public, unless exempted from disclosure
13 by other provisions of law.

14 (d) For purposes of this section, “trade secret” is defined as in **Section 25173**.

15 **Comment.** Subdivision (a) of Section 95170 continues former Section 25185.6(d) without
16 substantive change.

17 Subdivisions (b) through (d) restate former Section 25185.6(h) without substantive change.

18 See Sections 83160 (“department”), 83245 (“local officer”).

19 **Staff Note.** Proposed Section 95170 would restate existing Section 25185.6(d) and (h) for clarity.
20 The other subdivisions of existing Section 25185.6 are continued in other sections of this proposed
21 article.

22 Currently, Section 25185.6 in its entirety provides:

23 “25185.6. (a) (1) The department or a local officer or agency authorized to enforce this chapter
24 pursuant to subdivision (a) of Section 25180, in connection with any action authorized by this
25 chapter, may require any of the following persons to furnish and transmit, upon reasonable notice,
26 to the designated offices of the department or the local officer or agency any existing information
27 relating to hazardous substances, hazardous wastes, or hazardous materials:

28 (A) Any person who owns or operates any hazardous waste facility.

29 (B) Any person who generates, stores, treats, transports, disposes of, or otherwise handles
30 hazardous waste.

31 (C) Any person who has generated, stored, treated, transported, disposed of, or otherwise
32 handled hazardous waste.

33 (D) Any person who arranges, or has arranged, by contract or other agreement, to store, treat,
34 transport, dispose of, or otherwise handle hazardous waste.

35 (E) Any person who applies, or has applied, for any permit, registration, or certification under
36 this chapter.

37 (2) (A) The department, or a local officer or agency authorized to enforce this chapter pursuant
38 to subdivision (a) of Section 25180, may require a person described in paragraph (1) to furnish and
39 transmit, upon reasonable notice, to the designated offices of the department or the local officer or
40 agency, any information relating to the person’s ability to pay for, or to perform, a response or
41 corrective action.

42 (B) This paragraph applies only if there is a reasonable basis to believe that there has been or
43 may be a release or threatened release of a hazardous substance, hazardous wastes, or hazardous
44 material, and only for the purpose of determining under this chapter how to finance a response or
45 corrective action or otherwise for the purpose of enforcing this chapter.

(b) (1) The department may require any person who has information regarding the activities of a person described in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a) relating to hazardous substances, hazardous wastes, or hazardous materials to furnish and transmit, upon reasonable notice, that information to the designated offices of the department.

(2) (A) The department may require any person who has information regarding the activities of a person described in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (a), relating to the ability of the person described in those subparagraphs to pay for, or to perform, a response or corrective action, upon reasonable notice, to furnish and transmit that information to the designated offices of the department.

(B) This paragraph applies only if there is a reasonable basis to believe that there has been or may be a release or threatened release of a hazardous substance, hazardous wastes, or hazardous material, and only for the purpose of determining under this chapter how to finance a response or corrective action or otherwise for the purpose of enforcing this chapter.

(c) Any person required to furnish information pursuant to this section shall pay any costs of photocopying or transmitting this information.

(d) When requested by the person furnishing information pursuant to this section, the department or the local officer or agency shall follow the procedures established under Section 25173.

(e) If a person intentionally or negligently fails to furnish and transmit to the designated offices of the department or the local officer or agency any existing information required pursuant to this section, the department may issue an order pursuant to Section 25187 directing compliance with the request.

(f) The department may disclose information submitted pursuant to this section to authorized representatives, contractors, or other governmental agencies only in connection with the department's responsibilities pursuant to this chapter. The department shall establish procedures to ensure that information submitted pursuant to this section is used only in connection with these responsibilities and is not otherwise disseminated without the consent of the person who provided the information to the department.

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

(h) A person providing information pursuant to subdivision (a) or (b) shall, at the time of its submission, identify all information that the person believes is a trade secret. Any information or record not identified as a trade secret is available to the public, unless exempted from disclosure by other provisions of law. For purposes of this subdivision, "trade secret" is defined as in Section 25173.

(i) Notwithstanding Section 25190, a person who knowingly and willfully disseminates information protected by Section 25173 or procedures established by the department pursuant to Section 25173 shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000), imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

Absent comment, this proposed restatement will be presumed correct.

§ 95175. Order directing compliance for failure to provide information

95175. If a person intentionally or negligently fails to furnish and transmit to the designated offices of the department or the local officer or agency any existing information required pursuant to this article, the department may issue an order

pursuant to Article 3 (commencing with Section 95350) directing compliance with the request.

Comment. Section 95175 continues former Section 25185.6(e) without substantive change. See Sections 83160 (“department”), 83245 (“local officer”).

§ 95180. Disclosure of information by department

95180. (a) The department may disclose information submitted pursuant to this article to authorized representatives, contractors, or other governmental agencies only in connection with the department’s responsibilities pursuant to this division.

(b) The department shall establish procedures to ensure that information submitted pursuant to this article is used only in connection with these responsibilities and is not otherwise disseminated without the consent of the person who provided the information to the department.

(c)(1) The department may also make available to the United States Environmental Protection Agency any and all information required by law to be furnished to that agency.

(2) The sharing of information between the department and that agency pursuant to this article does not constitute a waiver by the department or any affected person of any privilege or confidentiality provided by law that pertains to the information.

Comment. Subdivision (a) of Section 95180 continues the first sentence of former Section 25186.5(f) without substantive change.

Subdivision (b) continues the second sentence of former Section 25186.5(f) without substantive change.

Subdivision (c) continues former Section 25186.5(g) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95185. Required disclosure statements by hazardous waste licenseholder or applicant

95185. (a) Every hazardous waste licenseholder or applicant, other than a federal, state, or local agency, who is not otherwise required to file a disclosure statement on or before January 1, 1989, shall file a disclosure statement with the department on or before January 1, 1989.

(b) If changes or additions of information regarding majority ownership, the business name, or the information required by **paragraphs (6) and (8) of subdivision (a) of Section 25112.5** occur after the filing of the statement, the licenseholder or applicant shall provide that information to the department, in writing, within 30 days of the change or addition.

(c) Any person submitting a disclosure statement shall pay a fee set by the department in an amount adequate to defray the costs of implementing this section, per person, officer, director, or partner required to be listed in the disclosure statement, in addition to any other fees required.

(d) The department shall deposit ~~these~~ fees paid pursuant to subdivision (c) in the Hazardous Waste Control Account.

(e) ~~The fees~~ Fees deposited pursuant to subdivision (d) shall be made available, upon appropriation by the Legislature, to cover the costs of conducting the necessary background searches.

(f) Any person who knowingly makes any false statement or misrepresentation in a disclosure statement filed pursuant to the requirements of this division is, upon conviction, subject to the penalties specified in **Sections 25189 and 25189.2 and subdivision (a) of Section 25191**.

(g) The disclosure statement submitted pursuant to subdivision (b) is exempt from the requirements of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

Comment. Subdivision (a) of Section 95185 continues former Section 25186.5(b) without substantive change.

Subdivision (b) continues former Section 25186.5(c) without substantive change.

Subdivision (c) continues the first sentence of former Section 25186.5(d) without substantive change.

Subdivision (d) continues the second sentence of former Section 25186.5(d) without substantive change.

Subdivision (e) continues the third sentence of former Section 25186.5(d) without substantive change.

Subdivision (f) continues former Section 25186.5(e) without substantive change.

Subdivision (g) continues former Section 25186.5(f) without substantive change.

See Sections 83065 (“applicant”), 83160 (“department”), 83170 (“disclosure statement”).

Article 4. Permits

§ 95200. Proceedings generally relating to permit, registration or certificate

95200. (a) Proceedings to determine whether to grant, issue, modify, or deny a permit, registration, or certificate shall be conducted in accordance with the regulations adopted by the department.

(b) The petition for judicial review of a final decision of the department to grant, issue, modify, or deny a permit, registration, or certificate shall not be filed later than 90 days after the date that the notice of the final decision is served.

Comment. Subdivision (a) of Section 95200 continues the third sentence of former Section 25186.1 without substantive change.

Subdivision (b) continues the fourth sentence of former Section 25186.1 without substantive change.

See Section 83160 (“department”).

§ 95205. Special requirement for issuance of hazardous waste facilities permit

95205. (a) The department shall prepare a written report pursuant to subdivision (b) whenever the department proposes to issue a hazardous waste facilities permit applied for pursuant to **Section 25200** and the department has information that the applicant, or the applicant under any previous name or names, or, if the applicant is a business concern, any officer, director, or partner of the business concern, has been named as a party in any action involving violation of any statute, regulation, or requirement specified in **Section 25186**, excluding civil and administrative penalties

of one thousand dollars (\$1,000) or less at any hazardous waste facility issued a permit pursuant to this division, and that a conviction, judgment, or settlement has been entered during a three-year period preceding the date of application.

(b) The report shall list all convictions, judgments, and settlements relating to violations of any statutes, regulations, or requirements specified in **Section 25186**, excluding civil and administrative penalties of one thousand dollars (\$1,000) or less at any hazardous waste facility issued a permit pursuant to this division, that occurred during the three-year period preceding the date of application.

(c) ~~The~~ Any listing of settlements shall include the following statement: “Settlements may or may not include admissions of guilt.”

(d) The report shall separately list all criminal convictions and ~~those~~ violations resulting in penalties of fifty thousand dollars (\$50,000) or more, and shall be included in the administrative record for the proposed permit.

(e) For the purposes of this section, the department may use criminal history information obtained from the Department of Justice to the extent that the information is necessary to list all convictions, judgments, and settlements as required by subdivision (b).

(f) This section does not apply to facilities that meet the requirements necessary to operate pursuant to the department’s permit-by-rule regulations.

Comment. Section 95205 continues former Section 25186.3 without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 8320 (“permit-by-rule”).

§ 95210. Suspension of permit

95210. (a) For purposes of this section, the term “permit” means a hazardous waste facilities permit, interim status authorization, or standardized permit.

(b) The department shall suspend the permit of any facility for nonpayment of any facility fee assessed pursuant to **Section 25205.2** or activity fee assessed pursuant to **Section 25205.7**, if the operator of the facility is subject to the fee, and if the department or State Board of Equalization has certified in writing to all of the following:

(1) The facility’s operator is delinquent in the payment of the fee for one or more reporting periods.

(2) The department or State Board of Equalization has notified the facility’s operator of the delinquency.

(3)(A) For a facility operator that elected to pay the flat activity fee rate pursuant to **subdivision (d) of Section 25205.7**, as that section read on January 1, 2016, the operator has exhausted his or her administrative rights of appeal provided by Chapter 3 (commencing with Section 43151) of Part 22 of Division 2 of the Revenue and Taxation Code, and the State Board of Equalization has determined that the operator is liable for the fee, or that the operator has failed to assert those rights.

(B) For a facility operator that pays the activity fee under a reimbursement agreement with the department pursuant to **subdivision (a) of Section 25205.7**, the

1 operator has exhausted the dispute resolution procedures adopted by the department
2 pursuant to **subparagraph (H) of paragraph (2) of subdivision (b) of Section**
3 **25206.2.**

4 (c)(1) The department shall suspend the permit of any facility for nonpayment of
5 a penalty assessed upon the owner or operator for failure to comply with this
6 division or the regulations adopted pursuant to this division, if the penalty has been
7 imposed by a trial court judge or by an administrative hearing officer, if the person
8 has agreed to pay the penalty pursuant to a written agreement resolving a lawsuit or
9 an administrative order, or if the penalty has become final due to the person's failure
10 to respond to the lawsuit or order.

11 (2) The department may suspend a permit pursuant to this subdivision only if the
12 owner or operator is delinquent in the payment of the penalty and the department
13 has notified the owner or operator of the delinquency pursuant to subdivision (d).

14 (d) Before suspending a permit pursuant to this section, the department shall
15 notify the owner or operator of its intent to do so, and shall allow the owner or
16 operator a minimum of 30 days in which to cure the delinquency.

17 (e) The department may deny a new permit or refuse to renew a permit on the
18 same grounds for which the department is required to suspend a permit under this
19 section, subject to the same requirements and conditions.

20 (f)(1) The department shall reinstate a permit that is suspended pursuant to this
21 section upon payment of the amount due if the permit has not otherwise been
22 revoked or suspended pursuant to any other provision of this division or regulation.

23 (2) Until the department reinstates a permit suspended pursuant to this section, if
24 the facility stores, treats, disposes of, or recycles hazardous wastes, the facility shall
25 be in violation of this division.

26 (3) If the operator of the facility subsequently pays the amount due, the period of
27 time for which the operator shall have been in violation of this division shall be from
28 the date of the activity that is in violation until the day after the owner or operator
29 submits the payment to the department.

30 (4) Except as otherwise provided in this section, the department is not required to
31 take any other statutory or regulatory procedures governing the suspension of the
32 permit before suspending a permit in compliance with the procedures of this section.

33 (g) (1) A suspension under this section shall be stayed while an authorized appeal
34 of the fee or penalty is pending before a court or an administrative agency.

35 (2) For purposes of this subdivision, "an authorized appeal" means any appeal
36 allowed pursuant to an applicable regulation or statute.

37 (h) The department may suspend a permit under this section based on a failure to
38 pay the required fee or penalty that commenced before January 1, 2002, if the failure
39 to pay has been ongoing for at least 30 days following that date.

40 (i) Notwithstanding Section 43651 of the Revenue and Taxation Code, the
41 suspension of a permit pursuant to this section, the reason for the suspension, and
42 any documentation supporting the suspension, shall be a matter of public record.

(j)(1) This section does not authorize the department to suspend a permit held by a government agency if the agency does not dispute the payment but nonetheless is unable to process the payment in a timely manner.

(2) This section does not apply to a site owned or operated by a federal agency if the department has entered into an agreement with that federal agency regarding the remediation of that site.

(k) This section does not limit or supersede **Section 25186**.

Comment. Section 95210 continues former Section 25189.3 without substantive change.

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

CHAPTER 4. SANCTIONS

Article 1. Denial, Suspension, or Revocation of Permit, Registration, or Certificate

§ 95250. Grounds in general

95250. The department may deny, suspend, or revoke any permit, registration, or certificate applied for, or issued, pursuant to this division in accordance with the procedures specified in **Sections 25186.1 and 25186.2**, where the applicant or holder of the permit, registration, or certificate, or in the case of a business concern, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in, or debt liability of, that business concern, has engaged in any of the following:

(a) Any violation of, or noncompliance with, this division, Chapter 6.7 (commencing with Section 25280), Part 2 (commencing with Section 78000) of Division 45, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in **Section 25117**, a hazardous substance, as defined in subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(b) The aiding, abetting, or permitting of any violation of, or noncompliance with, this division, Chapter 6.7 (commencing with Section 25280), Part 2 (commencing with Section 78000) of Division 45, the Porter-Cologne Water Quality Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in **Section 25117**, a hazardous substance, as defined in subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(c) Any violation of, or noncompliance with, any order issued by a state or local agency or by a hearing officer or a court relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in **Section 25117**, a hazardous substance, as defined in subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code.

(d) Any misrepresentation or omission of a significant fact or other required information in the application for the permit, registration, or certificate, or in information subsequently reported to the department or to a local officer or agency authorized to enforce this division pursuant to subdivision (a) of Section 25180.

(e) Activities resulting in the revocation or suspension of a license, permit, registration, or certificate held by the applicant or holder of the permit, registration, or certificate or, if the applicant or holder of the permit, registration, or certificate is a business concern, by any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in, or debt liability of, that business concern relating to, the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in **Section 25117**, a hazardous substance, as defined in subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code.

Comment. Subdivision (a) of Section 95250 continues former Section 25186(a) without substantive change.

Subdivision (b) continues former Section 25186(b) without substantive change.

Subdivision (c) continues former Section 25186(c) without substantive change.

Subdivision (d) continues former Section 25186(d) without substantive change.

Subdivision (e) continues former Section 25186(f) without substantive change.

See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83245 (“local officer”), 83355 (“storage”), 83370 (“treatment”).

§ 95255. Activities relating to federal or state conviction

95255. (a) The department may deny, suspend, or revoke any permit, registration, or certificate applied for, or issued, pursuant to this division in accordance with the procedures specified in **Sections 25186.1 and 25186.2**, where the applicant or holder of the permit, registration, or certificate, or in the case of a business concern, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in, or debt liability of, that business concern, has engaged in activities resulting in any federal or state conviction that are significantly related to the fitness

of the applicant or holder of the permit, registration, or certificate to perform the applicant's duties or activities under the permit, registration, or certificate.

(b) An action that the department may take pursuant to this paragraph relating to the denial, suspension, or revocation of a permit, registration, or certificate may be based upon a conviction for which any of the following has occurred:

(1) The time for appeal has elapsed.

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

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

(c) For purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

Comment. Section 95255 continues former Section 25186(e) without substantive change.

See Section 83160 ("department").

§ 95260. Obtaining information from other agencies

95260. (a) In making a determination pursuant to Section 95250 or 95255, the director may contact the district attorney, local agencies, the Attorney General, the United States Department of Justice, the Environmental Protection Agency, or other agencies outside of the state that have, or have had, regulatory or enforcement jurisdiction over the applicant in connection with any hazardous waste or hazardous materials activities.

Comment. Section 95260 continues former Section 25186.5(a) without substantive change.

See Sections 83165 ("director"), 83210 ("hazardous waste").

§ 95265. Multiple incidents of violation or noncompliance

95265. (a) For the purposes of this section, "violation" and "noncompliance" mean only the following:

(1) A violation or noncompliance pursuant to Section 95250 or 95255 that creates a significant risk of harm to the public health or safety of the environment resulting from acute or chronic exposure to hazardous waste or hazardous waste constituents, and that threat makes it reasonably necessary to take action to prevent, reduce, or mitigate that exposure.

(2) A violation of, or noncompliance with, any order issued by the department to the applicant or holder of the permit.

(3) A federal or state felony conviction for a violation of this division or its equivalent in the federal act, or of any requirement or regulation adopted pursuant to that authority relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste, as described in subdivision (e) of Section 25186.

(b) A violation or noncompliance by a federal hazardous waste facility, pursuant to Section 6961 of Title 42 of the United States Code, shall, for purposes of this section, be limited to a violation or noncompliance caused by an action or inaction within the boundaries identified in Part B of the federal hazardous waste permit application, pursuant to Section 270.14 of Title 40 of the Code of Federal Regulations, for that facility.

(c) “Violation” and “noncompliance” shall not include a minor violation as defined in Section 25117.6.

(d) (1) Except as provided in paragraph (2), the department shall consider three or more incidents of violation of, or noncompliance with, a requirement specified in subdivision (a) or (b) of Section 95250 for which a person or entity has been found liable or has been convicted, with respect to a single facility within a five-year period, as compelling cause to deny, suspend, or revoke the permit, registration, or certificate.

(2) This subdivision does not apply to a third violation or noncompliance if the department finds that extraordinary circumstances exist, including that a denial, suspension, or revocation would endanger the public health or safety or the environment.

(3) This subdivision does not limit or modify the department’s authority to deny, suspend, or revoke any permit, registration, or certificate pursuant to Section 95250, Section 95255, or any other law.

Comment. Section 95265 continues former Section 25186.05 without substantive change.

See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83355 (“storage”), 83370 (“treatment”).

§ 95270. Proceedings relating to permit, registration or certificate

95270. (a) Except as specified in Section 95275, proceedings for the suspension or revocation of a permit, registration, or certificate under this division shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions.

(b) In the event of a conflict between this division and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the provisions of the Government Code shall prevail.

Comment. Section 95270 continues the first two sentences of former Section 25186.1 without substantive change.

See Section 83160 (“department”).

Staff Note. Existing Section 25186.1(a) (which would be continued by proposed Section 95270(a) and (b)), as well as most other sections in the existing statutory article in which Section 25186.1 appears, relates generally to enforcement activity by the Department of Toxic Substances Control.

However, existing Section 25186.1(b) appears to relate solely to process relating to whether the department grants, issues, modifies, or denies a permit, registration, or certificate, and is therefore

proposed to be relocated to proposed Article 4 of Chapter 3 of this proposed Part. See proposed Section 95200.

Public comment on this issue is welcome and invited.

§ 95275. Temporary suspension of permit, registration, or certificate due to endangerment

95275. (a) The department may temporarily suspend any permit, registration, or certificate issued pursuant to this division prior to any hearing if the department determines that conditions may present an imminent and substantial endangerment to the public health or safety or the environment.

(b) In making this determination, the department may rely on any information, including, but not limited to, information concerning an actual, threatened, or potential harm to the public health or safety or the environment, information concerning a release or threat of a release, or a human health or ecological risk assessment.

(c) The department shall notify the holder of the permit, registration, or certificate of ~~the~~ a temporary suspension and the effective date thereof, and at the same time shall serve the person with an accusation.

(d) Upon receipt by the department of a notice of defense to the accusation from the holder of the permit, registration, or certificate, the department shall, within 15 days, set the matter for a hearing, which shall be held as soon as possible, but not later than 30 days after receipt of the notice.

(e) The temporary suspension shall remain in effect until the hearing is completed and the department has made a final determination on the merits, which shall be made within 60 days after the completion of the hearing.

(f) If the determination is not transmitted within this period, the temporary suspension shall be of no further effect.

Comment. Subdivision (a) of Section 95275 continues the first sentence of former Section 25186.2 without substantive change.

Subdivision (b) continues the second sentence of former Section 25186.2 without substantive change.

Subdivision (c) continues the third sentence of former Section 25186.2 without substantive change.

Subdivision (d) continues the fourth sentence of former Section 25186.2 without substantive change.

Subdivision (e) continues the fifth sentence of former Section 25186.2 without substantive change.

Subdivision (f) continues the sixth sentence of former Section 25186.2 without substantive change.

See Section 83160 (“department”).

Staff Note. The third sentence of existing Section 25186.2 (which would be continued by proposed Section 95275(c)) requires service of an “accusation” by the department, with no further detail as to content or process.

If no such statutory detail presently exists, would the absence of that detail be an appropriate topic to be included in the list of substantive issues that the Legislature has requested be reported for possible future study?

Public comment on this issue is welcome and invited.

1 **§ 95280. Temporary suspension of operation of facility with extended permit**

2 95280. (a) The department may temporarily suspend the operation of a facility
3 operating under an expired permit that has been extended pursuant to
4 **subparagraph (B) of paragraph (1) of subdivision (c) of Section 25200** or an
5 interim status pursuant to **Section 25200.5** prior to a hearing, if the department
6 determines that the action is necessary to prevent or mitigate a risk to the public
7 health or safety or the environment.

8 (b) The department shall notify the owner and operator of the facility of the
9 temporary suspension and the effective date of the temporary suspension and at the
10 same time shall serve the person with an accusation.

11 (c) Upon receipt by the department of a notice of defense to the accusation from
12 the owner or operator of the facility, the department shall, within 15 days, set the
13 matter for a hearing, which shall be held as soon as possible, but not later than 30
14 days after receipt of the notice.

15 (d) The temporary suspension shall remain in effect until the hearing is completed
16 and the department has made a final determination on the merits, which shall be
17 made within 60 days after the completion of the hearing.

18 (e) If the determination is not transmitted within this period, the temporary
19 suspension shall be of no further effect.

20 **Comment.** Subdivision (a) of Section 95280 continues the first sentence of former Section
21 25186.2.5 without substantive change.

22 Subdivision (b) continues the second sentence of former Section 25186.2.5 without substantive
23 change.

24 Subdivision (c) continues the third sentence of former Section 25186.2.5 without substantive
25 change.

26 Subdivision (d) continues the fourth sentence of former Section 25186.2.5 without substantive
27 change.

28 Subdivision (e) continues the fifth sentence of former Section 25186.2.5 without substantive
29 change.

30 See Section 83160 (“department”).

31 **Staff Note.** The second sentence of existing Section 25186.2.5 (which would be continued by
32 proposed Section 95280(b)) requires service of an “accusation” by the department, with no further
33 detail as to content or process.

34 If no such statutory detail presently exists, would the absence of that detail be an appropriate
35 topic to be included in the list of substantive issues identified by the Commission for possible future
36 study?

37 **Public comment on this issue is welcome and invited.**

38 **§ 95285. Suspension or revocation of other authorizations**

39 95285. (a) The department may suspend or revoke any grant of authorization to
40 operate pursuant to a permit-by-rule or authorization to conduct treatment pursuant
41 to **subdivision (a) or (c) of Section 25201.5**, in accordance with the procedures
42 specified in Sections **25186.1** and **25186.2**, for any of the grounds specified in
43 **Section 25186** and .

(b) The department may suspend or revoke any grant of conditional authorization granted pursuant to **Section 25200.3** in accordance with the procedures specified in **Sections 25186.1 and 25186.2**, for any of the grounds specified in **Section 25186** or as specified in **subdivision (j) of Section 25200.3**.

Comment. Section 95285 continues former Section 25186.7 without substantive change. See Sections 83160 (“department”), 83290 (“permit-by-rule”), 83370 (“treatment”).

Article 2. Order to Conduct Monitoring, Testing, Analysis, and Reporting

§ 95300. Basis for order

95300. (a) If the department or a unified program agency authorized pursuant to subdivision (b) determines, upon receipt of any information, that the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of any hazardous waste from the facility or site may present a substantial hazard to human health or the environment, the department or authorized unified program agency may issue an order requiring the owner or operator of the facility or site to conduct monitoring, testing, analysis, and reporting with respect to the facility or site which the department or authorized unified program agency deems reasonable to ascertain the nature and extent of the hazard.

(b) The authority granted under this article to a unified program agency is limited to the issuance of orders pursuant to subdivision (a) to a unified program facility within the jurisdiction of the CUPA, and is subject to **Section 25404.1**.

Comment. Section 95300 continues former Section 25187.1(a) without substantive change.

See Sections 83110 (“CUPA”), 83160 (“department”), 83210 (“hazardous waste”), 83375 (“unified program agency”), 83380 (“unified program facility”).

§ 95305. Order to previous owner or operator

95305. If a facility or site subject to Section 95300 is not in operation at the time ~~the~~ a determination pursuant to Section 95300 is made, and the department finds that the owner of the facility or site, could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have the actual knowledge to carry out the actions specified in Section 95400.

Comment. Section 95305 continues former Section 25187.1(b) without substantive change.

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

§ 95310. Submission of proposal

95310. (a) Any order issued pursuant to Section 95300 or 95305 shall require the person to whom the order is issued to submit to the department or authorized unified program agency, within 30 days from the issuance of the order, a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(b) The department or authorized unified program agency may, after providing the person to whom the order is issued ~~with~~ an opportunity to confer with the department or authorized unified program agency concerning the proposal, require the person to carry out the monitoring, testing, analysis, and reporting in accordance with the proposal, and with any modifications in the proposal as that the department or authorized unified program agency deems reasonable to ascertain the nature and extent of the hazard.

Comment. Section 95310 continues former Section 25187.1(c) without substantive change. See Sections 83160 (“department”), 83375 (“unified program agency”).

§ 95315. Conduct of work by other parties

95315. (a) If the department or authorized unified program agency determines that there is no owner or operator as specified in Section 95300 or 95305 to conduct monitoring, testing, analysis, or reporting satisfactory to the department or authorized unified program agency, deems action carried out by an owner or operator unsatisfactory, or cannot initially determine that there is an owner or operator specified in Section 95400 or 94505 who is able to conduct monitoring, testing, analysis, or reporting, the department or authorized unified program agency may do either of the following:

(1) Conduct monitoring, testing, or analysis, or any combination of these actions that the department or authorized unified program agency deems reasonable, to ascertain the nature and extent of the hazard associated with the site.

(2) Authorize a local authority or other person to carry out the action needed, and order the owner or operator specified in Section 95300 or 95305 to reimburse the department or authorized unified program agency or other authority or person for the costs of the action.

(b) The department or authorized unified program agency shall not issue an order pursuant to this article ~~which~~ that requires the department or authorized unified program agency to be reimbursed for the costs of any action carried out by the department or authorized unified program agency to conduct monitoring, testing, and analysis to determine the results of the actions carried out by a person pursuant to an order issued pursuant to Section 95300 or 95305.

Comment. Subdivision (a) of Section 95315 restates former Section 25187.1(d) without substantive change.

Subdivision (b) continues former Section 25187.1(e) without substantive change.

See Sections 83160 (“department”), 83375 (“unified program agency”).

Staff Note. Proposed Section 95315(a) would restate existing Section 25187.1(d) for clarity. Currently, Section 25187(h) provides:

“25187.1(d). If the department or authorized unified program agency determines that there is no owner or operator specified in subdivision (a) or (b) to conduct monitoring, testing, analysis, or reporting satisfactory to the department or authorized unified program agency, if the department or authorized unified program agency deems the action carried out by an owner or operator is unsatisfactory, or if the department or authorized unified program agency cannot initially determine that there is an owner or operator specified in subdivision (a) or (b) who is able to conduct

monitoring, testing, analysis, or reporting, the department or authorized unified program agency may do either of the following:

(1) Conduct monitoring, testing, or analysis, or any combination of these actions, which the department or authorized unified program agency deems reasonable, to ascertain the nature and extent of the hazard associated with the site.

(2) Authorize a local authority or other person to carry out the action, and require, by order, the owner or operator specified in subdivision (a) or (b) to reimburse the department or authorized unified program agency or other authority or person for the costs of the activity.”

Absent comment, this proposed restatement will be presumed correct.

§ 95320. Other authorized action

95320. For purposes of carrying out this article, the department, an authorized unified program agency, any other local agency, or other person authorized under paragraph (2) of subdivision (a) of Section 95315, may take action pursuant to **Section 25185**.

Comment. Section 95320 continues former Section 25187.1(f) without substantive change.

See Sections 83160 (“department”), 83375 (“unified program agency”).

Article 3. Order Requiring Corrective Action

Staff Note. The following article proposes a nonsubstantive recodification and reorganization of existing Section 25187.

Public comment on whether this proposed recodification and reorganization would cause any substantive change is welcome and invited.

§ 95350. “Hazardous waste facility”

95350. For purposes of this article, “hazardous waste facility” includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

Comment. Section 95350 continues former Section 25187(b)(6) without substantive change.

See Sections 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

§ 95355. Limitation on orders issued by unified program agency

95355. The authority granted under this ~~section~~ article to a unified program agency is limited to ~~both~~ issuance of the following orders:

(a) ~~The issuance of orders~~ An order to impose penalties and to correct violations of the requirements of this chapter and its implementing regulations, only when the violations are violations of requirements applicable to hazardous waste generators and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, when the violations occur at a unified program facility within the jurisdiction of the CUPA.

(b) ~~The issuance of orders~~ An order to require corrective action when there has been a release of hazardous waste or constituents only when the unified program agency is authorized to do so pursuant to **Section 25404.1**.

Comment. Section 95355 continues former Section 25187(l) without substantive change.

See Sections 83110 (“CUPA”), 83125 (“conditional authorization”), 83130 (“conditional exemption”), 83210 (“hazardous waste”), 83290 (permit-by-rule), 83330 (“release”), 83380 (“unified program facility”).

§ 95360. Order correcting violation and imposing administrative penalty

95360. (a) For purposes of this section, “threaten” has the meaning set forth in subdivision (e) of Section 13304 of the Water Code.

(b) The department or a unified program agency, upon a determination that a person has violated, is in violation of, or threatens to violate, a provision of this division or a provision of Part 2 (commencing with Section 78000) of Division 45, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this division or pursuant to Part 2 (commencing with Section 78000) of Division 45, may issue an order requiring that the violation or threat of violation be corrected, and imposing an administrative penalty.

(c) In an order proposing a penalty pursuant to this section, the department or unified program agency shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator’s past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator’s ability to pay the proposed penalty, and the prophylactic effect that the imposition of the proposed penalty would have on both the violator and the regulated community as a whole.

Comment. Subdivision (a) and (b) of Section 95360 restate former Section 25187(a)(1) without substantive change.

Subdivision (c) continues former Section 25187(a)(2) without substantive change.

See Sections 83160 (“department”), (“unified program agency”).

Staff Note. Proposed Section 95360, in conjunction with proposed Section 95355, would restate existing Section 25187(a)(1) for clarity. Currently, Section 25187(a)(1) provides:

“25187. (a)(1) The department or a unified program agency, in accordance with subdivision (l), may issue an order requiring that the violation be corrected and imposing an administrative penalty, for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, whenever the department or unified program agency determines that a person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code, to violate, this chapter or Part 2 (commencing with Section 78000) of Division 45, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter or Part 2 (commencing with Section 78000) of Division 45.”

Absent comment, this proposed restatement will be presumed correct.

§ 95365. Issuance of order for corrective action

95365. (a) The department or a unified program agency, ~~in accordance with subdivision (l),~~ may issue an order requiring corrective action whenever the department or unified program agency determines that there is or has been a release, as defined in Part 2 (commencing with Section 78000) of Division 45, of hazardous waste or constituents into the environment from a hazardous waste facility.

(b) The order shall include a requirement that the person issued the order take corrective action with respect to the release of hazardous waste or constituents, abate the effects thereof, and take any other necessary remedial action.

(c) If the order requires corrective action at a hazardous waste facility, the order shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment.

(d) The order shall incorporate, as a condition of the order, any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department or unified program agency determines that those plans and policies are not less stringent than this division and regulations adopted pursuant to this division.

(e) The order may include any more stringent requirement that the department or unified program agency determines is necessary or appropriate to protect water quality.

Comment. Subdivision (a) of Section 95365, in conjunction with Section 95305, continues the introductory paragraph of former Section 25187(b) without substantive change.

Subdivision (b) continues former Section 25187(b)(2) without substantive change.

Subdivision (c) continues former Section 25187(b)(3) without substantive change.

Subdivision (d) continues the first sentence of former Section 25187(b)(4) without substantive change.

Subdivision (e) continues the second sentence of former Section 25187(b)(4) without substantive change.

See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83330 (“release”), 83375 (“unified program agency”), 83380 (“unified program facility”), 83395 (“waste”).

§ 95370. Preference for remedies under Division 46

95370. In the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit pursuant to **Article 9 (commencing with Section 25200)**, the department shall pursue the remedies available under this division, including the issuance of an order for corrective action pursuant to this article, before using legal remedies available pursuant to Part 2 (commencing with Section 78000) of Division 45, except in any of the following circumstances:

(a) The person who is responsible for the release voluntarily requests in writing that the department issue an order to that person to take corrective action pursuant to Part 2 (commencing with Section 78000) of Division 45.

(b) The person who is responsible for the release is unable, as determined in accordance with the policies of the Environmental Protection Agency for the

1 implementation of Section 9605 of Title 42 of the United States Code, to pay for the
2 cost of corrective action to address the release.

3 (c) The person responsible for the release is unwilling, as determined in
4 accordance with the policies of the Environmental Protection Agency for the
5 implementation of Section 9605 of Title 42 of the United States Code, to perform
6 corrective action to address the release.

7 (d) The release is part of a regional or multisite groundwater contamination
8 problem that cannot, in its entirety, be addressed using the legal remedies available
9 pursuant to this division and for which other releases that are part of the regional or
10 multisite groundwater contamination problem are being addressed using the legal
11 remedies available pursuant to Part 2 (commencing with Section 78000) of Division
12 45.

13 (e) An order for corrective action has already been issued against the person
14 responsible for the release, or the department and the person responsible for the
15 release have, prior to January 1, 1996, entered into an agreement to address the
16 required cleanup of the release pursuant to Part 2 (commencing with Section 78000)
17 of Division 45.

18 (f) The hazardous waste facility is owned or operated by the federal government.

19 **Comment.** Section 95370 restates former Section 25187(b)(1) without substantive change.

20 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste
21 facility”).

22 **Staff Note.** Proposed Section 95370 would restate existing Section 25187(b)(1) for clarity.
23 Currently, Section 25187(a)(1) provides:

24 “25187. (b)(1) In the case of a release of hazardous waste or constituents into the environment
25 from a hazardous waste facility that is required to obtain a permit pursuant to Article 9
26 (commencing with Section 25200), the department shall pursue the remedies available under this
27 chapter, including the issuance of an order for corrective action pursuant to this section, before
28 using the legal remedies available pursuant to Part 2 (commencing with Section 78000) of Division
29 45, except in any of the following circumstances:

30 (A) If the person who is responsible for the release voluntarily requests in writing that the
31 department issue an order to that person to take corrective action pursuant to Part 2 (commencing
32 with Section 78000) of Division 45.

33 (B) If the person who is responsible for the release is unable to pay for the cost of corrective
34 action to address the release. For purposes of this subparagraph, the inability of a person to pay for
35 the cost of corrective action shall be determined in accordance with the policies of the
36 Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United
37 States Code.

38 (C) If the person responsible for the release is unwilling to perform corrective action to address
39 the release. For purposes of this subparagraph, the unwillingness of a person to take corrective
40 action shall be determined in accordance with the policies of the Environmental Protection Agency
41 for the implementation of Section 9605 of Title 42 of the United States Code.

42 (D) If the release is part of a regional or multisite groundwater contamination problem that
43 cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and
44 for which other releases that are part of the regional or multisite groundwater contamination
45 problem are being addressed using the legal remedies available pursuant to Part 2 (commencing
46 with Section 78000) of Division 45.

(E) If an order for corrective action has already been issued against the person responsible for the release, or the department and the person responsible for the release have, prior to January 1, 1996, entered into an agreement to address the required cleanup of the release pursuant to Part 2 (commencing with Section 78000) of Division 45.

(F) If the hazardous waste facility is owned or operated by the federal government.”

Absent comment, this proposed restatement will be presumed correct.

§ 95375. Persons subject to correction action order

95375. Persons ~~who are~~ subject to an order pursuant to this article include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

Comment. Section 95375 continues former Section 25187(b)(5) without substantive change. See Section 83210 (“hazardous waste”).

§ 95380. Service and form of order

95380. (a) Any order issued pursuant to this article shall be served by personal service or certified mail and shall inform the person ~~so~~ served of the right to a hearing.

(b) If ~~the~~ a unified program agency issues the order ~~pursuant to this section~~, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (a) of Section 95340 may be requested by the person ~~receiving~~ served with the order.

Comment. Section 95380 continues former Section 25187(c) without substantive change. See Section 83375 (“unified program agency”).

§ 95385. Request for hearing and filing notice of defense

95385. (a) Any person served with an order pursuant to this article who has been unable to resolve any violation or deficiency on an informal basis with the department or unified program agency may, within 15 days after service of the order, request that a hearing be conducted pursuant to Section 95390 by filing a notice of defense with the department or unified program agency.

(b)(1) If a hearing is requested on an order issued by a unified program agency, and as of the date the order is issued the agency has selected a designated hearing officer and established a program for conducting a hearing in accordance with paragraph (2) of subdivision (a) of Section 95340, the person requesting the hearing may select that hearing process in the notice of defense.

(b) The notice of defense shall be filed with the office that issued the order.

(c) A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period.

(d) If a notice of defense is not filed within the time limits provided by this subdivision, the order shall become final.

Comment. Section 95385 restates former Section 25187(d) without substantive change.
See Section 83375 (“unified program agency”).

Staff Note. Proposed Section 95385 would restate existing Section 25187(d) for clarity. Currently, Section 25187(d) provides:

“25187. (d) Any person served with an order pursuant to this section who has been unable to resolve any violation or deficiency on an informal basis with the department or unified program agency may, within 15 days after service of the order, request a hearing pursuant to subdivision (e) or (f) by filing with the department or unified program agency a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If a notice of defense is not filed within the time limits provided by this subdivision, the order shall become final.”

Absent comment, this proposed restatement will be presumed correct.

§ 95390. Hearing process

95390. (a) Within 90 days of receipt of the notice of defense by the unified program agency, the hearing shall be conducted using one of the following procedures:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, at which the department shall have all the authority granted to an agency by those provisions.

(2) If the unified program agency has selected a designated hearing officer and established a program for conducting a hearing in accordance with this section as of the date the order is issued, a hearing officer designated by the unified program agency shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, at which the unified program agency shall have all the authority granted to an agency by those provisions.

(b) When a hearing is conducted by a unified program agency pursuant to subdivision (b), the unified program agency shall issue a decision within 60 days of the hearing.

(c) The hearing decision is effective and final upon issuance.

(d) Copies of the decision shall be served by personal service or by certified mail upon the party served with the order and upon other persons who appeared at the hearing and requested a copy.

Comment. Subdivision (a) of Section 95390 restates former Section 25187(e), the second sentence of former Section 25187(f), former Section 25187(f)(1), and the first sentence of former Section 25187(f)(2)(A) without substantive change.

Subdivision (b) restates the second sentence of former Section 25187(f)(2)(A) without substantive change.

Subdivision (c) restates the first sentence of former Section 25187(g) without substantive change.

Subdivision (d) continues the second sentence of former Section 25187(g) without substantive change.

See Sections 83160 (“department”), 83375 (“unified program agency”).

Staff Notes. (1) Proposed Section 95390 would restate former Section 25187(e), the second sentence of former Section 25187(f), former Section 25187(f)(1) and (f)(2)(A), and the first sentence of former Section 25187(g), for clarity. Currently those provisions provide as follows:

“25187. (e) Any hearing requested on an order issued by the department shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the authority granted to an agency by those provisions.

(f) ... Within 90 days of receipt of the notice of defense by the unified program agency, the hearing shall be conducted using one of the following procedures:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) (A) A hearing officer designated by the unified program agency shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the unified program agency shall have all the authority granted to an agency by those provisions.

(g) The hearing decision issued pursuant to subdivision (f) is effective and final upon issuance.”

Absent comment, this proposed restatement will be presumed correct.

(2) Proposed Section 95390(a)(2), which would continue the second sentence of existing Section 25187(f)(2)(A), requires that following a hearing on a correction order at which a hearing officer designated by a uniform program agency has conducted the hearing, the unified program agency shall issue a decision within 60 days of the hearing. However, the section appears to provide no deadline for the issuance of a decision if the hearing is conducted by an administrative law judge pursuant to existing Section 25187(f)(1) (which would be continued by proposed Section 95340(a)(1)). **Is or should there be a deadline specified in this section?**

(3) The procedure that existing Section 25187(f)(1) specifies for conducting a hearing by an administrative law judge indicates that the hearing is to be conducted in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. **Should this citation be to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code?**

Public comment on these questions is welcome and invited.

§ 95395. Effective date of order

95395. (a) Notwithstanding a request for a hearing or a pending hearing decision, any provision of any order issued pursuant to this article other than a provision imposing an administrative penalty takes effect upon issuance of the order, if the department or unified program agency finds that a violation of law associated with the provision may pose an imminent and substantial endangerment to the public health or safety or the environment.

(b) Notwithstanding a request for a hearing or a pending hearing decision, if the department or unified program agency determines that any or all provisions of an order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a

whole, other than a provision imposing an administrative penalty, takes effect upon issuance of the order.

Comment. Section 95395 restates former Section 25187(h) without substantive change. See Sections 83160 (“department”), 83375 (“unified program agency”).

Staff Note. Proposed Section 95395 would restate existing Section 25187(h) for clarity. Currently, Section 25187(h) provides:

“25187. (h) Any provision of an order issued under this section, except the imposition of an administrative penalty, takes effect upon issuance by the department or unified program agency if the department or unified program agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the department or unified program agency determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole, except the imposition of an administrative penalty, takes effect upon issuance by the department or unified program agency. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.”

Absent comment, this proposed restatement will be presumed correct.

§ 95400. Court review of decision

95400. (a) A decision issued pursuant to this article may be reviewed by the court pursuant to Section 11523 of the Government Code.

(b) In all proceedings pursuant to this article, the court shall uphold the decision of the department or unified program agency if the decision is based upon substantial evidence in the whole record.

(c) The filing of a petition for writ of mandate shall not stay any action required pursuant to this division or the accrual of any penalties assessed pursuant to this division.

(d) This section does not prohibit ~~the~~ a court from granting any appropriate relief within its jurisdiction.

Comment. Section 95400 continues former Section 25187(i) without substantive change. See Sections 83160 (“department”), 83375 (“unified program agency”).

§ 95405. Collected administrative penalties

95405. (a) All administrative penalties collected from actions brought by the department pursuant to this article shall be placed in a separate subaccount in the Toxic Substances Control Account and shall be available only for transfer to the Site Remediation Account or the Expedited Site Remediation Trust Fund and for expenditure by the department upon appropriation by the Legislature.

(b) The administrative penalties collected from an action brought by the department pursuant to **Sections 25214.3, 25214.22.1, and 25215.82**, in accordance with this chapter, shall be deposited in the Toxic Substances Control Account, for expenditure by the department for implementation and enforcement activities, upon appropriation by the Legislature, pursuant to **Section 25173.6**.

(c) All administrative penalties collected from an action brought by a unified program agency pursuant to this article shall be paid to the unified program agency that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the unified program agency in enforcing this chapter pursuant to **Section 25180**.

Comment. Subdivision (a) of Section 95405 continues former Section 25187(j)(1) without substantive change.

Subdivision (b) continues former Section 25187(j)(2) without substantive change.

Subdivision (c) continues former Section 25187(k) without substantive change.

See Sections 83160 (“department”), 83375 (“unified program agency”).

§ 95410. Responsibilities of CUPA

95410. (a) The CUPA shall annually submit a summary report to the department on the status of orders issued by the unified program agencies under this article and under **Section 25187.1**.

(b) The CUPA shall consult with the local district attorney ~~for the county~~ on the development of policies to be followed in exercising the authority delegated pursuant to this article and **Section 25187.1**, as they relate to the authority of unified program agencies to issue orders.

(c) The CUPA shall arrange to have appropriate legal representation in administrative hearings that are conducted by an administrative law judge of the Office of Administrative Hearings of the Department of General Services, and when a decision issued pursuant to this section is appealed to the superior court.

Comment. Subdivision (a) of Section 95410 continues former Section 25187(m) without substantive change.

Subdivision (b) continues former Section 25187(n) without substantive change.

Subdivision (c) continues former Section (o) without substantive change.

See Sections 83110 (“CUPA”), 83160 (“department”), 83375 (“unified program agency”).

Staff Note. Subdivisions (m), (n), and (o) of existing Section 25187, which would be continued by proposed Section 95410, could likely be more easily understood if the CUPAs referenced in those subdivisions were more clearly identified.

Public comment on this issue is welcome and invited.

§ 95415. Implementation of regulations

95415. (a) The department may adopt regulations to implement this article and **paragraph (2) of subdivision (a) of Section 25187.1** as they relate to the authority of unified program agencies to issue orders.

(b) The regulations shall include, but not be limited to, all of the following requirements:

(1) Provisions to ensure coordinated and consistent application of this section and **Section 25187.1** when both the department and the unified program agency have issued or will be issuing orders under one or both of these sections with regard to the same facility.

(2) Provisions to ensure that the enforcement authority granted to the unified program agencies will be exercised consistently throughout the state.

(3) Minimum training requirements for staff of the unified program agency relative to this section and **Section 25187.1**.

(4) Procedures to be followed by the department to rescind the authority granted to a unified program agency under this section and **Section 25187.1**, if the department finds that the unified program agency is not exercising that authority in a manner consistent with this chapter and **Chapter 6.11 (commencing with Section 25404)** and the regulations adopted pursuant thereto.

Comment. Subdivision (a) of Section 95415 continues the first sentence of former Section 25187(p) without substantive change.

Subdivision (b) continues the second sentence of former Section 25187(p) without substantive change.

See Sections 83160 (“department”), 83375 (“unified program agency”).

§ 95420. Authority of local agency

95420. Except for an enforcement action taken pursuant to this division or Part 2 (commencing with Section 78000) of Division 45, this article does not otherwise affect the authority of a local agency to take any action under any other law.

Comment. Section 95420 continues former Section 25187(q) without substantive change.

Article 4. Financial Assurances

§ 95450. Corrective action cost estimate

95450. An owner or operator of a facility for which corrective action under department oversight is required shall include a corrective action cost estimate in any corrective measures study submitted to the department pursuant to an order issued or agreement entered into pursuant to Article 3 (commencing with Section 95350) for a release, as defined in Part 2 (commencing with Section 78000) of Division 45, of hazardous waste, hazardous waste constituents, or hazardous substances, as defined in Part 2 (commencing with Section 78000) of Division 45, into the environment from the facility.

Comment. Section 95450 continues former Section 25187.3(a) without substantive change.

See Sections 83160 (“department”), 83210 (“hazardous waste”), 83330 (“release”).

§ 95455. Continuing assurances

95455. (a) An owner or operator of a facility for which corrective action under department oversight is required shall demonstrate financial assurances within 90 days of the department’s approval of a corrective action cost estimate as required by Section 95450, or by **Section 25246.1**, and shall maintain financial assurances until the department determines that all required corrective actions are complete.

(b) The department shall waive the financial assurances required by subdivision (a) if the owner or operator of the facility is a federal or state governmental entity.

1 **Comment.** Subdivision (a) of Section 95455 continues former Section 25187.3(b) without
2 substantive change.

3 Subdivision (b) continues former Section 25187.3(d) without substantive change.

4 See Section 83160 (“department”).

5 **§ 95460. Approved financial assurance mechanisms**

6 94560. (a) For purposes of Section 94555, an owner or operator of a facility for
7 which corrective action under department oversight is required shall demonstrate
8 and maintain one or more of the financial assurance mechanisms set forth in
9 subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California
10 Code of Regulations.

11 (b) As an alternative to the financial assurance requirement of subdivision (a), an
12 owner or operator of a facility for which corrective action under department
13 oversight is required may demonstrate and maintain financial assurances by means
14 of a financial assurance mechanism other than those described in subdivision (a), if
15 the alternative financial assurance mechanism has been submitted to, and approved
16 by, the department as being at least equivalent to the financial assurance
17 mechanisms described in subdivision (a).

18 (c) The department shall evaluate the equivalency of the proposed alternative
19 financial assurance mechanism described in subdivision (b), principally in terms of
20 the certainty of the availability of funds for required corrective action activities and
21 the amount of funds that will be made available.

22 (d) The department shall require the owner or operator of the facility to submit
23 any information deemed necessary by the department to make a determination
24 regarding the equivalency of the proposed alternative financial assurance
25 mechanism described in subdivision (b).

26 **Comment.** Subdivision (a) of Section 95460 continues former Section 25187.3(c)(1) without
27 substantive change.

28 Subdivision (b) continues former Section 25187.3(c)(2)(A) without substantive change.

29 Subdivision (c) continues the first sentence of former Section 25187.3(c)(2)(B) without
30 substantive change.

31 Subdivision (d) continues the second sentence of former Section 25187.3(c)(2)(B) without
32 substantive change.

33 See Section 83160 (“department”).

34 **§ 95465. Prior financial assurances to water control board**

35 95465. An owner or operator may satisfy the requirements of this article by
36 demonstrating to the department that it has provided financial assurance for
37 corrective action to the State Water Resources Control Board or a California
38 regional water quality control board for the same release identified by the
39 department.

40 **Comment.** Section 95465 continues former Section 25187.3(e) without substantive change.

41 See Section 83160 (“department”), 83330 (“release”).

1 **§ 95470. Exemption based on participation in hazardous waste facility regulation and**
2 **permitting consolidation program**

3 95470. For facilities for which sole jurisdiction has been granted pursuant to
4 **subdivision (b) of Section 25204.6**, the department shall not require additional
5 financial assurances unless it is the lead agency or is directed by the lead agency
6 that has sole jurisdiction pursuant to **subdivision (b) of Section 25204.6**.

7 **Comment.** Section 95470 continues the first sentence of former Section 25187.3(f) without
8 substantive change.

9 See Section 83160 (“department”).

10 **§ 95475. Impact of State Water Resources Control Board rules and regulations**

11 95475. This article does not alter the State Water Resources Control Board’s rules
12 and regulations regarding financial assurances.

13 **Comment.** Section 95475 continues the second sentence of former Section 25187.3(f) without
14 substantive change.

15 Article 5. Corrective Action by Department

16 **§ 95500. Grounds for corrective action by department**

17 95500. (a) If corrective action is not taken on or before the date specified in an
18 order issued pursuant to Article 3 (commencing with Section 95350), or if in the
19 judgment of the department immediate corrective action is necessary to remedy or
20 prevent an imminent substantial danger to the public health, domestic livestock,
21 wildlife, or the environment, the department may take, or contract for the taking of,
22 that corrective action, and recover the cost ~~thereof~~ for doing so, as provided in
23 Section 95510.

24 **Comment.** Section 95470 continues former Section 25187.5(a) without substantive change.

25 See Section 83160 (“department”).

26 **§ 95505. Expenditure of funds**

27 94505. (a) The department may expend up to one hundred thousand dollars
28 (\$100,000) in a 12-month period of available ~~moneys~~ funds in the Hazardous Waste
29 Control Account in the General Fund to take corrective action pursuant to Section
30 95500.

31 (b) Notwithstanding any other provision of law, the department may enter into
32 written contracts for corrective action taken or to be taken pursuant to subdivision
33 (a).

34 (c) Notwithstanding any other provision of law, the department may enter into
35 oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when in
36 the judgment of the department immediate corrective action is necessary to remedy
37 or prevent an imminent substantial danger to the public health, domestic livestock,
38 wildlife, or the environment.

39 (d) The contracts entered into pursuant to this section, whether written or oral,
40 may include provisions for the rental of tools or equipment, either with or without

1 operators furnished, and for the furnishing of labor and materials necessary to
2 accomplish the work.

3 (e) Any contract entered into by the department pursuant to this subdivision shall
4 be exempt from approval by the Department of General Services pursuant to Section
5 10295 of the Public Contract Code.

6 **Comment.** Section 95505 continues former Section 25187.5(b) without substantive change.
7 See Section 83160 (“department”).

8 **§ 95510. Financial liability to department**

9 95510. (a) If corrective action is taken pursuant to Section 95500, the person or
10 persons who were subject to the order issued pursuant to Article 3 (commencing
11 with Section 95350), or any person or persons whose violation resulted in the
12 imminent and substantial danger to health or the environment, shall be liable to the
13 department for the reasonable cost actually incurred in taking corrective action.

14 (b) In addition to the liability specified in subdivision (a), the person or persons
15 referenced in subdivision (a) shall be liable to the department for administrative
16 costs in an amount equal to 10 percent of the reasonable cost actually incurred or
17 five hundred dollars (\$500), whichever is greater.

18 (c) The amount of cost determined pursuant to this section shall be recoverable in
19 a civil action by the department, in addition to any other fees or penalties.

20 (d) Persons who may be liable pursuant to this section shall include, but not be
21 limited to, present or prior owners, lessees, or operators of the property where the
22 hazardous waste is located and producers, transporters or disposers of the hazardous
23 waste.

24 **Comment.** Section 95510 continues former Section 25187.5(c) without substantive change.
25 See Sections 83160 (“department”), 83210 (“hazardous waste”).

26 **§ 95515. Absence of civil or criminal liability for trespass**

27 95515. Neither the department, nor any person authorized by the department to
28 enter upon any lands for the purpose of taking corrective action pursuant to Section
29 95500 is liable to civil or criminal action for trespass for any acts that are necessary
30 to carry out the corrective action.

31 **Comment.** Section 95515 continues former Section 25187.5(d) without substantive change.
32 See Sections 83160 (“department”), 83210 (“hazardous waste”).

33 **§ 95520. Absence of liability for acts occurring before January 1, 1981**

34 95520. This article does not impose any new liability associated with acts that
35 occurred before January 1, 1981, if the acts were not in violation of existing law or
36 regulations at the time they occurred.

37 **Comment.** Section 95520 continues former Section 25187.5(e) without substantive change.

Article 6. Quarantine Orders

§ 95550. “Authorized agent of the department”

95550. For purposes of this article, “authorized agent of the department” includes any representative of a local officer or agency authorized to enforce this chapter pursuant to **subdivision (a) of Section 25180**.

Comment. Section 95550 continues former Section 25187.6(h) without substantive change. See Sections 83160 (“department”), 83245 (“local officer”).

§ 95555. Issuance of quarantine order

95555. If an authorized agent of the department has probable cause to believe that any hazardous waste, or any material ~~which~~ that the authorized agent reasonably believes to be a hazardous waste, is stored, transported, disposed of, or handled in violation of this division or in a manner that will constitute a violation of this division, and that the violation may threaten public health and safety, or the environment, the agent may issue an order of quarantine, by affixing a tag or other appropriate marking to the container containing, or to the vehicle transporting, the hazardous waste.

Comment. Section 95555 continues former Section 25187.6(a) without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”).

§ 95560. Notice of quarantine

95560. Upon issuing an order of quarantine pursuant to Section 95555, the authorized agent shall notify the person who owns the hazardous waste, or the owner or lessee of the vehicle in which the wastes are transported, of all of the following:

(a) The hazardous waste has been subject to a quarantine order because the hazardous waste is, or is suspected of being, stored, transported, disposed of, or handled in violation of this division.

(b) No person shall remove, transfer, or dispose of the hazardous waste until permission for removal, transfer, or disposal is given by an authorized agent of the department or by a court.

(c) The person so notified may request, and shall be granted, an immediate hearing before a person designated by the director to review the validity of the authorized agent’s order, which shall be held within 24 hours after a hearing is requested by the person subject to the order.

Comment. Section 95560 restates former Section 25187.6(b) without substantive change. See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”).

Staff Note. Proposed Section 95560 would restate existing Section 25187.6(b) for clarity. Currently, Section 25187.6(b) provides:

“25187.6 (b) Upon issuing an order of quarantine pursuant to subdivision (a), the authorized agent shall notify the person who owns the hazardous waste, or the owner or lessee of the vehicle in which the wastes are transported, of all of the following:

(1) The hazardous waste has been subject to a quarantine order because the hazardous waste is, or is suspected of being, stored, transported, disposed of, or handled in violation of this chapter.

(2) No person shall remove, transfer, or dispose of the hazardous waste until permission for removal, transfer, or disposal is given by an authorized agent of the department or by a court.

(3) The person so notified may request, and shall be granted, an immediate hearing before a person designated by the director to review the validity of the authorized agent's order. For purposes of this section, an immediate hearing shall be held within 24 hours after a hearing is requested by the person subject to the order."

Absent comment, this proposed restatement will be presumed correct.

§ 95565. Duration of quarantine order

95565. Any order of quarantine issued pursuant to Section 95555 shall take effect upon issuance and shall remain effective for 30 days thereafter, until an authorized agent removes the quarantine order pursuant to Section 95570, or until the quarantine order is revoked pursuant to a hearing conducted in accordance with subdivision (c) of Section 95560, whichever event occurs first.

Comment. Section 95565 continues former Section 25187.6(c) without substantive change. See Sections 83160 ("department"), 83210 ("hazardous waste").

§ 95570. Revocation of quarantine order

95570. If an authorized agent of the department determines that a hazardous waste subject to a quarantine order is not being stored, handled, transported, or disposed of in violation of this division, or does not threaten public health and safety or the environment, the authorized agent shall revoke the order of quarantine.

Comment. Section 95570 continues former Section 25187.6(d) without substantive change. See Sections 83160 ("department"), 83210 ("hazardous waste").

§ 95575. Removal of hazardous waste subject to quarantine order

95575. If an authorized agent of the department has probable cause to believe that a hazardous waste subject to a quarantine order will, or is likely to, be removed, transferred or disposed of in violation of this section, the authorized agent may remove the hazardous waste to a place of safekeeping.

Comment. Section 95575 continues former Section 25187.6(e) without substantive change. See Sections 83160 ("department"), 83210 ("hazardous waste").

§ 95580. Storage of hazardous waste subject to quarantine order

95580. (a) A hazardous waste in transit for which a quarantine order has been issued pursuant to Section 95555 shall be stored or held at one of the following locations, ~~which~~ that the authorized agent determines will represent the least risk to the public health and safety or the environment:

(1) The facility owned or operated by the producer of the waste, except when the producer is located outside the state.

(2) The transporter's yard, facility, or terminal.

(3) The treatment, storage, or disposal facility to which the hazardous waste is to be transported.

(4) Any other site designated by the authorized agent.

(b) All fees for storage and any other expenses incurred in carrying out this section or Section 95575 shall be a charge against the person who owns the hazardous waste or the owner or lessee of the vehicle in which the wastes are transported.

Comment. Subdivision (a) of Section 95580 continues former Section 25187.6(f) without substantive change.

Subdivision (b) continues former Section 25187.6(g) without substantive change.

See Sections 83160 (“department”), 83165 (“disposal”), 83210 (“hazardous waste”), 83305 (“producer”), 83355 (“storage”), 83370 (“treatment”), 83395 (“waste”).

Article 7. Notices to Comply

§ 95600. Issuance of notice

95600. An authorized representative of the department or local officer or agency authorized to enforce this division pursuant to **subdivision (a) of Section 25180**, who, in the course of conducting an inspection of a facility, detects a minor violation of any permit conditions, rule, regulation, standard, or other requirement, shall issue a notice to comply before leaving the site in which the minor violation is alleged to have occurred.

Comment. Section 95600 continues former Section 25187.8(a) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95605. Notice to contain advisement about reinspection

95605. A notice to comply issued to a facility pursuant to this article shall contain an explicit statement that the facility may be subject to reinspection at any time by the department or authorized local officer or agency that issued the notice to comply.

Comment. Section 95605 continues the first sentence of former Section 25187.8(h) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95610. Compliance with notice

95610. (a) A facility that receives a notice to comply pursuant to Section 95600 shall have not more than 30 days from the date of receipt of the notice to comply in which to achieve compliance with the permit conditions, rule, regulation, standard, or other requirement cited on the notice to comply.

(b) Within five working days of achieving compliance, an appropriate person who is an owner or operator of or an employee at the facility shall sign the notice to comply stating that the facility has complied with the notice, and return the signed notice to the department representative or to the authorized local officer or agency.

(c) A false statement that compliance has been achieved is a violation of this division pursuant to Section 25191.

(d) A department representative or authorized local officer or agency shall not take any other enforcement action specified in this division against a facility for a violation alleged in a notice to comply, if the facility complies with this article.

Comment. Subdivision (a) of Section 95610 continues the first sentence of former Section 25187.8(b) without substantive change.

Subdivision (b) restates the second sentence of former Section 25187.8(b) without substantive change.

Subdivision (c) continues the third sentence of former Section 25187.8(b) without substantive change.

Subdivision (d) restates the second sentence of former Section 25187.8(e) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

Staff Notes. (1) Proposed Section 95610(b) would restate the second sentence of existing Section 25187.8(b) for clarity. Currently, that sentence reads:

“25187.8. (b) ... Within five working days of achieving compliance, an appropriate person who is an owner or operator of, or an employee at, the facility shall sign the notice to comply and return it to the department representative or to the authorized local officer or agency, as the case may be, which states that the facility has complied with the notice to comply.”

Absent comment, this proposed restatement will be presumed correct.

(2) Proposed Section 95610(d) would restate the second sentence of existing Section 25187.8(e) for clarity. Currently, that sentence reads:

“25187.8. (e) ... The department representative or the authorized local officer or agency shall not take any other enforcement action specified in this chapter against a facility which has received a notice to comply if the facility complies with this section.”

Absent comment, this proposed restatement will be presumed correct.

§ 95615. Enforcement action based on failure to comply with notice

(i) Nothing in this article shall be construed as preventing the department, or authorized local officer or agency, on a case-by-case basis, from requiring a facility to submit reasonable and necessary documentation to support the facility’s claim of compliance pursuant to Section 95615.

Comment. Section 95615 continues the second sentence of former Section 25187.8(h) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95620. Multiple violations

95620. A single notice to comply shall be issued for all minor violations cited during the same inspection ~~and the notice to comply that~~ shall separately list each of the cited minor violations and the manner in which each of the minor violations may be brought into compliance.

Comment. Section 95615 continues former Section 25187.8(c) without substantive change.

See Sections 83160 (“department”), 83245 (“local officer”).

§ 95625. Immediate correction of violation in presence of an inspector

95625. Immediate correction of a minor violation in the presence of an inspector may be noted in an inspection report, but a notice to comply shall not be issued for the violation, and the facility shall not be subject to any further action by the department representative or by the authorized local officer or agency.

1 **Comment.** Section 95615 restates former Section 25187.8(d) without substantive change.
2 See Sections 83160 (“department”), 83245 (“local officer”).

3 **Staff Note.** Proposed Section 95625 would restate existing Section 25187.8(d) for clarity.
4 Currently, Section 25187.8(d) provides:

5 “(d) A notice to comply shall not be issued for any minor violation which is corrected
6 immediately in the presence of the inspector. Immediate compliance in that manner may be noted
7 in the inspection report, but the facility shall not be subject to any further action by the department
8 representative or by the authorized local officer or agency.”

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

10 **§ 95630. Exclusive means of citation for minor violation**

11 95630. Except as otherwise provided in Sections 95635 and 95650, a notice to
12 comply shall be the only means by which a department representative or authorized
13 local officer or agency shall cite a minor violation.

14 **Comment.** Section 95630 continues the first sentence of former Section 25187.8(e) without
15 substantive change.

16 See Sections 83160 (“department”), 83245 (“local officer”).

17 **§ 95635. Additional assessment of civil penalty**

18 95635. Notwithstanding any other provision of this article, if the department, or
19 an authorized local officer or agency, determines that the circumstances surrounding
20 a particular minor violation or combination of minor violations are such that the
21 assessment of a civil penalty pursuant to this division is warranted or is required by
22 the federal act, in addition to issuance of a notice to comply, the department or
23 authorized local officer or agency shall assess that civil penalty in accordance with
24 this division, if the department or authorized local officer or agency makes written
25 findings that set forth the basis for the department’s or authorized local officer’s or
26 agency’s determination.

27 **Comment.** Section 95635 continues former Section 25187.8(g)(2) without substantive change.

28 See Sections 83160 (“department”), 83200 (“federal act”), 83245 (“local officer”).

29 **§ 95640. Disagreement with notice to comply**

30 95640. If a facility that receives a notice to comply pursuant to Section 95600
31 disagrees with one or more of the alleged violations listed on the notice to comply,
32 the owner shall give the person who issued the notice to comply written notice of
33 disagreement.

34 **Comment.** Section 95640 continues the first sentence of former Section 25187.8(f) without
35 substantive change.

36 **§ 95645. Appeal of enforcement action**

37 95645. If the issuing agency takes administrative enforcement action on the basis
38 of ~~the a~~ disputed violation, that action may be appealed in the same manner as for
39 other alleged violations under **subdivisions (d) to (j), inclusive, of Section 25187.**

1 **Comment.** Section 95645 continues the second sentence of former Section 25187.8(f) without
2 substantive change.

3 **§ 95650. Need for immediate enforcement**

4 95650. Notwithstanding any other provision of this article, if a facility fails to
5 comply with a notice to comply within the prescribed period, or if the department,
6 or an authorized local officer or agency, determines that the circumstances
7 surrounding a particular minor violation or combination of minor violations are such
8 that immediate enforcement is warranted to prevent harm to the public health or
9 safety or to the environment, the department or authorized local officer or agency
10 may take any needed enforcement action authorized by this chapter.

11 **Comment.** Section 95650 continues former Section 25187.8(g)(1) without substantive change.
12 See Sections 83160 (“department”), 83245 (“local officer”).

13 **§ 95655. Disagreement with notice to comply**

14 95655. Nothing in this article shall be construed as preventing the reinspection of
15 a facility to ensure compliance with this division or to ensure that minor violations
16 cited in a notice to comply have been corrected and that the facility is in compliance
17 with this division.

18 **Comment.** Section 95655 continues former Section 25187.8(i) without substantive change.

19 CHAPTER 4. LIABILITY

20 Article 1. General Provisions

21 **§ 95700. Cumulative remedies permissible**

22 95700. The remedies provided by this division are cumulative, and shall not be
23 construed as restricting any remedy, provisional or otherwise, provided by law for
24 the benefit of any party, and no judgment under this division shall preclude any
25 party from obtaining additional relief based upon the same facts.

26 **Comment.** Section 95700 continues former Section 25193 without substantive change.

27 **§ 95705. Non-abatement of action or proceeding**

28 95705. Any action brought pursuant to this division against a person shall not
29 abate by reason of a sale or other transfer of ownership, except with the express
30 written consent of the director.

31 **Comment.** Section 95705 continues former Section 25194 without substantive change.

32 **§ 95710. Proceeding relating to withdrawn application**

33 95710. (a) The withdrawal of an application for a permit, registration, or
34 certificate, after it has been filed with the department shall not, unless the
35 department consents in writing to the withdrawal, deprive the department of its
36 authority to institute or continue a proceeding against the applicant for the denial of

the permit, registration, or certificate upon any ground provided by law, or to enter an order denying the permit, registration, or certificate ~~upon on~~ any ground, ~~and a~~.

(b) A withdrawal described in subdivision (a) shall not affect the authority of the department, or a local officer or agency authorized to enforce this division pursuant to **subdivision (a) of Section 25180**, to institute or continue a proceeding against the applicant pertaining to any violation of this division or any rule, regulation, standard, or requirement issued or promulgated pursuant to this division.

(c) The suspension, expiration, or forfeiture by operation of law of a permit, registration, or certificate issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court, or its surrender or attempted or actual transfer without the written consent of the department shall not affect the authority of the department, or a local officer or agency authorized to enforce this division pursuant to **subdivision (a) of Section 25180**, to institute or continue a disciplinary proceeding against the holder of a permit, registration, or certificate upon any ground, or the authority of the department to enter an order suspending or revoking the permit, registration, or certificate, or otherwise taking an action against the holder of a permit, registration, or certificate on any ground.

Comment. Section 95710 continues former Section 25194.5 without substantive change. See Sections 83160 (“department”), 83245 (“local officer”).

§ 95715. Apportionment of penalties

95715. (a) All civil and criminal penalties collected pursuant to this division shall be apportioned in the following manner:

(1) Fifty percent shall be deposited in the Toxic Substances Control Account in the General Fund.

(2) Twenty-five percent shall be paid to the office of the city attorney, city prosecutor, county counsel, district attorney, or the Attorney General, whichever office brought the action.

(3) Twenty-five percent shall be paid to the department and used to fund the activity of the CUPA, the local health officer, or other local public officer or agency authorized to enforce the provisions of this division pursuant to **Section 25180**, whichever entity investigated the matter that led to the bringing of the action.

(4) If investigation by the local police department or sheriff’s office or the Department of the California Highway Patrol led to the bringing of the action, the CUPA, the local health officer, or the authorized officer or agency, shall pay a total of 40 percent of its portion under this subdivision to that investigating agency or agencies to be used for the same purpose.

(5) If more than one agency is eligible for payment under this paragraph, division of payment among the eligible agencies shall be in the discretion of the CUPA, the local health officer, or the authorized officer or agency.

(b) If a reward is paid to a person pursuant to Section 95715, the amount of the reward shall be deducted from the amount of the civil penalty before the amount is apportioned pursuant to subdivision (a).

Comment. Section 95715 continues former Section 25192 without substantive change.
See Sections 83110 (“CUPA”), 83160 (“department”), 83240 (“local health officer”).

§ 95720. Reimbursement to department for overseeing or carrying out corrective action

95720. If an order or agreement issued by the department pursuant to Article 3 (commencing with Section 95350) of Chapter 4 to a potentially responsible party requires a person to take corrective action with respect to a release of hazardous waste or hazardous waste constituents into the environment, that person shall pay for the department’s costs incurred in overseeing or carrying out the corrective action.

Comment. Section 95720 continues former Section 25187.2 without substantive change.
See Sections 83160 (“department”), (“hazardous waste”).

Article 2. Civil Liability Generally

§ 95800. Prosecution of civil action

95800. Every civil action brought under this division at the request of the department or a unified program agency shall be brought by the city attorney, the county counsel, the district attorney, or the Attorney General in the name of the people of the State of California, and any such actions relating to the same processing or disposal of hazardous wastes may be joined or consolidated.

Comment. Section 95800 continues former Section 25182 without substantive change.
See Sections 83160 (“department”), 83375 (“unified program agency”).

§ 95805. Venue for civil action

95805. Any civil action brought pursuant to this division shall be brought in the county in which the processing or disposal of hazardous waste is made or proposed to be made, the county in which the principal office of the defendant is located, or the county in which the Attorney General has an office nearest to the county in which the principal office of the defendants, or any of them, is located in this state.

Comment. Section 95805 continues former Section 25183 without substantive change.
See Sections 83175 (“disposal”), 83210 (“hazardous waste”).

§ 95810. Temporary restraining order or injunctive relief

95810. In any civil action brought pursuant to this division in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued; or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without such allegations and without such proof.

Comment. Section 95810 continues former Section 25184 without substantive change.

1 **§ 95815. Additional liability for costs and expenses**

2 95815. (a) In addition to liability under any other provision of law, any person
3 who is liable for a civil penalty pursuant to **subdivision (c) or (d) of Section 25189**
4 **or subdivision (c) of Section 25189.2**, or is convicted pursuant to **subdivision (b)**
5 **of Section 25189.5**, is also civilly liable for all the costs or expenses which may be
6 incurred by the state, or by a local agency, in doing any of the following:

7 (1) Assess short-term or long-term injury to, degradation or destruction of, or any
8 loss of, any natural resource resulting from the disposal of the hazardous waste
9 which is the subject of the civil penalty or conviction.

10 (2) Restore, rehabilitate, replace, or acquire the equivalent of, any natural resource
11 injured, degraded, destroyed, or lost as a result of the disposal of the hazardous
12 waste which is the subject of the civil penalty or conviction.

13 (b) The liability imposed by subdivision (a) is separate and in addition to any civil
14 penalty imposed pursuant to **subdivision (c) or (d) of Section 25189 or subdivision**
15 **(c) of Section 25189.2** or any fine imposed pursuant to **subdivision (e) of Section**
16 **25189.5**.

17 (c) Any funds collected pursuant to this section are in addition to any other funds
18 which may be collected pursuant to this division.

19 (d) A state or local agency may collect funds pursuant to this section prior to
20 carrying out the actions specified in paragraph (1) or (2) of subdivision (a).

21 (e) An action brought pursuant to this section may be brought by the trustee of the
22 natural resources specified in **Section 79685**.

23 (f) The action may be prosecuted by the Attorney General or the district attorney-
24 ~~The action, but may be prosecuted~~ by the district attorney only after the trustee, in
25 consultation with the Office of the Attorney General, approves that prosecution in
26 writing.

27 (g) The trustee shall have 30 days to consider any requested action, and approval
28 shall be presumed to have been granted if a written denial is not issued within 30
29 days.

30 (h) The trustee may not unreasonably withhold approval.

31 (i) All funds collected pursuant to this section by the trustee of the natural
32 resources shall be deposited, at the discretion of the trustee, in the Fish and Wildlife
33 Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund
34 or in a special deposit trust fund.

35 **Comment.** Section 95815 continues former Section 25189.1 without substantive change.
36 See Sections 83175 (“disposal”), 83210 (“hazardous waste”), 83260 (“natural resource”).

37 Article 3. Primary Civil Liability [Former Section 25189]

38 **§ 95850. False statements**

39 95850. A person who intentionally or negligently makes a false statement or
40 representation in an application, label, manifest, record, report, permit, or other
41 document filed, maintained, or used for purposes of compliance with this division,

shall be liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each separate violation, or, for continuing violations, for each day that violation continues.

Comment. Section 95850 continues former Section 25189(a) without substantive change. 83210 (“hazardous waste”).

Staff Note. Proposed Sections 95820 through 95850 would continue existing Section 25189 without substantive change. These provisions of existing Section 25189 appear to be largely duplicative of the provisions of existing Section 25189.2.

Pending further study and consideration of public comment, proposed recodification of the provisions of existing Section 25189.2 are temporarily not included in this draft, in anticipation of possible merger and/or coordination in the recodification of the provisions of both Section 25189 and 25189.2.

Public comment on this issue is invited and welcome.

§ 95855. Violation of provision of division

95855. Except as provided in Sections 95830, 95835, or 95840, a person who intentionally or negligently violates a provision of this division or a permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this division, shall be liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

Comment. Section 95855 continues former Section 25189(b) without substantive change.

§ 95860. Intentional disposal of hazardous or extremely hazardous waste

95860. (a) A person who intentionally disposes or causes the disposal of a hazardous or extremely hazardous waste at a point that is not authorized according to the provisions of this division shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) or more than seventy thousand dollars (\$70,000) for each violation, and may be ordered to disclose the fact of this violation or these violations to those persons as the court may direct.

(b) Each day on which the deposit remains and the person has knowledge of the deposit is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

Comment. Section 95860 continues former Section 25189(c) without substantive change.

See Sections 83160 (“department”), 83175 (“disposal”), 83195 (“extremely hazardous waste”), 83210 (“hazardous waste”).

§ 95865. Negligent disposal of hazardous or extremely hazardous waste

95865. (a) A person who negligently disposes or causes the disposal of a hazardous or extremely hazardous waste at a point that is not authorized according to the provisions of this division shall be subject to a civil penalty of not more than seventy thousand dollars (\$70,000) for each violation and may be ordered to

disclose the fact of this violation or these violations to those persons as the court may direct.

(b) Each day on which the deposit remains and the person had knowledge of the deposit is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

Comment. Section 95865 continues former Section 25189(d) without substantive change.

See Sections 83160 (“department”), 83175 (“disposal”), 83195 (“extremely hazardous waste”), 83210 (“hazardous waste”).

§ 95870. Treatment or storage of hazardous waste

95870. A person who intentionally or negligently treats or stores, or causes the treatment or storage of, a hazardous waste at a point that is not authorized according to this division shall be liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each separate violation or, for continuing violations, for each day that the violation continues.

Comment. Section 95870 continues former Section 25189(e) without substantive change.

See Sections 83210 (“hazardous waste”), 83370 (“treatment”).

§ 95875. Separate penalties for separate violations

95875. Each civil penalty imposed for a separate violation pursuant to this section shall be separate and in addition to any other civil penalty imposed pursuant to this section or any other provision of law.

Comment. Section 95875 continues former Section 25189(f) without substantive change.

§ 95880. Duplication of penalties

95880. A person shall not be liable for a civil penalty imposed under this section and for a civil penalty imposed under **Section 25189.2** for the same act or failure to act.

Comment. Section 95880 continues former Section 25189(g) without substantive change.

Article 4. Alternative Civil Liability [Former Section 25189.2]

§ 95900. False statements

95900. A person who makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this chapter, is liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each separate violation or, for continuing violations, for each day that the violation continues.

Comment. Section 95900 continues former Section 25189.2(a) without substantive change.

See Sections 83160 (“department”), 83175 (“disposal”), 83195 (“extremely hazardous waste”), 83210 (“hazardous waste”).

§ 95905. Violation of provision of division

95905. Except as provided in Section 95910 or 95915, a person who violates a provision of this division or a permit, rule, regulation, standard, or requirement issued or adopted pursuant to this division, is liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

Comment. Section 95905 continues former Section 25189.2(b) without substantive change.

§ 95910. Unauthorized disposal of hazardous or extremely hazardous waste

95910. (a) A person who disposes, or causes the disposal of, a hazardous or extremely hazardous waste at a point that is not authorized according to the provisions of this chapter is liable for a civil penalty of not more than seventy thousand dollars (\$70,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court or, in the case of an administrative action, a hearing officer, may direct.

(b) Each day on which the deposit remains is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

Comment. Section 95910 continues former Section 25189.2(c) without substantive change.

See Sections 83160 (“department”), 83175 (“disposal”), 83195 (“extremely hazardous waste”), 83210 (“hazardous waste”).

§ 95915. Treatment or storage of hazardous waste

95915. A person who treats or stores, or causes the treatment or storage of, a hazardous waste at a point that is not authorized according to this chapter, shall be liable for a civil penalty not to exceed seventy thousand dollars (\$70,000) for each separate violation or, for continuing violations, for each day that the violation continues.

Comment. Section 95915 continues former Section 25189.2(d) without substantive change.

See Sections 83355 (“storage”), 83370 (“treatment”), 83210 (“hazardous waste”).

§ 95920. Exemption from liability under Section 95910 or 95915

95920. For purposes of Section 95910 or 95915, a person who offers hazardous waste to a transporter that is registered pursuant to **Section 25163** or to a storage, treatment, transfer, resource recovery, or disposal facility that holds a valid hazardous waste facilities permit or other grant of authorization from the department that authorizes the facility to accept the waste being offered shall not be considered to have caused disposal, treatment, or storage of hazardous waste at an unauthorized point solely on the basis of having offered that person’s waste, provided the person has taken reasonable steps to determine that the transporter is registered or the facility is authorized by the department to accept the hazardous waste being offered.

Comment. Section 95920 continues former Section 25189.2(e) without substantive change.

1 See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83215
2 (“hazardous waste facility”), 83355 (“storage”), 83370 (“treatment”), 83395 (“waste”).

3 **§ 95925. Prohibition of double imposition of penalty**

4 95925. A person shall not be liable for a civil penalty imposed under this section
5 and for a civil penalty imposed under Section 25189 for the same act or failure to
6 act.

7 **Comment.** Section 95925 continues former Section 25189.2(f) without substantive change.

8 **§ 95930. Alternative administrative imposition of penalty**

9 95930. Liability under this section may be imposed in a civil action or liability
10 may be imposed administratively pursuant to Article 3 (commencing with Section
11 95350) of Chapter 4.

12 **Comment.** Section 95925 continues former Section 25189.2(g) without substantive change.

13 **Article 4. Criminal Liability**

14 **§ 95950. Required disclosure of violations by designated government employees**

15 95950. (a) Within the meaning of this section, a “designated government
16 employee” is any person defined as a “designated employee” by Government Code
17 Section 82019, as amended.

18 (b)(1) Any designated government employee who obtains information in the
19 course of their official duties revealing the illegal discharge or threatened illegal
20 discharge of a hazardous waste within the geographical area of his or her jurisdiction
21 and who knows that the discharge or threatened discharge is likely to cause
22 substantial injury to the public health or safety must, within 72 hours, disclose that
23 information to the local Board of Supervisors and to the local health officer.

24 (2) No disclosure of information is required under this subdivision when
25 otherwise prohibited by law, or when law enforcement personnel have determined
26 that this disclosure would adversely affect an ongoing criminal investigation, or
27 when the information is already general public knowledge within the locality
28 affected by the discharge or threatened discharge.

29 (c)(1) Any designated government employee who knowingly and intentionally
30 fails to disclose information required to be disclosed under subdivision (b) shall,
31 upon conviction, be punished by imprisonment in a county jail for not more than
32 one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the
33 Penal Code.

34 (2) The court may also impose upon the person a fine of not less than five thousand
35 dollars (\$5000) or more than twenty-five thousand dollars (\$25,000).

36 (3) The felony conviction for violation of this section shall require forfeiture of
37 government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make that information available to the public without delay.

Comment. Section 95950 continues former Section 25180.7 without substantive change. See Sections 83210 (“hazardous waste”), 83240 (“local health officer”).

§ 95955. Knowing disposal of hazardous waste

95955. (a) The disposal of any hazardous waste, or the causing thereof, is prohibited when the disposal is at a facility which does not have a permit from the department issued pursuant to this division, or at any point which is not authorized according to this division.

(b) Any person who is convicted of knowingly disposing or causing the disposal of any hazardous waste, or who reasonably should have known that he or she was disposing or causing the disposal of any hazardous waste, at a facility which does not have a permit from the department issued pursuant to this division, or at any point which is not authorized according to this division shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(c) Any person who knowingly transports or causes the transportation of hazardous waste, or who reasonably should have known that he or she was causing the transportation of any hazardous waste, to a facility which does not have a permit from the department issued pursuant to this division, or at any point which is not authorized according to this division, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(d) Any person who knowingly treats or stores any hazardous waste at a facility which does not have a permit from the department issued pursuant to this division, or at any point which is not authorized according to this division, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(e) The court also shall impose upon a person convicted of violating subdivision (b), (c), or (d), a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000) for each day of violation, except as further provided in this subdivision. If the act which violated subdivision (b), (c), or (d) caused great bodily injury, or caused a substantial probability that death could result, the person convicted of violating subdivision (b), (c), or (d) may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for one, two, or three years, in addition and consecutive to the term specified in subdivision (b), (c), or (d), and may be fined up to two hundred fifty thousand dollars (\$250,000) for each day of violation.

(f) For purposes of this section, except as otherwise provided in this subdivision, “each day of violation” means each day on which a violation continues. In any case where a person has disposed or caused the disposal of any hazardous waste in

violation of this section, each day that the waste remains disposed of in violation of this section and the person has knowledge thereof is a separate additional violation, unless the person has filed a report of the disposal with the department and is complying with any order concerning the disposal issued by the department, a hearing officer, or court of competent jurisdiction.

Comment. Section 95955 continues former Section 25189.5 without substantive change. See Sections 83175 (“disposal”), 83210 (“hazardous waste”), 83395 (“waste”).

§ 95960. Treatment, handling, transport, disposal, or storage of hazardous waste

95960. (a) Any person who knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes, or stores any hazardous waste in a manner which causes any unreasonable risk of fire, explosion, serious injury, or death is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) nor more than two hundred fifty thousand dollars (\$250,000) for each day of violation, or by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment.

(b) Any person who knowingly, at the time the person takes the actions specified in subdivision (a), places another person in imminent danger of death or serious bodily injury, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) nor more than two hundred fifty thousand dollars (\$250,000) for each day of violation, and by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.

Comment. Section 95960 continues former Section 25189.6 without substantive change. See Section 83210 (“hazardous waste”).

§ 95965. Burning or incineration of hazardous waste

95965. (a) The burning or incineration of any hazardous waste, or the causing thereof, is prohibited when the burning or incineration is at a facility which does not have a permit from the department issued pursuant to this division, or at any point which is not authorized according to this division.

(b) Any person who is convicted of knowingly burning or incinerating, or causing the burning or incineration of, any hazardous waste, or who reasonably should have known that he or she was burning or incinerating, or causing the burning or incineration of, any hazardous waste, at a facility which does not have a permit from the department issued pursuant to this division, or at any point which is not authorized according to this division, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(c) The court also shall impose upon a person convicted of violating subdivision (b) a fine of not less than five thousand dollars (\$5,000) nor more than one hundred

thousand dollars (\$100,000) for each day of violation, except as otherwise provided in this subdivision.

(d) If the act which violated subdivision (b) caused great bodily injury or caused a substantial probability that death could result, the person convicted of violating subdivision (b) may be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for one, two, or three years, in addition and consecutive to the term specified in subdivision (b), and may be fined up to two hundred fifty thousand dollars (\$250,000) for each day of violation.

Comment. Section 95965 continues former Section 25189.7 without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”).

§ 95970. Violation of provision of division

95970. (a) Except as otherwise provided in **Sections 25185.6, 25189.5, 25189.6, 25189.7, and 25191**, any person who violates any provision of this division, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this division, is, upon conviction, guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for up to six months in a county jail or by both that fine and imprisonment.

(b) If the conviction is for a second or subsequent violation, the person shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months. The court shall also impose upon the person a fine of not less than five thousand dollars (\$5,000) or more than twenty-five thousand dollars (\$25,000).

Comment. Section 95970 continues former Section 25190 without substantive change.

§ 95975. Dissemination of protected information

95975. Notwithstanding Section 25190, a person who knowingly and willfully disseminates information protected by **Section 25173** or procedures established by the department pursuant to **Section 25173** shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000), imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

Comment. Section 95975 continues former Section 25185.6(i) without substantive change.

§ 95980. Miscellaneous criminal liability

95980. (a)(1) Any person who knowingly does any of the acts specified in subdivision (b) shall, upon conviction, be punished by a fine of not less than two thousand dollars (\$2,000) or more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(2) If the conviction is for a second or subsequent violation of subdivision (b), the person shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months, or in a county jail for not more

1 than one year, or by a fine of not less than two thousand dollars (\$2,000) or more
2 than fifty thousand dollars (\$50,000) for each day of violation, or by both that fine
3 and imprisonment.

4 (3) Each day or partial day that a violation occurs is a separate violation.

5 (b) A person who does any of the following is subject to the punishment
6 prescribed in subdivision (a):

7 (1) Makes any false statement or representation in any application, label, manifest,
8 record, report, permit, notice to comply, or other document filed, maintained, or
9 used for the purposes of compliance with this division.

10 (2) Has in his or her possession any record relating to the generation, storage,
11 treatment, transportation, disposal, or handling of hazardous waste required to be
12 maintained pursuant to this division, that has been altered or concealed.

13 (3) Destroys, alters, or conceals any record relating to the generation, storage,
14 treatment, transportation, disposal, or handling of hazardous waste required to be
15 maintained pursuant to this division.

16 (4) Withholds information regarding a real and substantial danger to the public
17 health or safety when that information has been requested by the department, or by
18 a local officer or agency authorized to enforce this division pursuant to **subdivision**
19 **(a) of Section 25180**, and is required to carry out the responsibilities of the
20 department or the authorized local officer or agency pursuant to this division in
21 response to a real and substantial danger.

22 (5) Except as otherwise provided in this division, engages in transportation of
23 hazardous waste in violation of **Section 25160 or 25161, or subdivision (a) of**
24 **Section 25163**, or in violation of any regulation adopted by the department pursuant
25 to those provisions, including, but not limited to, failing to complete or provide the
26 manifest in the form and manner required by the department.

27 (6) Except as otherwise provided in this division, produces, receives, stores, or
28 disposes of hazardous waste, or submits hazardous waste for transportation, in
29 violation of **Section 25160 or 25161** or any regulation adopted by the department
30 pursuant to those sections, including, but not limited to, failing to complete, provide,
31 or submit the manifest in the form and manner required by the department.

32 (7) Transports any waste, for which there is provided a manifest, if the
33 transportation is in violation of this division or the regulations adopted by the
34 department pursuant thereto.

35 (8) Violates **Section 25162**.

36 (c)(1) The penalties imposed pursuant to subdivision (a) on any person who
37 commits any of the acts specified in paragraph (5), (7), or (8) of subdivision (b) shall
38 be imposed only ~~(A)~~ on the owner or lessee of the vehicle in which the hazardous
39 wastes are unlawfully transported, carried, or handled, or ~~(B) on~~ the person who
40 authorizes or causes the transporting, carrying, or handling.

41 (2) ~~These~~ The penalties shall not be imposed on the driver of the vehicle, unless
42 the driver is also the owner or lessee of the vehicle or authorized or caused the
43 transporting, carrying, or handling.

(3) If any person other than the person producing the hazardous waste prepares the manifest specified in **Section 25160**, that other person is also subject to the penalties imposed on a person who commits any of the acts specified in paragraph (6) of subdivision (b).

(d) Any person who knowingly does any of the following acts, each day or partial day that a violation occurs constituting a separate violation, shall, upon conviction, be punished by a fine of not more than five hundred dollars (\$500) for each day of violation, or by imprisonment in the county jail for not to exceed six months, or by both that fine and imprisonment:

(1) Carries or handles, or authorizes the carrying or handling of, a hazardous waste without having in the driver's possession the manifest specified in Section 25160.

(2) Transports, or authorizes the transportation of, hazardous waste without having in the driver's possession a valid registration issued by the department pursuant to **Section 25163**.

(e) Whenever any person is prosecuted for a violation pursuant to **paragraph (5), (6), (7), or (8) of subdivision (b), subdivision (d), or subdivision (c) of Section 25189.5**, the prosecuting attorney may take appropriate steps to make the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled, the driver of the vehicle, or any other person who authorized or directed the loading, maintenance, or operation of the vehicle, who is reasonably believed to have violated these provisions, a codefendant.

(f) If a codefendant is held solely responsible and found guilty, the court may dismiss the charge against the person who was initially so charged.

Comment. Section 95980 continues former Section 25191 without substantive change. See Sections 83175 ("disposal"), 83355 ("storage"), 83370 ("treatment").

§ 95985. Additional misdemeanor violations

95985. It is a misdemeanor for any person to do any of the following:

(a) Willfully prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the department, or a local officer or agency authorized to enforce this division pursuant to subdivision (a) of Section 25180, in the lawful enforcement of any provision of this division.

(b) Willfully prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of his or her official duties under this division.

(c) Willfully prevent or interfere with any such representative in the preserving of evidence of any violation of any of the provisions of this division or of the rules and regulations promulgated pursuant to this division.

Comment. Section 95985 continues former Section 25195 without substantive change. See Sections 83160 ("department"), 83245 ("local officer").

Article 4. Miscellaneous Liability

§ 96000. Additional civil penalty based on prior liability finding

96000. (a) In addition to any penalty imposed under any other law, a person who is subject to the imposition of civil or criminal penalties pursuant to the provisions specified in subdivision (b) shall also be subject to an additional civil penalty of not less than five thousand dollars (\$5,000) or more than fifty thousand dollars (\$50,000) for each day of each violation, if the person has been found liable for, or has been convicted of, two or more previous violations subject to the penalties specified in subdivision (b) and those violations or convictions occurred within any consecutive 60 months.

(b) The additional liability specified in subdivision (a) shall apply to a penalty imposed pursuant to, or a conviction under, paragraph (2) of subdivision (g) of Section 25187.8, or Section 25189, 25189.2, 25189.3, 25189.5, 25189.6, or 25189.7.

Comment. Section 96000 continues former Section 25189.4 without substantive change.

§ 96005. Violation of Section 25227 or former Section 25221

96005. A person who knowingly violates a provision of **subdivision (a) of former Section 25221** as that section read on January 1, 2012, and who violated that provision prior to the effective date of Chapter 39 of the Statutes of 2012, or who knowingly violates **Section 25227**, shall be subject to a civil penalty not to exceed 25 percent of the fair market value of the land and improvements, 25 percent of the sale price of the land and improvements, or fifty thousand dollars (\$50,000), whichever has been established and is greatest.

Comment. Section 96005 continues former Section 25196 without substantive change.

§ 96010. Registered waste transporters

96010. A registered waste transporter transporting medical waste who is not subject to **Section 25097** shall be subject to penalties for violations pursuant to this part.

Comment. Section 96010 continues former Section 25181.5 without substantive change. See Section 83395 (“waste”).

§ 96015. Failure to provide information relating to generated hazardous waste

96015. (a) A person who generates or has generated hazardous waste that fails to provide information to the department as required pursuant to this division and regulations adopted pursuant to this division is liable for a civil or administrative penalty not to exceed seventy thousand dollars (\$70,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(b) The department may adopt regulations to implement subdivision (a).

Comment. Section 96015 continues former Section 25196.1 without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”).

1 **§ 96020. Noncompliance with order requiring corrective action**

2 96020. A person subject to an order issued pursuant to Article 3 (commencing
3 with Section 95350) of Chapter 4 who does not comply with that order shall be
4 subject to a civil penalty of not more than seventy thousand dollars (\$70,000) for
5 each day of noncompliance.

6 **Comment.** Section 95815 continues former Section 25188 without substantive change.

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this staff draft, of provisions in Chapter 6.5 of Division 20 of the Health and Safety Code (§§ 25100-25259), as the law existed on January 1, 2025. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	New Provision
25180(a).....	95000
25180(b).....	95005
25180(c).....	95010
25180(d).....	95020
25180.1	83288
25180.2	95050
25180.5(a), (b)	95055
25180.5(c).....	95060
25180.7	95950
25181	95080
25181.5	96010
25182	95800
25183	95805
25184	95810
25184.1	95085
25185(a).....	95075
25185(b).....	95100(a)
25185(c)(1), 1 st sent.....	95100(b)
25185(c)(1), 2 nd sent.....	95100(c)
25185(c)(2)(A), 1 st sent	95100(d)
25185(c)(2)(A), 2 nd sent.....	95100(e)
25185(c)(2)(A), 3 rd sent.....	95100(f)
25185(c)(2)(A), 4 th sent	95100(g)
25185(c)(2)(A), 5 th sent	95100(h)(1)
25185(c)(2)(A), 6 th sent	95100(h)(2)
25185(c)(2)(B).....	95105
25185(c)(2)(C).....	95110
25185(c)(2)(D).....	95115
25185(c)(3), 1 st sent.....	95120(a)
25185(c)(3), 2 nd sent	95120(b)
25185(c)(3), 3 rd sent.....	95120(c)
25185(c)(3), 4 th sent.....	95120(d)
25185(d), 1 st sent	95125(a)
25185(d), 2 nd and 3 rd sent.....	95125(b)
25185.5	95130
25185.6(a)(1)	95150
25185.6(a)(2)	95155
25185.6(b).....	95160
25185.6(c).....	95165

Existing Provision	New Provision
25185.6(d).....	95170(a)
25185.6(e).....	95175
25186.5(f), 1 st sent	95180(a)
25186.5(f), 2 nd sent.....	95180(b)
25185.6(g).....	95180(c)
25185.6(h), 1 st sent	95170(b)
25185.6(h), 2 nd sent	95170(c)
25185.6(h), 3 rd sent.....	95170(d)
25185.6(i)	95975
25186.5(a).....	95260
25186.5(b).....	95185(a)
25186.5(c).....	95185(b)
25185.6(d), 1 st sent	95185(c)
25185.6(d), 2 nd sent.....	95185(d)
25185.6(d), 3 rd sent.....	95185(e)
25185.6(e).....	95185(f)
25186.5(f)	95185(g)
25186(a).....	95250(a)
25186(b).....	95250(b)
25186(c).....	95250(c)
25186(d).....	95250(d)
25186(e).....	95255
25186(f)	95250(e)
25186.05	95265
25186.1, 1 st and 2 nd sent.....	95270
25186.1, 3 rd sent.....	95200(a)
25186.1, 4 th sent.....	95200(b)
25186.2, 1 st sent	95275(a)
25186.2, 2 nd sent	95275(b)
25186.2, 3 rd sent.....	95275(c)
25186.2, 4 th sent.....	95275(d)
25186.2, 5 th sent.....	95275(e)
25186.2, 6 th sent.....	95275(f)
25186.2.5, 1 st sent	95280(a)
25186.2.5, 2 nd sent	95280(b)
25186.2.5, 3 rd sent.....	95280(c)
25186.2.5, 4 th sent.....	95280(d)
25186.2.5, 5 th sent.....	95280(e)
25186.3	95205
25186.6	95065
25186.7	95285
25187(a)(1)	95360(a) and (b)
25187(a)(2)	95360(c)
25187(b) (intro para)	95365(a)
25187(b)(1).....	95370
25187(b)(2).....	95365(b)
25187(b)(3).....	95365(c)

Existing Provision	New Provision
25187(b)(4), 1 st sent.....	95365(d)
25187(b)(4), 2 nd sent.....	95365(e)
25187(b)(5).....	95375
25187(b)(6).....	95350
25187(c).....	95380
25187(d).....	95385
25187(e).....	95390(a)
25187(f) 2 nd sent.....	95390(a)
25187(f)(1).....	95390(a)
25187(f)(2)(A) 1 st sent.....	95390(a)
25187(f)(2)(A), 2 nd sent.....	95390(b)
25187(g), 1 st sent.....	95390(c)
25187(g), 2 nd sent.....	95390(d)
25187(h).....	95395
25187(i).....	95400
25187(j)(1).....	95405(a)
25187(j)(2).....	95405(b)
25187(k).....	95405(c)
25187(l).....	95355
25187(m).....	95410(a)
25187(n).....	95410(b)
25187(o).....	95410(c)
25187(p), 1 st sent.....	95415(a)
25187(p), 2 nd sent.....	95415(b)
25187(q).....	95420
25187.1(a).....	95300
25187.1(b).....	95305
25187.1(c).....	95310
25187.1(d).....	95315(a)
25187.1(e).....	95315(b)
25187.1(f).....	95320
25187.2.....	95720
25187.3(a).....	95450
25187.3(b).....	95455(a)
25187.3(c)(1).....	95460(a)
25187.3(c)(2)(A).....	95460(b)
25187.3(c)(2)(B), 1 st sent.....	95460(c)
25187.3(c)(2)(B), 2 nd sent.....	95460(d)
25187.3(d).....	95455(b)
25187.3(e).....	95465
25187.3(f), 1 st sent.....	95470
25187.3(f), 2 nd sent.....	95475
25187.5(a).....	95500
25187.5(b).....	95505
25187.5(c).....	95510
25187.5(d).....	95515
25187.5(e).....	95520

Existing Provision	New Provision
25187.6(a).....	95555
25187.6(b).....	95560
25187.6(c).....	95565
25187.6(d).....	95570
25187.6(e).....	95575
25187.6(f).....	95580(a)
25187.6(g).....	95580(b)
25187.6(h).....	95550
25187.8(a).....	95600
25187.8(b), 1 st sent	95610(a)
25187.8(b), 2 nd sent.....	95610(b)
25187.8(b), 3 rd sent	95610(c)
25187.8(c).....	95620
25187.8(d).....	95625
25187.8(e), 1 st sent.....	95630
25187.8(e), 2 nd sent.....	95610(d)
25187.8(f), 1 st sent	95640
25187.8(f), 2 nd sent	95645
25187.8(g)(1).....	95650
25187.8(g)(2).....	95635
25187.8(h), 1 st sent	95605
25187.8(h), 2 nd sent.....	95615
25187.8(i)	95655
25188	96020
25189(a).....	95850
25189(b).....	95855
25189(c).....	95860
25189(d).....	95865
25189(e).....	95870
25189(f)	95875
25189(g).....	95880
25189.1	95815
25189.2(a).....	95900
25189.2(b).....	95905
25189.2(c).....	95910
25189.2(d).....	95915
25189.2(e).....	95920
25189.2(f)	95925
25189.2(g).....	95930
25189.3	95210
25189.4	96000
25189.5	95955
25189.6	95960
25189.7	95965
25190	95970
25191	95980
25191.2	95015

Existing Provision	New Provision
25191.7	95090
25192	95715
25193	95700
25194	95705
25194.5	95710
25195	95985
25196	96005
25196.1	96015

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in proposed Division 46 reflected in this staff draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Proposed New Provision	Existing Provision
83288	25180.1
95000	25180(a)
95005	25180(b)
95010	25180(c)
95015	25191.2
95020	25180(d)
95050	25180.2
95055	25180.5(a), (b)
95060	25180.5(c)
95065	25186.6
95075	25185(a)
95080	25181
95085	25184.1
95090	25191.7
95100(a)	25185(b)
95100(b)	25185(c)(1), 1 st sent
95100(c)	25185(c)(1), 2 nd sent
95100(d)	25185(c)(2)(A), 1 st sent
95100(e)	25185(c)(2)(A), 2 nd sent
95100(f)	25185(c)(2)(A), 3 rd sent
95100(g)	25185(c)(2)(A), 4 th sent
95100(h)(1)	25185(c)(2)(A), 5 th sent
95100(h)(2)	25185(c)(2)(A), 6 th sent
95105	25185(c)(2)(B)
95110	25185(c)(2)(C)
95115	25185(c)(2)(D)
95120(a)	25185(c)(3), 1 st sent
95120(b)	25185(c)(3), 2 nd sent
95120(c)	25185(c)(3), 3 rd sent
95120(d)	25185(c)(3), 4 th sent
95125(a)	25185(d), 1 st sent
95125(b)	25185(d), 2 nd and 3 rd sent
95130	25185.5
95150	25185.6(a)(1)
95155	25185.6(a)(2)
95160	25185.6(b)
95165	25185.6(c)
95170(a)	25185.6(d)
95170(b)	25185.6(h), 1 st sent
95170(c)	25185.6(h), 2 nd sent

Proposed New Provision	Existing Provision
95170(d).....	25185.6(h), 3 rd sent
95175	25185.6(e)
95180(a).....	25186.5(f), 1 st sent
95180(b).....	25186.5(f), 2 nd sent
95180(c).....	25185.6(g)
95185(a).....	25186.5(b)
95185(b).....	25186.5(c)
95185(c).....	25185.6(d), 1 st sent
95185(d).....	25185.6(d), 2 nd sent
95185(e).....	25185.6(d), 3 rd sent
95185(f)	25185.6(e)
95185(g).....	25186.5(f)
95200(a).....	25186.1, 3 rd sent
95200(b).....	25186.1, 4 th sent
95205	25186.3
95210	25189.3
95250(a).....	25186(a)
95250(b).....	25186(b)
95250(c).....	25186(c)
95250(d).....	25186(d)
95250(e).....	25186(f)
95255	25186(e)
95260	25186.5(a)
95265	25186.05
95270	25186.1, 1 st and 2 nd sent
95275(a).....	25186.2, 1 st sent
95275(b).....	25186.2, 2 nd sent
95275(c).....	25186.2, 3 rd sent
95275(d).....	25186.2, 4 th sent
95275(e).....	25186.2, 5 th sent
95275(f)	25186.2, 6 th sent
95280(a).....	25186.2.5, 1 st sent
95280(b).....	25186.2.5, 2 nd sent
95280(c).....	25186.2.5, 3 rd sent
95280(d).....	25186.2.5, 4 th sent
95280(e).....	25186.2.5, 5 th sent
95285	25186.7
95300	25187.1(a)
95305	25187.1(b)
95310	25187.1(c)
95315(a).....	25187.1(d)
95315(b).....	25187.1(e)
95320	25187.1(f)
95350	25187(b)(6)
95355	25187(l)
95360(a) and (b)	25187(a)(1)
95360(c).....	25187(a)(2)

Proposed New Provision	Existing Provision
95365(a).....	25187(b) (intro para)
95365(b).....	25187(b)(2)
95365(c).....	25187(b)(3)
95365(d).....	25187(b)(4), 1 st sent
95365(e).....	25187(b)(4), 2 nd sent
95370	25187(b)(1)
95375	25187(b)(5)
95380	25187(c)
95385	25187(d)
95390(a).....	25187(e), 25187(f) 2 nd sent, 25187(f)(1), 25187(f)(2)(A) 1 st sent
95390(b).....	25187(f)(2)(A), 2 nd sent
95390(c).....	25187(g), 1 st sent
95390(d).....	25187(g), 2 nd sent
95395	25187(h)
95400	25187(i)
95405(a).....	25187(j)(1)
95405(b).....	25187(j)(2)
95405(c).....	25187(k)
95410(a).....	25187(m)
95410(b).....	25187(n)
95410(c).....	25187(o)
95415(a).....	25187(p), 1 st sent
95415(b).....	25187(p), 2 nd sent
95420	25187(q)
95450	25187.3(a)
95455(a).....	25187.3(b)
95455(b).....	25187.3(d)
95460(a).....	25187.3(c)(1)
95460(b).....	25187.3(c)(2)(A)
95460(c).....	25187.3(c)(2)(B), 1 st sent
95460(d).....	25187.3(c)(2)(B), 2 nd sent
95465	25187.3(e)
95470	25187.3(f), 1 st sent
95475	25187.3(f), 2 nd sent
95500	25187.5(a)
95505	25187.5(b)
95510	25187.5(c)
95515	25187.5(d)
95520	25187.5(e)
95550	25187.6(h)
95555	25187.6(a)
95560	25187.6(b)
95565	25187.6(c)
95570	25187.6(d)
95575	25187.6(e)

Proposed New Provision	Existing Provision
95580(a).....	25187.6(f)
95580(b).....	25187.6(g)
95600	25187.8(a)
95605	25187.8(h), 1 st sent
95610(a).....	25187.8(b), 1 st sent
95610(b).....	25187.8(b), 2 nd sent
95610(c).....	25187.8(b), 3 rd sent
95610(d).....	25187.8(e), 2 nd sent
95615	25187.8(h), 2 nd sent
95620	25187.8(c)
95625	25187.8(d)
95630	25187.8(e), 1 st sent
95635	25187.8(g)(2)
95640	25187.8(f), 1 st sent
95645	25187.8(f), 2 nd sent
95650	25187.8(g)(1)
95655	25187.8(i)
95700	25193
95705	25194
95710	25194.5
95715	25192
95720	25187.2
95800	25182
95805	25183
95810	25184
95815	25189.1
95850	25189(a)
95855	25189(b)
95860	25189(c)
95865	25189(d)
95870	25189(e)
95875	25189(f)
95880	25189(g)
95900	25189.2(a)
95905	25189.2(b)
95910	25189.2(c)
95915	25189.2(d)
95920	25189.2(e)
95925	25189.2(f)
95930	25189.2(g)
95950	25180.7
95955	25189.5
95960	25189.6
95965	25189.7
95970	25190
95975	25185.6(i)
95980	25191

Proposed New Provision

Existing Provision

95985	25195
96000	25189.4
96005	25196
96010	25181.5
96015	25196.1
96020	25188
