

## MEMORANDUM 2025-49

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

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In the current phase of this study, the Commission<sup>1</sup> pursuant to legislative directive<sup>2</sup> is preparing a nonsubstantive recodification of [Chapter 6.5 \(commencing with Section 25100\) of Division 20](#) of the Health and Safety Code. This memorandum presents the most current cumulative draft of recodified provisions of Chapter 6.5 that the Commission has provisionally approved for inclusion in a tentative recommendation as an exhibit to this Memorandum.

The primary rationale for presenting this cumulative draft at Commission meetings is to provide Commissioners and other interested persons a reference indicating the current status of the proposed recodification. Each time the Commission provisionally approves new proposed recodified provisions at a Commission meeting, the staff adds the approved provisions to the most recently approved cumulative draft,<sup>3</sup> and the updated draft is then presented at the next Commission meeting at which the study is on the meeting agenda.<sup>4</sup>

The staff appreciates the Department of Toxic Substances Control staff (hereafter, “DTSC”) for their ongoing suggestions on the organization of the recodified provisions in the attached cumulative draft.

Unless otherwise indicated, all references in this memorandum to “proposed” statutory

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<sup>1</sup> Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

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

<sup>2</sup> [2024 Cal. Stat. res. ch. 16](#) (ACR 169, Kalra). Commission recommendations recodifying former Chapter 6.8 of Division 20 were previously submitted to and thereafter enacted by the Legislature. [Hazardous Substance Account Recodification Act](#) (Preprint – Dec. 2021), [2022 Cal. Stat. ch. 257](#) (AB 2293, Committee on Environmental Safety and Toxic Materials); [Hazardous Substance Account Recodification Act: Conforming Revisions](#) (Preprint – Dec. 2021); [2022 Cal. Stat. ch. 258](#) (AB 2327, Committee on Environmental Safety and Toxic Materials).

<sup>3</sup> The cumulative draft is also regularly updated to incorporate new legislation adding, amending, or repealing existing sections of Chapter 6.5. These revisions, as well as any other revisions needed to previously approved provisions aside from conforming or technical revisions, are presented to the Commission for approval in the memorandum presenting the cumulative draft.

<sup>4</sup> The recodified provisions most recently approved by the Commission, which are included in this memorandum, were presented to the Commission by Memorandum [2025-38](#) and approved on September 18, 2025. See Memorandum [2025-44](#) p. 4.

provisions are to provisions in the proposed recodification, and all statutory references without that designation are to provisions of the existing Health and Safety Code, or other existing codes.

**Comments on any aspect of the attached draft,<sup>5</sup> including suggestions that a substantive issue raised by a proposed revision should be considered for future study,<sup>6</sup> are welcome.**

## 2025 LEGISLATIVE ENACTMENTS

The staff has reviewed the most current 2025 legislative enactments and has not identified any enactment requiring amendment or repeal of any code section proposed for recodification in the current cumulative draft, or the addition to the current draft of any newly enacted code section.

## REVISIONS OF PREVIOUSLY PRESENTED PROVISIONS

### **Proposed Section 85505**

While incorporating the proposed recodified provisions presented and approved at the Commission's September 2025 meeting<sup>7</sup> into this cumulative draft, the staff noted a technical drafting error in proposed Section 85505. The last sentence of subdivision (c) of the existing section was proposed to be recodified as a new subdivision (d), and in transferring the text, a clause in the existing sentence was inadvertently omitted. That error has been corrected in the cumulative draft.<sup>8</sup>

**Does the Commission approve the revised recodification and Staff Note in the attached cumulative draft corresponding to proposed Section 85505 for inclusion in a tentative recommendation in this study?**

### **Proposed Section 85560**

At the Commission's September 2025 meeting, the staff presented proposed Section

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<sup>5</sup> Written comments should be sent to [scohen@clrc.ca.gov](mailto:scohen@clrc.ca.gov). Oral comments may be presented at any Commission meeting at which this study is on the meeting agenda. The Commission's meeting agendas can be viewed on the Commission [website](#).

<sup>6</sup> The Commission's assignment in this study also directs the Commission to include in its final report to the Legislature "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, Kalra), para. 13.

<sup>7</sup> Memorandum [2025-38](#).

<sup>8</sup> EX 152-153.

85560 as a recodification of existing Section 25211.2,<sup>9</sup> a dense and complicated code section relating to recycling appliances.

At the Commission’s September meeting, the Commission generally approved the restatement of the provision, but requested the word “presenting” in the repeated phrase “presenting the appliances” be replaced.<sup>10</sup> The staff implemented the Commission’s request by incorporating in a revision of the proposed section the phrase “transported, delivered, or sold appliances.” Further, in part to be consistent with the rephrasing, the staff is proposing further organizational changes.

A significant element of the staff’s proposed recodification of the existing section as presented in the prior memorandum<sup>11</sup> was a nonsubstantive reorganization of its text, in an effort to make the section more readable and eliminate possible ambiguity. The further organizational changes are consistent with that goal. To allow for review, the entire text of the existing section is set out in a Staff Note below the proposed recodification.

DTSC does not object to the revised section as it appears in the cumulative draft.

**Does the Commission approve the revised recodification and Staff Note corresponding to proposed Section 85560 in the attached cumulative draft for inclusion in a tentative recommendation?**

### **Proposed Section 83705(b)**

At the Commission meeting in September 2025, the Commission approved a revision to proposed Section 83705(b) — a provision already in the cumulative draft — to correct an apparent citation error.<sup>12</sup>

However, a subsequent discussion with DTSC relating to the citation suggests that revision of the citation may constitute more than a technical correction.

#### *Background*

Proposed Section 83705(b) would recodify Section 25125(k), which sets forth responsibilities of the Board of Environmental Safety (hereafter, “Board”). Subdivision (k) specifically directs the Board to conduct administrative adjudications pursuant to the Administrative Procedure Act (hereafter, “APA”):

The board shall conduct administrative adjudications, including, but not limited to, permit appeals pursuant to paragraph (2) of subdivision (b) of Section 25125.2,

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<sup>9</sup> Draft of recodified provisions included in Memorandum [2025-38](#), pp. 17-18.

<sup>10</sup> Memorandum [2025-44](#), p. 4.

<sup>11</sup> Recodified provisions included in Memorandum [2025-38](#), pp. 9-12.

<sup>12</sup> Recodified provisions included in Memorandum [2025-37](#), pp. 2, 44.

in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including the prohibition against ex parte communications.

The citation to the APA in Section 25125(k) appeared to the staff to be incorrect because the text of the subdivision directs the Board to conduct administrative adjudications “in accordance with” the APA, but the chapter of the APA thereafter cited in the statute addresses rulemaking, not administrative adjudications. Instead, that chapter is one of four distinct chapters of the APA, which each address distinct subjects:

- Chapter 3.5 (commencing with Section 11340) addresses rulemaking;
- Chapter 4 (commencing with Section 11370) contains general provisions relating to the act;
- Chapter 4.5 (commencing with Section 11400) generally addresses informal administrative adjudications; and
- Chapter 5 (commencing with Section 11500) addresses formal administrative adjudications.

As a result, at the September 2025 meeting, the staff proposed and the Commission approved a revision of the parenthetical citation in Section 25125(k) to instead refer to Chapters 4.5 and 5 of the APA, which address administrative adjudications.<sup>13</sup>

However, following an informal exchange with DTSC, there appear to be additional issues that need to be addressed relating to this citation.

#### *Is the Citation Erroneous?*

Government Code Section 11370, the first section of Chapter 4 of the APA, makes clear that the APA consists of four distinct statutory chapters, and seems to indicate that a reference to all four of those chapters is appropriately included in a nonspecific citation to the APA:

11370. Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) constitute, and may be cited as, the Administrative Procedure Act.<sup>14</sup>

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<sup>13</sup> Memorandum [2025-44](#), p. 4.

<sup>14</sup> This text has been part of existing law for some time. Section 11370 was last amended in 1995, with an operative date of July 1, 1997. See [1995 Cal. Stat. ch. 938](#) (SB 523, Kopp). The section had previously been amended in 1981 to read as indicated above, but without reference to Chapter 4.5, which was added to the act in 1995 based on a Commission recommendation. See 1981 Cal. Stat. ch. 714; [Administrative Adjudication by State Agencies](#), 25 Cal. L. Revision Comm’n Reports 55 (1995).

However, notwithstanding Section 11370, the APA is commonly cited in hundreds of code sections as it is cited in Health and Safety Code Section 25125(k) (with a reference to only Chapter 3.5),<sup>15</sup> and is almost never cited as arguably suggested by Government Code Section 11370 (with a reference to all four chapters of the APA).<sup>16</sup>

The staff therefore is concerned that revising the parenthetical citation to the APA in proposed Section 83705 to include a reference to all four chapters, even if technically correct, could be interpreted as indicating legislative intent to substantively broaden the scope of the reference to the APA in Section 25125(k). That interpretation of the revision would arguably substantively change existing law, which is expressly prohibited in this study.<sup>17</sup>

#### *Possible Alternative Reading of Citation*

While many existing code sections contain only a general reference to the APA, Section 25125(k) specifically directs the Board to “conduct administrative adjudications ... in accordance with the Administrative Procedure Act.” The parenthetical citation to the APA in the section therefore could be understood as intending to specifically reference the part of the APA addressing administrative adjudications. This was how the staff read the section initially, which prompted the proposed revision of the citation to refer to the two chapters of the act that address administrative adjudications, as the Legislature has done in a handful of other existing code sections.<sup>18</sup>

DTSC concurs that a citation to the APA in proposed Section 83705 referring only to Chapter 3.5, a chapter of the act addressing rulemaking, seems incorrect. However, DTSC suggests the citation should be revised to refer to only *one* of the two APA chapters that address administrative adjudication — Chapter 4.5 — because at present the Board only conducts the informal adjudications governed by Chapter 4.5. DTSC is concerned that revising the citation to refer to Chapter 4.5 and Chapter 5 could be understood as obligating the Board to also conduct formal adjudications governed by the latter chapter.

It is possible that in drafting Section 25125(k), the Legislature mistakenly referenced

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<sup>15</sup> A word search throughout all codes for citation to the APA identified 742 code sections with a citation to the APA identical to the citation in existing § 25125(k). In 328 of those instances, the citation did appear following a reference to “the rulemaking provisions of the Administrative Procedure Act,” which arguably would be followed by a citation to *only* Chapter 3.5, the chapter of the APA addressing rulemaking. However, that would still leave more than 400 code sections citing generally to only the first chapter of the APA.

<sup>16</sup> A citation to the act referencing all four chapters of the APA, as seemingly suggested in § 11370, appears in only 10 existing code sections.

<sup>17</sup> [2018 Cal. Stat. ch. 158](#) (SCR 91, Roth).

<sup>18</sup> See e.g., Bus. & Prof. Code § [494.5](#); Educ. Code § [41344.1](#), Fam. Code § [17520](#), Health & Safety Code §§ [1523.1](#), [1568.05](#), [1569.185](#).

Chapter 3.5 instead of 4.5. This would explain the reference to ex parte communications referenced at the end of Section 25125(k), which is addressed only in Chapter 4.5, and not in Chapter 5.<sup>19</sup>

Nevertheless, it is the staff's view that amending the citation as requested by DTSC could also be seen as a substantive change to existing law, because it implies that DTSC is not authorized conduct formal adjudications, and nothing else in current law indicates legislative intent to limit the Board to conducting only informal administrative adjudications.

In fact, the Legislature has parenthetically cited to only the informal adjudication APA provisions in ten other existing code sections,<sup>20</sup> suggesting if the Legislature intended to limit the Board to only informal adjudications pursuant to Chapter 4.5 of the APA, it had an existing template to do so.

However, based on that same rationale, the staff is now also concerned that revising the citation to refer to both APA Chapters 4.5 and 5 could also be understood as a substantive change. As indicated previously, in seven other existing code sections, including four sections of the Health and Safety Code, the Legislature has referred to administrative adjudications conducted pursuant to the APA by parenthetically referencing only those two chapters.<sup>21</sup> The fact that the Legislature chose not to use that parenthetical reference when enacting Section 25125(k) suggests at least the possibility the Legislature intended the reference in Section 25125(k) to be to something other than those two chapters of the APA.

#### *Staff Recommendation*

For the reasons indicated above, the staff now believes that any proposed revision of the chapter number in the parenthetical citation to the APA in Section 25125(k) could be problematic. Instead, the staff suggests that the Commission revise the parenthetical citation to read as follows:

The board shall conduct administrative adjudications, including, but not limited to, permit appeals pursuant to paragraph (2) of subdivision (b) of Section 25125.2, in accordance with the Administrative Procedure Act (commencing with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including the prohibition against ex parte communications.

This revision, which is also supported by DTSC, is technically correct while continuing

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<sup>19</sup> See Gov't. Code §§ [11425.10](#), [11430.70](#), [11455.10](#).

<sup>20</sup> Bus. & Prof. Code §§ [2660](#), [10087](#); Fin. Code §§ [12404](#), [22169](#), [22690](#), [23011.5](#), [30609](#); Penal Code §§ [2602](#), [2603](#); Water Code § [13287](#).

<sup>21</sup> See footnote 15, *supra*.

the current non-specificity within Section 25125(k) relating to the referenced APA provisions.

In addition, the Commission could add this APA citation issue to the list of substantive issues the Commission identifies in the course of its recodification for possible future study,<sup>22</sup> which is also supported by DTSC.

*Commission Decisions*

1. The staff recommends that the parenthetical citation in Section 25125(k) be revised in proposed Section 83705(b) as follows:

The board shall conduct administrative adjudications, including, but not limited to, permit appeals pursuant to paragraph (2) of subdivision (b) of Section 25125.2, in accordance with the Administrative Procedure Act (commencing with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including the prohibition against ex parte communications.

**Does the Commission approve making this revision in the cumulative draft?**

**2. Does the Commission wish to have the various ways in which the APA is cited in code sections added to the list of substantive issues the Commission has noted as possible candidates for future study?**

Respectfully submitted,

Steve Cohen  
Senior Staff Counsel

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<sup>22</sup> See footnote 6, *supra*.





## CUMULATIVE DRAFT OF PROPOSED DIVISION 46 OF THE HEALTH & SAFETY CODE

**Note.** This is a work in progress. The material shown below may be changed. For a tentative outline and discussion of the proposed organization of new Division 46 of the Health & Safety Code, see [Memorandum 2020-13](#), Exhibit pp. 3-5, [Memorandum 2023-33](#), pp. 2-3, and [Memorandum 2025-16](#). All the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code, unless otherwise indicated.

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

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

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

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

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

As new Division 46 is drafted, these references will be updated to reflect the new numbering scheme. Where the cross-referenced material is contained in this draft, the cross-reference was updated to reflect the recodified section number.

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

**Tables.** There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular form, the disposition of every provision of the existing code Chapter 6.5 that has been included in this draft.

There is also a “derivation table” at the end of the proposed recodification. It summarizes, in tabular form, the statutory derivation of every new code provision in this draft.

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

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



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## DRAFT LEGISLATION

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

### DIVISION 46. HAZARDOUS SUBSTANCES AND WASTE MANAGEMENT

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

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

## PART 1. GENERAL PROVISIONS

### CHAPTER 1. FINDINGS AND DECLARATIONS

#### § 83000. Legislative findings

83000. The Legislature finds that:

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

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

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

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

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

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

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



1   **§ 83005. Legislative declarations**

2       83005. The Legislature therefore declares that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 CHAPTER 2. EFFECT OF RECODIFICATION

14 **§ 83035. Short title**

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

20 **Comment.** Section 83035 is new. It provides a convenient means of referring to the  
 21 recodification of former Chapter 6.5 (commencing with Section 25100) of Division 20. For  
 22 background, see *Recodification of Hazardous Waste Control Provisions*, \_\_ Cal. L. Revision  
 23 Comm’n Reports \_\_ (202x).

24 **§ 83040. Nonsubstantive reform**

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

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

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

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

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

2 83045. (a) A provision of this division, insofar as it is substantially the same as a  
3 previously existing provision relating to the same subject matter, shall be considered  
4 as a restatement and continuation of the previously existing provision and not as a  
5 new enactment.

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

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

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

15 **Comment.** Section 83045 is new.

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

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

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

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

26 **§ 83050. Judicial decision interpreting former law**

27 83050. (a) A judicial decision interpreting a previously existing provision is  
28 relevant in interpreting any provision of this division that restates and continues that  
29 previously existing provision.

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

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

36 **Comment.** Section 83050 is new. It is modeled on Penal Code Section 16020.

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

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

42 For specific guidance on the impact of a judicial decision assessing the constitutionality of a  
43 predecessor of a provision in this division, see Section 83055. For general guidance on the  
44 nonsubstantive impact of the Hazardous Waste Control Recodification Act, see Section 83040.

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

**Note.** In another recently completed recodification project, the Commission included a section similar to proposed Section 83050 that addresses Attorney General opinions, rather than judicial decisions. The Commission considered whether such a provision should be included in this project, as well. The Commission searched for Attorney General opinions related to Chapter 6.5 and found a couple. See 70 Cal. Ops. Atty. Gen. 130, 70 Cal. Ops. Atty. Gen. 183. Given that there are very few Attorney General opinions, it is not clear whether it would be worthwhile to include a provision about the effect of the recodification on Attorney General opinions.

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

#### § 83055. Constitutionality

83055. (a) A judicial decision on the constitutionality of a previously existing provision is relevant in determining the constitutionality of any provision of this division that restates and continues that previously existing provision.

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

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

**Comment.** Section 83055 is new. It is modeled on Penal Code Section 16025.

Subdivision (a) makes clear that case law on the constitutionality of a predecessor provision is relevant in determining the constitutionality of its successor in this division.

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

For specific guidance on the impact of a judicial decision interpreting a predecessor of a provision in this division, see Section 83050. For general guidance on the nonsubstantive effect of the Hazardous Waste Control Recodification Act, see Section 83040.

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

#### § 83060. Conforming rule change

83060. (a) The department or another state agency may make a conforming rule change without complying with the rulemaking procedure specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, if the rule change meets all of the requirements of this section.

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

(1) A completed and signed form STD 400.

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

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

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

(d) For the purposes of this section, a “conforming rule change” means a rule change that deletes a reference to a provision of former Chapter 6.5 (commencing with Section 25100) of Division 20 and replaces it with a reference to the provision of this division that continues or restates the former provision. A “rule change” includes a change to the text of a regulation in the California Code of Regulations, a regulation’s citation of authority, or a regulation’s reference.

**Comment.** Section 83060 is new. It is modeled on Section 78030.  
See Section 83160 (“department”).

### CHAPTER 3. DEFINITIONS

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

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

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

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

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

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

#### § 83075. Applicable definitions

83075. (a) Unless expressly incorporated by reference by another statute, the definitions in this chapter govern only the construction of this division.

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

**Comment.** Section 83075 continues former Section 25110 without substantive change. A reference to the “Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.)” was replaced with the defined term “federal act.” See Section 83200.

See Section 83200 (“federal act”).

**Notes.** Subdivision (b) of proposed Section 83075 provides for the application of definitions contained in the federal act (42 U.S.C. Sec. 6901 et seq.) if the terms are not defined either in

Chapter 6.5 or the associated state regulations. In preparing this recodification, the Commission has not exhaustively evaluated the application of definitions in the state regulation, federal law, or federal regulations to the use of those terms in this division. Assessing the applicability of the numerous definitions to uses of the defined terms in this law would be a significant undertaking. And, importantly, the potential benefits of doing such work in this nonsubstantive study are limited. That said, the Commission has identified issues that may be appropriate for future attention:

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

More broadly, Section 66260.10 of Title 22 of the California Code of Regulations appears to be the key regulatory section defining terms related to hazardous waste management. That section defines over 400 terms (although some definitions are simply cross-references, e.g., “‘Acute hazardous waste’ see ‘Acutely hazardous waste.’”). The regulations include definitions for a number of terms that are also defined in this proposed division (e.g., “acutely hazardous waste,” “applicant,” “buffer zone,” “business”); the same term may be defined differently in this proposed division and the regulations (see, e.g., “disposal site” definitions in proposed Section 83180 and 22 C.C.R. § 66260.10). While many defined terms are sufficiently technical that they would not be mistakenly used in a more colloquial sense (e.g., “Acute aquatic 96-hour LC<sub>50</sub>,” “polychlorinated biphenyls”), there are several defined terms that have a more general colloquial meaning (e.g., “activity,” “application,” “assets,” “authorized representative,” “commence,” “component”).

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

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

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

**The Commission welcomes comment on the above issues.**

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

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

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

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

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

6   **§ 83085. “Applicant”**

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

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

14   **§ 83090. “Board”**

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

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

18   **§ 83095. “Buffer zone”**

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

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

25   **§ 83100. “Business”**

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

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

29   **§ 83105. “Business concern”**

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

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

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

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

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

§ 83115. “Class I violation”

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

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

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

(A) The volume of the waste.

(B) The relative hazardousness of the waste.

(C) The proximity of the population at risk.

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

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

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

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

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

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

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

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

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

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

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

“Class I violation” means any of the following:

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

...

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

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



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

**§ 83120. “Class II violation”**

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

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

See Section 83115 (“class I violation”).

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

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

**§ 83125. “Conditional authorization”**

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

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

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

See Section 83295 (“person”).

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

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

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

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

**§ 83130. “Conditional exemption”**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83140. “Conditionally exempt specified waste stream” means a waste stream treated by a generator conditionally exempted pursuant to **subdivision (c) of Section 25201.5**.

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

#### § 83145. “Consolidated manifest”

83145. “Consolidated manifest” means a hazardous waste manifest used by a milk run transporter to combine hazardous waste shipments from multiple generators on one consolidated manifest pursuant to the procedures in **Section 25160.2**.

**Comment.** Section 83145 restates former Section 25110.9.3 without substantive change. See Sections 83210 (“hazardous waste”), 83250 (“manifest”).

**Note.** Section 25110.9.3 begins with a clause specifying that the definition is “[f]or purposes of this chapter.” This language appears to be redundant. Proposed Section 83075 (Section 25110) provides that the definitions in this proposed chapter govern “only the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 83145 does not continue the “[f]or purposes of this chapter” language.

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

§ 83150. “Consolidation site”

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

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

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

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

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

§ 83155. “Contained gaseous material”

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

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

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

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

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

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

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

§ 83160. “Department”

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

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

§ 83165. “Director”

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

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

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

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

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

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

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

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

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

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

19    **§ 83175. “Disposal”**

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

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

25       (2) The abandonment of any waste.

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

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

30       See Section 83395 (“waste”).

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

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

35    **§ 83180. “Disposal site”**

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

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

39       See Section 83210 (“hazardous waste”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 **§ 83200. “Federal act”**

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

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

1    **§ 83205. “Handling”**

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

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

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

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

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

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

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

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

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

14    **§ 83210. “Hazardous waste”**

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

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

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

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

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

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

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

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

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

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

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

40      “(b) Biohazardous waste that meets the conditions specified in subdivision (f) or (g) of Section  
41   117635 is not subject to this chapter.”

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

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

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

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

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

83215. (a) “Hazardous waste facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste.

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

**Comment.** Section 83215 continues former Section 25117.1 without substantive change.

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

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

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

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

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

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

83225. (a) “Intermediate manufacturing process stream” means a material, or combination of materials, that meets all of the following conditions:

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

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

(3) It is not a recyclable material.

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

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

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

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

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

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

**Comment.** Section 83225 continues former Section 25116.5 without substantive change.

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

#### § 83230. “Land use restriction”

83230. “Land use restriction” means any limitation regarding the uses of property which may be provided by, but is not limited to, a written instrument that imposes an easement, covenant, restriction, or servitude, or a combination thereof, as appropriate, upon the present and future uses of all, or part of, the land, pursuant to Section 25202.5 or 79055 or former Section 25222.1 or 25230.

**Comment.** Section 83230 continues former Section 25117.13 without substantive change.

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

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

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

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

(2) Section 25117.13 lists two sections that have been repealed, Sections 25222.1 and 25230. See 2012 Cal. Stat. ch. 39, § 38. Since the land use restrictions enacted under these repealed laws may still be in effect, proposed Section 83230 has been drafted to continue to refer to land use restrictions pursuant to those “former” sections. For these references, no statutory citation was



provided to avoid an implication that only certain restrictions under these former sections are “land use restrictions” for the purpose of this definition (i.e., those restrictions adopted when a specified version of the section was in effect).

#### § 83235. “License”

83235. “License” includes, but is not limited to any, permit, registration, or certification issued by any local, state, or federal agency for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste.

**Comment.** Section 83235 continues former Section 25117.10 without substantive change.

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

#### § 83240. “Local health officer”

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

**Comment.** Section 83240 continues former Section 25117.4.1(a) without substantive change.

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

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

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

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

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

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

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

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

1   **§ 83245. “Local officer”**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## § 83250. “Manifest”

83250. (a) “Manifest” means a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by the department and that complies with all applicable federal and state regulations, and includes any of the following:

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

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

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

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

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

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

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

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

The prefatory “for the purposes of this chapter” text is redundant and therefore is not continued. Proposed Section 83075 (Section 25110) provides that the definitions in this chapter govern “only the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 83250 does not continue the “[f]or purposes of this chapter” language.

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

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

(3) Another definition from Section 25160 is included in this draft but is not proposed for inclusion in the cross-reference as it does not pertain to the date of shipment initiation. See proposed Section 83185.

#### § 83255. “Minor violation”

83255. (a) “Minor violation” means a deviation from the requirements of this division, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this division, that is not a class I violation.

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

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

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

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

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

**Comment.** Section 83255 continues former Section 25117.6 without substantive change.

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

**Note.** Section 25117.6(a) specifies that a “minor violation” does not include a “class I violation.” A “class I violation” is defined to include “a class II violation that is a chronic violation or committed by a recalcitrant violator” (hereafter, a chronic class II violation). See proposed Section 83115. Thus, a chronic class II violation is not a minor violation.

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

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

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

#### § 83260. “Natural resources”

83260. “Natural resources” includes, but is not limited to, disposal site capacity and substances that are hazardous waste, or that are in hazardous waste, the reuse of which is technologically and economically feasible.

**Comment.** Section 83260 continues former Section 25117.8 without substantive change.

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

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

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

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

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

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

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

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

15   **§ 83270. “Notice to comply”**

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

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

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

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

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

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

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

34   **§ 83275. “Offsite facility”**

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

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

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

1    **§ 83280. “Onsite facility”**

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

5       **Comment.** Section 83280 continues former Section 25117.12 without substantive change.  
6       See Sections 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83305  
7 (“producer”), 83395 (“waste”).

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

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

14       **Comment.** Section 83285 continues former Section 25123.7(c) without substantive change.  
15       See Section 83110 (“certified unified program agency” or “CUPA”), 83350 (“secretary”).

16   **§ 83288. “Permit”**

17       83288. “Permit” includes matters deemed to be permits pursuant to **subdivision**  
18 **(c) of Section 25198.6**.

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

20   **§ 83290. “Permit-by-rule”**

21       83290. “Permit-by-rule” means a provision of the regulations adopted pursuant to  
22 this division stating that a facility or activity is deemed to have a hazardous waste  
23 facilities permit if it meets the requirements of that provision.

24       **Comment.** Section 83290 continues former Section 25117.14 without substantive change.  
25       See Section 83215 (“hazardous waste facility”).

26   **§ 83295. “Person”**

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

33       **Comment.** Section 83295 continues former Section 25118 without substantive change.  
34       See Sections 83105 (“business concern”), 83160 (“department”).

35   **§ 83300. “Processing”**

36       83300. “Processing” means treatment.

37       **Comment.** Section 83300 restates former Section 25119 without substantive change.  
38       See Section 83370 (“treatment”).

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

**§ 83305. “Producer”**

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

**Comment.** Section 83305 continues former Section 25120 without substantive change. See Sections 83295 (“person”), 83395 (“waste”).

**§ 83310. “RCRA hazardous waste”**

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

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

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

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

**§ 83315. “Recyclable material”**

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

(a) A residue.

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

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

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

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

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

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

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

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

1    **§ 83320. “Recycled material”**

2       83320. (a) “Recycled material” means a recyclable material that has been used or  
3 reused, or reclaimed.

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

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

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

9    **§ 83325. “Recycling”**

10       83325. (a) “Recycling” means using, reusing, or reclaiming a recyclable material.

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

16       **Comment.** Section 83325 continues former Section 25121.1 without substantive change.

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

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

22       **However, once recodification of those provisions from Article 7 are proposed, the**  
23 **Commission welcomes comment on whether the proposed recodification of Section**  
24 **25121.1(b) should be moved from this location, and relocated to appear with those recodified**  
25 **provisions from Article 7.**

26    **§ 83330. “Release”**

27       83330. “Release” has the same definition as in Section 78105.

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

29    **§ 83335. “Remote site”**

30       83335. (a) “Remote site” means a site operated by the generator that meets all of  
31 the following conditions:

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

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

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

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

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

41       See Section 83210 (“hazardous waste”).



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

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

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

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

#### § 83340. “Retrograde material”

83340. (a) “Retrograde material” means any hazardous material that is not to be used, sold, or distributed for use in an originally intended or prescribed manner or for an originally intended or prescribed purpose and that meets any one or more of the following criteria:

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

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

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

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

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

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

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

**Comment.** Section 83340 continues former Section 25121.5 without substantive change.

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

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

83345. “Restricted hazardous waste” includes both of the following:

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

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

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

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

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

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

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

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

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

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

#### § 83350. “Secretary”

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

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

#### § 83355. “Storage”

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

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

See Section 83210 (“hazardous waste”).

#### § 83360. “Storage facility”

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

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

See Section 83215 (“hazardous waste facility”).

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

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

1 **§ 83365. “Transportable hazardous waste treatment unit” or “transportable treatment**  
2 **unit”**

3 83365. “Transportable hazardous waste treatment unit” or “transportable  
4 treatment unit” means mobile equipment that performs treatment, is transported  
5 onto a facility to perform treatment, and is not permanently stationed at a single  
6 facility.

7 **Comment.** Section 83365 continues former Section 25123.4 without substantive change.  
8 See Section 83370 (“treatment”).

9 **§ 83370. “Treatment”**

10 83370. (a) Except as provided in subdivisions (b) and (c), “treatment” means any  
11 method, technique, or process that is not otherwise excluded from the definition of  
12 treatment by this division and that is designed to change the physical, chemical, or  
13 biological character or composition of any hazardous waste or any material  
14 contained therein, or that removes or reduces its harmful properties or  
15 characteristics for any purpose.

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

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

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

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

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

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

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

35 (i) The waste streams are being combined solely for the purpose of consolidated  
36 accumulation or storage or consolidated offsite shipment, and they are not being  
37 combined to meet a fuel specification or to otherwise be chemically or physically  
38 prepared to be treated, burned for energy value, or incinerated.

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

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

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

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

**Comment.** Section 83370 continues former Section 25123.5 without substantive change.

See Sections 83160 (“department”), 83200 (“federal act”), 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83355 (“storage”), 83395 (“waste”).

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

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

#### § 83375. “Unified program agency” or “UPA”

83375. (a) “Unified program agency” or “UPA” means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in **paragraph (1) of subdivision (c) of Section 25404**.

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

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

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

**Comment.** Section 83375 continues former Section 25123.7(d) without substantive change.

See Sections 83110 (“certified unified program agency” or “CUPA”), 83160 (“department”), 83285 (“participating agency” or “PA”), 83350 (“secretary”).

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

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

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

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

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

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

**The Commission welcomes comment this issue.**

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

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

### § 83380. “Unified program facility”

83380. “Unified program facility” means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of **paragraph (1) of subdivision (c) of Section 25404.**

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

### § 83385. “Universal waste”

83385. “Universal waste” means a hazardous waste identified as a universal waste in Section 66273.9 of Title 22 of the California Code of Regulations, or as that regulation may be further amended pursuant to this division, or a hazardous waste designated as a universal waste pursuant to this division.

**Comment.** Section 83385 continues former Section 25123.8 without substantive change.

See Section 83210 (“hazardous waste”).

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

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

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

#### § 83390. “Volatile organic compound”

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

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

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

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

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

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

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

#### § 83395. “Waste”

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

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

(1) Relinquished by being any of the following:

(A) Disposed of.

(B) Burned or incinerated.

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

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

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

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

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

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

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

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

(1) An intermediate manufacturing process stream.

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

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

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

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

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

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

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

**Comment.** Section 83395 restates former Section 25124 without substantive change.

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

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

Subdivision (a) is restated to make clear that the provision is using the defined terms “contained gaseous material” and “discarded material.” See proposed subdivisions (b), (c) of this section (specifying materials that are and are not “discarded materials”) and Commission Note to proposed Section 83155 (the definition for “contained gaseous material” specifically provides that it applies to this provision).

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

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

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

This subparagraph has been proposed for restatement as two clauses.

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

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

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

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

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

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

## PART 2. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

### CHAPTER 1. GENERAL POWERS AND DUTIES

#### Article 1. Preliminary Provisions

##### **§ 83420. Department obligations**

83420. The department, in performing its duties under this division, shall do all of the following:

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

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

(c) Establish and maintain a toll-free Toxic Substances Hotline, operating during the regular working hours of the department, to provide information on hazardous



waste or appropriate referrals on other toxic substances to the regulated community and the public. The department shall coordinate the Toxic Substances Hotline program with other programs that provide information on hazardous wastes and other toxic substances, including, but not limited to, the technical reference center established pursuant to subdivision (b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) An annual California Hazardous Waste Management Symposium.

**Comment.** Section 83420 continues former Section 25170 without substantive change.

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

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

## Article 2. Regulations and Standards

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

83450. (a) The department shall adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to the public health, to domestic livestock, to wildlife, or to the environment.

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

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

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

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

(f) Before the adoption of regulations, the department shall notify all agencies of interested local governments, including, but not limited to, certified unified program agencies, local governing bodies, local planning agencies, local health authorities, local building inspection departments, the Department of Pesticide Regulation, the Department of the California Highway Patrol, the Department of Fish and Wildlife,

the Department of Industrial Relations, the Division of Occupational Safety and Health, the State Air Resources Board, the State Water Resources Control Board, the Office of the State Fire Marshal, regional water quality control boards, the California Building Standards Commission, the Office of Environmental Health Hazard Assessment, and the Department of Resources Recycling and Recovery.

**Comment.** Section 83450 continues former Section 25150 without substantive change. Several of the listed state agency names were outdated and have been corrected to refer to the current name of the relevant agency. See Fish & Game Code § 700; Health & Safety Code §§ 13100, 18920; Lab. Code § 56; Pub. Res. Code § 40400.

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

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

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

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

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

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

**Absent comment, these proposed corrections will be presumed correct.**

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

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

### § 83455. Authority to adopt varying regulations

83455. (a) The department, when adopting regulations pursuant to Section 83450, may adopt varying regulations for different areas of the state depending on population density, climate, geology, types and volumes of hazardous waste generated in the area, types of waste treatment technology available in the area, and other factors relevant to hazardous waste handling, processing, storing, recycling, and disposal.

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

**Comment.** Section 83455 continues former Section 25151 without substantive change.  
See Sections 60160 (“department”), 60175 (“disposal”), 60205 (“handling”), 60210 (“hazardous waste”), 60300 (“processing”), 60325 (“recycling”), 60365 (“treatment”), 60390 (“waste”).

**Note.** Section 25151 is restated for clarity. Currently, Section 25151 provides:  
The department may adopt varying regulations pursuant to Section 25150, other than building standards for different areas of the state depending on population density, climate, geology, types and volumes of hazardous waste generated in the area, types of waste treatment technology available in the area, and other factors relevant to hazardous waste handling, processing, storing, recycling, and disposal.

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

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

83460. Any regulation adopted prior to January 1, 2008, pursuant to former Section 25150.6, that exempts a hazardous waste management activity from one or more of the requirements of this division shall remain valid unless repealed.

**Comment.** Section 83460 restates former Section 25150.65 without substantive change.  
See Section 60220 (“hazardous waste management” or “management”).

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

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

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

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

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

83465. (a) Before adopting building standards or adopting or revising other standards and regulations for the handling, processing, storing, use, recycling, and disposal of hazardous and extremely hazardous wastes, the department shall hold at least one public hearing in Sacramento, or in a city within the area of the state to be affected by the proposed regulations.

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

**Comment.** Section 83465 continues former Section 25152 without substantive change.  
See Sections 60160 (“department”), 60175 (“disposal”), 60195 (“extremely hazardous waste”), 60205 (“handling”), 60210 (“hazardous waste”), 60300 (“processing”), 60325 (“recycling”).

1 **§ 83470. Permissible format for contingency plan**

2 83470. On or before July 1, 1995, the department shall revise any standard or  
3 regulation it has adopted that requires the preparation of a contingency plan, as that  
4 term is defined in Section 66260.10 of Title 22 of the California Code of  
5 Regulations, to allow the person preparing the contingency plan to use the format  
6 adopted pursuant to former Section 25503.4, if that person elects to use that format.

7 **Comment.** Section 83470 continues former Section 25150.5 without substantive change.  
8 See Sections 60160 (“department”), 60295 (“person”).

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

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

12 **(2)** Assuming this section has continuing effect, it is unclear how the reference to Section  
13 25503.4 should be updated. This section requires the department to permit use of a contingency plan  
14 format adopted pursuant to “Section 25503.4.” Section 25503.4 has been repealed. 2013 Cal. Stat.  
15 ch. 419, § 2.

16 In proposed Section 83470, the reference has been adjusted to refer to “former” Section 25503.4.  
17 The Commission considered whether to provide a statutory cite, but was unsure whether the  
18 relevant version of Section 25503.4 should have been the one in effect on July 1, 1995 (the date  
19 specified in the statute) or the last amended version. See 1993 Cal. Stat. ch. 630, § 6; 2013 Cal.  
20 Stat. ch. 352, § 359.

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

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

27 **Article 3. Information Distribution**

28 **§ 83500. Reporting and distribution of information**

29 83500. (a) The department may report findings and results of an investigation that  
30 the department undertakes pertaining to subject matter governed by this division,  
31 except for trade secrets as provided in Section 83505.

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

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

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

1 **§ 83505. Protection of trade secrets**

2 83505. (a)(1) The department shall establish procedures to ensure that trade  
3 secrets used by a person regarding methods of hazardous waste handling and  
4 disposal are utilized by the director, the department, or any authorized representative  
5 of the department only in connection with the responsibilities of the department  
6 pursuant to this division.

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

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

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

17 (1) It is not patented.

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

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

23 **Comment.** Section 83505 restates former Section 25173 without substantive change.

24 See Sections 60095 (“business”), 60160 (“department”), 60165 (“director”), 60175 (“disposal”),  
25 60205 (“handling”), 60210 (“hazardous waste”), 60295 (“person”).

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

28 Currently, Section 25173 provides:

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

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

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

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

## Article 4. Reporting

## § 83550. Information to be posted online

83550. On or before January 1 of each odd-numbered year, the department shall post on its internet website, at a minimum, all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

(h) Research activity initiated by the department.

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

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

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

(l) The information specified in **subdivision (c) of Section 25161, paragraph (4) of subdivision (b) of Section 25197.1**, and Article 9 (commencing with Section 78575) of Chapter 3 of Part 2 of Division 45.

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

**Comment.** Section 83550 continues former Section 25178 without substantive change. An erroneous reference to “paragraph (4) of subdivision (a) of Section 25197.1” was corrected to refer to Section [XXXXX], which continues Section 25197.1(b)(4).

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

**Notes. (1)** Section 25178(b)(2) specifies that a “hazardous waste facility,” which is a defined term for this division, means “a facility that uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes regulated as hazardous waste pursuant to the federal act.”

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

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

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

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

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

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

## Article 5. Contracting

### § 83575. Contracts for specialized training programs

83575. The department shall enter into contracts or agreements with educational, professional, or trade associations, using a competitive bidding process, to establish specialized training programs with a statewide focus to instruct businesses and other entities on compliance with statutes and regulations governing the handling, disposal, transportation, and storage of hazardous waste.

**Comment.** Section 83575 continues former Section 25172.6 without substantive change.

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

## CHAPTER 2. BOARD OF ENVIRONMENTAL SAFETY

### Article 1. Establishment of Board

#### § 83650. Appointment of board members

83650. (a) The Board of Environmental Safety is hereby established in the department consisting of five voting members as follows:

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



- 1 (2) One member shall be appointed by the Senate Committee on Rules.
- 2 (3) One member shall be appointed by the Speaker of the Assembly.
- 3 (b) The members of the board shall be appointed on the basis of their
- 4 demonstrated interest in the fields of hazardous waste management, site
- 5 remediation, or pollution prevention and reduction, shall possess understanding of
- 6 the needs of the general public in connection with the risks posed by hazardous
- 7 materials and the management of hazardous waste, and shall possess experience in
- 8 at least one of the following:
- 9 (1) Environmental law.
- 10 (2) Environmental science, including toxicology, chemistry, geology, industrial
- 11 hygiene, or engineering.
- 12 (3) Public health.
- 13 (4) Cumulative impact assessment and management.
- 14 (5) Regulatory permitting.
- 15 (c) No more than two members of the board may represent a single category of
- 16 qualification described in paragraphs (1) to (5), inclusive, of subdivision (b) at any
- 17 one time.
- 18 **Comment.** Section 83650 continues former Section 25125(a)-(c) without substantive change.
- 19 See Sections 83090 (“board”), 83160 (“department”), 83210 (“hazardous waste”), 83220
- 20 (“hazardous waste management”).

#### 21 § 83655. Role of board members

22 83655. The board members shall represent the general public interest and act to  
23 protect public health and reduce risks of toxic exposure with a particular focus on  
24 disproportionately burdened and vulnerable communities.

25 **Comment.** Section 83655 continues former Section 25125(d) without substantive change.

26 See Section 83090 (“board”).

#### 27 § 83660. Terms

28 83660. (a) Except as provided in subdivision (c), a board member shall be  
29 appointed for a term of four years.

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

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

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

36 (2) The chairperson of the board, appointed by the Governor pursuant to Section  
37 83665, shall serve a four-year term.

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

40 **Comment.** Section 83660 restates former Section 25125(f) without substantive change.

41 See Section 83090 (“board”).

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

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

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

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

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

83665. (a) The chairperson of the board, who is appointed by the Governor, shall serve full time and shall receive the salary provided for in Section 11553 of the Government Code.

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

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

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

83670. Due to the unique nature of permitting federal facilities, the chairperson of the board shall designate one board member to serve as the liaison between the board and the United States Department of Defense.

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

### **§ 83675. Litigation counsel**

83675. (a) The Attorney General shall represent the board in litigation concerning the affairs of the board unless the Attorney General represents another state agency that is a party to the action, in which case, the Attorney General may represent the board with the written consent of the board and the other state agency.

(b) If the Attorney General is not representing the board, the board may contract for the service of outside counsel to represent the board or in-house counsel of the board may represent the board, subject to Section 11040 of the Government Code.

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

## **Article 2. Conducting of Business**

### **§ 83700. Voting and quorum requirements**

83700. (a) Three board members constitute a quorum for the transaction of business of the board.

(b) An affirmative vote of a majority of board members present at a meeting of the board shall be required for the board to take any action or pass any motion.

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

#### § 83705. Compliance with other acts

83705. (a) The board shall conduct its business, including adjourning to, or meeting solely in, closed session, pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) The board shall conduct administrative adjudications, including, but not limited to, ~~permit~~ appeals of hazardous waste facility permit decisions pursuant to Section 83780, in accordance with the Administrative Procedure Act (Chapter ~~3.5~~ 4.5 (commencing with Section ~~11340~~ 11400) of Part 1 of Division 3 of Title 2 of the Government Code), including the prohibition against ex parte communications, and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

**Comment.** Subdivision (a) of Section 83705 continues former Section 25125(i) without substantive change.

Subdivision (b) ~~continues~~ restates former Section 25125(k) without substantive change.

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

**Notes. (1)** Proposed Section 83705(b) would nonsubstantively revise a shorthand reference in existing Section 25125(k) to “permit appeals pursuant to paragraph (2) of subdivision (b) of Section 25125.2,” for clarity.

**(2)** Proposed Section 83705(b) would also make a nonsubstantive technical correction of what the Commission believes was an inadvertent drafting error in existing Section 25125(k), which presently reads in its entirety as follows:

“(k) The board shall conduct administrative adjudications, including, but not limited to, permit appeals pursuant to paragraph (2) of subdivision (b) of Section 25125.2, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), including the prohibition against ex parte communications.”

The revision is proposed because the currently referenced Chapter 3.5 of the Administrative Procedure Act governs rulemaking, while Chapters 4.5 and 5 govern administrative adjudications. See also Government Code Section 11501.

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

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

83710. (a) The board shall adopt rules for the conduct of its affairs.

(b) The rules for conduct adopted by the board shall require, at a minimum, that a board member adhere to all of the following principles:

(1) A board member shall faithfully discharge the duties, responsibilities, and quasi-judicial actions of the board.

(2) A board member shall conduct their affairs in the public’s best interest, following principles of fundamental fairness and due process of law.

(3) A board member shall conduct their affairs in an open, objective, and impartial manner, free of undue influence and the abuse of power and authority.

(4) A board member shall understand that the programs implemented by the department require public awareness, understanding, and support of, and participation and confidence in, the board and its practices and procedures.

(5) A board member shall preserve the public's welfare and the integrity of the board, and act to maintain the public's trust in the board and the implementation of its regulations and policies.

(6) A board member shall not conduct themselves in a manner that reflects discredit upon state laws, policies, or regulations, or principles of the board.

(c) The rules adopted pursuant to this section are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**Comment.** Section 83710 continues former Section 25125(j) without substantive change. See Section 83090 ("board").

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

83715. (a) Members of the board, or representatives authorized by the board to do so, may hold, attend, or otherwise participate in conferences or hearings, official or unofficial, within or out of the state, with interested persons, agencies, or officers, of this or any other state, or with Congress, congressional committees, or officers of the federal government, concerning any matter within the scope of the power and duties of the board.

(b) This section does not create an exception to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

**Comment.** Section 83715 continues former Section 25125(n) without substantive change. See Sections 83090 ("board"), 83295 ("person").

#### § 83720. Conflict of interest

83720. A board member shall not make, participate in making, or in any way attempt to use the board member's official position to influence a board decision in which the board member knows or has reason to know they have a financial interest within the meaning of Section 87103 of the Government Code.

**Comment.** Section 83720 continues former Section 25125(h) without substantive change. See Section 83090 ("board").

#### § 83725. Removal of board member

83725. (a) A board member appointed by the Governor may be removed by the Governor for neglect of duty, misconduct, or malfeasance in office. Before removal from office, a member shall be provided with a written statement of the charges and an opportunity to be heard.

(b) A board member appointed by the Governor or the Legislature may be removed after trial for knowingly violating a provision of this chapter based on a complaint filed in a county superior court by the Attorney General alleging that the board member knowingly violated a provision of this chapter and asking that the board member be removed from the board. Further proceedings shall be in accordance as near as may be with rules governing civil actions.

(c) A board member shall not miss three consecutive meetings as unexcused absences. Missing three consecutive meetings as unexcused absences shall constitute grounds for removal under subdivision (a) or (b).

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

### Article 3. Meeting Process

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

83750. (a) Beginning January 1, 2022, the board shall conduct no fewer than six public meetings per year, at least three of which shall be held outside the greater Sacramento area.

(b) For those meetings held outside the greater Sacramento area, the board shall meet in different geographic areas within the state to facilitate the participation by the businesses and sites regulated by the department, as well as members of the communities impacted by the businesses and sites regulated by the department.

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

#### § 83755. Use of advisory subcommittees

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

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

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

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

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

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

## § 83760. Director participation

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

requested by the board, on any issue or item brought forward by a member of the public, the ombudsperson, or a board member.

public, the ombudsperson, or a board member.

**Comment.** Section 83760 continues former Section 25125.6 without substantive change.

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

## Article 4. Board Responsibilities

## § 83775. Setting of fees

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

**25205.6.1.**

**Comment.** Section 83775 continues former Section 25125.2(b)(1) without substantive change.

See Section 83090 (“board”).

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

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

decisions.

**Comment.** Section 83780 continues former Section 25125.2(b)(2) without substantive change.

See Sections 83090 (“board”), 83215 (“hazardous waste facility”).

## § 83785. Public hearings

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

permitted or remediation sites.

**Comment.** Section 83785 continues former Section 25125.2(b)(3) without substantive change.

See Section 83090 (“board”).

### § 83790. Evaluation of director priorities and adoption of performance metrics

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

priorities for each program under the department and, after consulting with the director, adopt clear performance metrics for the department and each of the department's programs.

director, adopt clear performance metrics for the department and each of the department's programs.

department's programs.

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

hearing.

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

priorities and performance metrics.

**Comment.** Section 83790 continues former Section 25125.2(b)(4) without substantive change.

See Sections 83090 (“board”), 83160 (“department”), 83165 (“director”).

**§ 83795. Fee structure analysis and development of recommendations for specified department activity**

83795. (a) The board shall conduct an analysis of the fee structure supporting the department's activities funded by the Hazardous Waste Control Account, the

83795. (a) The board shall conduct an analysis of the fee structure supporting the department's activities funded by the Hazardous Waste Control Account, the

department's activities funded by the Hazardous Waste Control Account, the

Hazardous Waste Facilities Account, and the Toxic Substances Control Account.  
and, to

(b) To the extent necessary, the board shall develop recommendations for funding the department's activities that accomplish all of the following:

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

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

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

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

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

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

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

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

(9) Considers additional funding amounts that may be needed for the department to implement the responsibilities identified in **Article 11.8 (commencing with Section 25244) and Article 11.9 (commencing with Section 25244.12)**, in whole or in part.

(10) Considers additional funding amounts that may be needed for the department to implement programs that further support the collection and appropriate management of hazardous wastes that may pose a higher risk of being illegally disposed.

**Comment.** Section 83795 continues former Section 25125.2(b)(5) without substantive change.

See Sections 83090 ("board"), 83160 ("department"), 83210 ("hazardous waste"), 83395 ("waste").

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

83800. The board shall conduct an analysis of the department's programs, the relationship between those programs and related programs in other regulatory agencies, including, but not limited to, the State Water Resources Control Board, the California regional water quality control boards, and the Department of Resources Recycling and Recovery, and, to the extent necessary, develop

recommendations to improve coordination between programs, and to reduce or eliminate duplication or overlap.

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

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

83805. The board shall develop, in consultation with the director and with consideration of available resources, a multiyear schedule for the discussion of long-term goals for the following departmental activities:

(a) The department’s processing of hazardous waste facility permits and proposals to improve the efficiency of the permitting process, the relationship between the efficiency of the process and the time needed to review permit applications and reach permit decisions, and the amount of reimbursement required of permit applicants in the course of the permitting process.

(b) The department’s duties and responsibilities in law and proposals to improve the department’s ability to meet those duties and responsibilities.

(c) The site mitigation program and proposals for the prioritization of the cleanup of contaminated properties.

(d) The department’s implementation of its enforcement activities.

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

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

83810. The board shall annually prepare and transmit to the secretary an annual review of the department’s performance as compared to its objectives, including, but not limited to, the performance of the director.

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

#### § 83815. Appearance before legislative policy committees

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

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



## Article 5. Authority of Board

### § 83835. Adoption of regulations

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

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

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

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

## Article 6. Ombudsperson

### § 83845. Establishment of office

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

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

See Section 83090 (“board”).

### § 83850. Appointment

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

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

See Section 83090 (“board”).

### § 83855. Responsibilities

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

(a) Receive complaints and suggestions from the public.

(b) Evaluate complaints.

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

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

2 **Comment.** Section 83855 continues former Section 25125.8(b) without substantive change.  
3 See Sections 83090 (“board”), 83165 (“director”).

4 **§ 83860. Determination of responsibilities**

5 83860. The board, in consultation with the director, may determine the activities,  
6 in addition to those specified in Section 83855, the ombudsperson can undertake.

7 **Comment.** Section 83860 continues former Section 25125.8(c) without substantive change.  
8 See Sections 83090 (“board”), 83165 (“director”).

9 **§ 83865. Establishment of procedures**

10 83865. The board shall establish procedures governing the exercise of the  
11 ombudsperson’s duties, including all of the following:

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

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

15 (c) Criteria for prioritization of complaints and suggestions submitted to the  
16 ombudsperson.

17 (d) Access to information and resources to improve understanding of the  
18 department’s activities and opportunities for involvement in the department’s  
19 regulatory processes.

20 **Comment.** Section 83865 continues former Section 25125.8(d) without substantive change.  
21 See Sections 83090 (“board”), 83160 (“department”).

22 **§ 83870. Submission of complaint or suggestion**

23 83870. Any person may submit a complaint or make a suggestion to the  
24 ombudsperson regarding any action, program, or policy of the department.

25 **Comment.** Section 83870 continues former Section 25125.8(e) without substantive change.  
26 See Sections 83160 (“department”), 83295 (“person”).

27 **PART 3. FINANCIAL PROVISIONS**

28 **Staff Note.** This proposed Part contains a number of provisions that relate to laws other than  
29 Chapter 6.5. In particular, proposed Chapter 2, relating to the Toxic Substance Control Account,  
30 governs funds related to laws other than Chapter 6.5. In some cases, these provisions use  
31 terminology from and appear to be discussing legal concepts contained in provisions outside of  
32 Chapter 6.5, without cross-referencing the relevant provisions. In particular, several provisions in  
33 this proposed chapter use defined terms from Part 2 of Division 45 without citing to those  
34 definitions. See, e.g., proposed Section 84000 (Note #2), proposed Section 84005 (Note #2).

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

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

## CHAPTER 1. HAZARDOUS WASTE CONTROL ACCOUNT

## Article 1. General Provisions

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

83900. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director.

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

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

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

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

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

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

**Comment.** Section 83900 restates former Sections 25174(a) without substantive change.

See Sections 60160 (“department”), 60165 (“director”), 60200 (“federal act”), 60215 (“hazardous waste facility”).

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

To improve consistency with Section 25187.2, proposed Section 83900 restates this paragraph to refer to “funds” collected pursuant to Section 25187.2, where those funds are payments for the costs incurred in overseeing corrective action.

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

**§ 83905. Appropriations from account**

83905. The funds deposited into the Hazardous Waste Control Account may be appropriated by the Legislature, for expenditure as follows:

(a) To the department for the costs to administer and implement this division, but not including the costs of regulatory activities at sites operated by a hazardous waste facility authorized to operate under this division, and not including regulatory

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

(b) To the department for allocation to the California Department of Tax and Fee Administration to pay refunds of fees collected pursuant to Section 43053 of the Revenue and Taxation Code and for the administration and collection of the fees collected pursuant to **Sections 25205.5 and 25205.5.2**, or described in Section **25205.25**, that are deposited into the Hazardous Waste Control Account.

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

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

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

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

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

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

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

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

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

**Comment.** Section 83905 restates former Section 25174(b) without substantive change. See Sections 60088 (“board”), 60160 (“department”), 60215 (“hazardous waste facility”).

**Note.** Section 25174(b)(5) refers to the “Board of Environmental Safety.” Proposed Section 83905(e) replaces that reference with the defined term “board.” See proposed Section 60088 (“board”).

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

83910. (a) The Director of Finance, upon the request of the director, may make a loan from the General Fund to the Hazardous Waste Control Account to meet cash needs.

(b) The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

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

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

83915. (a) The Hazardous Waste Control Account is the successor fund of the Federal Receipts Account that was established pursuant to Section 25174.8, as that section read on January 1, 1999.

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

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

**Comment.** Section 83915 continues former Section 25174.9 without substantive change.

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

## CHAPTER 2. TOXIC SUBSTANCES CONTROL ACCOUNT

1 **§ 84000. Funds to be deposited in account**

2 84000. (a) There is in the General Fund the Toxic Substances Control Account,  
3 which shall be administered by the director.

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

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

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

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

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

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

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

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

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

28 (9) Money received from the federal government pursuant to the federal  
29 Comprehensive Environmental Response, Compensation, and Liability Act of  
30 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

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

33 **Comment.** Section 84000 restates former Section 25173.6(a) without substantive change.  
34 See Sections 60160 (“department”), 60165 (“director”).

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

37 When restating this provision, the following changes were made:

38 (A) Section 25173.6(a)(2) refers to “fees collected pursuant to Section 25187.2, to the extent that  
39 those fees are for oversight of a removal or remedial action taken under Chapter 6.86 (commencing  
40 with Section 25396), or Part 2 (commencing with Section 78000) of Division 45.” As described in  
41 the Note to proposed Section 83900, Section 25187.2 provides for the payment of “the department’s  
42 costs incurred in overseeing or carrying out the corrective action.” To improve consistency with

Section 25187.2, proposed Section 84000(a)(2) restates existing language to refer to “funds” collected pursuant to Section 25187.2, where those funds are payments for oversight costs.

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

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

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

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

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

...

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

...

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

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

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

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

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

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

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

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

(1) The administration and implementation of the following:

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

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

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

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

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

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

(A) The Human and Ecological Risk Office.

(B) The Environmental Chemistry Laboratory.

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

(D) The Safer Consumer Products Program.

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

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

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

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

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

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

(9) For all costs incurred by the department in cooperation with the Agency for Toxic Substances and Disease Registry established pursuant to subsection (i) of



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

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

(11) Direct site remediation costs.

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

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

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

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

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

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

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

(b) The funds deposited in the Toxic Substances Control Account may be appropriated by the Legislature to the Office of Environmental Health Hazard Assessment and the State Department of Public Health for the purposes of carrying out their duties pursuant to the California Environmental Contaminant

Biomonitoring Program (Chapter 8 (commencing with Section 105440) of Part 5 of Division 103).

**Comment.** Section 84005 continues former Section 25173.6(b) and (c) without substantive change.

An obsolete cross-reference to Section 25215.7 in former Section 25173.6(b)(16) was corrected in Section 84005(a)(16) to refer to Section 25215.82. See 2019 Cal. Stat. ch. 497, § 164.

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

**Notes. (1)** Section 25173.6(b)(18) refers to the “Board of Environmental Safety.” Proposed Section 84005(a)(18) replaces that reference with the defined term “board.” See proposed Section 60088 (“board”).

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

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

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

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

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

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

## § 84010. Expenditures

84010. (a) The director shall expend federal funds in the Toxic Substances Control Account consistent with the requirements specified in Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604), upon appropriation by the Legislature, for the purposes for which they were provided to the state.

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

**Comment.** Section 84010 continues former Section 25173.6(d) and (e) without substantive change. An erroneous reference to “Section 114 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9614)” was corrected to refer to “Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604).”

See Section 60165 (“director”).

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

In proposed Section 84010, this reference was adjusted to refer instead to Section 104 of CERCLA. CERCLA Section 104(c)(3) precludes federal cleanup actions, unless a state pays a specified share of the cleanup costs.

In the course of the Commission's work on Chapter 6.8, the Commission encountered an erroneous reference to Section 114(c) of CERCLA, which was corrected to refer to Section 104(c) of CERCLA. Two other provisions in this draft also refer to Section 104 of CERCLA. See proposed Sections 84005, 84050.

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

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

#### § 84015. Loans to account

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

**Comment.** Section 84015 continues former Section 25173.6(f) without substantive change. See Section 60165 ("director").

#### § 84020. Account as successor fund

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

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

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

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

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

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

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

1   **§ 84025. Legislative intent regarding appropriations to account**

2       84025. It is the intent of the Legislature that funds deposited in the Toxic  
3       Substances Control Account shall be appropriated in the annual Budget Act each  
4       year in the following manner:

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

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

12      (c) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site  
13      Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a)  
14      of former Section 25399.1, as added by Section 2 of Chapter 435 of the Statutes of  
15      1994, for purposes of paying the orphan share of response costs pursuant to Chapter  
16      6.86 (commencing with Section 25396) of Division 20.

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

23      (e) Not less than one million fifty thousand dollars (\$1,050,000) for purposes of  
24      establishing and implementing a program pursuant to **Sections 25244.15.1,**  
25      **25244.17.1, 25244.17.2, and 25244.22** to encourage hazardous waste generators to  
26      implement pollution prevention measures.

27      (f) Funds not appropriated as specified in subdivisions (a) to (e), inclusive, may  
28      be appropriated for any of the purposes specified in subdivision (a) of Section  
29      84005, except the purposes specified in subparagraph (C) of paragraph (1) of, and  
30      paragraph (13) of, subdivision (a) of Section 84005.

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

33   **§ 84030. Annual adjustments for cost of living**

34       84030. (a) The amounts specified in subdivisions (b) to (e), inclusive, of Section  
35       84025 shall be adjusted annually to reflect increases or decreases in the cost of living  
36       during the prior fiscal year, as measured by the Consumer Price Index issued by the  
37       Department of Industrial Relations or by a successor agency.

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

41       (1) Reduce the amounts specified in subdivisions (a) to (e), inclusive, of Section  
42       84025, if there are insufficient funds in the Toxic Substances Control Account.

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

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

## CHAPTER 3. DEPARTMENT RESPONSIBILITIES AND AUTHORITY

### Article 1. Reporting on Budget

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

84045. (a) The department shall, at the time of the release of the annual Governor’s Budget, describe the budgetary amounts proposed to be allocated to the California Department of Tax and Fee Administration, as specified in subdivision (b) of Section 83905.

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

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

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

84050. (a) The department shall submit to the Legislature with the Governor’s Budget each year a report that includes an estimate of the funding needed to fund direct site remediation costs at state orphan sites and meet the state’s obligation to pay for direct site remediation costs at federal Superfund orphan sites pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

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

**Comment.** Section 84050 continues former Section 25173.7(c) without substantive change. See Section 60160 (“department”).

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

## Article 2. Assumption of Administration of Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **§ 84080. Due process rights**

84080. If, pursuant to Section 84075, the department, or a private party or another public agency, pursuant to a contract with the department, performs the determinations and functions that would otherwise be the responsibility of the California Department of Tax and Fee Administration, the department shall be responsible for ensuring that persons subject to the fees specified in Section 84075 have equivalent rights to public notice and comment, and procedural and substantive rights of appeal, as afforded by the procedures of the California Department of Tax and Fee Administration pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

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

See Section 83160 (“department”).

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

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

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

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

1 See Section 83160 (“department”).

2 **§ 84090. Assignment of administrative functions**

3 84090. The department, with the concurrence of the secretary, shall determine  
4 which administrative functions should be retained by the California Department of  
5 Tax and Fee Administration, administered by the department, or assigned to another  
6 public agency or private party pursuant to Sections 84075, 84080, and  
7 84085.

8 **Comment.** Section 84090 continues former Section 25174.02(d) without substantive change.  
9 See Sections 83160 (“department”), 83350 (“secretary”).

10 **§ 84095. Adoption of regulations**

11 84095. The department may adopt regulations to implement this article.

12 **Comment.** Section 84095 continues former Section 25174.02(e) without substantive change.  
13 See Section 83160 (“department”).

14 CHAPTER 4. FACILITY AND GENERATOR FEES

15 Article 1. Definitions

16 **§ 84150. Application of definitions**

17 84150. For purposes of this chapter, the definitions in this article shall apply.

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

20 **Staff Note.** Proposed Section 84150 would restate the introductory clause of existing Section  
21 25205.1 for clarity. The existing clause reads as follows:

22 25205.1. For purposes of this article, the following definitions apply:

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

25 **§ 84155. “Board”**

26 84155. “Board” means the State Board of Equalization.

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

28 **Staff Note.** The introductory clause of existing Section 25205.1 (proposed Section 84150)  
29 indicates that the definition of the term “Board” in subdivision (a) of that section is intended to  
30 apply “for purposes of” the article in which Section 25205.1 appears. However, existing Section  
31 25110.3 provides a different definition of the term “Board,” and existing Section 25110 provides  
32 that different definition is intended to govern the entirety of Chapter 6.5.

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



§ 84160. “Class 1 modification”

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

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

See Section 83160 (“department”).

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

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

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

§ 84165. “Class 2 modification”

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

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

See Section 83160 (“department”).

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

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

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

§ 84170. “Class 3 modification”

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

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

See Section 83160 (“department”).

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

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

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

1    § 84175. “Disposal”

2       84175. “Disposal” means only the placement of hazardous waste satisfying all of  
3    the following criteria:

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

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

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

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

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

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

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

18       25205.1(o) “Treatment,” “storage,” and “disposal” mean only that treatment, storage, or  
19    disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status  
20    issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment,  
21    storage, or disposal that does not require this permit or grant of interim status shall not be considered  
22    treatment, storage, or disposal for purposes of this article.

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

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

32       (2) The introductory clause of existing Section 25205.1 (proposed Section 84150) indicates that  
33    the definition of the term “disposal” in existing Section 25205.1(o) is intended to apply “for  
34    purposes of” the article in which Section 25205.1 appears. However, existing Section 25113  
35    provides a different definition of the term “disposal,” and existing Section 25110 provides that  
36    definition in Section 25113 is intended to govern the entirety of Chapter 6.5.  
37

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

43    § 84180. “Facility”

44       84180, “Facility” means any units or other structures, and all contiguous land,  
45    used for the treatment, storage, disposal, or recycling of hazardous waste, for which

a permit or a grant of interim status has been issued by the department for that activity pursuant to **Article 9 (commencing with Section 25200)**.

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

#### § 84185. “Generator”

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

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

#### § 84190. “Hazardous waste”

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

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

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

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

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

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

#### § 84195. “Land treat”

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

**Comment.** Section 84195 continues former Section 25205.1(n) without substantive change. See Section 84190 (“hazardous waste”).

#### § 84200. “Large storage facility”

84200. “Large storage facility” means the following:

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

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

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

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

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

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

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

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

84205. “Large treatment facility” means the following:

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

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

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

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

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

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

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

1   **§ 84210. “Mini-storage facility”**

2       84210. “Mini-storage facility” means the following:

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

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

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

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

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

16       25205.1. (f) “Ministorage facility,” in those cases in which total storage capacity is provided in  
17 a permit, interim status document, or federal Part A application for the facility, means a storage  
18 facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in  
19 which it is not so provided, “ministorage facility” means a storage facility that stores 0.5 tons (1,000  
20 pounds) or less of hazardous waste during any one month of the current reporting period  
21 commencing on or after July 1, 1991.

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

24   **§ 84215. “Mini-treatment facility”**

25       84215. “Mini-treatment facility” means the following:

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

30       (b) In those cases in total treatment capacity is not provided in a permit, interim  
31 status document, or federal Part A application for the facility, a treatment facility  
32 that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste  
33 during any one month of the current reporting period commencing on or after July  
34 1, 1991.

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

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

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

40       25205.1. (g) “Minitreatment facility,” in those cases in which total treatment capacity is  
41 provided in a permit, interim status document, or federal Part A application for the facility, means  
42 a treatment facility with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of  
43 hazardous waste. In those cases in which it is not so provided, “minitreatment facility, means a

treatment facility that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

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

#### § 84220. “Site”

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

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

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

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

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

#### § 84225. “Small storage facility”

84225. “Small storage facility” means the following:

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

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

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

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

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

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

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

1 **§ 84230. “Small treatment facility”**

2 84230. “Small treatment facility” means the following:

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

7 (b) In those cases in which total treatment capacity is provided in a permit, interim  
8 status document, or federal Part A application for the facility, a treatment facility  
9 that treats, land treats, or recycles more than 0.5 tons (1,000 pounds), but less than  
10 1,000 tons, of hazardous waste during any month of the current reporting period  
11 commencing on or after July 1, 1991.

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

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

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

17 25205.1. (j) “Small treatment facility,” in those cases in which total treatment capacity is  
18 provided in a permit, interim status document, or federal Part A application for the facility, means  
19 a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds),  
20 but less than 1,000 tons of hazardous waste. In those cases in which this is not provided, “small  
21 treatment facility” means a treatment facility that treats, land treats, or recycles more than 0.5 tons  
22 (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month of the current  
23 reporting period commencing on or after July 1, 1991.

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

26 **§ 84235. “Storage”**

27 84235. “Storage” means only the storage of hazardous waste satisfying both of  
28 the following criteria:

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

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

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

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

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

41 25205.1.(o) “Treatment,” “storage,” and “disposal” mean only that treatment, storage, or  
42 disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status  
43 issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment,

storage, or disposal that does not require this permit or grant of interim status shall not be considered treatment, storage, or disposal for purposes of this article.

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

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

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

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

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

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

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

## § 84240. “Treatment”

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

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

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

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

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

(1) “Disposal” includes only the placement of hazardous waste onto or into the ground for permanent disposition and does not include the placement of hazardous waste in surface



impoundments, as defined in regulations adopted by the department, or the placement of hazardous waste onto or into the ground solely for purposes of land treatment.

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

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

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

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

#### § 84245. “Unit”

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

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

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

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

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

## Article 2. xxx

## CHAPTER 3. ENVIRONMENTAL FEES

## CHAPTER 4. METAL SHREDDING FEES

CHAPTER 5. OTHER HAZARDOUS WASTE FEES

PART 4. TOXICS REDUCTION

CHAPTER 1. GREEN CHEMISTRY

Article 1. Definitions

**84400. Application**

84400. The definitions in this article apply for purposes of this chapter.

**Comment.** Section 84400 restates the introductory text of former Section 25251 without substantive change.

**Note.** The introductory text of Section 25251 is restated by proposed Section 84400 as a distinct code section, to allow the definitions in Section 25251 to be recodified as distinct code sections. The introductory text of Section 25251 currently provides:

25251. For purposes of this article, the following definitions apply:

**Absent comment, this proposed restatement will be presumed correct.**

**84405. “Chemical manufacturer”**

84405. “Chemical manufacturer” means a person who manufactures a chemical or chemical ingredient that is used in a consumer product.

**Comment.** Section 84405 continues former Section 25251(a) without substantive change. See Sections 83295 (“person”), 84415 (“consumer product”).

**84410. “Clearinghouse”**

84410. “Clearinghouse” means the Toxics Information Clearinghouse established pursuant to Article 8 (commencing with Section 84630).

**Comment.** Section 84410 is new. It is added to enhance the clarity of other provisions of this chapter that refer to the Toxics Information Clearinghouse as “the clearinghouse.”

**Note.** This nonsubstantive definitional provision, similar to Section 25251(e) (proposed Section 84430) defining the term “panel,” is added for clarity.

**84415. “Consumer product”**

84415. (a) Except as provided in subdivision (b), “consumer product” means a product or part of the product that is used, brought, or leased for use by a person for any purpose.

(b) “Consumer product” does not include any of the following items:

(1) A “dangerous drug” or “dangerous device,” as defined in Section 4022 of the Business of Professions Code.

(2) “Dental restorative materials,” as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

- 1 (3) A “device,” as defined in Section 4023 of the Business of Professions Code.  
 2 (4) The packaging associated with an item specified in paragraph (1), (2), or (3).  
 3 (5) “Food,” as defined in subdivision (a) of Section 109935.  
 4 (6) A “pesticide,” as defined in Section 12753 of the Food and Agricultural Code  
 5 or as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.  
 6 Sec. 136 et seq.).  
 7 **Comment.** Section 84415 restates former Section 25251(b) without substantive change.  
 8 See Section 83295 (“person”).

9 **Note.** Section 25251(b) is restated by proposed Section 84415 for clarity. Section 25251(b)  
 10 currently provides:

11 25251. (b) “Consumer product” means a product or part of the product that is used, brought, or  
 12 leased for use by a person for any purposes. “Consumer product” does not include any of the  
 13 following:

- 14 (1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of  
 15 Professions Code.  
 16 (2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business  
 17 and Professions Code.  
 18 (3) A device as defined in Section 4023 of the Business of Professions Code.  
 19 (4) A food as defined in subdivision (a) of Section 109935.  
 20 (5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).  
 21 (6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal  
 22 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

23 **Absent comment, this proposed restatement will be presumed correct.**

24 **84420. “Council”**

25 84420. “Council” means the California Environmental Policy Council established  
 26 pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

27 **Comment.** Section 84420 continues former Section 25251(c) without substantive change.

28 **84425. “Office”**

29 84425. “Office” means the Office of Environmental Health Hazard Assessment.

30 **Comment.** Section 84425 continues former Section 25251(d) without substantive change.

31 **84430. “Panel”**

32 84430. “Panel” means the Green Ribbon Science Panel established pursuant to  
 33 Article 4 (commencing with Section 84500).

34 **Comment.** Section 84430 continues former Section 25251(e) without substantive change.

35 **84435. “Product manufacturer”**

36 84435. “Product manufacturer” means a person who manufactures, controls the  
 37 manufacturing process for, or specifies the use of a chemical to be included in, a  
 38 consumer product.

39 **Comment.** Section 84435 restates former Section 25251(f) without substantive change.  
 40 See Sections 83295 (“person”), 84415 (“consumer product”).

**Note.** Section 25251(f) is restated by proposed Section 84435 for clarity. Section 25251(f) currently provides:

25251. (f) “Product manufacturer” means a person who manufactures a consumer product or a person who controls the manufacturing process for, or specifies the use of a chemical to be included in, a consumer product.

**Absent comment, this proposed restatement will be presumed correct.**

## Article 2. Relationship of Chapter to Other Authority

### **84455. Authority relating to hazardous materials generally**

84455. This chapter does not limit and shall not be construed to limit the existing authority of the department, or the existing authority of any other department or agency, over hazardous materials.

**Comment.** Section 84455 restates former Section 25257.1(a) without substantive change. See Section 83160 (“department”).

**Notes. (1)** Section 25257.1(a) is restated by proposed Section 84455 for clarity. Section 25257.1(a) currently provides:

25257.1. (a) This article does not limit and shall not be construed to limit the department’s or any other department’s or agency’s existing authority over hazardous materials.

**Absent comment, this proposed restatement will be presumed correct.**

**(2)** Section 25257.1(a) refers to “hazardous materials,” which is not a defined term in Chapter 6.5. although the term is defined in a chapter of Part 2 of Division 45 (formerly Chapter 6.8), “for purposes of [that] chapter.” See Sections 80200, 80235.

The question of whether definitional provisions in Part 2 of Division 45 (formerly Chapter 6.8) should be incorporated to apply when terms are used without definition in proposed Division 46 has already been added to the cumulative list of substantive issues for possible future study.

### **84460. Regulatory authority of other departments or agencies**

84460. This chapter does not authorize the department to supersede the regulatory authority of any other department or agency.

**Comment.** Section 84460 continues former Section 25257.1(b) without substantive change. See Section 83160 (“department”).

### **84465. Duplication or adoption of conflicting regulations**

84465. The department shall not duplicate or adopt conflicting regulations for product categories already regulated or subject to pending regulation consistent with the purposes of this chapter.

**Comment.** Section 84465 continues former Section 25257.1(c) without substantive change. See Section 83160 (“department”).

### Article 3. Priorities

#### 84480. Policy

84480. The Legislature hereby declares that it is the policy goal of the state to ensure the safety of consumer products sold in California through timely administrative and legislative action on consumer products and chemicals of concern in those products, particularly those products that may have disproportionate impacts on sensitive populations.

**Comment.** Section 84480 continues former Section 25253.6 without substantive change. See Section 84415 (consumer product).

#### 84485. Priority Product Work Plan of 2015-17

84485. The department shall revise its 2015–17 Priority Product Work Plan to include lead acid batteries for consideration and evaluation as a potential priority product.

**Comment.** Section 84485 continues former Section 25253.5 without substantive change.

**Note.** This provision requires that a specific product be addressed in a revision to the 2015-17 Priority Product Work Plan. That plan and two subsequent plans have been prepared. See <https://dtsc.ca.gov/scp/priority-product-work-plan/>. It is unclear whether the revision required by this provision was undertaken (and, if so, whether this provision is now obsolete).

**Comment on this issue is welcome.**

#### 84490. Priority Product Work Plans

84490. Subject to an appropriation by the Legislature for purposes of this section, the department shall include in each Priority Product Work Plan, commencing with the 2024–26 Priority Product Work Plan, in addition to any other information that the department is required to include pursuant to Section 69503.4 of Title 22 of the California Code of Regulations, or any successor regulation, a brief description of all of the following information:

(a) Information that the department has at the time the work plan is issued on the chemicals or chemical ingredients that may be chemicals of concern that are contained in consumer products within each product category or subcategory.

(b) Any additional ingredient information that is needed for the department to evaluate the safety of those consumer products, including, but not limited to, the information specified in Article 9 (commencing with Section 84670).

(c) Information specifying how the department plans to collect the additional information, if any, described in subdivision (b).

(d)(1) Timelines for completion of all of the following with regard to at least five product categories or subcategories in each work plan:

(A) The collection of information described in subdivision (b).

(B) All actions required pursuant to this chapter for a consumer product that contains a chemical of concern, including, but not limited to, the listing of that

product as a priority product, the completion of an alternatives analysis for the product, and the finalization of regulatory response determinations.

(2) The length of a timeline pursuant to paragraph (1) shall not exceed seven years from the date of issuance of the work plan.

(3) In determining the data needed and actions required pursuant to paragraph (1), the department shall take into account all chemicals that are known to serve or can potentially serve the same function in the product categories or subcategories, such as surfactants, preservatives, or plasticizers, in order to avoid the substitution of one chemical with another chemical on the candidate chemical list.

(4) An action to enforce the timelines shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

**Comment.** Section 84490 continues former Section 25253.9 without substantive change. See Sections 83160 (“department”), 84415 (“consumer product”).

#### Article 4. Green Ribbon Science Panel

##### **84500. Establishment of panel**

84500. (a) In implementing this chapter, the department shall establish a Green Ribbon Science Panel. The panel shall be composed of members whose expertise shall encompass all of the following disciplines:

- (1) Chemistry.
- (2) Chemical engineering.
- (3) Environmental law.
- (4) Toxicology.
- (5) Public policy.
- (6) Pollution prevention.
- (7) Cleaner production methods.
- (8) Environmental health.
- (9) Public health.
- (10) Risk analysis.
- (11) Materials science.
- (12) Nanotechnology.
- (13) Chemical synthesis.
- (14) Research.
- (15) Maternal and child health.

(b) The department shall appoint all members to the panel on or before July 1, 2009.

(c) The department shall appoint the members for staggered three-year terms, and may reappoint a member for additional terms, without limitation.

(d) The department shall provide for staff and administrative support to the panel.

**Comment.** Subdivision (a) of Section 84500 continues former Section 25254(a) without substantive change.

Subdivision (b) continues the first sentence of former Section 25254(b) without substantive change.

1 Subdivision (c) continues the second sentence of former Section 25254(b) without substantive  
2 change.

3 Subdivision (d) continues the second sentence of former Section 25254(c) without substantive  
4 change.

5 See Sections 83160 (“department”), 84430 (“panel”).

6 **Note.** Section 25254(b) (which would be continued by proposed Section 84500(b)) requires that  
7 all members of the Green Ribbon Science Panel be appointed by July 1, 2009. It is unclear whether  
8 this required appointment has occurred (and, if so, whether this provision is now obsolete).

9 **Comment on this issue is welcome.**

## 10 **84505. Meetings**

11 84505. (a) The panel shall meet as often as the department deems necessary, with  
12 consideration of available resources, but not less than twice each year.

13 (b) The panel meetings shall be open to the public and are subject to the Bagley-  
14 Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter  
15 1 of Part 1 of Division 3 of Title 2 of the Government Code).

16 **Comment.** Subdivision (a) of Section 84505 continues the first sentence of former Section  
17 25254(c) without substantive change.

18 Subdivision (b) continues former Section 25254(d) without substantive change.

19 See Sections 60610 (“department”), 84430 (“panel”).

## 20 **84510. Authorized action by panel**

21 84510. The panel may take any of the following actions:

22 (a) Advise the department and the council on scientific and technical matters in  
23 support of the goals of this chapter of significantly reducing adverse health and  
24 environmental impacts of chemicals used in commerce, as well as the overall costs  
25 of those impacts to the state’s society, by encouraging the redesign of consumer  
26 products, manufacturing processes, and approaches.

27 (b) Assist the department in developing green chemistry and chemicals policy  
28 recommendations and implementation strategies and details, and ensure these  
29 recommendations are based on a strong scientific foundation.

30 (c) Advise the department and make recommendations for chemicals the panel  
31 views as priorities for which hazard traits and toxicological end-point data should  
32 be collected.

33 (d) Advise the department in the adoption of regulations required by this chapter.

34 (e) Advise the department on any other pertinent matter in implementing this  
35 chapter, as determined by the department.

36 **Comment.** Section 84510 continues former Section 25255 without substantive change.

37 See Sections 60610 (“department”), 84415 (“consumer product”), 84440 (“council”), 84430  
38 (“panel”).

Article 5. Regulations Identifying and Prioritizing Chemicals of Concern

**84525. Adoption of regulations**

84525. (a) On or before January 1, 2011, the department shall adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, in accordance with the review process specified in Article 7 (commencing with Section 84595).

(b) The department shall adopt these regulations in consultation with the office and all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment.

**Comment.** Section 84525 continues the first two sentences of former Section 25252(a) without substantive change.

See Sections 83160 (“department”), 84415 (“consumer product”), 84425 (“office”).

**84530. Identification and prioritization process**

84530. The regulations adopted pursuant to this article shall establish an identification and prioritization process that includes, but is not limited to, all of the following considerations:

(a) The volume of the chemical in commerce in this state.

(b) The potential for exposure to the chemical in a consumer product.

(c) Potential effects on sensitive subpopulations, including infants and children.

**Comment.** Section 84530 continues the third sentence of former Section 25252(a) without substantive change.

See Section 84415 (“consumer product”).

**84535. Development of evaluation criteria**

84535. (a) In adopting regulations pursuant to this article, the department shall develop criteria by which chemicals and their alternatives may be evaluated.

(b) These criteria shall include, but not be limited to, the traits, characteristics, and endpoints that are referenced in Article 8 (commencing with Section 84630).

**Comment.** Section 84535 continues former Section 25252(b)(1) without substantive change.

See Section 83160 (“department”).

**84540. Reference and use of information from other sources**

84540. (a) In adopting regulations pursuant to this article, the department shall reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritization processes, so as to leverage the work and costs already incurred by those entities and to minimize costs and maximize benefits for the state’s economy.



(b) Subdivision (a) does not require the department, when adopting regulations pursuant to this article, to reference and use only the available information specified in subdivision (a).

**Comment.** Section 84540 continues former Section 25252(b)(2) and (b)(3) without substantive change.

See Section 83160 (“department”)

## Article 6. Regulations Evaluating Chemicals of Concern

### 84555. Adoption of regulations

84555. (a) On or before January 1, 2011, the department shall adopt regulations pursuant to this article that establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, in accordance with the review process specified in Article 9 (commencing with Section 84670).

(b) The department shall adopt the regulations in consultation with all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment.

**Comment.** Section 84555 continues former Section 25253(a)(1) without substantive change.

See Sections 83160 (“department”), 84415 (“consumer product”).

### 84560. Process for evaluation

84560. The regulations adopted pursuant to this article shall establish a process that includes all of the following:

(a) An evaluation of the availability of potential alternatives and potential hazards posed by those alternatives.

(b) An evaluation of critical exposure pathways.

(c) Life cycle assessment tools that take into consideration, but shall not be limited to, all of the following:

(1) Product function or performance.

(2) Useful life.

(3) Materials and resource consumption.

(4) Water conservation.

(5) Water quality impacts.

(6) Air emissions.

(7) Production, in-use, and transportation energy inputs.

(8) Energy efficiency.

(9) Greenhouse gas emissions.

(10) Waste and end-of-life disposal.

(11) Public health impacts, including potential impacts to sensitive subpopulations, including infants and children.

1 (12) Environmental impacts.

2 (13) Economic impacts.

3 **Comment.** Section 84560 continues former Section 25253(a)(2) without substantive change.  
4 See Sections 83175 (“disposal”), 83395 (“waste”).

5 **Note.** Section 25253(a)(2) is restated by proposed Section 84560 for clarity. Section 25253(a)(2)  
6 currently provides:

7 25253. (a)(2) The regulations adopted pursuant to this section shall establish a process that  
8 includes an evaluation of the availability of potential alternatives and potential hazards posed by  
9 those alternatives, as well as an evaluation of critical exposure pathways. This process shall include  
10 life cycle assessment tools that take into consideration, but shall not be limited to, all of the  
11 following:

12 (A) Product function or performance.

13 (B) Useful life.

14 (C) Materials and resource consumption.

15 (D) Water conservation.

16 (E) Water quality impacts.

17 (F) Air emissions.

18 (G) Production, in-use, and transportation energy inputs.

19 (H) Energy efficiency.

20 (I) Greenhouse gas emissions.

21 (J) Waste and end-of-life disposal.

22 (K) Public health impacts, including potential impacts to sensitive subpopulations, including  
23 infants and children.

24 (L) Environmental impacts.

25 (M) Economic impacts.

26 **Absent comment, this proposed restatement will be presumed correct.**

27 **84565. Use of tools**

28 84565. (a) The department, in developing the processes and regulations pursuant  
29 to this article, shall ensure that the tools available are in a form that allows for ease  
30 of use and transparency of application.

31 (b) The department shall also make every feasible effort to devise simplified and  
32 accessible tools that consumer product manufacturers, consumer product  
33 distributors, product retailers, and consumers can use to make consumer product  
34 manufacturing, sales, and purchase decisions.

35 **Comment.** Section 84565 continues former Section 25253(c) without substantive change.

36 See Sections 83160 (“department”), 84415 (“consumer product”), 84435 (“product  
37 manufacturers”).

38 **Note.** Are the “tools” referenced in Section 25253(c) intended to be a shorthand reference to the  
39 life cycle assessment tools discussed in Section 25253(a)(2)? If not, is the meaning of the term  
40 “tools” as used in Section 25253(c) sufficiently clear in practice?

41 **Comment is welcome on this issue. Depending on the comment received, the issue may be**  
42 **added to the list of substantive issues for possible future study.**

**84570. Range of regulatory responses**

84570. The regulations adopted pursuant to this article shall specify the range of regulatory responses that the department may take following the completion of the alternatives analysis, including, but not limited to, any of the following actions:

- (a) Not requiring any action.
- (b) Imposing requirements to provide additional information needed to assess a chemical of concern and its potential alternatives.
- (c) Imposing requirements on the labeling or other type of consumer product information.
- (d) Imposing a restriction on the use of the chemical of concern in the consumer product.
- (e) Prohibiting the use of the chemical of concern in the consumer product.
- (f) Imposing requirements that control access to or limit exposure to the chemical of concern in the consumer product.
- (g) Imposing requirements for the manufacturer to manage the product at the end of its useful life, including recycling or responsible disposal of the consumer product.
- (h) Imposing a requirement to fund green chemistry challenge grants where no feasible safer alternative exists.
- (i) Any other outcome the department determines accomplishes the requirements of this chapter.

**Comment.** Section 84570 continues former Section 25253(b) without substantive change. See Sections 83160 (“department”), 83175 (“disposal”), 84415 (“consumer product”).

**84575. Reliance on studies or evaluations in lieu of alternatives analysis**

84575. (a) In lieu of requiring an analysis of alternatives, as specified in Sections 84555, 84560, and 84570, the department may instead rely on all or part of one or more applicable publicly available studies or evaluations of alternatives to the chemical of concern under consideration in a consumer product, in existence at the time of consideration, and may proceed directly to a regulatory response.

(b) Any study or evaluation that the department proposes to rely on pursuant to this section shall satisfy one of the reliability criteria in paragraphs (1) to (3), inclusive, of subparagraph (A) of paragraph (57) of subdivision (a) of, and also meet the requirements of subparagraph (B) of paragraph (57) of subdivision (a) of, Section 69501.1 of Title 22 of the California Code of Regulations.

(c)(1) The department shall provide public notice and an opportunity for comment from the public, including responsible entities, on the proposal to rely on the studies or evaluations.

(2) The proposal may be combined with the proposal to list a chemical-product combination as a priority product.

(d)(1) The proposal shall address any relevant factors listed in subdivision (c) of Section 69506 of Title 22 of the California Code of Regulations, as that section may

be amended, that product manufacturers would be required to address as part of the regulatory response.

(2) If the department determines that a study or evaluation upon which it is relying pursuant to this section does not address one or more relevant factors, the department may augment the study or evaluation with additional information that addresses the relevant factors as part of the proposal to rely on the studies or evaluations.

(e)(1) Following public notice and comment, the department shall make a formal determination of whether the studies or evaluations are applicable and meet the reliability criteria and requirements specified in subdivision (b), and whether all relevant factors have been addressed.

(2) The department shall publish a summary of its determination, including whether the department plans to proceed to regulatory responses. If regulatory responses are planned, the summary shall not be judicially reviewable until regulatory responses are finalized.

(f)(1) Following a formal determination pursuant to subdivision (e), the department may issue regulatory responses based on the studies or evaluations, after providing public notice and an opportunity for comment from the public, including responsible entities, on the regulatory responses.

(2) The department shall respond to all comments it receives.

**Comment.** Section 84575 continues former Section 25253(d) without substantive change.

See Sections 83160 (“department”), 84415 (“consumer product”), 84435 (“product manufacturers”).

#### **84580. Public involvement**

84580. (a) The department shall amend Sections 69504 and 69504.1 of Title 22 of the California Code of Regulations to allow a person to petition the department for a regulatory response pursuant to Section 84575.

(b) The revision of regulations pursuant to subdivision (a) shall be deemed to be a change without regulatory effect.

(c) If the department provides public notice of a proposed regulation pursuant to this chapter and an opportunity to comment prior to the adoption of the regulation, the dispute resolution procedures specified in Sections 69507.1 and 69507.2 of Title 22 of the California Code of Regulations, as those sections read on January 1, 2021, shall not be available to a person who seeks to dispute the regulation and the requirement to exhaust administrative remedies in subdivision (b) of Section 69507 of Title 22 of the California Code of Regulations does not apply.

**Comment.** Subdivision (a) of Section 84580 continues former Section 25253(e)(1) without substantive change.

Subdivision (b) continues former Section 25253(e)(2) without substantive change.

Subdivision (c) continues former Section 25253(f) without substantive change.

See Sections 83160 (“department”), 83295 (“person”).

## Article 7. Multimedia Life Cycle Evaluation

**84595. “Multimedia life cycle evaluation”**

84595. For the purposes of this article, “multimedia life cycle evaluation” means the identification and evaluation of a significant adverse impact on public health or the environment, including air, water, or soil, that may result from the production, use, or disposal of a consumer product or consumer product ingredient.

**Comment.** Section 84595 continues former Section 25252.5(g) without substantive change. See Sections 83175 (“disposal”), 84415 (“consumer product”).

**84600. Preparation of evaluation**

84600. (a) Except as provided in subdivision (c), the department, in adopting the regulations pursuant to Article 5 (commencing with Section 84525) and Article 6 (commencing with Section 84555), shall prepare a multimedia life cycle evaluation conducted by affected agencies and coordinated by the department, and shall submit the regulations and the multimedia life cycle evaluation to the council for review.

(b) In coordinating a multimedia life cycle evaluation pursuant to subdivision (a), the department shall consult with other boards and departments within the California Environmental Protection Agency, the State Department of Public Health, the State and Consumer Services Agency, the Department of Homeland Security, the Department of Industrial Relations, and other state agencies with responsibility for, or expertise regarding, impacts that could result from the production, use, or disposal of consumer products and the ingredients they may contain.

(c) Notwithstanding subdivision (a), the department may adopt regulations pursuant to Article 5 (commencing with Section 84525) and Article 6 (commencing with Section 84555) without subjecting the proposed regulation to a multimedia life cycle evaluation if the council, following an initial evaluation of the proposed regulation, conclusively determines that the regulation will not have any significant adverse impact on public health or the environment.

**Comment.** Subdivision (a) of Section 84600 continues former Section 25252.5(a) without substantive change.

Subdivision (b) continues former Section 25252.5(e) without substantive change.

Subdivision (c) continues former Section 25252.5(f) without substantive change.

See Sections 83160 (“department”), 83175 (“disposal”), 84415 (“consumer product”), 84440 (“council”), 84595 (“multimedia life cycle evaluation”).

**84605. Basis of evaluation**

84605. The multimedia life cycle evaluation prepared in accordance with this article shall be based on the best available scientific data, written comments submitted by interested persons, and information collected by the department in preparation for adopting the regulations, and shall address, but is not limited to, the impacts associated with all the following:

(a) Emissions of air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and greenhouse gases.

- 1 (b) Contamination of surface water, groundwater, and soil.
- 2 (c) Disposal or use of the byproducts and waste materials.
- 3 (d) Worker safety and impacts to public health.
- 4 (e) Other anticipated impacts to the environment.

5 **Comment.** Section 84605 restates former Section 25252.5(b) without substantive change.  
 6 See Sections 83160 (“department”), 83295 (“person”), 83175 (“disposal”), 84595 (“multimedia  
 7 life cycle evaluation”).

8 **Note.** The introduction to Section 25252.5(b) is restated by proposed Section 84605 for clarity.  
 9 The introduction to Section 25252.5(b) currently provides:

10 25252.5. (b) The multimedia evaluation shall be based on the best available scientific data, ....

11 **Absent comment, this proposed restatement will be presumed correct.**

## 12 **84610. Review by council**

13 84610. (a) The council shall complete its review of the multimedia life cycle  
 14 evaluation prepared in accordance with this article within 90 calendar days  
 15 following notice from the department that it intends to adopt regulations.

16 (b) If the council determines that the proposed regulations will cause a significant  
 17 adverse impact on the public health or the environment, or that alternatives exist  
 18 that would be less adverse, the council shall recommend alternative measures that  
 19 the department or other state agencies may take to reduce the adverse impact on  
 20 public health or the environment.

21 (c) The council shall make all information relating to its review available to the  
 22 public.

23 **Comment.** Section 84610 restates former Section 25252.5(c) without substantive change.  
 24 See Sections 83160 (“department”), 84440 (“council”), 84595 (“multimedia life cycle  
 25 evaluation”).

26 **Note.** The first sentence of Section 25252.5(c) is restated by proposed Section 84610(a) for  
 27 clarity. The first sentence of Section 25252.5(c) currently provides:

28 25252.5. (c) The council shall complete its review of the multimedia evaluation within 90  
 29 calendar days following notice from the department that it intends to adopt regulations.

30 **Absent comment, this proposed restatement will be presumed correct.**

## 31 **84615. Significant adverse impact determination**

32 84615. Within 60 days of receiving notification from the council of a  
 33 determination of significant adverse impact, the department shall adopt revisions to  
 34 the proposed regulation to avoid or reduce the adverse impact, or the affected  
 35 agencies shall take appropriate action that will, to the extent feasible, mitigate the  
 36 adverse impact so that, on balance, there is no significant adverse impact on public  
 37 health or the environment.

38 **Comment.** Section 84615 continues former Section 25252.5(d) without substantive change.  
 39 See Sections 83160 (“department”), 84440 (“council”).

Article 8. Toxics Information Clearinghouse

**84630. Establishment of clearinghouse**

84630. The department shall establish the Toxics Information Clearinghouse, which shall provide a decentralized, Web-based system for the collection, maintenance, and distribution of specific chemical hazard trait and environmental and toxicological end-point data.

**Comment.** Section 84630 continues the first sentence of former Section 25256 without substantive change.

See Section 83160 (“department”).

**84635. Data to be initially included in clearinghouse**

84635. (a) On or before January 1, 2011, the office shall evaluate and specify the hazard traits and environmental and toxicological end-points and any other relevant data that are to be included in the clearinghouse.

(b) The office shall conduct this evaluation in consultation with the department and all appropriate state agencies, after one or more public workshops, and an opportunity for all interested parties to comment.

(c) The office may seek information from other states, the federal government, and other nations in implementing this section.

**Comment.** Section 84635 continues former Section 25256.1 without substantive change.

See Sections 83160 (“department”), 84410 (“clearinghouse”), 84425 (“office”), 84630 (“clearinghouse”).

**84640. Operation of clearinghouse**

84640. (a) The department shall develop requirements and standards related to the design of the clearinghouse and data quality and test methods that govern the data that is eligible to be available through the clearinghouse.

(b) The department may phase in the access to eligible information and data in the clearinghouse as that information and data become available.

(c) The department shall ensure the clearinghouse is capable of displaying updated information as new data becomes available.

**Comment.** Section 84640 continues former Section 25256.2 without substantive change.

See Sections 83160 (“department”), 84410 (“clearinghouse”).

**84645. Department consultation with other governmental entities**

84645. The department shall consult with other states, the federal government, and other nations to identify available data related to hazard traits and environmental and toxicological end-points, and to facilitate the development of regional, national, and international data sharing arrangements to be included in the clearinghouse.

**Comment.** Section 84645 continues former Section 25256.3 without substantive change.

See Sections 83160 (“department”), 84410 (“clearinghouse”).

1 **84650. Accessibility to the public**

2 84650. The department shall make the clearinghouse accessible to the public  
3 through a single internet web portal.

4 **Comment.** Section 84650 continues the first part of the second sentence of former Section 25256  
5 without substantive change.

6 See Sections 83160 (“department”), 84410 (“clearinghouse”).

7 **84655. Operational cost**

8 84655. The department shall, to the maximum extent possible, operate the  
9 clearinghouse at the least possible cost to the state.

10 **Comment.** Section 84655 continues the second part of the second sentence of former Section  
11 25256 without substantive change.

12 See Sections 83160 (“department”), 84410 (“clearinghouse”).

13 **Article 9. Department Requests for Information**

14 **84670. Request for information from product manufacturers**

15 84670. (a) The department may issue a formal request for information from  
16 product manufacturers.

17 (b) The request shall be accompanied by a brief statement on why the department  
18 is requesting the information.

19 (c) The department’s request may include, but is not limited to, all of the  
20 following:

21 (1) Information on ingredient chemical identity, concentration, and functional  
22 use.

23 (2) Existing information, if any, related to the use of the products by children,  
24 pregnant women, or other sensitive populations.

25 (3) Data on state product sales, or national product sales in the absence of state  
26 product sales data.

27 **Comment.** Subdivision (a) of Section 84670 continues the first sentence of former Section  
28 25253.7(a)(1) without substantive change.

29 Subdivision (b) continues the second sentence of former Section 25253.7(a)(1) without  
30 substantive change.

31 Subdivision (c) continues the fourth sentence of former Section 25253.7(a)(1) without substantive  
32 change.

33 See Sections 83160 (“department”), 84435 (“product manufacturer”).

34 **84675. Response by product manufacturer**

35 84675. (a) A product manufacturer shall provide to the department data and  
36 information on the ingredients and use of a consumer product upon the department’s  
37 request within the time specified in Section 84690.

38 (b) If the product manufacturer certifies in writing that it does not have access to  
39 information requested pursuant to Section 84670, in whole or in part, and that it has  
40 attempted to, but cannot, obtain that information from one or more suppliers or



chemical manufacturers, the product manufacturer shall provide the identity and contact information of those suppliers or chemical manufacturers to the department.

(c) To the extent that the product manufacturer satisfies the requirements of subdivision (b), the product manufacturer shall be considered to be in compliance with the requirement to provide the data and information specified in Section 84670, with respect to the information that the product manufacturer has attempted to obtain from the supplier or chemical manufacturer, and shall be absolved of liability for violating this article as it pertains to the provision of that information.

**Comment.** Subdivision (a) of Section 84675 continues the third sentence of former Section 25253.7(a)(1) without substantive change.

Subdivision (b) continues former Section 25253.7(a)(2)(A) without substantive change.

Subdivision (c) continues former Section 25253.7(a)(2)(B) without substantive change.

See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84415 (“consumer product”), 84435 (“product manufacturer”).

#### **84680. Request for information from supplier or chemical manufacturer**

84680. (a) The department may issue an independent information request to a supplier or chemical manufacturer identified by the product manufacturer pursuant to subdivision (b) of Section 84675 for the unknown information that the product manufacturer certifies it does not have access to, as well as for the identity and contact information of other suppliers or chemical manufacturers, as necessary to access the information requested pursuant to Section 84670.

(b) Upon the department’s request, a supplier or chemical manufacturer shall provide the information requested pursuant to this section to the department.

(c) The supplier or chemical manufacturer shall be considered to be in violation of this section, and is liable for civil penalties pursuant to Section 84700, to the extent that it fails to comply with an information request, pursuant to subdivisions (b) or (c) of Section 84675, in its entirety.

**Comment.** Section 84680 continues former Section 25253.7(a)(2)(C) without substantive change.

See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84435 (“product manufacturer”).

**Note.** The last sentence of Section 25253.7(a)(2)(C) (which would be continued by proposed Section 84680(c)) provides that a supplier or chemical manufacturer shall be considered in violation of Section 25253.7, and liable for civil penalties, “to the extent that it fails to comply with an information request, pursuant to subparagraph (A) or (B), in its entirety.”

However, neither of the two cross-referenced subparagraphs, which would be continued by proposed subdivisions (b) and (c) of Section 84675, seem to impose any obligation on a supplier or chemical manufacturer.

**Comment is welcome on this issue. Depending on the comment received, the issue may be added to the list of substantive issues for possible future study.**

#### **84685. Request for information for category in Priority Product Work Plan**

84685. The department may seek data and information pursuant to Sections 84670, 84675, and 84680 for any product category or subcategory published in a

previous Priority Product Work Plan or being considered for inclusion in an upcoming Priority Product Work Plan.

**Comment.** Section 84685 continues former Section 25253.7(a)(3) without substantive change. See Section 83160 (“department”).

#### **84690. Allowed time for response to request**

84690. (a) The department shall provide 30 days for a response to a request for data or information, unless the department concludes additional time is necessary for the entity to obtain the necessary information.

(b) If the department determines that a longer time is required, it shall identify the deadline for response, which shall not exceed 120 days.

(c) If the entity is in communication with the department and is working in good faith to fulfill the department’s request, the department may exceed 120 days by granting additional time in an amount not to exceed 60 days.

**Comment.** Section 84690 continues former Section 25253.7(a)(4) without substantive change. See Section 83160 (“department”).

#### **84695. Assertion of trade secret claims**

84695. In providing data or information in response to a request from the department, a product manufacturer, chemical manufacturer, or supplier may raise trade secret claims in accordance with Article 10 (commencing with Section 84720).

**Comment.** Section 84695 continues former Section 25253.7(a)(5) without substantive change. See Sections 83160 (“department”), 84405 (“chemical manufacturer”), 84435 (“product manufacturer”).

#### **84700. Penalties for noncompliance**

84700. (a) A person who violates this article shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for each separate violation or, for continuing violations, for each day that violation continues.

(b) Liability under this section may be imposed in a civil action or may be imposed administratively.

(c) A penalty collected pursuant to this section shall be deposited in the Toxic Substances Control Account in the General Fund.

(d) In imposing an administrative penalty pursuant to this section, the department shall take into consideration the nature, circumstances, extent, and gravity of the violation, the history of previous violations, the violator’s ability to pay the penalty, and the deterrent effect of the penalty.

(e) Nothing in this section shall be construed to impose liability for a civil penalty pursuant to subdivision (a) for a violation of this article resulting from another party’s failure to comply with an independent information request issued by the department pursuant to Section 84680.

**Comment.** Section 84700 continues former Section 25253.7(b) without substantive change. See Sections 83160 (“department”), 83295 (“person”).

## Article 10. Trade Secrets

**84720. Claim of trade secret**

84720. (a) A person providing information pursuant to this chapter may, at the time of submission, identify a portion of the information submitted to the department as a trade secret and, upon the written request of the department, shall provide support for the claim that the information is a trade secret.

(b) Except as provided in Section 84730, a state agency shall not release to the public, subject information supplied pursuant to this chapter that is a trade secret, and that is so identified at the time of submission, in accordance with Sections 7924.510 and 7924.700 of the Government Code and Section 1060 of the Evidence Code.

(c) Information not identified as a trade secret pursuant to subdivisions (a) or (b) shall be available to the public unless exempted from disclosure by other provisions of law.

(d) The fact that information is claimed to be a trade secret is public information.

**Comment.** Subdivision (a) of Section 84720 continues the first sentence of former Section 25257(a) without substantive change.

Subdivision (b) continues the second sentence of former Section 25257(a) without substantive change.

Subdivision (c) continues the first sentence of former Section 25257(c) without substantive change.

Subdivision (d) continues the second sentence of former Section 25257(c) without substantive change.

See Sections 83160 (“department”), 83295 (“person”).

**Note.** In the second sentence of Section 25257(a) (continued by proposed Section 84720(b)), the meaning of the term “subject information” is unclear.

**Comment on this issue is welcome. Depending on the comment received, the issue may be added to the list of substantive issues for possible future study.**

**84725. Duty of department employees**

84725. An employee of the department that has access to a properly designated trade secret shall maintain the confidentiality of that trade secret by complying with this section.

**Comment.** Section 84725 continues the second sentence of former Section 25257(b) without substantive change.

See Section 83160 (“department”).

**84730. Request for release of information claimed to be trade secret**

84730. (a) Upon receipt of a request for the release of information that has been claimed to be a trade secret, the department shall immediately notify the person who submitted the information.

(b) Based on the request, the department shall determine whether or not the information claimed to be a trade secret is to be released to the public.

(c) The department shall make the determination specified in subdivision (b), no later than 60 days after the department receives the request for disclosure, but not before 30 days following the notification of the person who submitted the information.

(d) If the department decides that the information requested pursuant to this section should be made public, the department shall provide the person who submitted the information 30 days' notice prior to public disclosure of the information, unless, prior to the expiration of the 30-day period, the person who submitted the information obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection under this article or for a preliminary injunction prohibiting disclosure of the information to the public and promptly notifies the department of that action.

**Comment.** Section 84730 continues former Section 25257(d) without substantive change. See Sections 83160 ("department"), 83295 ("person").

**Note.** Two aspects of the text of Section 25257(d)(3) (which would be continued by proposed Section 84730(d)) are somewhat unclear:

1. The required calculation of the 30-day notice period, based on the intended application of the text of the provision beginning with the word "unless."

2. The reference to a specified person "obtain[ing]" a specified action in an appropriate court, which might be understood as either (a) *commencing* an action, or (b) obtaining one of the specified *results* in an action.

**Comment on whether these issues should be added to the list of substantive issues for possible future study is welcome.**

#### **84735. Exchange of information between public agencies**

84735. This article does not prohibit the exchange of a properly designated trade secret between public agencies, if the trade secret is relevant and necessary to the exercise of the agency's jurisdiction and the public agency exchanging the trade secrets complies with this section.

**Comment.** Section 84735 continues the first sentence of former Section 25257(b) without substantive change.

#### **84740. Refusal to disclose information to department**

84740. This article does not authorize a person to refuse to disclose to the department information required to be submitted to the department pursuant to this article.

**Comment.** Section 84740 continues the first sentence of former Section 25257(e) without substantive change.

See Section 83160 ("department"), 83295 ("person").

#### **84745. Application of article to hazardous trait submissions**

84745. This article does not apply to hazardous trait submissions for chemicals and chemical ingredients pursuant to this chapter.

1     **Comment.** Section 84745 continues the first sentence of former Section 25257(f) without  
2 substantive change.

3     See Section 83160 (“department”).

## 4                   Article 11. Healthy Nail Salon Recognition Programs

### 5     **84765. Publication of guidelines**

6     84765. The department shall, by January 1, 2018, publish guidelines for healthy  
7 nail salon recognition (HNSR) programs voluntarily implemented by local cities  
8 and counties.

9     **Comment.** Section 84765 continues former Section 25257.2(a) without substantive change.

10    See Section 83160 (“department”).

### 11    **84770. Content of guidelines**

12    84770. The guidelines for an HNSR program adopted pursuant to Section 84765  
13 may include, but shall not be limited to, all of the following:

14    (a) A list of specific chemical ingredients that should not be used by a nail salon  
15 seeking recognition. In determining whether to include a chemical on the list, the  
16 department shall consider:

17    (1) Whether the chemical is identified as a candidate chemical pursuant to the  
18 regulations adopted pursuant to Section 25252.

19    (2) Whether an existing healthy nail salon program has restricted the use of the  
20 chemical.

21    (3) The potential for exposure of nail salon workers and customers to the  
22 chemical.

23    (4) The availability of existing, safer alternatives to the chemical in products  
24 available to nail salons in California.

25    (b) Specific best practices for minimizing exposure to hazardous chemicals,  
26 including:

27    (1) A list of specific personal protective equipment that should be used by  
28 personnel in a salon seeking recognition and guidance on when and how to use it.

29    (2) Engineering controls that should be adopted by salons seeking recognition,  
30 including specific ventilation practices and equipment.

31    (3) Prohibiting nail polishes that contain dibutyl phthalate, formaldehyde, or  
32 toluene.

33    (4) Prohibiting nail polish thinners that contain methyl ethyl ketone or toluene.

34    (5) Prohibiting nail polish removers that contain ethyl or butyl acetate.

35    (c) A list of specific training topics for salon owners and staff, whether on payroll  
36 or contract, on safer practices delineated in the HNSR program guidelines.

37    (d) Criteria for the use of outside products brought in by clients.

38    (e) Verification that a salon seeking recognition is in compliance with Chapter 10  
39 (commencing with Section 7301) of Division 3 of the Business and Professions  
40 Code, and all applicable regulations enforced by the State Board of Barbering and  
41 Cosmetology.

(f) Any other guidelines or best practices determined by the department to further the goals of an HNSR program.

**Comment.** Section 84770 continues former Section 25257.2(b) without substantive change. See Section 83160 (“department”).

**84775. Criteria for cities and counties adopting program**

84775. (a) The guidelines adopted pursuant to Section 84765 shall include criteria for cities and counties that adopt an HNSR program.

(b) The criteria referred to in subdivision (a) may cover, but are not limited to:

(1) Coordination with other local HNSR programs to assist businesses in achieving and moving beyond regulatory compliance.

(2) Training and certification requirements for the salon owners and staff to ensure thorough knowledge of safe and environmentally friendly procedures.

(3) Issuance of an approved seal or certificate to salons that have met certification requirements.

(4) The process by which a salon can enroll in an HNSR program and be verified by the local entity.

(5) The frequency at which the local entity shall verify continued compliance by a salon that has previously met all specified requirements.

**Comment.** Section 84775 continues former Section 25257.2(c) without substantive change. See Section 83100 (“business”).

**84780. Consultation with other agencies**

84780. In developing guidelines pursuant to Section 84765, the department shall consult with the Division of Occupational Safety and Health, the State Department of Public Health, and the State Board of Barbering and Cosmetology.

**Comment.** Section 84780 continues former Section 25257.2(d) without substantive change. See Section 83160 (“department”).

**84785. Promotion of guidelines**

84785. In collaboration with existing healthy nail salon programs, the department shall promote the HNSR guidelines developed pursuant to Section 84765 by doing all of the following:

(a) Developing and implementing a consumer education program.

(b) Presenting the HNSR guidelines to local health officers, local environmental health departments, and other local agencies as appropriate.

(c) Developing and either distributing or posting on its internet website information for local entities, including, but not limited to the following:

(1) Suggestions for successful implementation of HNSR programs.

(2) Resource lists that include names and contact information of vendors, consultants, or providers of financial assistance or loans for purchases of ventilation equipment.

(d) Developing an internet website or a section on the department’s internet website that links to county HNSR internet websites.

**Comment.** Section 84785 restates former Section 25257.2(e) without substantive change. See Section 60610 (“department”).

**Note.** Section 25257.2(e)(3) is restated by proposed Section 84785(c) for clarity. The existing provision currently provides:

25257. (e) In collaboration with existing healthy nail salon programs, the department shall promote the HNSR guidelines developed pursuant to subdivision (a) by doing all of the following:

...

(3) Developing and either distributing or posting on its Internet Web site information for local entities, including, but not limited to, suggestions for successful implementation of HNSR programs and resource lists that include names and contact information of vendors, consultants, or providers of financial assistance or loans for purchases of ventilation equipment.

**Absent comment, this proposed restatement will be presumed correct.**

#### **84790. Outreach**

84790. The department may prioritize its outreach to those counties that have the greatest number of nail salons.

**Comment.** Section 84790 continues former Section 25257.2(f) without substantive change. See Section 83160 (“department”).

#### **84795. Violation of regulation by salon**

84795. (a) The State Board of Barbering and Cosmetology may notify the city, county, or city and county if a recognized salon is found in violation of Article 12 (commencing with Section 977) of Division 9 of Title 16 of the California Code of Regulations.

(b) A violation shall result in the removal of healthy nail salon recognition from that salon.

**Comment.** Section 84795 restates former Section 25257.2(g) without substantive change.

#### **84800. Local rules and ordinances**

84800. This article does not prevent the adoption or enforcement of any local rules or ordinances.

**Comment.** Section 84800 continues former Section 25257.2(h) without substantive change.

## **CHAPTER 2. POLLUTION PREVENTION AND HAZARDOUS WASTE SOURCE REDUCTION AND MANAGEMENT REVIEW ACT**

Article 1. Preliminary Provisions

**§ 84850. Short title**

84850. This chapter shall be known and may be cited as the Pollution Prevention and Hazardous Waste Source Reduction and Management Review Act.

**Comment.** Section 84850 continues former Section 25244.12 without substantive change.

**§ 84855. Legislative findings and declarations**

84855. The Legislature finds and declares as follows:

(a) Existing law requires the department and the State Water Resources Control Board to promote the reduction of generated hazardous waste. This policy, in combination with hazardous waste land disposal bans, requires the rapid development of new programs and incentives for achieving the goal of optimal minimization of the generation of hazardous wastes. Substantial improvements and additions to the state's hazardous waste reduction program are required to be made if these goals are to be achieved.

(b) Hazardous waste source reduction provides substantial benefits to the state's economy by maximizing use of materials, avoiding generation of waste materials, improving business efficiency, enhancing revenues of companies that provide products and services in the state, increasing the economic competitiveness of businesses located in the state, and protecting the state's precious and valuable natural resources.

(c) It is the intent of the Legislature to expand the state's pollution prevention activities beyond those directly associated with source reduction evaluation reviews and plans. The expanded program, which is intended to accelerate pollution prevention, shall include programs to promote implementation of pollution prevention measures using education, outreach, and other effective voluntary techniques demonstrated in California or other states.

(d) It is the intent of the Legislature for the department to maximize the use of its available resources in implementing the pollution prevention program through cooperation with other entities, including, but not limited to, CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs. To the extent feasible, the department shall utilize cooperative programs with entities that routinely contact small business to expand its support of small business pollution prevention activities.

(e) It is the goal of this chapter to do all of the following:

(1) Reduce the generation of hazardous waste.

(2) Reduce the release into the environment of chemical contaminants that have adverse and serious health or environmental effects.

(3) Document hazardous waste management information and make that information available to state and local government.



(f) It is the intent of this chapter to promote the reduction of hazardous waste at its source, and wherever source reduction is not feasible or practicable, to encourage recycling. Where it is not feasible to reduce or recycle hazardous waste, the waste should be treated in an environmentally safe manner to minimize the present and future threat to health and the environment.

(g) It is the intent of the Legislature not to preclude the regulation of environmentally harmful releases to all media, including air, land, surface water, and groundwater, and to encourage and promote the reduction of these releases to air, land, surface water, and groundwater.

(h) It is the intent of the Legislature to encourage all state departments and agencies, especially the State Water Resources Control Board, the California regional water quality control boards, the State Air Resources Board, the air pollution control districts, and the air quality management districts, to promote the reduction of environmentally harmful releases to all media.

**Comment.** Section 84855 continues former Section 25244.13 without substantive change.

See Sections 84895 (“business”), 83110 (“CUPA”), 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83260 (“natural resources”), 83325 (“recycling”), 83330 (“release”), 84915 (“pollution prevention”), 83395 (“waste”).

#### § 84860. Application of chapter

84860. (a) This chapter establishes a program for pollution prevention, including, but not limited to, hazardous waste source reduction.

(b) The department shall coordinate the activities of all state agencies with responsibilities and duties relating to hazardous waste and shall promote coordinated efforts to encourage the reduction of hazardous waste. Coordination between the program and other relevant state agencies and programs shall, to the fullest extent possible, include joint planning processes and joint research and studies.

(c) The department shall adopt regulations to carry out the requirements imposed upon generators pursuant to this chapter.

(d)(1) Except as provided in paragraph (3), **Sections 25244.19, 25244.20, and 25244.21** apply only to generators who, by site, routinely generate, through ongoing processes and operations, more than 12,000 kilograms of hazardous waste in a calendar year, or more than 12 kilograms of extremely hazardous waste in a calendar year.

(2) The department shall adopt regulations to establish procedures for exempting generators from the requirements of this chapter where the department determines that no source reduction opportunities exist for the generator.

(3) Notwithstanding paragraph (1), **Sections 25244.19, 25244.20, and 25244.21** do not apply to any generator whose hazardous waste generating activity consists solely of receiving offsite hazardous wastes and generating residuals from the processing of those hazardous wastes.

**Comment.** Section 84860 continues former Section 25244.15 without substantive change.

See Sections 83160 (“department”), 83195 (“extremely hazardous waste”), 83210 (“hazardous waste”), 83300 (“processing”), 84915 (“pollution prevention”).

**Note.** Existing Section 25244.15, as well as several other sections in this proposed chapter, frequently refer to the undefined term “generators.”

**Should a statutory definition of this term be added to this proposed chapter, and if so, what definition should be added?**

#### § 84865. Funding contingency

63695. (a) The department’s duties to implement this chapter are contingent upon, and limited to, the availability of funding.

(b) Subdivision (a) does not eliminate a requirement of this chapter that is imposed upon a generator.

**Comment.** Section 84865 continues former Section 25244.13.1 without substantive change. See Section 83160 (“department”).

### Article 2. Definitions

#### § 84880. Definitions

84880. For purposes of this chapter, the definitions in this article shall apply.

**Comment.** Section 84880 continues the introductory clause of former Section 25244.14 without substantive change.

#### § 84885. “Advisory Committee”

84885. “Advisory committee” means the California Pollution Prevention Advisory Committee established pursuant to **Section 25244.15.1**.

**Comment.** Section 84885 continues former Section 25244.14(a) without substantive change.

#### § 84890. “Appropriate local agency”

84890. “Appropriate local agency” means a county, city, or regional association that has adopted a hazardous waste management plan pursuant to **Article 3.5 (commencing with Section 25135)**.

**Comment.** Section 84890 continues former Section 25244.14(b) without substantive change. See Section 83220 (“hazardous waste management”).

#### § 84895. “Business”

84895. “Business” has the same meaning as defined in **Section 25501**.

**Comment.** Section 84895 continues former Section 25244.14(c) without substantive change.

#### § 84900. “Hazardous waste management approaches”

84900. “Hazardous waste management approaches” means approaches, methods, and techniques of managing the generation and handling of hazardous waste, including source reduction, recycling, and the treatment of hazardous waste.

**Comment.** Section 84900 continues former Section 25244.14(d) without substantive change.

See Sections 83205 (“handling”), 83210 (“hazardous waste”), 83220 (“hazardous waste management”), 83325 (“recycling”), 83370 (“treatment”), 84925 (“source reduction”).

**§ 84905. “Hazardous waste management performance report” or “report”**

84905. “Hazardous waste management performance report” or “report” means the report required by **subdivision (b) of Section 25244.20** to document and evaluate the results of hazardous waste management practices.

**Comment.** Section 84905 continues former Section 25244.14(e) without substantive change.  
See Section 83220 (“hazardous waste management”).

**§ 84910. “NAICS Code”**

84910. “NAICS Code” means the identification number assigned to specific types of businesses by the North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

**Comment.** Section 84910 continues former Section 25244.14(f) without substantive change.  
See Section 84895 (“business”).

**§ 84915. “Pollution prevention”**

84915. “Pollution prevention” means the reduction of chemical sources that have adverse impacts on public health and the environment, including, but not limited to, source reduction.

**Comment.** Section 84915 continues former Section 25244.14(g) without substantive change.  
See Section 84925 (“source reduction”).

**§ 84920. “SIC Code”**

84920. “SIC Code” means the identification number assigned to specific types of businesses by the Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

**Comment.** Section 84920 continues former Section 25244.14(h) without substantive change.  
See Section 84895 (“business”).

**§ 84925. “Source reduction”**

84925. (a) “Source reduction” means either of the following:

(1) An action that causes a net reduction in the generation of hazardous waste.

(2) An action taken before the hazardous waste is generated that results in a lessening of the properties that cause it to be classified as a hazardous waste.

(b) “Source reduction” includes, but is not limited to, each of the following:

(1) “Input change,” which means a change in raw materials or feedstocks used in a production process or operation so as to reduce, avoid, or eliminate the generation of hazardous waste.

(2) “Operational improvement,” which means improved site management so as to reduce, avoid, or eliminate the generation of hazardous waste.

(3) “Production process change,” which means a change in a process, method, or technique that is used to produce a product or a desired result, including the return

of materials or their components, for reuse within the existing processes or operations, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(4) “Product reformulation,” which means changes in design, composition, or specifications of end products, including product substitution, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(c) “Source reduction” does not include any of the following:

(1) Actions taken after a hazardous waste is generated.

(2) Actions that merely concentrate the constituents of a hazardous waste to reduce its volume or that dilute the hazardous waste to reduce its hazardous characteristics.

(3) Actions that merely shift hazardous wastes from one environmental medium to another environmental medium.

(4) Treatment.

**Comment.** Section 84925 continues former Section 25244.14(i) without substantive change. See Section 83210 (“hazardous waste”), 83370 (“treatment”).

#### § 84930. “Source reduction evaluation review and plan” or “review and plan”

84930. “Source reduction evaluation review and plan” or “review and plan” means a review conducted by the generator of the processes, operations, and procedures in use at a generator’s site, in accordance with the format established by the department pursuant to **subdivision (a) of Section 25244.16**, and that does both of the following:

(a) Determines any alternatives to, or modifications of, the generator’s processes, operations, and procedures that may be implemented to reduce the amount of hazardous waste generated.

(b) Includes a plan to document and implement source reduction measures for the hazardous wastes specified in subdivision (a) that are technically feasible and economically practicable for the generator, including a reasonable implementation schedule.

**Comment.** Section 84930 continues former Section 25244.14(j) without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”), 84925 (“source reduction”).

#### § 84935. Generally defined terms

84935. The following terms have the same meanings as defined in **Article 2 (commencing with Section 25110)**:

(a) “Hazardous waste.”

(b) “Person.”

(c) “Recycle.”

(d) “Treatment.”

**Comment.** Section 84935 restates former Section 25244.14(k) without substantive change. See Sections 83210 (“hazardous waste”), 83295 (“person”), 83370 (“treatment”).

**Note.** Proposed Section 84935 would restate existing Section 25244.14(k) for clarity. The existing subdivision reads as follows:

“Hazardous waste,” “person,” “recycle,” and “treatment” have the same meanings as defined in Article 2 (commencing with Section 25110).

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing subdivision.**

### Article 3. California Pollution Prevention Advisory Committee

#### § 84950. Creation and membership

84950. The California Pollution Prevention Advisory Committee is hereby created and consists of the following members:

(a) The Executive Director of the State Air Resources Board, as an ex officio member.

(b) The Executive Director of the State Water Resources Control Board, as an ex officio member.

(c) The Director of Toxic Substances Control, as an ex officio member.

(d) The Director of Resources Recycling and Recovery, as an ex officio member.

(e) The Chairperson of the California Environmental Policy Council established pursuant to Section 71017 of the Public Resources Code, as an ex officio member.

(f) The Director of Pesticide Regulation, as an ex officio member.

(g) Ten public members with experience in pollution prevention as appointed by the department, which shall include all of the following:

(1) Two representatives of local governments from different regions of the state.

(2) One representative of a publicly owned treatment works.

(3) Two representatives of industry.

(4) One representative of small business.

(5) One representative of organized labor.

(6) Two representatives of statewide environmental advocacy organizations.

(7) One representative of a statewide public health advocacy organization.

(h) The department may appoint up to two additional public members with experience in pollution prevention and detailed knowledge of one of the priority categories of businesses selected in accordance with **Section 25244.17.1**.

**Comment.** Section 84950 continues former Section 25244.15.1(a) without substantive change. See Sections 84895 (“business”), 83160 (“department”), 83370 (“treatment”).

#### § 84955. Chairperson

84955. The advisory committee shall select one member to serve as chairperson.

**Comment.** Section 84955 continues former Section 25244.15.1(b) without substantive change. See Section 84885 (“advisory committee”).

#### § 84960. Compensation and expense reimbursement

84960. The members of the advisory committee shall serve without compensation, but each member, other than officials of the state, upon request, shall

be reimbursed for all reasonable expenses incurred in the performance of their duties, as authorized by the department.

**Comment.** Section 84960 continues former Section 25244.15.1(c) without substantive change. See Sections Section 84885 (“advisory committee”), 83160 (“department”).

#### § 84965. Public forum

84965. When convened by the department, the advisory committee shall provide a public forum for discussion and deliberation on matters pertaining to the implementation of this division.

**Comment.** Section 84965 continues former Section 25244.15.1(d) without substantive change. See Sections Section 84885 (“advisory committee”), 83160 (“department”).

#### § 84970. Committee responsibilities

84970. The advisory committee’s responsibilities shall include, but not be limited to, the following:

(1) Reviewing and providing consultation and guidance in the preparation of the work plan authorized by **Section 25244.22**.

(2) Evaluating the performance and progress of the department’s pollution prevention program.

(3) Making recommendations to the department concerning program activities and funding priorities, and legislative changes, if needed.

(4) Making recommendations to the department concerning strategies to more effectively align its pollution prevention program with the goals of the department’s green chemistry program, including the implementation of **Article 14 (commencing with Section 25251)**.

**Comment.** Section 84970 continues former Section 25244.15.1(e) without substantive change. See Sections 84885 (“advisory committee”), 83160 (“department”).

### Article 4. Publication of Prepared Material

#### § 84985. Draft work plan

84985. (a) The department may, on a periodic basis, prepare and make available for public review a draft work plan for the department’s operations and activities in carrying out this chapter.

(b) The department shall prepare the work plan in consultation with the advisory committee and with other interested parties, including local government, industry, labor, health, and environmental organizations.

(c) The department shall hold a public meeting of the advisory committee to discuss the draft work plan before finalizing the work plan.

(d) The work plan shall include an outline of the department’s proposed operations and activities under this chapter.

(e) The department shall use the data summary analysis prepared pursuant to Section 84990 to develop criteria for the selection of targets for pollution prevention efforts.

(f) When identifying activities for inclusion in the work plan, the department shall consider potential benefits to human health and the environment, available resources, feasibility of applying pollution prevention techniques, and availability of related resources from other entities, such as other states, the federal government, local governments, and other organizations.

**Comment.** Section 84985 continues former Section 25244.22(a) without substantive change. See Sections Section 84885 (“advisory committee”), 83160 (“department”).

#### § 84990. Publication of data summary analysis

84990. (a) The department may periodically prepare, and make available to the public on its Internet Web site, a summary analysis of readily available data on the state’s hazardous waste generation and management patterns.

(b) The analysis may include information from various data sources including hazardous waste manifests, biennial generator reports, and United States Environmental Protection Agency Toxics Release Inventory reports.

(c) The department shall estimate the quantities of hazardous waste generated in the state, by hazardous waste stream, the amounts of hazardous waste generated in the state, by industry SIC or NAICS Code, and the amounts of hazardous waste that state generators sent offsite for management, by management method.

**Comment.** Section 84990 continues former Section 25244.22(b) without substantive change.

See Sections 83160 (“department”), 83210 (“hazardous waste”), 83250 (“manifest”), 84910 (“NAICS Code”).

**Note.** Existing Section 25244.22(b), which would be continued by proposed Section 84990, indicates in its first sentence, which would be continued by subdivision (a) of proposed Section 84990, that the department “may” prepare a summary analysis as described in that first sentence.

Section 25244.22(b) then provides in its second sentence, which would be continued by subdivision (b) of proposed Section 84990, that the analysis referenced in the first sentence of the section “may” include information specified in the second sentence.

Finally, Section 25244.22(b) provides in its third sentence, which would be continued by subdivision (c) of proposed Section 84990, that the department “shall” estimate quantities of various categories of hazardous waste by various identified methods.

This phrasing of Section 25244.22(b) raises the following questions:

1. Is the use of the word “may” in the second sentence of Section 25244.22(b) intended to be a *limitation* on what may be included in the summary analysis described in the first sentence of the section, or simply a permissive and non-exclusive authorization of what may be included?

2. Is the different use of the word “shall” in the third sentence of Section 25244.22(b) intended to *require* the department to include quantities of hazardous waste as described in the sentence, in any summary analysis prepared pursuant to Section 25244.22(b), or is the word “shall” intended only to compel the department to use the methods identified for measuring hazardous waste, *if* the department includes estimates of hazardous waste in a prepared analysis?

**The Commission welcomes comment on these questions.**

## Article 5. Pollution Prevention

## § 85000. Technical and Research Assistance Programs

85000. (a) The department may establish a technical and research assistance program to assist businesses in identifying and applying methods of pollution prevention.

(b) The program shall emphasize the following subjects:

(1) Assistance to smaller businesses that have inadequate technical and financial resources for obtaining information.

(2) Assessing pollution prevention methods.

(3) Developing and applying pollution prevention techniques.

(c) The program may include, but is not limited to, each of the following:

(1) Programs by private or public consultants, including onsite consultation at sites or locations where hazardous waste is generated, to aid those generators requiring assistance in developing and implementing the review and plan, the plan summary, the report, and the report summary required by this chapter.

(2) Seminars, workshops, training programs, and other similar activities to assist businesses to evaluate pollution prevention alternatives and to identify opportunities for pollution prevention.

(3) Assembling, cataloging, and disseminating information about pollution prevention methods, available consultant services, and regulatory requirements.

(4) The identification of a range of generic and specified technical pollution prevention solutions that can be applied by particular types of businesses.

**Comment.** Section 85000 continues former Section 25244.17 without substantive change.

See Sections 84895 (“business”), 83160 (“department”), 83210 (“hazardous waste”), 84930 (“review and plan”).

**Note.** Existing Section 25244.17(a), which would be continued by proposed Section 85000(c)(1), references an undescribed “report” and “report summary.”

**Are these references to a “Hazardous waste management performance report” or “report” defined by existing Section 25244.14(e) (which would be continued by proposed Section 84905)?**

## § 85005. Implementation of model pollution prevention in priority business categories

85005. (a) The department may establish a technical assistance and outreach program to promote implementation of model pollution prevention measures in priority business categories.

(b) In the work plan described in **Section 25244.22**, the department may, in consultation with the advisory committee, identify priority categories of businesses by SIC or NAICS Code, in compliance with the following requirements:

(1) At least one identified category of businesses shall be a category that consists primarily of small businesses.



(2) At least one identified category of businesses shall be a category that consists primarily of businesses affected by an action taken by the department pursuant to **Article 14 (commencing with Section 25251).**

(c) For each priority business category identified pursuant to subdivision (b), the department may implement a cooperative pollution prevention technical assistance and outreach program that includes the following elements:

(1) Effective pollution prevention measures for each business category.

(2) The most effective technical assistance and outreach methods to promote implementation of the pollution prevention measures identified in paragraph (1).

(3) Appropriate measures for evaluating the effectiveness of the technical assistance and outreach measures, including quantitative measures when feasible.

**Comment.** Section 85005 continues former Section 25244.17.1 without substantive change.

See Sections 84885 (“advisory committee”), 84895 (“business”), 83160 (“department”), 84910 (“NAICS Code”), 84915 (“pollution prevention”).

## Article 6. Outreach by Department

### § 85015. Pollution prevention training and resources

85015. (a) The department may provide pollution prevention training and resources to CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs to enable those entities to provide technical assistance to businesses in identifying and applying methods of pollution prevention.

(b) The activities conducted pursuant to paragraph (a) shall emphasize activities necessary to implement **Sections 25244.17 and 25244.17.1.**

(c) The department may determine, in consultation with the advisory committee, the most effective methods to promote implementation of pollution prevention education programs by CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs, the elements of which may include, but are not limited to, all of the following:

(1) Sponsoring workshops, conferences, technology fairs, and other training events.

(2) Sponsoring regional training groups, such as the regional hazardous waste reduction committees.

(3) Developing and distributing educational materials, such as short descriptions of successful pollution prevention projects and materials explaining how pollution prevention has been used by businesses to achieve compliance with environmental laws enforced by local governments.

(4) Developing site review checklists, training manuals, and technical resource manuals and using those resources to train CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs.

(5) Preparing and distributing resource lists such as lists of vendors, consultants, or providers of financial assistance for pollution prevention projects.

(6) Serving as an information clearinghouse to support telephone and onsite consultants with local governments.

**Comment.** Subdivisions (a) and (b) of Section 85015 continue former Section 25244.17.2(a) without substantive change.

Subdivision (c) continues former Section 25244.17.2(d) without substantive change.

See Sections 84885 (“advisory committee”), 84895 (“business”), 83110 (“CUPA”), 83160 (“department”) , 84915 (“pollution prevention”).

## **§ 85020. California Green Business Program**

85020. (a) As part of implementing the program authorized by this article, the department may develop a California Green Business Program would voluntarily certify small businesses that adopt environmentally preferable business practices, including, but not limited to, increased energy efficiency, reduced greenhouse gas emissions, promotion of water conservation, and reduced waste generation, and that provides support and assistance to programs operated by local governments to meet the following requirements:

(1) The program will be operated by a local government or its designee.

(2) The program will adopt industry-specific standards for green business certification, or its equivalent, in consultation with the other participants in the California Green Business Program.

(3) The program will grant a small business that voluntarily applies to the program a green business certification or its equivalent, only upon a determination by the program operator or designee that the business is a small business, as determined by the program, and complies with the industry-specific standards for green business certification adopted pursuant to paragraph (2).

(4) The program will grant a green business certification, or its equivalent, to small businesses, as determined by the program, in accordance with all of the following requirements:

(A) Before the program grants green business certification or its equivalent, the program conducts an evaluation to verify compliance with the appropriate green business certification standards adopted pursuant to paragraph (2).

(B) A green business certification or its equivalent is granted only to an individual location of a small business.

(C) A green business certification or its equivalent is granted to an individual small business only for a limited time period, and, after the elapse of that time period, the small business is required to reapply for that certification.

(D) Compliance with applicable federal, state, and local environmental laws and regulations is required as a condition of receiving a green business certification or its equivalent.

(b) The California Green Business Program may also do any or all of the following:

(1) Assist the network of statewide local government programs in implementing guidelines and structures that establish and promote a level of consistency among green business programs across the state.

(2) Support, through staffing and contracts, the development and maintenance of a statewide database to register small businesses granted green business certification, or its equivalent, pursuant to a local government program, and track measurable pollution reductions and cost savings.

(3) Solicit participation of additional local programs and facilitate the startup of new local programs.

(4) Develop technical guidance on pollution prevention measures, conduct industry studies and pilot projects, and provide policy coordination for the participating local programs.

(5) Collaborate with relevant state agencies that operate small business efficiency and economic development programs, including, but not limited to, the Department of Resources Recycling and Recovery, the Public Utilities Commission, the State Energy Resources Conservation and Development Commission, the State Air Resources Board, and the Department of Water Resources.

**Comment.** Subdivision (a) of Section 85020 combines and restates the first sentence of former Section 25244.17.2(b) and former Section 25244.17.2(c), without substantive change.

Subdivision (b) continues the second sentence of former Section 25244.17.2(b) without substantive change.

See Sections 84895 (“business”), 83160 (“department”), 84915 (“pollution prevention”).

**Notes. (1)** Proposed Section 85020(a) would combine and restate the first sentence of existing Section 25244.17.2(b), and 25244.17.2(c). That text in the existing section reads as follows:

“(b) As part of implementing the program authorized by this section, the department may develop a California Green Business Program that provides support and assistance to programs operated by local governments to meet the requirement of subdivision (c) and that would voluntarily certify small businesses that adopt environmentally preferable business practices, including, but not limited to, increased energy efficiency, reduced greenhouse gas emissions, promotion of water conservation, and reduced waste generation. [...]”

(c) The department may provide support and assistance to a local government program to enable the program to meet all of the following requirements:

(1) The program will be operated by a local government or its designee.

(2) The program will adopt industry-specific standards for green business certification, or its equivalent, in consultation with the other participants in the California Green Business Program.

(3) The program will grant a small business that voluntarily applies to the program a green business certification or its equivalent, only upon a determination by the program operator or designee that the business is a small business, as determined by the program, and complies with the industry-specific standards for green business certification adopted pursuant to paragraph (2).

(4) The program will grant a green business certification, or its equivalent, to small businesses, as determined by the program, in accordance with all of the following requirements:

(A) Before the program grants green business certification or its equivalent, the program conducts an evaluation to verify compliance with the appropriate green business certification standards adopted pursuant to paragraph (2).

(B) A green business certification or its equivalent is granted only to an individual location of a small business.

(C) A green business certification or its equivalent is granted to an individual small business only for a limited time period, and, after the elapse of that time period, the small business is required to reapply for that certification.

(D) Compliance with applicable federal, state, and local environmental laws and regulations is required as a condition of receiving a green business certification or its equivalent.”

**The Commission welcomes comment on this restatement of existing text in Section 25244.17.2.**

(2) Existing Section 25244.17.2(b), which would be continued in part by proposed Section 85020(a), begins with the phrase “As part of implementing the program authorized by this section, ....”

**The Commission welcomes clarification as to what specific “program” is intended to be referenced by that phrase, and welcomes comment as to whether this reference can be clarified without substantively changing the intended meaning of the phrase.**

(3) Even after this proposed recodification, this section remains quite difficult to parse. Part of that difficulty is attributable to the phrasing of subdivision (a) of the existing section, which does not make clear whether the California Green Business Program that the department is authorized to develop must satisfy TWO prerequisites — supporting and assisting specified local government programs AND voluntarily certifying specifying small businesses — or whether the program need provide only ONE of those two services.

**The Commission welcomes comment on this question.**

## Article 7. Generator Requirements

### § 85030. Source reduction evaluation review and plan

85030. (a) On or before September 1, 1991, and every four years thereafter, each generator shall conduct a source reduction evaluation review and plan pursuant to subdivision (b).

(b) Except as provided in subdivision (c), the source reduction evaluation review and plan required by subdivision (a) shall be conducted and completed for each site pursuant to the format adopted pursuant to **subdivision (a) of Section 25244.16** and shall include, at a minimum, all of the following:

(1) The name and location of the site.

(2) The SIC Code of the site.

(3) Identification of all routinely generated hazardous waste streams that annually weigh 600 kilograms or more and that result from ongoing processes or operations and exceed 5 percent of the total yearly weight of hazardous waste generated at the site, or, for extremely hazardous waste, that annually weigh 0.6 kilograms or more and exceed 5 percent of the total yearly weight of extremely hazardous waste generated at the site. For purposes of this paragraph, a hazardous waste stream identified pursuant to this paragraph shall also meet one of the following criteria:

(A) It is processed in a wastewater treatment unit that discharges to a publicly owned treatment works or under a national pollutant discharge elimination system

1 (NPDES) permit, as specified in the Federal Water Pollution Control Act, as  
2 amended (33 U.S.C. Sec. 1251 and following).

3 (B) It is not processed in a wastewater treatment unit, and its weight exceeds 5  
4 percent of the weight of the total yearly volume at the site, less the weight of any  
5 hazardous waste stream identified in subparagraph (A).

6 (4) For each hazardous waste stream identified in paragraph (3), the review and  
7 plan shall include all of the following information:

8 (A) An estimate of the quantity of hazardous waste generated.

9 (B) An evaluation of source reduction approaches available to the generator that  
10 are potentially viable. The evaluation shall consider at least all of the following  
11 source reduction approaches:

12 (i) Input change.

13 (ii) Operational improvement.

14 (iii) Production process change.

15 (iv) Product reformulation.

16 (5) A specification of, and a rationale for, the technically feasible and  
17 economically practicable source reduction measures that will be taken by the  
18 generator with respect to each hazardous waste stream identified in paragraph (3).  
19 The review and plan shall fully document any statement explaining the generator's  
20 rationale for rejecting any available source reduction approach identified in  
21 paragraph (4).

22 (6) An evaluation, and, to the extent practicable, a quantification, of the effects of  
23 the chosen source reduction method on emissions and discharges to air, water, or  
24 land.

25 (7) A timetable for making reasonable and measurable progress towards  
26 implementation of the selected source reduction measures specified in paragraph  
27 (5).

28 (8) Certification pursuant to subdivision (d).

29 (9) A generator subject to this chapter shall include in its source reduction  
30 evaluation review and plan four-year numerical goals for reducing the generation of  
31 hazardous waste streams through the approaches provided for in subparagraph (B)  
32 of paragraph (4), based upon its best estimate of what is achievable in that four-year  
33 period.

34 (10) A summary progress report that briefly summarizes and, to the extent  
35 practicable, quantifies, in a manner that is understandable to the general public, the  
36 results of implementing the source reduction methods identified in the generator's  
37 review and plan for each waste stream addressed by the previous plan over the  
38 previous four years. The report shall also include an estimate of the amount of  
39 reduction that the generator anticipates will be achieved by the implementation of  
40 source reduction methods during the period between the preparation of the review  
41 and plan and the preparation of the generator's next review and plan.

1 (c) If a generator owns or operates multiple sites with similar processes,  
2 operations, and waste streams, the generator may prepare a single multisite review  
3 and plan addressing all of these sites.

4 (d) Every review and plan conducted pursuant to this section shall be submitted  
5 by the generator for review and certification by an engineer who is registered as a  
6 professional engineer pursuant to Section 6762 of the Business and Professions  
7 Code and who has demonstrated expertise in hazardous waste management, by an  
8 individual who is responsible for the processes and operations of the site, or by an  
9 environmental assessor who has demonstrated expertise in hazardous waste  
10 management. The engineer, individual, or environmental assessor shall certify the  
11 review and plan only if the review and plan meet all of the following requirements:

12 (1) The review and plan addresses each hazardous waste stream identified  
13 pursuant to paragraph (3) of subdivision (b).

14 (2) The review and plan addresses the source reduction approaches specified in  
15 subparagraph (B) of paragraph (4) of subdivision (b).

16 (3) The review and plan clearly sets forth the measures to be taken with respect to  
17 each hazardous waste stream for which source reduction has been found to be  
18 technically feasible and economically practicable, with timetables for making  
19 reasonable and measurable progress, and properly documents the rationale for  
20 rejecting available source reduction measures.

21 (4) The review and plan does not merely shift hazardous waste from one  
22 environmental medium to another environmental medium by increasing emissions  
23 or discharges to air, water, or land.

24 (e) At the time a review and plan is submitted to the department or the unified  
25 program agency, the generator shall certify that the generator has implemented, is  
26 implementing, or will be implementing, the source reduction measures identified in  
27 the review and plan in accordance with the implementation schedule contained in  
28 the review and plan. A generator may determine not to implement a measure  
29 selected in paragraph (5) of subdivision (b) only if the generator determines, upon  
30 conducting further analysis or due to unexpected circumstances, that the selected  
31 measure is not technically feasible or economically practicable, or if attempts to  
32 implement that measure reveal that the measure would result in, or has resulted in,  
33 any of the following:

34 (1) An increase in the generation of hazardous waste.

35 (2) An increase in the release of hazardous chemicals to other environmental  
36 media.

37 (3) Adverse impacts on product quality.

38 (4) A significant increase in the risk of an adverse impact to human health or the  
39 environment.

40 (f) If the generator elects not to implement the review and plan, including, but not  
41 limited to, a selected measure pursuant to subdivision (e), the generator shall amend  
42 its review and plan to reflect that election and include in the review and plan proper  
43 documentation identifying the rationale for that election.

**Comment.** Section 85030 continues former Section 25244.19 without substantive change. See Sections 83160 (“department”), 83190 (“environmental assessor”), 83195 (“extremely hazardous waste”), 83210 (“hazardous waste”), 83330 (“release”), 83370 (“treatment”), 83375 (“unified program agency”), (“SIC Code”), 84930 (“review and plan”), 84925 (“source reduction”), 83395 (“waste”).

**Notes. (1)** Several provisions in existing Section 25244.19, which would be continued by proposed Section 85030, refer to an unspecified “generator.” One of those existing provisions, Section 25244.19(a)(9), which would be continued by proposed Section 85030(a)(9), refers to “[a] generator subject to this article.”

Another section in the existing article, Section 25244.14, specifies a number of definitions that apply for purposes of the article, but the list of definitions does not include the term “generator.”

However, the term “generator” is defined, expressly for purposes of *another* existing statutory article, by existing Section 25205.1(e).

**The Commission welcomes comment on two issues relating to the use of the term “generator” in existing Section 25244.19:**

1. Despite apparent statutory language to the contrary, is the definition of the term “generator” in existing Section 25205.1(e) meant to define that term as used throughout existing Section 25244.19?

2. What is the intended meaning of the term “generator subject to this article” in existing Section 25244.19(a)(9)?

**(2)** Existing Section 25244.19(e), which would be continued by proposed Section 85030(f), begins with the phrase “At the time a review and plan is submitted to the department or the unified program agency,....”

**The Commission welcomes comment on whether there is a statutory provision, which could be cross-referenced in the recodification of Section 25244.29(e), specifying when the referenced review and plan is required to be submitted to the department or unified program agency.**

## **§ 85035. Hazardous waste management performance report**

85035. (a) On or before September 1, 1991, and every four years thereafter, each generator shall prepare a hazardous waste management performance report documenting hazardous waste management approaches implemented by the generator.

(b) Except as provided in subdivision (d), the hazardous waste management performance report required by subdivision (a) shall be prepared for each site in accordance with the format adopted pursuant to **subdivision (a) of Section 25244.16** and shall include all of the following:

(1) The name and location of the site.

(2) The SIC Code for the site.

(3) All of the following information for each waste stream identified pursuant to **paragraph (3) of subdivision (b) of Section 25244.19:**

(A) An estimate of the quantity of hazardous waste generated and the quantity of hazardous waste managed, both onsite and offsite, during the current reporting year and the baseline year, as specified in subdivision (c).

(B) An abstract for each source reduction, recycling, or treatment technology implemented from the baseline year through the current reporting year, if the reporting year is different from the baseline year.

(C) A description of factors during the current reporting year that have affected hazardous waste generation and onsite and offsite hazardous waste management since the baseline year, including, but not limited to, any of the following:

(i) Changes in business activity.

(ii) Changes in waste classification.

(iii) Natural phenomena.

(iv) Other factors that have affected either the quantity of hazardous waste generated or onsite and offsite hazardous waste management requirements.

(4) The certification of the report pursuant to subdivision (e).

(c) For purposes of subdivision (b), the following definitions apply:

(1) The current reporting year is the calendar year immediately preceding the year in which the report is to be prepared.

(2) The baseline year is either of the following, whichever is applicable:

(A) For the initial report, the baseline year is the calendar year selected by the generator for which substantial hazardous waste generation, or onsite or offsite management, data is available prior to 1991.

(B) For all subsequent reports, the baseline year is the current reporting year of the immediately preceding report.

(d) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite report addressing all of these sites.

(e) Every report completed pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the report only if the report identifies factors that affect the generation and onsite and offsite management of hazardous wastes and summarizes the effect of those factors on the generation and onsite and offsite management of hazardous wastes.

**Comment.** Section 85035 continues former Section 25244.20 without substantive change.

Sections 84895 (“business”), 83190 (“environmental assessor”), 83210 (“hazardous waste”), 83325 (“recycling”), 83370 (“treatment”), 84900 (“hazardous waste management approaches”), 84905 (“hazardous waste management performance report”), 84920 (“SIC Code”), 84925 (“source reduction”), 83395 (“waste”).

#### § 85040. Generator retention of review and plan and report

85040. (a) Every generator shall retain the original of the current review and plan and report, shall maintain a copy of the current review and plan and report at each site, or, for a multisite review and plan or report, at a central location, and upon



request, shall make it available to any authorized representative of the department or the unified program agency conducting an inspection pursuant to **Section 25185**.

(b) If a generator fails, within five days, to make available to the inspector the review and plan or report, the department, the unified program agency, or any authorized representative of the department, or of the unified program agency, conducting an inspection pursuant to **Section 25185**, shall, if appropriate, impose a civil penalty pursuant to **Section 25187**, in an amount not to exceed one thousand dollars (\$1,000) for each day the violation of this chapter continues, notwithstanding **Section 25189.2**.

(c) If a generator fails to respond to a request for a copy of its review and plan or report made by the department or a unified program agency pursuant to **subdivision (a) of Section 25244.18**, or by a local agency pursuant to **subdivision (e) of Section 25244.18**, within 30 days from the date of the request, the department or unified program agency shall, if appropriate, assess a civil penalty pursuant to **Section 25187**, in an amount not to exceed one thousand dollars (\$1,000) for each day the violation of this chapter continues, notwithstanding **Section 25189.2**.

**Comment.** Section 85040 continues former Section 25244.21(a) and (b) without substantive change.

See Sections 83160 (“department”), 83375 (“unified program agency”), 84905 (“report”), 84930 (“review and plan”).

#### **§ 85045. Evaluation of generator review and plan or report**

85045. (a) The department or the unified program agency may request from any generator, and the generator shall provide within 30 days from the date of the request, a copy of the generator’s review and plan or report conducted and completed pursuant to **Section 25244.19 or 25244.20**.

(b) The department or the unified program agency may evaluate any of those documents submitted to the department or the unified program agency to determine whether it satisfies the requirements of this chapter.

(c) If the department or the unified program agency determines that a generator has not completed the review and plan in the manner required by **Section 25244.19**, or the report in the manner required by **Section 25244.20**, the department or the unified program agency shall provide the generator with a notice of noncompliance, specifying the deficiencies in the review and plan or report identified by the department.

(d) If the department or the unified program agency finds that the review and plan does not comply with **Section 25244.19**, the department or the unified program agency shall consider the review and plan to be incomplete.

(e) A generator shall file a revised review and plan or report correcting the deficiencies identified by the department or the unified program agency within 60 days from the date of the receipt of the notice.

(f) The department or the unified program agency may grant, in response to a written request from the generator, an extension of the 60-day deadline, for cause,

except that the department or the unified program agency shall not grant that extension for more than an additional 60 days.

(g) If a generator fails to submit a revised review and plan or report complying with the requirements of this chapter within the required period, or if the department or unified program agency determines that a generator has failed to implement the measures included in the generator's review and plan for reducing the generator's hazardous waste, in accordance with **Section 25244.19**, the department or the unified program agency may impose civil penalties pursuant to **Section 25187**, in an amount not to exceed one thousand dollars (\$1,000) for each day the violation of this chapter continues, notwithstanding **Section 25189.2**, seek an order directing compliance pursuant to **Section 25181**, or enter into a consent agreement or a compliance schedule with the generator.

(h) If a generator fails to implement a measure specified in the review and plan pursuant to **paragraph (5) of subdivision (b) of Section 25244.19**, the generator shall not be deemed to be in violation of **Section 25244.19** for not implementing the selected measure if the generator does both of the following:

(1) The generator finds that, upon further analysis or as a result of unexpected consequences, the selected measure is not technically feasible or economically practicable, or if the selected approach has resulted in any of the following:

(A) An increase in the generation of hazardous waste.

(B) An increase in the release of hazardous chemical contaminants to other media.

(C) Adverse impacts on product quality.

(D) A significant increase in the risk of an adverse impact to human health or the environment.

(2) The generator revises the review and plan to comply with the requirements of **Section 25244.19**.

(i) When taking enforcement action pursuant to this chapter, the department or the unified program agency shall not judge the appropriateness of any decisions or proposed measures contained in a review and plan or report, but shall only determine whether the review and plan or report is complete, prepared, and implemented in accordance with this chapter.

(j) In addition to the unified program agency, an appropriate local agency that has jurisdiction over a generator's site may request from the generator, and the generator shall provide within 30 days from the date of that request, a copy of the generator's current review and plan and report.

(k) In carrying out this chapter, the department shall not disseminate information determined to be a trade secret pursuant to **Section 25244.23**.

**Comment.** Section 85045 continues former Section 25244.18 without substantive change.

See Sections 84890 ("appropriate local agency"), 83160 ("department"), 83210 ("hazardous waste"), 83330 ("release"), 83375 ("unified program agency"), 84905 ("report"), 84930 ("review and plan").

1   **§ 85050. Request for certification of generator compliance**

2       85050. (a) A person may request the department to certify that a generator is in  
3 compliance with this chapter by having the department certify that the generator has  
4 properly completed the review and plan and report required pursuant to **Sections**  
5 **25244.19 and 25244.20.**

6       (b) The department shall respond within 60 days to a request for certification.

7       (c) Upon receiving a request for certification, the department shall request from  
8 the generator, who is the subject of the request, a copy of the generator's review and  
9 plan and report, pursuant to **subdivision (a) of Section 25244.18**, if the department  
10 does not have these documents.

11       (d) The department shall forward a copy of the review and plan and report to the  
12 person requesting certification, within 10 days from the date that the department  
13 receives the request for certification or receives the review and plan and report,  
14 whichever is later.

15       (e) The department shall protect trade secrets in accordance with **Section**  
16 **25244.23** in a review and plan or report, requested to be released pursuant to this  
17 section.

18       (f) This section does not prohibit any person from directly requesting from a  
19 generator a copy of the review and plan or report.

20       (g) Solely for the purposes of responding to a request pursuant to this section, the  
21 department shall deem the review and plan or report to be a public record subject to  
22 **Section 25152.5**, and shall act in compliance with that **section**.

23       **Comment.** Section 85050 continues former Section 25244.21(c) without substantive change.

24       See Sections 83160 ("department"), 83295 ("person"), 84905 ("report"), 84930 ("review and  
25 plan").

26                                   Article 8. Department Responsibilities

27   **§ 85065. Department adoption of format to be used by generators**

28       85065. (a) The department shall adopt a format to be used by generators for  
29 completing the review and plan required by **Section 25244.19**, and the report  
30 required by **Section 25244.20.**

31       (b) The format shall include at least all of the factors the generator is required to  
32 include in the review and plan and the report.

33       (c) The department may include any other factor determined by the department to  
34 be necessary to carry out this chapter.

35       (d) The adoption of a format pursuant to this subdivision is not subject to Chapter  
36 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the  
37 Government Code.

38       **Comment.** Section 85065 continues former Section 25244.16(a) without substantive change.

39       See Sections 83160 ("department"), 84905 ("report"), 84930 ("review and plan").

1   **§ 85070. Department establishment of system to process generator information**

2       85070. (a) The department shall establish a data and information system to be  
3       used by the department for processing and evaluating the source reduction and other  
4       hazardous waste management information submitted by generators pursuant to  
5       **Section 25244.18.**

6       (b) In establishing the data and information system, the department shall do all of  
7       the following:

8           (1) Establish methods and procedures for appropriately processing or managing  
9       hazardous waste source reduction and management information.

10          (2) Use the data management expertise, resources, and forms of already  
11       established environmental protection programs, to the extent practicable.

12          (3) Establish computerized data retrieval and data processing systems, including  
13       safeguards to protect trade secrets designated pursuant to **Section 25244.23.**

14          (4) Identify additional data and information needs of the program.

15       **Comment.** Section 85070 continues former Section 25244.16(b) without substantive change.

16       See Sections 83160 (“department”), 83210 (“hazardous waste”), 83220 (“hazardous waste  
17       management”), 83300 (“processing”), 84925 (“source reduction”).

18   **§ 85075. Protection of trade secrets**

19       85075. (a) The department shall adopt regulations to ensure that trade secrets  
20       designated by a generator in all or a portion of the review and plan or the report  
21       required by this chapter are utilized by the director, the department, the unified  
22       program agency, or the appropriate local agency only in connection with the  
23       responsibilities of the department pursuant to this chapter, and that those trade  
24       secrets are not otherwise disseminated by the director, the department, the unified  
25       program agency, or any authorized representative of the department, or the  
26       appropriate local agency, without the consent of the generator.

27       (b) Any information subject to this section shall be made available to  
28       governmental agencies for use in making studies and for use in judicial review or  
29       enforcement proceedings involving the person furnishing the information.

30       (c) As provided by **Section 25159.5**, the regulations adopted pursuant to  
31       subdivision (a) shall conform with the corresponding trade secret regulations  
32       adopted by the Environmental Protection Agency pursuant to the federal act, except  
33       that the regulations adopted by the department may be more stringent or more  
34       extensive than the federal trade secret regulations.

35       (d) “Trade secrets,” as used in this section, may include, but are not limited to,  
36       any formula, plan, pattern, process, tool, mechanism, compound, procedure,  
37       production data, or compilation of information that is not patented, that is known  
38       only to certain individuals within a commercial concern who are using it to  
39       fabricate, produce, or compound an article of trade or a service having commercial  
40       value, and that gives its user an opportunity to obtain a business advantage over  
41       competitors who do not know or use it.

(e) The department, the unified program agency, and the appropriate local agency shall protect from disclosure any trade secret designated by the generator pursuant to this section. The department shall make available information concerning pollution prevention approaches that have proved successful, and that do not constitute a trade secret, when carrying out **subdivision (c) of Section 25244.17**.

(f) This section does not permit a generator to refuse to disclose the information required pursuant to this chapter to the department, the unified program agency, or the appropriate local agency, an officer or employee of the department, the unified program agency, or the appropriate local agency, in connection with the official duties of that officer or employee under this chapter.

(g) Any officer or employee of the department, the unified program agency, or the appropriate local agency, or any other person, who, because of their employment or official position, has possession of, or has access to, confidential information, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars (\$1,000), or by both the fine and imprisonment.

**Comment.** Section 85075 continues former Section 25244.23 without substantive change.

See Sections 84890 (“appropriate local agency”), 84895 (“business”), 83160 (“department”), 83165 (“director”), 83200 (“federal act”), 83295 (“person”), 84915 (“pollution prevention”), 84905 (“report”), 84930 (“review and plan”).

## CHAPTER 3. TOXICS IN PACKAGING

### Article 1. Preliminary Provisions

#### § 85150. Short title

85150. This chapter shall be known and may be cited as the Toxics in Packaging Prevention Act.

**Comment.** Section 85150 continues former Section 25214.11(b) without substantive change.

#### § 85155. Legislative findings and declarations

85155. The Legislature finds and declares all of the following:

(a) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment.

(b) Packaging comprises a significant percentage of the overall solid waste stream.

(c) The presence of heavy metals in packaging is a part of the total concern regarding the disposal of hazardous constituents in the solid waste stream, in light of the presence of heavy metals in emissions or ash when packaging is incinerated, or in leachate when packaging is disposed of in a solid waste landfill.

(d) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.

(e) It is desirable, as a first step in reducing the toxicity of packaging waste, and reducing the hazardous materials that may be disposed of in solid waste landfills, to eliminate the addition of these heavy metals to packaging.

(f) The intent of this chapter is to achieve this reduction in toxicity without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

**Comment.** Section 85155 continues former Section 25214.11(a) without substantive change. See Sections 60175 (“disposal”), 60320 (“recycled material”), 60390 (“waste”).

#### § 85160. Severability of provisions

85160. (a) The provisions of this chapter are severable, and if a court holds that a phrase, clause, sentence, or provision of this chapter is invalid, or that its applicability to a person or circumstance is invalid, the remainder of the chapter and its applicability to other persons and circumstances may not be affected.

(b) The provisions of this chapter shall be liberally construed to give effect to the purposes of this chapter.

**Comment.** Section 85160 continues former Section 25214.20 without substantive change. See Section 60295 (“person”).

#### § 85165. Nonapplication of chapter

85165. This chapter does not do any of the following:

(a) Affect a duty or other requirement imposed under federal or state law.

(b) Alter or diminish a legal obligation otherwise required in common law or by statute or regulation.

(c) Create or enlarge a defense in an action to enforce a legal obligation otherwise required in common law or by statute or regulation.

**Comment.** Section 85165 continues former Section 25214.19 without substantive change.

### Article 2. Definitions

#### § 85180. Application of definitions

85180. For purposes of this chapter, the definitions in this article shall apply.

**Comment.** Section 85180 continues the introductory clause of former Section 25214.12 without substantive change.

#### § 85185. “ASTM”

85185. “ASTM” means the American Society for Testing and Materials.

**Comment.** Section 85185 continues former Section 25214.12(b) without substantive change.

1   **§ 85190. “Authorized official”**

2       85190. “Authorized official” means a representative of a manufacturer or supplier  
3 who is authorized pursuant to the laws of this state to bind the manufacturer or  
4 supplier regarding the accuracy of the content of a certificate of compliance.

5       **Comment.** Section 85190 continues former Section 25214.12(a) without substantive change.  
6 See Section 85210 (“manufacturer”), 85245 (“supplier”).

7   **§ 85195. “Distribution”**

8       85195. (a) “Distribution” means the practice of taking title to a package or a  
9 packaging component for promotional purposes or resale.

10      (b) A person involved solely in delivering a package or a packaging component  
11 on behalf of a third party is not engaging in distribution.

12       **Comment.** Section 85195 continues former Section 25214.12(c) without substantive change.  
13 See Sections 85220 (“package”), 85225 (“packaging component”), 60295 (“person”).

14   **§ 85200. “Incidental presence”**

15      85200. “Incidental presence” means the presence of a regulated metal as an  
16 unintended or undesired ingredient of a package or packaging component.

17       **Comment.** Section 85200 continues former Section 25214.12(e) without substantive change.  
18 See Sections 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”).

19   **§ 85205. “Intentional introduction”**

20      85205. (a) “Intentional introduction,” except as provided in subdivision (b),  
21 means the act of deliberately utilizing a regulated metal in the formation of a  
22 package or packaging component where its continued presence is desired in the final  
23 package or packaging component to provide a specific characteristic, appearance,  
24 or quality.

25      (b) “Intentional introduction” does not include either of the following:

26      (1) The use of a regulated metal as a processing agent or intermediate to impart  
27 certain chemical or physical changes during manufacturing, where the incidental  
28 retention of a residue of that metal in the final package or packaging component is  
29 not desired or deliberate, if the final package or packaging component is in  
30 compliance with subdivision (b) of Section 85310.

31      (2) The use of recycled materials as feedstock for the manufacture of new  
32 packaging materials, where some portion of the recycled materials may contain  
33 amounts of a regulated metal, if the new package or packaging component is in  
34 compliance with subdivision (b) of Section 85310.

35       **Comment.** Section 85205 continues former Section 25214.12(d) without substantive change.

36 See Sections 85220 (“package”), 85225 (“packaging component”), 85215 (“manufacturing”),  
37 85235 (“recycled material”), 85240 (“regulated metal”).

38   **§ 85210. “Manufacturer”**

39      85210. “Manufacturer” means any person, firm, association, partnership, or  
40 corporation producing a package or packaging component.

**Comment.** Section 85210 continues former Section 25214.12(f) without substantive change. See Sections 85220 (“package”), 85225 (“packaging component”), 60295 (“person”).

**§ 85215. “Manufacturing”**

85215. “Manufacturing” means the physical or chemical modification of a material to produce packaging or a packaging component.

**Comment.** Section 85215 continues former Section 25214.12(g) without substantive change. See Sections 85220 (“package”), 85225 (“packaging component”).

**§ 85220. “Package”**

85220. (a) “Package,” except as provided in subdivision (c), means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product from its point of manufacture to its sale or transfer to a consumer, including a unity package, an intermediate package, or a shipping container, as defined in the ASTM specification D 996.

(b) “Package” also includes, but is not limited to, unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(c) “Package” does not include a reusable bag, as defined in subdivision (d) of Section 42250 of the Public Resources Code.

**Comment.** Section 85220 continues former Section 25214.12(h) without substantive change.

**Staff Notes. (1)** Existing Section 25214.12(h), which would be continued by proposed Section 85220, as well as existing Section 25214.14(d)(2), which would be continued by proposed Section 85330(c), and existing Section 25214.15(e), which would be continued by proposed Section 85365, all contain at least one reference to “handling” a product, or a package’s contents.

Existing Section 25116, which would be continued by proposed Section 60205, defines the term “handling” to mean “the transporting or transferring from one place to another, or pumping, processing, storing, or packaging of hazardous waste, but does not include the handling of any substance before it becomes a waste.” And existing Section 25110, which would be continued by proposed Section 60075, states that the definition of “handling” in existing Section 25116 “governs the construction” of the entirety of Chapter 20 of the Health and Safety Code, which includes existing Section 25214.12(h).

Based on this chapter-wide assignment of this definition, the use of the term “handling” in existing Section 25214.14(d)(2), (e), and (h) raises two questions:

1. Is the term “handling” as used in existing Section 25214.14(d)(2), (e), or (h) intended to be defined as provided by existing Section 25116?

2. If not, would any statutory resolution of this issue in proposed Section 85220, 85330, or 85365 be helpful? For example, a synonym for “handling” could be substituted in the three proposed sections, or each provision could be revised to provide that the term “handling” as used in the section is not intended as a defined term.

**The staff welcomes comment on these questions.**

**(2)** Existing Section 25214.12(h) excludes from the definition of “package” a “reusable bag, as defined in subdivision (d) of Section 42250 of the Public Resources Code.”



However, Section 42250 of the Public Resources Code was repealed in 2012, and its provided definition of “reusable bag” does not appear to have been continued in any other code section. The definition that section provided prior to its repeal was as follows:

“Reusable bag” means either of the following:

(1) A bag made of cloth or other machine washable fabric that has handles.

(2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

**The staff welcomes comment on whether the definition of “reusable bag” above should be incorporated in the text of proposed Section 85220 or offering another suggestion as to how to address this recodification issue.**

#### § 85225. “Packaging component”

85225. (a) “Packaging component” means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives.

(b) Tin-plated steel that meets the ASTM specification A 623, shall be considered as a single package component.

(c) Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

**Comment.** Section 85225 continues former Section 25214.12(i) without substantive change. See Section 85220 (“package”).

**Staff Note.** The intended meaning of the third sentence of existing Section 25214.12(i), which would be continued as proposed Section 85225(c), is unclear. The staff has two questions:

(1) Is the direction in that sentence that the steel specified in that sentence “shall be treated in the same manner as tin-plated steel” intended to mean that the steel specified is to be considered a single package component?

(2) If so, is the reference in that third sentence to “tin-plated steel” intended to refer to *any* tin-plated steel, or only to “tin-plated steel that meets the ASTM specification A 623,” as referenced in the second sentence of existing Section 25214.12(i), which would be continued by proposed Section 85215(b)?

**The staff welcomes comment on these questions.**

#### § 85230. “Purchaser”

85230. “Purchaser” means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

**Comment.** Section 85230 continues former Section 25214.12(j) without substantive change.

See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 60295 (“person”), 85245 (“supplier”).

1   **§ 85235. “Recycled material”**

2       85235. (a) “Recycled material,” except as provided in subdivision (c), means a  
3 material that has been separated from solid waste for the purpose of recycling the  
4 material as a secondary material feedstock.

5       (b) Recycled material includes paper, plastic, wood, glass, ceramics, metals, and  
6 other materials, except as provided in subdivision (c).

7       (c) Recycled material does not include a regulated metal that has been separated  
8 from other materials into its elemental or other chemical state for recycling as a  
9 secondary material feedstock.

10      **Comment.** Section 85235 continues former Section 25214.12(k) without substantive change.  
11      See Sections 60325 (“recycling”), 85240 (“regulated metal”), 60390 (“waste”).

12   **§ 85240. “Regulated metal”**

13       85240. “Regulated metal” means lead, mercury, cadmium, or hexavalent  
14 chromium.

15      **Comment.** Section 85240 continues former Section 25214.12(l) without substantive change.

16   **§ 85245. “Supplier”**

17       85245. (a) “Supplier,” except as provided in subdivision (b), means a person who  
18 does or is one or more of the following:

19       (1) Sells, offers for sale, or offers for promotional purposes, a package or  
20 packaging component that is used by any other person to package a product.

21       (2) Takes title to a package or packaging component, produced either  
22 domestically or in a foreign country, that is purchased for resale or promotional  
23 purposes.

24       (3) Acts as an intermediary for the purchase of a package or packaging component  
25 for resale from a manufacturer located in another country to a purchaser located in  
26 this state, and who may receive a commission or a fee on that sale.

27       (4) Listed as the importer of record on a United States Customs Service form for  
28 an imported package or packaging component.

29       (b) “Supplier” does not include a person involved solely in delivering a package  
30 or packaging component on behalf of a third party.

31      **Comment.** Section 85245 continues former Section 25214.12(m) without substantive change.

32      See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”),  
33 60295 (“person”), 85230 (“purchaser”).

34   **§ 85250. “Toxics in Packaging Clearinghouse”**

35       64323. “Toxics in Packaging Clearinghouse” means the Toxics in Packaging  
36 Clearinghouse (TPCH) of the Council of State Governments.

37      **Comment.** Section 85250 continues former Section 25214.12(n) without substantive change.

## Article 3. Department Authority and Responsibilities

## § 85270. Enforcement of chapter

85270. (a) The department may enforce the requirements of this chapter pursuant to its authority to enforce this division under all applicable provisions of law.

(b) The department may also adopt regulations to implement this chapter, as deemed necessary to further the purposes of this chapter.

**Comment.** Subdivision (a) of Section 85270 continues former Section 25214.21 without substantive change.

Subdivision (b) continues former Section 25214.26 without substantive change.

See Section 60160 (“department”).

## § 85275. Entry and inspection

85275. (a) For the purpose of administering and enforcing this chapter, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(1) Enter a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold.

(2) Enter a vehicle that is being used to transport, hold, or sell the package or packaging component.

(3) Enter a place where a package or packaging component is suspected of being held or sold in violation of this chapter.

(4) Inspect a factory, warehouse, establishment, vehicle, or place described in paragraph (1), (2), or (3) and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place.

(5) Inspect, in the case of a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold, any record, file, paper, process, control, and facility that has a bearing on whether the package, packaging component, or product in a package is being manufactured, packed, held, transported, sold, offered for sale, or offered for promotional purposes in violation of this chapter.

(6) Access all records of a carrier in commerce relating to the movement in commerce of a package or packaging component, or the holding of that package or packaging component during or after the movement, and the quantity, shipper, and consignee of the package or packaging component.

(b) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

**Comment.** Section 85275 continues former Section 25214.23 with the exception of the second sentence of Section 25214.23(a)(3), without substantive change.

The second sentence of Section 25214.23(a)(3) is continued by Section 85395.  
See Section 60160 (“department”), 85220 (“package”), 85225 (“packaging component”).

**§ 85280. Securing of samples**

85280. (a) When taking an action authorized pursuant to Section 85275, an authorized representative of the department may secure a sample of a package, packaging component, or product in a package. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(b) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(c) A sample that is secured in compliance with this section and found in compliance with this chapter that is destroyed during testing shall be subject to a claim for reimbursement.

**Comment.** Section 85280 continues former Section 25214.24 without substantive change.  
See Section 60160 (“department”), 85220 (“package”), 85225 (“packaging component”).

**§ 85285. Recommendations to Governor and Legislature**

85285. If the department determines that other substances contained in packaging should be added as regulated metals to the list set forth in Section 85240 in order to further reduce the toxicity of packaging waste, the department may submit recommendations to the Governor and the Legislature for additions to the list, along with a description of the nature of the substitutes used in lieu of the recommended additions to the list.

**Comment.** Section 85285 continues former Section 25214.18 without substantive change.  
See Sections 60160 (“department”), 85240 (“regulated metal”), 60390 (“waste”).

**§ 85290. Public access to information**

85290. Except as provided in Section 85295, the department, pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), shall provide the public with access to all information relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier of a package or packaging component pursuant to this chapter.

**Comment.** Section 85290 continues former Section 25214.17(a) without substantive change.  
See Sections 60160 (“department”), 85240 (“regulated metal”), 60390 (“waste”).

**§ 85295. Trade secrets**

85295. (a) A manufacturer or supplier providing information to the department pursuant to this article shall, at the time of submission, identify all information that the manufacturer or supplier believes is a trade secret as defined in **Section 25173**.

(b) The department shall keep confidential any information identified by the manufacturer or supplier as a trade secret in accordance with departmental

procedures that have been adopted pursuant to **Section 25173**, if the department determines that the information is a trade secret as defined in **Section 25173**.

(c) The department shall make available to the public any information identified by the manufacturer or supplier as a trade secret that the department determines is not a trade secret.

**Comment.** Section 85295 restates former Section 25214.17(b) without substantive change.

See Section 60160 (“department”), 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85245 (“supplier”).

**Staff Notes. (1)** Proposed Section 85295 would restate existing Section 25214.17 for clarity. The existing section reads as follows:

“(a) Except as provided in subdivision (b), the department, pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), shall provide the public with access to all information relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier of a package or packaging component pursuant to this article.

(b)(1) The department shall keep confidential any information identified by the manufacturer or supplier, pursuant to paragraph (2), as a trade secret, as defined in Section 25173, in accordance with departmental procedures that have been adopted pursuant to Section 25173, if the department determines that this information meets that definition of a trade secret.

(2) A manufacturer or supplier providing information to the department pursuant to this article shall, at the time of submission, identify all information that the manufacturer or supplier believes is a trade secret. The department shall make available to the public any information that is not a trade secret.”

**The staff welcomes comment on whether this restatement of existing Section 25214.17 improves the clarity of the section without substantively changing its meaning.**

(2) The second sentence of existing Section 25214.17(b)(2) (which would be continued by proposed Section 85295(c)) provides that if a manufacturer or supplier identifies information that it believes to be a trade secret, and the department determines the identified information is *not* a trade secret, the department “shall make [that information] available to the public.” This second sentence, read in conjunction with the text of existing Section 25214.17(a) (which would be continued by proposed Section 85290), suggests that information provided pursuant to existing Section 25214.17(b)(2) that the department determined was not a trade secret would then need to be made available to the public without consideration of any other exemptions from disclosure under the California Public Records Act, such as those listed in Part 6 (commencing with Section 7930.000) of Division 10 of title 1 of the Government Code.

**The staff welcomes comment on whether that construction of the two existing subdivisions is correct, and if not, whether and how the text of the existing section should be clarified.**

#### Article 4. Prohibited Offering of Item for Sale or Promotional Purposes

##### § 85310. Generally applicable prohibitions

85310. Except as provided in Section 85330, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state any of the following:

(a) A product in a package that includes a regulated metal in the package, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(b) A package, packaging component, or product in a package if the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component exceeds 100 parts per million by weight.

**Comment.** Subdivision (a) of Section 85310 continues former Section 25214.13(b) without substantive change.

Subdivision (b) continues former Section 25214.13(c) without substantive change.

See Sections 85195 (“distribution”), 85215 (“manufacturing”), 60295 (“person”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”).

**Staff Note.** Existing Section 25214.13, which would be continued by proposed Sections 85310 and 85315, prohibit the “offer for sale or for promotional purposes in this state” of a number of specified items.

The phrasing of the quoted text above fails to make clear whether the act that must occur “in this state” to trigger the prohibition of the section is the *making of the offer* identified in the quoted text, or the *sale or promotional purpose*. For example, an offer could be made in a state other than California, to arrange for a prohibited item to be delivered in California where it could be used for a promotional purpose. Alternatively, the reverse scenario could occur. To which scenarios are the prohibitions in Section 25214.13 intended to apply?

**The staff welcomes comment clarifying this possible ambiguity in existing Section 25214.13.**

## § 85315. Additional manufacturer or supplier prohibitions

85315. Except as provided in Section 85330, on and after January 1, 2006, a manufacturer or supplier may not offer for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

**Comment.** Section 85315 continues former Section 25214.13(a) without substantive change.

See Sections 85195 (“distribution”), 85210 (“manufacturer”), 85215 (“manufacturing”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

## Article 5. Exemptions for Specified Packages or Components

### § 85330. Packages and packaging components

85330. A package or a packaging component is exempt from the requirements of Sections 85310 and 85315, and shall be deemed in compliance with this chapter, if the manufacturer or supplier complies with the applicable documentation requirements specified in Article 6 (commencing with Section 85350) and the package or packaging component meets any of the following conditions:

(a) The package or packaging component is marked with a code indicating a date of manufacture prior to January 1, 2006.

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or safety requirements of a federal or state law.

(c) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process for a use, other than for purposes of marketing, for which a regulated metal is essential to the protection, safe handling, or function, of the package's contents, and technical constraints preclude the substitution of other materials.

**Comment.** Section 85330 continues former Section 25214.14(a), (b), and (d) without substantive change.

See Sections 85195 ("distribution"), 85210 ("manufacturer"), 85215 ("manufacturing"), 85220 ("package"), 85225 ("packaging component"), 85240 ("regulated metal"), 85245 ("supplier").

**Staff Note.** See Staff Note following proposed Section 85220 relating to the use of the term "handling" in proposed Section 85330(c).

#### § 85335. Expired exemptions

85335. The following exemptions to the requirements of former Section 25214.13, which had been available pursuant to former Section 25214.14, expired on January 1, 2010:

(a) A package or packaging component contains no intentionally introduced regulated metals but exceeds the applicable maximum concentration level set forth in subdivision (c) of former Section 25214.13 only because of the addition of a recycled material.

(b) A package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of former Section 25214.13, and all of the following apply:

(1) The product being conveyed by the package, the package, or packaging component is otherwise regulated under a federal or state health or safety requirement.

(2) The transportation of the packaged product is regulated under federal or state transportation requirements.

(3) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(c) A package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(d) A packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11

(commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead, does not contain mercury, and is not a glass bottle package with paint or applied ceramic decoration on the bottle and the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

**Comment.** Section 85335 would restate former Section 25214.14(c), (e), (f), (g) without substantive change.

See Sections 60175 (“disposal”), 85195 (“distribution”), 85220 (“package”), 85225 (“packaging component”), 85235 (“recycled material”), 85240 (“regulated metal”).

**Staff Note.** The text of existing Section 25214.14 lists several exemptions from the prohibitions of existing Section 25214.13 that expired in 2010. Proposed Section 85335 would preserve the published record of these expired exemptions to allow for a claimed exemption for conduct that occurred prior to 2010.

**The staff welcomes comment on whether this preservation is necessary, and if so, whether the restatement of these expired exemptions in proposed Section 85335 continues the provisions establishing the exemptions without substantive change.**

## Article 6. Documentation Required for Exemptions

### § 85350. Biennially updated information

85350. A package or packaging component qualifies for an exemption pursuant to Section 85330 or Section 85335 only if the manufacturer or supplier prepares, retains, and biennially updates documentation containing all of the following information for that package or packaging component:

(a) A statement that the documentation applies to an exemption from any applicable requirements of Sections 85310 and 85315.

(b) The name, position, and contact information for the person who is the manufacturer’s or supplier’s contact person on all matters concerning the exemption.

(c) An identification of the exemption and a reference to the applicable subdivision in Section 85330 or Section 85335 setting forth the conditions for the exemption.

(d) A description of the type of package or packaging component to which the exemption applies.

(e) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(f) An explanation of the reason for the exemption.

(g) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(h) Any other required documentation specified in this article.

**Comment.** Section 85350 restates former Section 25214.15(a) without substantive change.



See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 60295 (“person”), 85240 (“regulated metal”), 85245 (“supplier”).

**Staff Notes. (1)** Proposed Section 85350(h) is intended to restate existing Section 25214.15(a)(8) without substantive change. The existing paragraph reads as follows:

“The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption.”

**The staff welcomes comment on this restatement of existing Section 25214.5(a)(8).**

(2) Several subdivisions of existing Section 25214.15 referenced in subdivision (a)(8) of that section specify documentation required for exemptions that were previously authorized under Section 25214.14 but expired in 2010. See existing Section 25214.14(c)(2), (e)(2), (f)(2), (g)(3). Based on their apparent obsolescence for that reason, subdivisions (d), (f), (g), and (h) of Section 25214.15 would not be continued in this recodification.

**The staff welcomes comment on the discontinuation of those subdivisions.**

#### **§ 85355. Additional information required for exemption under subdivision (a) of Section 85330**

85355. In addition to the requirements specified in Section 85350, if an exemption is being claimed under subdivision (a) of Section 85330, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(a) Date of manufacture.

(b) Estimated time needed to exhaust current inventory.

(c) Alternative package or packaging component that meets the requirements of Sections 85310 and 85315.

**Comment.** Section 85355 continues former Section 25214.15(b) without substantive change.

See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85245 (“supplier”).

#### **§ 85360. Additional information required for exemption under subdivision (b) of Section 85330**

85360. In addition to the requirements specified in Section 85350, if an exemption is being claimed under subdivision (b) of Section 85330, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(a) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(b) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to subdivision (a).

(c) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(d) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to subdivision (a).

**Comment.** Section 85360 continues former Section 25214.15(c) without substantive change.

See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

#### **§ 85365. Additional information required for exemption under subdivision (c) of Section 85330**

85365. In addition to the requirements specified in Section 85350, if an exemption is being claimed under subdivision (c) of Section 85330, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(a) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package’s contents.

(b) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(c) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

(d) Documentation that the regulated metal is not being used for the purposes of marketing.

**Comment.** Section 85365 continues former Section 25214.15(e) without substantive change.

See Sections 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85240 (“regulated metal”), 85245 (“supplier”).

**Staff Note.** See Staff Note following proposed Section 85220 relating to the use of the term “handling” in proposed Section 85365(a).

#### **§ 85370. Submission of required documentation**

85370. A manufacturer or supplier shall submit the documentation required pursuant to this article to the department, as follows:

(a) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:

(1) Submit the required documentation to the department.

(2) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department's request.

(b) If the department finds that the documentation supplied pursuant to subdivision (a) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.

(c) If a manufacturer or supplier fails to comply with subdivision (a) or (b) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:

(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.

(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Sections 85310 and 85315, in accordance with a schedule approved in writing by the department.

(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.

**Comment.** Subdivisions (a) and (b) of Section 85370 continues former Section 25214.15(i) without substantive change.

Subdivision (c) continues former Section 25214.15(j) without substantive change.

See Sections 60160 ("department"), 85210 ("manufacturer"), 85220 ("package"), 85225 ("packaging component"), 85240 ("regulated metal"), 85245 ("supplier").

#### **§ 85375. Required furnishing of certificate of compliance**

85375. (a) On and after January 1, 2006, each manufacturer or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component, including instances in which the purchaser is also a supplier, stating that the package or packaging component is in compliance with the requirements of this chapter.

(b) If the package is exempt from the requirements of Sections 85310 and 85315 pursuant to Section 85330, the certificate of compliance shall state the specific basis upon which the exemption is claimed.

(c) The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier.

(d) A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.

(e) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.

(f) The manufacturer or supplier shall furnish to the department a copy of the certificate of compliance for each package or packaging component for which an

exemption is claimed under Section 85330 at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser. If no exemption is claimed for a package or packaging component, the manufacturer or supplier shall provide to the department upon request a copy of the certificate of compliance for that package or packaging component.

(g) If a manufacturer or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide the purchaser, and, if the package or packaging component is exempt, the department, with an amended or new certificate of compliance for the reformulated or new package or packaging component.

**Comment.** Section 85375 continues former Section 25214.16 without substantive change.

See Sections 85190 (“authorized official”), 60160 (“department”), 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85230 (“purchaser”), 85245 (“supplier”).

**Staff Note.** The staff welcomes comment on whether the introductory clause of existing Section 25214.16, which reads “On and after January 1, 2006,” may be safely deleted from the recodification of the section.

## Article 7. Exemptions for Specified Persons

### § 85390. Unknowning violation of chapter

85390. (a) Except as provided in subdivision (b), a person who offers for retail sale or for promotional purposes a product in a package or in a packaging component that includes a regulated metal shall not be subject to any administrative or civil penalty for a violation of this chapter, if the person proves, by a preponderance of evidence, all of the following:

(1) The person received a certificate of compliance for the package or packaging component from the manufacturer or supplier.

(2) The certificate of compliance received pursuant to paragraph (1) stated that the package or packaging component is in compliance with the requirements of this chapter.

(3) The person relied on the certificate of compliance and did not know or had no reason to know that the package or packaging component was in violation of this chapter.

(4) Upon receiving a notice of violation from the department, the person took corrective action by immediately removing the package or packaging component from commerce.

(b) The affirmative defense specified in subdivision (a) does not apply to, and may not be raised by, a person who has been found to be in violation of this chapter on at least two prior occasions in the preceding three years from the filing date of the current action.

**Comment.** Section 85390 continues former Section 25214.22 without substantive change.

See Sections 60160 (“department”), 85220 (“package”), 85225 (“packaging component”), 60295 (“person”), 85210 (“manufacturer”), 85240 (“regulated metal”), 85245 (“supplier”).

**§ 85395. Carrier exemption**

85395. Except as provided in paragraph (6) of subdivision (a) of Section 85275, a carrier shall not be subject to any provision of this chapter by reason of its receipt, carriage, holding, or delivery of a product in a package or packaging component, in the usual course of business as a carrier.

**Comment.** Section 85395 continues the second sentence of former Section 25214.23(a)(3) without substantive change.

See Sections 85220 (“package”), 85225 (“packaging component”).

Article 8. Criminal Violations

**§ 85410. Offering package or component in violation of chapter**

85410. A manufacturer or supplier of a package or packaging component who knowingly and intentionally offers for sale or for promotional purposes a package or packaging component in violation of this chapter is guilty of a misdemeanor, and punishable by a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000), imprisonment in a county jail for not more than one year, or by both fine and imprisonment.

**Comment.** Section 85410 continues former Section 25214.22.1 without substantive change.

See Section 85210 (“manufacturer”), 85220 (“package”), 85225 (“packaging component”), 85245 (“supplier”).

CHAPTER 4. PERCHLORATE

Article 1. Management

**§ 85450. Definitions**

85450. For purposes of this article, the following definitions shall apply:

(a) Notwithstanding **Section 25117.2**, “management” means disposal, storage, packaging, processing, pumping, recovery, recycling, transportation, transfer, treatment, use, and reuse.

(b) “Perchlorate” means all perchlorate-containing compounds.

(c) “Perchlorate material” means perchlorate and all perchlorate-containing substances, including, but not limited to, waste perchlorate and perchlorate-containing waste.

**Comment.** Section 85450 continues former Section 25210.5 without substantive change.

See Sections 83175 (“disposal”), 83300 (“processing”), 83325 (“recycling”), 83355 (“storage”), 83370 (“treatment”), 83395 (“waste”).

1 **§ 85455. Other persons authorized to enforce specific standards and regulations**

2 85455. (a) On or before December 31, 2005, the department shall adopt  
3 regulations specifying the best management practices for a person managing  
4 perchlorate materials. ~~These~~

5 (b) Best management practices may include, but are not limited to, all of the  
6 following:

7 (1) Procedures for documenting the amount of perchlorate materials managed by  
8 the facility.

9 (2) Management practices necessary to prevent releases of perchlorate materials,  
10 including, but not limited to, containment standards, usage, processing and  
11 transferring practices, and spill response procedures.

12 (c) Before adopting regulations pursuant to subdivision (a), the department shall  
13 consult with the State Air Resources Board, the Office of Environmental Health  
14 Hazard Assessment, the State Water Resources Control Board, the Office of  
15 Emergency Services, the State Fire Marshal, and the California certified unified  
16 program agencies forum.

17 (d) Before adopting regulations pursuant to subdivision (a), the department shall  
18 also review existing federal, state, and local laws governing the management of  
19 perchlorate materials to determine the degree to which uniform and adequate  
20 requirements already exist, so as to avoid any unnecessary duplication of, or  
21 interference with the application of, those existing requirements.

22 (e) In adopting regulations pursuant to subdivision (a), the department shall ensure  
23 that those regulations are at least as stringent as, and to the extent practical consistent  
24 with, the existing requirements of Chapter 6.95 (commencing with Section 25500)  
25 and the California Fire Code governing the management of perchlorate materials.

26 (f) The regulations adopted by the department pursuant to this section shall be  
27 adopted as emergency regulations in accordance with Chapter 3.5 (commencing  
28 with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and  
29 for the purposes of that chapter, including Section 11349.6 of the Government Code,  
30 the adoption of these regulations is an emergency and shall be considered by the  
31 Office of Administrative Law as necessary for the immediate preservation of the  
32 public peace, health and safety, and general welfare.

33 (g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of  
34 Division 3 of Title 2 of the Government Code, including subdivision (e) of Section  
35 11346.1 of the Government Code, any emergency regulations adopted pursuant to  
36 this section shall be filed with, but not be repealed by, the Office of Administrative  
37 Law, and shall remain in effect until revised by the department.

38 (h) The department may implement an outreach effort to educate persons who  
39 manage perchlorate materials concerning the regulations promulgated pursuant to  
40 subdivision (a).

41 **Comment.** Section 85455 continues former Section 25210.6 without substantive change.  
42 See Sections 83160 (“department”), 85450 (“management,” “perchlorate material”).

1 **§ 85460. Date of required compliance with regulations**

2 85460. On and after the effective date of the regulations adopted by the  
3 department pursuant to **Section 85455**, a person may not manage perchlorate  
4 materials unless the management complies with the best management practices  
5 specified in the regulations adopted by the department.

6 **Comment.** Section 85460 continues former Section 25210.7 without substantive change.

7 See Sections 83160 (“department”), 83295 (“person”), 85450 (“management,” “perchlorate  
8 material”).

9 **Article 2. Contamination**

10 **§ 85475. Definitions**

11 85475. For the purposes of this article, the following definitions shall apply:

12 (a) “Management” means disposal, storage, packaging, processing, pumping,  
13 recovery, recycling, transportation, transfer, treatment, use, and reuse.

14 (b) “Perchlorate” means all perchlorate-containing compounds.

15 (c) “Perchlorate facility” means all contiguous land, and the structures,  
16 appurtenances and improvements on the land, consisting of one or more units, or  
17 combination of units, that is or has been used for the management of perchlorate  
18 material.

19 (d) “Perchlorate material” means perchlorate and all perchlorate-containing  
20 substances, including, but not limited to, waste perchlorate and perchlorate-  
21 containing waste.

22 (e) “Public drinking water well” has the same meaning as defined in paragraph  
23 (1) of subdivision (a) of Section 25299.97.

24 **Comment.** Section 85475 restates former Section 25249.1 without substantive change.

25 See Sections 83175 (“disposal”), 83300 (“processing”), 83325 (“recycling”), 83355 (“storage”),  
26 83370 (“treatment”), 83395 (“waste”).

27 **Staff Note.** Subdivision (c) of proposed Section 85475 would restate existing Section  
28 25249.1(c), which currently reads as follows:

29 25249.1(c) “Perchlorate facility” means all contiguous land, and the structures, appurtenances  
30 and improvements on the land, that has been used for the management of perchlorate material. A  
31 perchlorate facility may consist of one or more units, or combination of units, that is or has been  
32 used for the management of perchlorate material.

33 **Absent comment, this proposed restatement of this provision will be presumed correct.**

34 **§ 85480. Submission of contamination information to EPA**

35 85480. (a) On or before July 1, 2004, the owner or operator of a perchlorate  
36 facility, located within a 5-mile radius of a public drinking water well that has been  
37 found by any state or local agency to be contaminated with perchlorate, shall submit  
38 to the Environmental Protection Agency a summary of any subsurface and any  
39 groundwater monitoring, investigation, or remediation work that has been  
40 performed at the facility.

(b) The owner or operator shall submit the information electronically, if it is available in electronic format.

**Comment.** Section 85480 continues former Section 25249.2 without substantive change. See Section 85475 (“perchlorate,” “perchlorate facility”).

**Staff Note.** Public comment is requested on whether existing Section 25249.2, which would be continued by proposed Section 85480, should be either revised or discontinued, based the specified deadline for required action.

## CHAPTER 5. RULES FOR SPECIFIC PRODUCTS

### Article 1. Chemical Toilets, Recreational Vehicles, Vessel Waste Facilities, and Prohibited Chemicals

#### § 85500. Prohibited acts relating to chemical toilets

85500. (a) It shall be unlawful, on or after January 1, 1979, to use a nonbiodegradable toxic chemical in a chemical toilet, recreational vehicle, or waste facility of a vessel, as the term vessel is defined in the Harbors and Navigation Code; ~~and it~~.

(b) It shall be unlawful, on or after January 1, 1979, to sell a nonbiodegradable toxic chemical in a container indicating that the chemical could be used in a chemical toilet, a waste facility of a recreational vehicle, or a waste facility of a vessel, as the term vessel is defined in the Harbors and Navigation Code.

(c) The department shall develop and adopt regulations to define nonbiodegradable toxic chemicals, and limitations on the sale thereof, by June 1, 1978.

**Comment.** Section 85500 continues former Section 25210 without substantive change. See Section 83160 (“department”).

**Staff Notes.** (1) Public comment is requested on whether the introductory text of the first two sentences of existing Section 25210 (sentences that would be continued by proposed Section 85500 (a) and (b)) should be revised to read as follows: “It ~~shall be~~ is unlawful, ~~on or after January 1, 1979,~~ to ....”.

(2) Public comment is requested on whether discontinuing the last sentence of existing Health and Safety Code Section 25210 — set forth above as subdivision (c) of proposed Section 85500 — would be problematic.

#### § 85505. Prohibited acts relating to sewage disposal systems

85505. (a) For purposes of this section, the following definitions shall apply:

(1) “Halocarbon chemicals” means chemical compounds which contain carbon, and one or more halogens, and which may include hydrogen, including, but not limited to, trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes, and carbon tetrachloride.



(2) “Aromatic hydrocarbon chemicals” means chemical compounds containing carbon and hydrogen and at least one six-carbon ring containing double bonds, including, but not limited to, benzene, toluene, and naphthalene.

(3) “Sewage disposal system” means a septic tank, cesspool, sewage seepage pit, leachline, or other structure into which sewage is drained for purposes of disposal and which is not connected to a municipal treatment works.

(b) On and after July 1, 1988, no person shall use any product containing halocarbon chemicals or aromatic hydrocarbon chemicals for the purposes of cleaning or unclogging a sewage disposal system.

(c) On and after July 1, 1988, no person shall sell any product containing halocarbon chemicals or aromatic hydrocarbon chemicals in a container ~~which indicates~~ indicating that the product may be used for the purposes of cleaning or unclogging a sewage disposal system. ~~The department may adopt regulations regarding the sales of these products for the purposes of enforcing this subdivision.~~

(d) The department may adopt regulations regarding the sale of any product described in subdivision (c) for the purposes of enforcing that subdivision.

**Comment.** Section 85505 restates former Section 25210.1 without substantive change. See Sections 83160 (“department”), 83295 (“person”).

**Staff Note (1).** Public comment is requested on whether subdivisions (b) and (c) of existing Section 25210.1, which would be continued by proposed Section 85505(b) and (c), should be revised to delete the references to the date when the prohibitions in the provisions took effect.

**(2) Public comment on whether the restatement of the second sentence of existing Section 25210.1(c) and relocation to a new subdivision (d) of proposed Section 85505 would cause any substantive change to the provision is welcome and invited.**

#### **§ 85510. Prohibited acts relating to waste facilities of recreational vehicles or campgrounds**

85510. (a) It is unlawful to sell or distribute in commerce a product that contains bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene in a container ~~that indicates~~ indicating that the product is suitable for use in a holding tank or other portion of a waste facility of a recreational vehicle.

(b) It is unlawful to use a product that contains bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene in a holding tank or other portion of a waste facility of a recreational vehicle or of a campground chemical toilet that discharges to a septic system, onsite wastewater treatment system, or subsurface disposal system.

(c) To the extent that funding is made available, the State Water Resources Control Board shall investigate methods to detect and quantify concentrations of chemical toilet deodorants, including bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene, in a

septic system, onsite wastewater treatment system, or subsurface disposal system that may inhibit biological treatment processes or result in degradation of groundwater quality.

(d)(1) An owner or operator of a recreational vehicle park or campground that utilizes a septic system, onsite wastewater treatment system, or subsurface disposal system to dispose of recreational vehicle wastewater shall post in a conspicuous location a notice stating the following:

“The State of California prohibits the use of products in RV holding tanks, including deodorizers, that contain bronopol, dowicil, formalin, formaldehyde, glutaraldehyde, paraformaldehyde, para-dichlorobenzene, benzene, toluene, xylene, ethylene glycol, 1,1,1-trichloroethane, trichloroethylene, or perchloroethylene. These chemicals can inhibit biological activity in onsite wastewater treatment systems and threaten groundwater and drinking water wells, and are strictly forbidden.

Please use bacteria- or enzyme-based products.”

(2) The State Water Resources Control Board or a regional water quality control board shall require an owner or operator described in paragraph (1) to certify compliance with paragraph (1) as part of any waste discharge requirement, or as a condition of a waiver of a waste discharge requirement, issued pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(e) Enforcement of subdivisions (a), (b), and (d) is contingent upon an appropriation by the Legislature for purposes of enforcing those requirements.

(f) This section shall become operative on January 1, 2022.

**Comment.** Section 85510 continues former Section 25210.2 without substantive change.

## Article 2. Lighting

### § 85525. “General purpose lights”

85525. (a) For purposes of this article, “general purpose lights” means lamps, bulbs, tubes, or other electric devices that provide functional illumination for indoor residential, indoor commercial, and outdoor use.

(b) General purpose lights do not include any of the following specialty lighting:

(1) Appliance.

(2) Black light.

(3) Bug.

(4) Colored.

(5) Infrared.

(6) Left-hand thread, ~~marine, mine~~.

(7) Marine.

(8) Marine signal service, ~~mine~~.

(9) Mine service, ~~plant~~.

(10) Plant light, ~~reflector, rough~~.

1 (11) Reflector.

2 (12) Rough service, shatter .

3 (13) Shatter resistant, sign .

4 (14) Sign service, silver .

5 (15) Silver bowl, showcase, three-way, traffic .

6 (16) Showcase.

7 (17) Three-way.

8 (18) Traffic signal, and vibration .

9 (19) Vibration service or vibration resistant.

10 (c) General purpose lights do not include lights needed to provide special-needs  
11 lighting for individuals with exceptional needs.

12 **Comment.** Section 85525 continues former Section 25210.10 without substantive change.

13 **§ 85530. Required compliances for general purpose lights**

14 85530. (a) Except as provided in subdivisions (e), (f), and (g), on and after January  
15 1, 2010, a person shall not manufacture general purpose lights for sale in this state  
16 that contain levels of hazardous substances that would result in the prohibition of  
17 those general purpose lights being sold or offered for sale in the European Union  
18 pursuant to the RoHS Directive.

19 (b) Except as provided in subdivisions (e), (f), and (g), on and after January 1,  
20 2010, a person shall not sell or offer for sale in this state a general purpose light  
21 under any of the following circumstances:

22 (1) The general purpose light being sold or offered for sale was manufactured on  
23 and after January 1, 2010, and contains levels of hazardous substances that would  
24 result in the prohibition of that general purpose light being sold or offered for sale  
25 in the European Union pursuant to the RoHS Directive.

26 (2) The manufacturer of the general purpose light sold or being offered for sale  
27 fails to provide the documentation to the department required by subdivision (h).

28 (3) The manufacturer of the general purpose light being sold or offered for sale  
29 does not provide the certification required in subdivision (i).

30 (c) For the purposes of this section, “RoHS Directive” means Directive  
31 2002/95/EC, adopted by the European Parliament and the Council of the European  
32 Union on January 27, 2003, on the restriction of certain hazardous substances in  
33 electrical and electronic equipment, as amended thereafter by the Commission of  
34 European Communities (13.2.2003 Official Journal of the European Union).

35 (d) The department shall determine the products covered by the RoHS Directive  
36 by reference to authoritative guidance published by the United Kingdom  
37 implementing the RoHS Directive in that country.

38 (e) (1) Except as provided in paragraph (2), subdivisions (a), (b), (h), and (i) do  
39 not apply to high output and very high output linear fluorescent lamps greater than  
40 32 millimeters in diameter and preheat linear fluorescent lamps.

41 (2) On or after January 1, 2014, the department shall determine, in consultation  
42 with companies that manufacture lamps specified in paragraph (1) in the United

States, if those lamps should be subject to the requirements of subdivisions (a), (b), (h), and (i), taking into consideration changes in lamp design or manufacturing technology that will allow for the removal or reduction of mercury.

(f) On and after January 1, 2012, for high intensity discharge lamps and compact fluorescent lamps greater than nine inches in length, subdivisions (a), (b), (h), and (i) shall be applicable.

(g) On and after January 1, 2014, for state-regulated general service incandescent lamps and enhanced spectrum lamps as defined in subdivision (k) of Section 1602 of Title 20 of the California Code of Regulations, subdivisions (a), (b), (h), and (i) shall be applicable.

(h) A manufacturer of general purpose lights sold or being offered for sale in California shall prepare and, at the request of the department, submit within 28 days of the date of the request, technical documentation or other information showing that the manufacturer's general purpose lights sold or offered for sale in this state comply with the requirements of the RoHS Directive.

(i) A manufacturer of general purpose lights sold or being offered for sale in California shall comply with one of the following requirements:

(1) Provide, upon request, a certification to a person who sells or offers for sale that manufacturer's general purpose lights that shall attest that the general purpose lights do not contain levels of hazardous substances that would result in the prohibition of those general purpose lights being sold or offered for sale in California.

(2) Display the certification required by this subdivision prominently on the shipping container or on the packaging of general purpose lights.

(j) The department may adopt regulations to implement and administer this article.

**Comment.** Section 85530 restates former Section 25210.9 without substantive change. See Sections 83160 ("department"), 83295 ("person"), 85525 ("general purpose lights").

**Staff Notes. (1)** Subdivision (i) of proposed Section 85530 would restate existing Section 25210.9(i), which currently reads as follows:

25210.9(i) A manufacturer of general purpose lights sold or being offered for sale in California shall provide, upon request, a certification to a person who sells or offers for sale that manufacturer's general purpose lights. The certification shall attest that the general purpose lights do not contain levels of hazardous substances that would result in the prohibition of those general purpose lights being sold or offered for sale in California. Alternatively, the manufacturer may display the certification required by this subdivision prominently on the shipping container or on the packaging of general purpose lights.

**Absent comment, this proposed restatement of this provision will be presumed correct.**

(2) Public comment is requested on whether subdivisions (a) and (b) of existing Section 25210.9, which would be continued by proposed Section 85530 (a) and (b), should be revised to delete the references to the date when the prohibitions in the provisions took effect.

1 **§ 85535. Inapplicability of specified criminal penalties**

2 85535. Notwithstanding **Article 8 (commencing with Section 25180)**, a person  
3 who violates this article shall not be subject to any criminal penalties imposed  
4 pursuant to **Article 8 (commencing with Section 25180)**.

5 **Comment.** Section 85535 continues former Section 25210.12 without substantive change.  
6 See Section 83295 (“person”).

7 **Article 3. Discarded Appliances**

8 **§ 85550. Definitions**

9 85550. For purposes of this article, the following terms have the following  
10 meaning:

11 (a) “Certified appliance recycler” means a person or entity engaged in the  
12 business of removing and properly managing materials that require special handling  
13 from discarded major appliances, ~~and~~ who is certified pursuant to **Section 25211.4**  
14 ~~and does not include~~ is not a person described in **subdivision (b) of Section**  
15 **25211.2**.

16 (b) “CUPA” means a certified unified program agency, as defined in **subdivision**  
17 **(b) of Section 25123.7**.

18 (c) “Major appliance” has the same meaning as defined in Section 42166 of the  
19 Public Resources Code.

20 (d) “Materials that require special handling” has the same meaning as defined in  
21 Section 42167 of the Public Resources Code.

22 (e) “Scrap recycling facility” means a facility where machinery and equipment  
23 are used for processing and manufacturing scrap metal into prepared grades and  
24 whose principal product is scrap iron or nonferrous metallic scrap for sale for  
25 remelting purposes. ~~A scrap recycling facility includes~~ including, but is not limited  
26 to, a feeder yard, a metal shredding facility, a metal crusher, and a metal baler.

27 **Comment.** Section 85550 continues former Section 25211 without substantive change.  
28 See Sections 83110 (“CUPA”), 83295 (“person”), 83300 (“processing”).

29 **§ 85555. Prohibited removal of materials**

30 85555. (a) Except as provided in subdivision (b), ~~a person~~, no person other than a  
31 certified appliance recycler, shall remove materials that require special handling  
32 from a major appliance.

33 (b) An appliance service technician certified pursuant to Section 82.161 of Title  
34 40 of the Code of Federal Regulations may remove refrigerant from major  
35 appliances.

36 **Comment.** Section 85555 continues former Section 25211.1 without substantive change.

37 See Sections 83295 (“person”), 85550 (“certified appliance recycler,” “major appliance,”  
38 “materials that require special handling”).

1 **§ 85560. Transfer of major appliances to scrap recycling facility**

2 85560. (a) Except as provided in subdivision (b), a person who transports,  
3 delivers, or sells discarded major appliances to a scrap recycling facility shall  
4 provide evidence that they are a certified appliance recycler, and at the time of the  
5 transaction shall provide the facility with all of the following, on a form prepared  
6 by the department:

7 (1) Certification that all materials that require special handling have been removed  
8 from the appliances pursuant to **subdivision (a) of Section 25212**.

9 (2) The appliance recycler's appliance recycler certificate number.

10 (3) The appliance recycler's hazardous waste generator identification number.

11 (4) If the appliances have not been crushed, baled, or shredded by the appliance  
12 recycler, the number and types of appliances being transported, delivered, or sold  
13 by the appliance recycler.

14 (5) The facilities to which any materials requiring special handling that were  
15 removed from the appliances were sent or are to be sent.

16 (b) A person who is not a certified appliance recycler may only transport, deliver,  
17 or sell discarded major appliances to a scrap recycling facility that is a certified  
18 appliance recycler, and all the conditions specified in either paragraph (1) or (2) are  
19 met:

20 (1) The transported, delivered, or sold appliances have not been crushed, baled,  
21 shredded, sawed ~~or~~ apart, sheared apart, or otherwise processed in ~~such~~ a manner  
22 that could result in the release, or prevent the removal, of materials that require  
23 special handling.

24 (2) The transported, delivered, or sold appliances have been crushed, baled,  
25 shredded, sawed apart, sheared apart, or otherwise processed in a manner that could  
26 result in the release, or prevent the removal, of materials that require special  
27 handling, and the person transporting, delivering, or selling the appliances complies  
28 with all the requirements specified in either subparagraph (A) or (B):

29 (A) At the time of the transaction, the person transporting, delivering, or selling  
30 the appliances provides the scrap recycling facility with a written certification that  
31 includes all of the following:

32 (i) Identification of all materials requiring special handling that were removed  
33 from the appliances.

34 (ii) Certification that all materials requiring special handling that were removed  
35 from the appliances were removed by a person authorized to do so pursuant to  
36 **Section 25211.1**.

37 (iii) The certificate number of the appliance recycler or appliance service  
38 technician that removed the materials requiring special handling.

39 (iv) The hazardous waste generator identification number of the appliance  
40 recycler or appliance service technician that removed the materials requiring special  
41 handling.

42 (v) The number and types of appliances being transported, delivered, or sold.

(vi) The facilities to which all materials requiring special handling that were removed from the transported, delivered, or sold appliances were sent or are to be sent.

(B) The person transporting, delivering, or selling the appliances provides the scrap recycling facility with all of the following:

(i) A form of government issued identification identifying the person transporting, delivering, or selling the appliances.

(ii) A declaration under penalty of perjury specifying the name, address, and telephone number of the person transporting, delivering, or selling the appliances.

(iii) Written certification under penalty of perjury that the person transporting, delivering, or selling the appliances obtained each appliance in its current condition, and did not process the appliance, arrange to have it processed, or knowingly accept the appliance from any other person who processed it or arranged to have it processed.

(iv) The name and address of the person from whom each transported, delivered, or sold appliance was obtained, or a statement in the written certification provided pursuant to subparagraph (iii) explaining why some or all of that information is unavailable.

(c) Appliances delivered to a scrap recycling facility by a local government representative that were generated as part of the local government's waste management activities are exempt from subdivision (b).

(d) A scrap recycling facility that accepts appliances pursuant to subparagraph (B) of paragraph (2) of subdivision (b) shall provide a monthly report to the department and the local CUPA that includes both of the following:

(1) For each appliance received by the scrap recycling facility, the name and address of the person who transported, delivered, or sold the appliance to the scrap recycling facility.

(2) The total number of appliances received by the scrap recycling facility pursuant to subparagraph (B) of paragraph (2) of subdivision (b).

**Comment.** Section 85560 restates former Section 25211.2 without substantive change.

See Sections 83110 ("CUPA"), 83160 ("department"), 83295 ("person"), 85550 ("certified appliance recycler," "major appliance," "materials that require special handling," "scrap recycling facility").

**Staff Notes. (1)** Proposed Section 85560 would restate existing Section 25211.2, which currently reads as follows:

25211.2. (a) Except as provided in subdivision (b), a person who transports, delivers, or sells discarded major appliances to a scrap recycling facility shall provide evidence that he or she is a certified appliance recycler and shall certify, on a form prepared by the department and provided to the facility at the time of the transaction, that all materials that require special handling have been removed from the appliances pursuant to subdivision (a) of Section 25212. Information on the form shall include, but not be limited to, the appliance recycler certificate number, the appliance recycler's hazardous waste generator identification number, the number and types of appliances included in the shipment, and the facilities to which the materials that require special handling and that were removed from the appliances were sent or are to be sent. If the appliances have been

crushed, baled, or shredded by the certified appliance recycler, the requirement to include the number and types of appliances included in the shipment on the form shall not apply.

(b) A person who is not a certified appliance recycler may transport, deliver, or sell discarded major appliances to a scrap recycling facility only if the scrap recycling facility is a certified appliance recycler and only if either of the following conditions specified is met:

(1) The appliances have not been crushed, baled, shredded, sawed or sheared apart, or otherwise processed in such a manner that could result in the release, or prevent the removal, of materials that require special handling.

(2) The appliances have been crushed, baled, shredded, or sawed or sheared apart, or otherwise processed in such a manner that could result in the release, or prevent the removal, of materials that require special handling, and that person does one of the following:

(A) Provides the scrap recycling facility with a written certification, at the time of the transaction, that identifies any materials that require special handling that have been removed from the appliance and certifies that all of these materials were removed by a person authorized under Section 25211.1. The certification shall include the appliance recycler or appliance service technician certificate number, the appliance recycler or appliance service technician's hazardous waste generator identification number, the number and types of appliances included in the shipment, and the facilities to which the materials that require special handling that were removed from the appliances were sent or are to be sent.

(B) Presents a form of government issued identification and, under penalty of perjury, provides the scrap recycling facility his or her name, address, telephone number, and written certification that he or she obtained the appliance in its current condition and did not process the appliance or arrange to have it processed or knowingly accept the appliance from any other person who processed it or arranged to have it processed. That person shall also provide the name and address of the person from whom the appliance was obtained, or include in the written certification the reason that the information is unavailable.

(c) Appliances delivered to a scrap recycling facility by a local government representative that were generated as part of the local government's waste management activities are exempt from subdivision (b).

(d) A scrap recycling facility that accepts appliances pursuant to subparagraph (B) of paragraph (2) of subdivision (b) shall provide a monthly report to the department and the local CUPA that includes both of the following:

(1) For each appliance received by the scrap facility, the name and address of the person who transported, delivered, or sold the appliance to the scrap recycling facility.

(2) The total number of appliances received pursuant to the conditions provided in subparagraph (B) of paragraph (2) of subdivision (b).

**The staff welcomes comment on whether this restatement of existing Section 25211.2(b)(2) improves its clarity without substantively changing its meaning.**

(2) The staff seeks clarification of the intended meaning and/or reference of the word "generated" as used in Section 25211.2(c), which would be continued by proposed Section 85560(c).

#### **§ 85565. Retention of records demonstrating compliance**

85565. (a) A certified appliance recycler, and any person who is not a certified appliance recycler who is subject to **subdivision (b) of Section 25211.2**, shall retain onsite records demonstrating compliance with applicable requirements of this article and Section 42175 of the Public Resources Code.



(b) The records shall be retained for three years and shall be made available for inspection, upon the request of a representative of the department or a CUPA.

(c) The records shall be retained, after that three-year period, during the course of an unresolved enforcement action, or as requested by the department or CUPA.

(d) The records shall include, but not be limited to, all of the following information:

(1) The amount, by volume or weight or both, of each material that required special handling.

(2) The method used by the appliance recycler to recycle, dispose of, or otherwise manage each material that required special handling, ~~including the~~.

(3) The name and address of the facility to which each material was sent.

(4) The number and types of appliances from which materials that require special handling are removed each year.

(5) The reports required pursuant to **subdivision (c) of Section 25211.2.**

**Comment.** Section 85565 continues former Section 25211.3 without substantive change.

See Sections 83110 (“CUPA”), 83160 (“department”), 85550 (“certified appliance recycler,” “materials that require special handling”).

#### § 85570. Obtaining required certification

85570. (a) On and after January 1, 2008, a person wishing to operate as a certified appliance recycler, ~~except other than a person having with~~ a certification issued before January 1, 2008, ~~until that certification expires through the expiration of that certification,~~ shall submit an initial or a renewal application to operate as a certified appliance recycler to the department, and obtain or renew certification from the department, pursuant to this section.

(b) The department shall make available on its Internet Web site an application for certification as a certified appliance recycler that requires all of the following information:

(1) The business name under which the appliance recycler operates, the telephone number, ~~the~~ physical address, and mailing address of the business, and if different, ~~and~~ the business owner’s name, address, and telephone number.

(2) A hazardous waste generator identification number issued by the department pursuant to **this chapter.**

(3) A statement indicating that the applicant has either filed an application for a stormwater permit or is not required to obtain a stormwater permit.

(4) A statement indicating that the applicant has either filed a hazardous materials business plan or is not required to file the plan.

(5) The tax identification number assigned by the Franchise Tax Board.

(6) A copy of a business license and any conditional use permits issued by the appropriate city or county.

(7) A description of the ability of the applicant to properly remove and manage all materials that require special handling, including, but not limited to, a technical description of how each material requiring special handling will be removed and a

description of how each material requiring special handling will be managed by the applicant consistent with applicable laws.

(8) Any other information that the department may determine to be necessary to carry out this article.

~~(b)~~ (c) A person wishing to operate as a certified appliance recycler shall submit to the department, under penalty of perjury, the information required pursuant to subdivision (a).

(d) The department shall review the application for completeness and, upon determining that the application is complete and meets the requirements of this section, shall issue a numbered certificate to the applicant.

(e) The department shall notify an applicant whose application fails to meet the requirements for certification of the reason why the department denied the certification.

(f) The department may revoke or suspend a certification issued pursuant to this section, in accordance with the procedures specified in **Sections 25186.1 and 25186.2**, for any of the grounds specified in **Section 25186**.

~~(e)~~ (g) The certificate issued by the department shall include the issuance date and the expiration date, which shall be three years after the issuance date.

(h) A person whose certification has expired, and who has not applied for and obtained a new current certification, is no longer a certified appliance recycler and may no longer operate as a certified appliance recycler.

~~(d)~~ (i) Upon issuance of a certificate, the department shall transmit the application and certification of the certified appliance recycler to the certified uniform program agency in whose jurisdiction the person is located, which shall, as soon as is practicable, inspect the certified appliance recycling facility to determine whether the recycler is capable of properly removing and managing materials that require special handling from major appliances.

(j) In making the determination required by subdivision (i), the certified uniform program agency shall consider various factors, including, but not limited to, the working condition of equipment used to remove the materials, the technical ability of employees of the business to operate the equipment proficiently, and the facility's compliance with existing applicable laws.

**Comment.** Section 85570 continues former Section 25211.4 without substantive change.

See Sections 83110 ("certified uniform program agency"), 83160 ("department"), 83295 ("person"), 85550 ("certified appliance recycler").

**Staff Note.** The second sentence of existing Section 25211.4, which is proposed to be continued by proposed Section 85570(b) specifies information that must be submitted on an application for a recycler certification pursuant to this section, including the identification of a "telephone number, mailing address, and physical address." However, the section does not make clear whether that specified information is intended to correspond to the applicant or to the business under which the recycler operates.

**Public comment is requested on this issue.**

1 **§ 85575. Treatment of materials requiring special handling**

2 85575. (a) Materials ~~that require~~ requiring special handling that are contained in  
3 major appliances shall not be disposed of at a solid waste facility and shall be  
4 removed from major appliances in which they are contained prior to the appliance  
5 being crushed, baled, shredded, sawed or sheared apart, disposed of, or otherwise  
6 processed in a manner that could result in the release or prevent the removal of  
7 materials that require special handling.

8 (b) A person who, pursuant to subdivision (a), removes from a major appliance  
9 any material that requires special handling, ~~that and~~ is a hazardous waste under this  
10 chapter, is a hazardous waste generator, and shall comply with all provisions of **this**  
11 **chapter** applicable to generators of hazardous waste.

12 (c) All materials ~~that require~~ requiring special handling that have been removed  
13 from a major appliance pursuant to subdivision (a), and ~~that~~ are hazardous wastes,  
14 shall be managed in accordance with **this chapter**.

15 (d) A person who fails to comply with subdivision (a) is in violation of **this**  
16 **chapter**.

17 (e) ~~(1)~~ The department or a local health officer or other public officer authorized  
18 pursuant to **Article 8 (commencing with Section 25180)**, including, when  
19 applicable, a certified unified program agency (CUPA) or a unified program agency  
20 within the jurisdiction of a CUPA, shall incorporate both of the following into ~~the~~  
21 their existing inspection and enforcement activities of the department:

22 ~~(A)~~ (1) The regulation of materials ~~that require~~ requiring special handling that,  
23 when removed from a major appliance, ~~is are~~ hazardous waste wastes.

24 ~~(B)~~ (2) The enforcement of subdivision (a).

25 ~~(2)~~ (f) The department, local health officers, or other public officers shall  
26 coordinate their activities as needed to identify and regulate materials ~~that require~~  
27 requiring special handling that, when removed from major appliances, are  
28 hazardous wastes that are transported from one jurisdiction to another.

29 **Comment.** Section 85575 continues former Section 25212 without substantive change.

30 See Sections 83110 (“CUPA”), 83160 (“department”), 83210 (“hazardous waste”), 83240  
31 (“local health officer”), 83295 (“person”), 83375 (“unified program agency”), 85550 (“certified  
32 appliance recycler,” “major appliance,” “materials that require special handling”).

33 **Staff Notes. (1)** Paragraph (1) of subdivision (e) of existing Section 25212, which is proposed  
34 to be continued by proposed Section 85575(e), indicates that it applies to “[t]he department or a  
35 local health officer or other public officer authorized pursuant to Article 8 (commencing with  
36 Section 25180).”

37 **Public comment is requested on whether the inclusion of any commas in this text would be**  
38 **appropriate to clarify its intended meaning.**

39 **(2)** Public comment is requested on whether the restatement of paragraph (1) of subdivision (e)  
40 of existing Section 25212 as set forth in proposed Section 85575(e) would substantively change the  
41 intended meaning of the existing paragraph.

1 **§ 85580. Department facilitation of removal of materials requiring special handling**

2 85580. (a) To implement **subdivision (c) of Section 25212**, the department shall,  
 3 based on reasonably available information, develop a statewide list of appliance  
 4 recyclers, used appliance dealers, solid waste facilities, metal scrapyards, and others  
 5 who may remove from major appliances, or do business with those who remove;  
 6 from major appliances, materials that require special handling. ~~The department shall~~  
 7 , and notify persons on the list of the requirements of **this chapter** and the steps that  
 8 will be required to be taken to comply with **this chapter**.

9 (b) The department shall transmit a copy of the Appliance Recycling Guide,  
 10 published by the California Integrated Waste Management Board, and any other  
 11 materials determined to be necessary by the department to ensure compliance with  
 12 this chapter, to the following persons and agencies:

13 (1) Persons who apply for a generator identification number indicating that they  
 14 are involved with any activities regulated pursuant to this article.

15 (2) The local officers and agencies authorized to enforce **this chapter** pursuant  
 16 to **subdivision (a) of Section 25180**.

17 (c) The department shall transmit the generator identification number of any  
 18 person identified pursuant to paragraph (1) of subdivision (b) and the statewide list  
 19 developed pursuant to subdivision (a) to the appropriate local officers and agencies  
 20 authorized to enforce **this chapter** pursuant to **subdivision (a) of Section 25180**.

21 **Comment.** Section 85580 continues former Section 25213 without substantive change.

22 See Sections 83160 (“department”), 83295 (“person”), 85550 (“major appliance,” “materials that  
 23 require special handling”).

24 **§ 85585. Furnishing of implementation information by department**

25 85585. The department shall make information available upon request regarding  
 26 the implementation of this article, including, but not limited to, the list of persons  
 27 notified pursuant to **subdivision (a) of Section 25213**, the list of persons identified  
 28 pursuant to **paragraph (1) of subdivision (b) of Section 25213**, information on  
 29 inspection and enforcement, and other information pertaining to the record of  
 30 compliance with this article, subject to the California Public Records Act (Division  
 31 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

32 **Comment.** Section 85585 continues former Section 25214 without substantive change.

33 See Sections 83160 (“department”), 83295 (“person”).

34 **§ 85590. Adoption of regulations**

35 85590. The department may adopt any regulations determined necessary to  
 36 implement and enforce this article.

37 **Comment.** Section 85590 continues former Section 25211.5 without substantive change.

38 See Section 83160 (“department”).

Article 4. Metal-Containing Jewelry

**§ 85650. Definitions**

85650. For purposes of this article, the following definitions shall apply:

(a) “Body piercing jewelry” means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

(b) “Children” means persons under 15 years of age.

(c) “Children’s jewelry” means jewelry that is made for, marketed for use by, or marketed to, children. For purposes of this article, children’s jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) Represented in its packaging, display, or advertising, as appropriate for use by children.

(2) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(3) Sized for children and not intended for use by adults.

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalog, or online internet website, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalog, or online internet website, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(d) “Component” means any part of jewelry.

(e) “Inaccessible” means not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product, including swallowing, mouthing, breaking, or other children’s activities, and the aging of the product. For purposes of this article, paint, coatings, or electroplating do not render substrate material inaccessible to a child.

(f) “Jewelry” means any of the following:

(1) Any of the following ornaments worn by a person:

(A) An anklet.

(B) Arm cuff.

(C) Bracelet.

(D) Brooch.

(E) Chain.

(F) Crown.

(G) Cuff link.

(H) Hair accessory.

(I) Earring.

(J) Necklace.

- 1 (K) Pin.
- 2 (L) Ring.
- 3 (M) Tie clip.
- 4 (N) Body piercing jewelry.
- 5 (O) Jewelry placed in the mouth for display or ornament.
- 6 (2) Any bead, chain, link, pendant, or other component of an ornament specified
- 7 in paragraph (1).
- 8 (3) A charm, bead, chain, link, pendant, or other attachment to shoes or clothing
- 9 that can be removed and may be used as a component of an ornament specified in
- 10 paragraph (1).
- 11 (4) A watch in which a timepiece is a component of an ornament specified in
- 12 paragraph (1), excluding the timepiece itself if the timepiece can be removed from
- 13 the ornament.
- 14 (g) (1) “Surface coating” means a fluid, semifluid, or other material, with or
- 15 without a suspension of finely divided coloring matter, that changes to a solid film
- 16 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or
- 17 other surface.
- 18 (2) “Surface coating” does not include a printing ink or a material that actually
- 19 becomes a part of the substrate, including, but not limited to, pigment in a plastic
- 20 article, or a material that is actually bonded to the substrate, such as by electroplating
- 21 or ceramic glazing.

22 **Comment.** Section 85650 continues former Section 25214.1 without substantive change.

23 **§ 85655. Nonapplication of article**

24 85655. (a) This article does not do any of the following:

- 25 (1) Affect a duty or other requirement otherwise imposed under federal or state
- 26 law.
- 27 (2) Alter or diminish a legal obligation otherwise required in common law, by
- 28 statute, or by regulation.
- 29 (3) Create or enlarge a defense to an action to enforce a legal obligation otherwise
- 30 required in common law, by statute, or by regulation.

31 (b) The Legislature finds and declares that the addition of this section during the

32 2007–08 Regular Session of the Legislature is declaratory of existing law.

33 **Comment.** Section 85655 continues former Section 25214.1.5 without substantive change.

34 **§ 85660. Required material for specified jewelry**

35 85660. (a) ~~For jewelry that is not children’s jewelry, a~~ A person shall not

36 manufacture, ship, sell, offer for sale, or offer for promotional purposes ~~such jewelry~~

37 that is not children’s jewelry for retail sale or promotional purposes in the state,

38 unless the jewelry is made entirely from one or more than one of the following

39 materials:

- 40 (1) Stainless or surgical steel.
- 41 (2) Karat gold.

- 1 (3) Sterling silver.
- 2 (4) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.
- 3 (5) Natural or cultured pearls.
- 4 (6) Glass, ceramic, or crystal decorative components, including cat's eye, cubic
- 5 zirconia, including cubic zirconium or CZ, rhinestones, and cloisonné.
- 6 (7) A gemstone that is cut and polished for ornamental purposes, excluding
- 7 aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite,
- 8 phosgenite, samarskite, vanadinite, and wulfenite.
- 9 (8) Elastic, fabric, ribbon, rope, or string that does not contain intentionally added
- 10 lead.
- 11 (9) All natural decorative material, including amber, bone, coral, feathers, fur,
- 12 horn, leather, shell, or wood, that is in its natural state and is not treated in a way
- 13 that adds lead.
- 14 (10) Adhesive.
- 15 (11) Electroplated metal containing less than 0.05 percent (500 parts per million)
- 16 lead by weight.
- 17 (12) Unplated metal not otherwise listed containing less than 0.05 percent (500
- 18 parts per million) lead by weight.
- 19 (13) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and
- 20 polyvinyl chloride (PVC) containing less than 0.02 percent (200 parts per million)
- 21 lead by weight.
- 22 (14) A dye or surface coating containing less than 0.05 percent (500 parts per
- 23 million) lead by weight.
- 24 (15) Any other material that contains less than 0.05 percent (500 parts per million)
- 25 lead by weight.
- 26 (b) ~~For body piercing jewelry that is not children's jewelry, a~~ A person shall not
- 27 manufacture, ship, sell, offer for sale, or offer for promotional purposes ~~such jewelry~~
- 28 body piercing jewelry that is not children's jewelry for retail sale or promotional
- 29 purposes in the state, unless the jewelry is made of one or more of the following
- 30 materials:
- 31 (1) Surgical implant stainless steel.
- 32 (2) Surgical implant grade of titanium.
- 33 (3) Niobium (Nb).
- 34 (4) Solid 14 karat or higher white or yellow nickel-free gold.
- 35 (5) Solid platinum.
- 36 (6) A dense low-porosity plastic, including, but not limited to, Tygon or
- 37 polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.
- 38 (c) ~~(1) For children's jewelry, a~~ A person shall not manufacture, ship, sell, offer
- 39 for sale, or offer for promotional purposes ~~such children's jewelry~~ for retail sale or
- 40 promotional purposes in the state, unless the jewelry meets all of the following
- 41 requirements:
- 42 ~~(A) (1)~~ Every component of the jewelry contains no more than 0.01 percent (100
- 43 parts per million) lead by weight, excluding inaccessible component parts.

~~(B)~~ (2) The jewelry has a surface coating that contains no more than 0.009 percent (90 parts per million) lead by weight.

~~(2)~~ (d) The department may establish guidance on what component parts in children's jewelry shall be considered to be inaccessible for purposes of paragraph (1) of subdivision (c).

(e) In the absence of the establishment of that guidance from the department pursuant to subdivision (d), a determination of whether a component part of children's jewelry is inaccessible shall be made in accordance with Section 1500.87 of Title 16 of the Code of Federal Regulations, as it may be amended from time to time.

~~(d)~~ ~~(1) For children's jewelry, a~~ (f) A person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes such children's jewelry that meets either of the following descriptions:

(A) The jewelry contains a component or is made of a material that is more than 0.03 percent (300 parts per million) cadmium by weight.

(B) The jewelry has a surface coating that contains more than 0.0075 percent (75 parts per million) soluble cadmium by weight.

~~(2) This subdivision~~ (g) Subdivision (f) shall not apply to any toy regulated for cadmium exposure under the federal Consumer Product Safety Improvement Act of 2008 (Public Law 110-314).

~~(e)~~ (h) The department may establish a standard for children's jewelry or for a component of children's jewelry that is more protective of public health, of sensitive subpopulations, or of the environment than the standards established pursuant to subdivisions (c) ~~and (d)~~ , (f), and (g).

~~(f)~~ (i) This section shall become operative on June 1, 2020.

**Comment.** Section 85660 continues former Section 25214.2 without substantive change.

See Sections 83160 ("department"), 83295 ("person"), 85650 ("body piercing jewelry," "children's jewelry," "component," "inaccessible," "jewelry," "surface coating").

## **§ 85665. Administrative and civil enforcement of article**

85665. (a) Except as provided in **Sections 25214.3.3 and 25214.3.4**, a person who violates this article shall not be subject to criminal penalties imposed pursuant to **this chapter** and shall only be subject to the administrative or civil penalty specified in subdivision (b).

(b) ~~(1)~~ A person who violates this article shall be liable for an administrative or a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each violation. ~~That~~

(c) ~~That~~ An administrative or civil penalty for a violation of this article may be assessed and recovered in an administrative action filed with the Office of Administrative Hearings or in a civil action brought in any court of competent jurisdiction.



(2) (d) In assessing the amount of an administrative or a civil penalty for a violation of this article, the presiding officer or the court, as applicable, shall consider all of the following:

- (A) (1) The nature and extent of the violation.
- (B) (2) The number of, and severity of, the violations.
- (C) (3) The economic effect of the penalty on the violator.
- (D) (4) Whether the violator took good faith measures to comply with this article and the time these measures were taken.
- (E) (5) The willfulness of the violator's misconduct.
- (F) (6) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.
- (G) (7) Any other factor that justice may require.

(e) (e) Administrative and civil penalties collected pursuant to this article shall be deposited in the Toxic Substances Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this article, except as provided in **Section 25192**.

(d)(1) (f) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(A) (1) Enter a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold; ~~enter~~.

(2) Enter a vehicle that is being used to transport, hold, or sell jewelry; ~~or enter~~.

(3) Enter a place where jewelry is being held or sold.

(B) (4) Inspect a factory, warehouse, establishment, vehicle, or place described in subparagraph (A) paragraph (1), and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. ~~In the case of~~

(5) Inspect in a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold; ~~this inspection shall include~~ any record, file, paper, process, control, and facility that has a bearing on whether the jewelry is being manufactured, packed, held, transported, sold, or offered for sale or for promotional purposes in violation of this article.

(2) (A) (6) ~~An authorized representative of the department may secure~~ Secure a sample of jewelry when taking an action authorized pursuant to this subdivision. ~~If the representative obtains~~, but if taking possession of a sample prior to leaving the premises, ~~he or she~~ the representative shall leave a receipt describing the sample obtained.

(B) (g) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(C) (h) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

(3) (i) An authorized representative of the department shall have access to all records of a carrier in commerce relating to the movement in commerce of jewelry, or the holding of that jewelry during or after the movement, and the quantity, shipper, and consignee of the jewelry.

(j) A carrier shall not be subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of jewelry in the usual course of business as a carrier.

(4) (k) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

**Comment.** Section 85665 continues former Section 25214.3 without substantive change.

See Sections 83160 (“department”), 83295 (“person”), 85650 (jewelry”).

**Staff Notes.** (1) Public comment is requested on whether the phrase “has a bearing on” in paragraph (1) of subdivision (e) of existing Section 25212 (which would be continued by proposed Section 85575(e)) would substantively change the intended meaning of the existing paragraph.

(2) Public comment is requested on whether the restatement of subparagraph (A) of paragraph (2) of subdivision (d) of existing Section 25214.3, as set forth in proposed Section 25214.3(f)(6), would substantively change the intended meaning of the existing provision.

## § 85670. Compliance documentation

85670. (a) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare and, at the request of the department, submit to the department no more than 28 days after the date of the request, technical documentation or other information showing that the jewelry is in compliance with the requirements of this article.

(b) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare a certification. ~~This certification shall attest that the jewelry does not contain a level of lead or cadmium that prohibits the jewelry from being sold or offered for sale pursuant to this article and that shall do all of the following:~~

(1) Attest that the jewelry does not contain a level of lead or cadmium that prohibits the jewelry from being sold or offered for sale pursuant to this article.

~~(1) (2) Identify the jewelry covered by the certificate, including a description of the jewelry that is sufficiently detailed to match the certificate to each product covered by the certificate and that could not be used to describe any jewelry that is not covered by the certificate.~~

~~(2) (3) Cite to each separate rule or standard for which the jewelry is being certified.~~

~~(3)~~ (4) Identify the manufacturer or supplier certifying compliance of the jewelry, including the name, full mailing address, and telephone number of the manufacturer or supplier.

(4) ~~(5)~~ Include the contact information for the person maintaining records of the test results of jewelry tested for purposes of this article, including the name, full mailing address, email address, and telephone number of that person.

~~(5)~~ (6) Include the date on which the jewelry was manufactured, including at least the month and year.

~~(6)~~ (7) Include the location where the jewelry was manufactured, including at least the city or administrative region, state, if applicable, and country where the product was manufactured or finally assembled. ~~If , and if the same manufacturer operates more than one location in the same city, the street address of the factory shall be included.~~

~~(7)~~ (8) Include the date or dates on which, and the location or locations where, the jewelry was tested for purposes of certification.

~~(8)~~ (9) Identify any third-party laboratory that performed the testing for purposes of certification, including the name, full mailing address, and telephone number of the laboratory.

(c) A manufacturer or supplier of jewelry sold or offered for promotional purposes in this state shall do either of the following:

(1) Provide the certification required by subdivision (b) to a person who sells or offers for sale that manufacturer's or supplier's jewelry.

(2) Display the certification required by subdivision (b) prominently on the shipping container or on the packaging of jewelry.

**Comment.** Section 85670 continues former Section 25214.3.1 without substantive change.

See Sections 83160 ("department"), 83295 ("person"), 85650 (jewelry").

#### § 85675. Exemption from penalty

85675. (a) Except as provided in subdivision (b), a person who sells jewelry at retail or offers jewelry for retail sale shall not be subject to an administrative or civil penalty for a violation of this article if the person proves, by a preponderance of evidence, all of the following:

(1) The person received a certificate of compliance for the jewelry from the manufacturer or supplier.

(2) The certificate of compliance received pursuant to paragraph (1) stated that the jewelry is in compliance with the requirements of this article.

(3) The person relied on the certificate of compliance and did not know, and had no reason to know, that the jewelry was in violation of this article.

(4) Upon receiving a notice of violation from the department, the person took corrective action by immediately removing the jewelry from commerce.

(b) The affirmative defense specified in subdivision (a) does not apply to, and may not be raised by, a person who has been found in violation of this article on at

1 least two prior occasions in the preceding three years from the filing date of the  
2 current action.

3 **Comment.** Section 85675 continues former Section 25214.3.2 without substantive change.  
4 See Sections 83160 (“department”), 83295 (“person”), 85650 (jewelry”).

5 **§ 85680. Criminal liability relating to jewelry containing lead or cadmium**

6 85680. A manufacturer or supplier of jewelry who knowingly and intentionally  
7 manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry  
8 containing lead or cadmium in violation of this article is guilty of a misdemeanor  
9 punishable by a fine of not less than five thousand dollars (\$5,000) nor more than  
10 one hundred thousand dollars (\$100,000), by imprisonment in a county jail for not  
11 more than one year, or by both that fine and imprisonment.

12 **Comment.** Section 85680 continues former Section 25214.3.3 without substantive change.  
13 See Section 85650 (jewelry”).

14 **§ 85685. Criminal liability relating to falsifying document**

15 85685. A manufacturer or supplier of jewelry who knowingly and with intent to  
16 deceive, falsifies any document or certificate required to be kept or produced  
17 pursuant to this article is subject to a fine of not more than fifty thousand dollars  
18 (\$50,000), by imprisonment in a county jail for not more than one year, or by both  
19 that fine and imprisonment.

20 **Comment.** Section 85685 continues former Section 25214.3.4 without substantive change.  
21 See Section 85650 (jewelry”).

22 **§ 85690. Conflict with independent department authority**

23 85690. (a) This article does not limit, supersede, duplicate, or otherwise conflict  
24 with the authority of the department to fully implement **Article 14 (commencing**  
25 **with Section 25251)**, including the authority of the department to include products  
26 in its product registry.

27 (b) Notwithstanding **subdivision (c) of Section 25257.1**, cadmium-containing  
28 jewelry shall not be considered as a product category already regulated or subject to  
29 pending regulation for purposes of **Article 14 (commencing with Section 25251)**.

30 **Comment.** Section 85690 continues former Section 25214.3.5 without substantive change.  
31 See Sections 83160 (“department”), 85650 (jewelry”).

32 **§ 85695. Test methods and procedures for determining compliance**

33 85695. (a) The test methods for determining compliance with this article shall be  
34 conducted using the EPA reference methods 3050B, 3051A, or 3052, as specified  
35 in EPA Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-  
36 846 (Third Edition, or subsequent update, as applicable) for lead and cadmium in  
37 the material being tested, except as otherwise provided in subdivision (b) and  
38 **Sections 24214.4.1 and 25214.4.2**, and shall be conducted in accordance with all  
39 of the following procedures:

(1) When preparing a sample, the laboratory shall make every effort to ensure that the sample removed from a jewelry piece is representative of the component to be tested, and is free of contamination from extraneous dirt and material not related to the jewelry component to be tested.

(2) All jewelry component samples shall be washed prior to testing using standard laboratory detergent, rinsed with laboratory reagent grade deionized water, and dried in a clean ambient environment.

(3) If a component is required to be cut or scraped to obtain a sample, the metal snips, scissors, or other cutting tools used for the cutting or scraping shall be made of stainless steel and washed and rinsed before each use and between samples.

(4) A sample shall be digested in a container that is known to be free of lead and cadmium and with the use of an acid that is not contaminated by lead or cadmium, including analytical reagent grade digestion acids and reagent grade deionized water.

(5) Method blanks, consisting of all reagents used in sample preparation handled, digested, and made to volume in the same exact manner and in the same container type as samples, shall be tested with each group of 20 or fewer samples tested.

(6) The results for the method blanks shall be reported with each group of sample results, and shall be below the stated reporting limit for sample results to be considered valid.

(7) Test methods selected shall be those that best demonstrate they can achieve total digestion of the sample material being analyzed.

(8) Test methods shall not be used if they are inconsistent with the specified application of the test method or do not demonstrate the best performance or proficiency for achieving total digestion of the sample material.

(b) Notwithstanding **subdivision (a) and Section 25214.4.1**, test methods for determining compliance with the limits for lead in children's jewelry in **subdivision (c) of Section 25214.2** include those permissible to demonstrate compliance with the federal Consumer Product Safety Improvement Act of 2008 (Public Law 110-314).

(c) The test method for determining compliance with **subparagraph (B) of paragraph (1) of subdivision (d) of Section 25214.2** shall be the same test method used to demonstrate compliance with Section 2056b of Title 15 of the United States Code.

~~(e)~~ (d) Digested samples shall be analyzed according to the specification of an approved and validated methodology using inductively coupled plasma optical emission spectroscopy. ~~Other analytical~~

(e) Analytical methods not identified in subdivision (d), such as inductively coupled plasma mass spectrometry, flame atomic absorption spectroscopy, graphite furnace atomic absorption spectroscopy, or other technology, may be used under appropriate conditions, using applicable, recognized analytical techniques for the alternative method to achieve a reported quantitation limit no greater than 0.001 percent (10 parts per million) for samples.

(~~d~~) (f) All testing for determining compliance with this article shall be performed by a laboratory that conforms to the requirements in **Article 8.5 (commencing with Section 25198)**.

**Comment.** Section 85695 continues former Section 25214.4 without substantive change. See Sections 85650 (“children’s jewelry,” “component”).

**§ 85700. Additional procedures for specified materials**

85700. In addition to the requirements of **Section 25214.4**, the following procedures shall be used for testing the following materials:

(a) For testing a metal plated with suitable undercoats and finish coats, the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(b) For testing unplated metal and metal substrates that are not a material listed in **paragraphs (1) to (10), inclusive, of subdivision (a) of Section 25214.2**, the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(c) For testing polyvinyl chloride (PVC), the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Digested samples may require dilution prior to analysis.

(4) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(d) For testing plastic or rubber that is not polyvinyl chloride (PVC), including acrylic, polystyrene, plastic beads, or plastic stones, the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Plastic beads or stones shall be crushed prior to digestion.

(4) Digested samples may require dilution prior to analysis.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(e) For testing coatings on glass and plastic pearls, the following protocols shall be observed:

(1) The coating of glass or plastic beads shall be scraped onto a surface free of dust, including a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead or cadmium. The substrate pearl material shall not be included in the scrapings.

(2) The razor blade or sharp instrument shall be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples.

(3) The scrapings shall be weighed and not less than 50 micrograms of scraped coating shall be used for analysis.

(4) If less than 50 micrograms of scraped coating is obtained from an individual pearl, multiple pearls from that sample shall be scraped and composited to obtain a sufficient sample amount.

(4) (5) The number of pearls used to make the composite shall be noted.

(5) (6) The scrapings shall be digested according to EPA reference method 3050B or 3051 or an equivalent procedure for hot acid digestion in preparation for trace lead or cadmium analysis.

(6) (7) The digestate shall be diluted in the minimum volume practical for analysis.

(7) (8) The sample result shall be reported within the calibrated range of the instrument.

(9) If the initial test of the sample is above the highest calibration standard, the sample shall be diluted and reanalyzed within the calibrated range of the instrument.

(f) For testing dyes, paints, coatings, varnish, printing inks, or ceramic glazes, the following testing protocols shall be observed:

(1) The digestion shall use hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be not less than 0.050 gram, and shall be chopped or comminuted prior to digestion.

(3) The digested sample may require dilution prior to analysis.

(4) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(g) For testing glass and crystal, the following protocols shall be used:

~~(1) For determining weight:~~

~~(A) A component shall be free of any extraneous material, including adhesive, before it is weighed.~~

~~(B) The scale used to weigh a component shall be calibrated annually by a qualified vendor using reference mass standards that are traceable to the National Institute of Standards and Technology (NIST) of the Department of Commerce or the International System of Units (SI) and shall be verified daily before weighing the component.~~

~~(C) The calibration of the scale shall be accurate to within 0.0001 gram.~~

~~(2) Both of the following testing protocols shall be observed:~~

~~(A) (1) The glass and crystal component shall be crushed or grounded to powder form before digestion and shall be digested according to the United States Environmental Protection Agency Test Method 3052 using hydrofluoric acid in a microwave or an equivalent method to yield complete digestion.~~

~~(B) (2) The digestate shall be diluted in the minimum volume practical for analysis.~~

(h) For determining the weight of glass and crystal, the following protocols shall be used:

(1) A component shall be free of any extraneous material, including adhesive, before it is weighed.

(2) The scale used to weigh a component shall be calibrated annually by a qualified vendor using reference mass standards that are traceable to the National Institute of Standards and Technology (NIST) of the Department of Commerce or the International System of Units (SI) and shall be verified daily before weighing the component.

(3) The calibration of the scale shall be accurate to within 0.0001 gram.

**Comment.** Section 85700 restates former Section 25214.4.1 without substantive change.

**Note.** Proposed Section 85700(g) would restate existing Section 25214.4.1(g) for clarity. The existing section reads as follows:

“(g) For testing glass and crystal, the following protocols shall be used:

(1) For determining weight:

(A) A component shall be free of any extraneous material, including adhesive, before it is weighed.

(B) The scale used to weigh a component shall be calibrated annually by a qualified vendor using reference mass standards that are traceable to the National Institute of Standards and Technology (NIST) of the Department of Commerce or the International System of Units (SI) and shall be verified daily before weighing the component.

(C) The calibration of the scale shall be accurate to within 0.0001 gram.

(2) Both of the following testing protocols shall be observed:

(A) The glass and crystal component shall be crushed or grounded to powder form before digestion and shall be digested according to the United States Environmental Protection Agency Test Method 3052 using hydrofluoric acid in a microwave or an equivalent method to yield complete digestion.

(B) The digestate shall be diluted in the minimum volume practical for analysis.”

**Absent comment, this proposed restatement of this provision will be presumed correct.**



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85705. The department may adopt regulations to implement this article, including, but not limited to, adopting regulations that modify the testing protocols specified in **Sections 25214.4 and 25214.4.1**, as it deems necessary to further the purposes of this article.

**Comment.** Section 85705 continues former Section 25214.4.2 without substantive change. See Section 83160 (“department”).

## Article 5. Lead Plumbing

## § 85750. Monitoring and compliance

85750. (a) Lead plumbing monitoring and compliance testing shall be undertaken by the department, as a part of the department's ongoing program for reducing toxic substances from the environment.

(b) For purposes of implementing this article, the department shall, based on its available resources and staffing, annually select not more than 75 drinking water faucets or other drinking water plumbing fittings and fixtures for testing and evaluation, including the locations from which to select the faucets, fittings, and fixtures, to determine compliance with Section 116875.

(c) In implementing this article, the department shall use test methods, protocols, and sample preparation procedures that are adequate to determine total lead concentration in a drinking water plumbing fitting or fixture to determine compliance with the standards for the maximum allowable total lead content set forth in Section 116875.

(d) In selecting drinking water faucets and other drinking water plumbing fittings and fixtures to test and evaluate pursuant to this article, the department shall exercise its judgment regarding the specific drinking water plumbing fittings or fixtures to test.

(e) This article does not require the department's selection to be either random or representative of all available plumbing fittings or fixtures.

(f) The department shall acquire its samples of fittings and fixtures from locations that are readily accessible to the public at either retail or wholesale sources.

(g) The department shall annually post the results of the testing and evaluation conducted pursuant to this article on its Internet Web site and shall transmit these results in an annual report to the State Department of Public Health.

**Comment.** Section 85750 continues former Section 25214.4.3 without substantive change. See Section 83160 (“department”).

## Article 6. Motor Vehicle Switches

**§ 85575. “Mercury-containing motor vehicle light switch”**

85575. For purposes of this article, “mercury-containing motor vehicle light switch” means any motor vehicle light switch found in the hood or trunk of a motor vehicle that contains mercury.

**Comment.** Section 85575 continues former Section 25214.5 without substantive change.

**§ 85580. Applicable laws and regulations**

85580. Any mercury-containing motor vehicle light switch removed from a motor vehicle is subject to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, and any other applicable regulation adopted by the department pursuant to **this chapter**, including, but not limited to, standards for the handling of hazardous waste, standards for destination facilities, requirements for the tracking of universal waste shipments, import requirements, and the regulations governing different products.

**Comment.** Section 85580 continues former Section 25214.6 without substantive change.

See Section 83160 (“department”).

**§ 85585. Department responsibilities**

85585. The department shall do all of the following with regard to this article:

(a) Coordinate with local agencies to provide technical assistance to businesses engaged in the dismantling or crushing of motor vehicles concerning the safe removal and proper disposal of mercury-containing light switches from motor vehicles, including information about vehicle makes and models that contain mercury light switches and entities that provide mercury recycling services.

(b) Coordinate and encourage entities, such as associations representing motor vehicle repair shops, to offer to the public the replacement and recycling of mercury-containing motor vehicle light switches.

(c) Make available to the public information concerning services to replace and recycle mercury-containing motor vehicle light switches.

**Comment.** Section 85585 continues former Section 25214.7 without substantive change.

See Section 83160 (“department”).

**§ 85590. Reports to Legislature**

85590. On or before January 1, 2004, the department shall report to the appropriate policy and fiscal committees of the Legislature on both of the following:

(a) The success of efforts to remove mercury-containing vehicle light switches from vehicles pursuant to **Section 25214.6**.

(b) Compliance with the requirement to remove mercury-containing appliance switches pursuant to Section 42175 of the Public Resources Code.

**Comment.** Section 85590 continues former Section 25214.8 without substantive change.

See Section 83160 (“department”).

Article 7. Mercury-Added Equipment (*Article 10.2.1. Mercury-Added Thermostats, Relays, Switches, And Measuring Devices, Article 10.2.2. Mercury Thermostat Collection Act of 2021*)

Article 8. Electronic Waste (*Article 10.3. Electronic Waste*)

Article 9. Lead-Acid Batteries (*Article 10.5. The Lead-Acid Battery Recycling Act of 2016*)

Article 10. Electronic Waste (*Article 10.3. Electronic Waste*)

Article 11. Lead Wheel Weights (*Article 10.5.1. Lead Wheel Weights*)

Article 12. Household Batteries (*Article 10.6. Management of Small Household Batteries*)

Article 13. Paint (*Article 10.7. Recyclable Latex Paint and Oil-Based Paint*)

Article 14. Household and Generator Waste (*Article 10.8. Household Hazardous Waste and Small Quantity Generator Waste*)

Article 15. Battery Management: Federal Regulation (*Article 10.9*)

Article 16. Treated Wood (*Article 11.2*)

## PART 5. HAZARDOUS WASTE AND SPECIFIC WASTES

### CHAPTER 1. IDENTIFICATION OF HAZARDOUS WASTE

Article 1. Listing (*Article 4. Listings*)

Article 2. Identification and Management of Specific Hazardous Waste (*Article 6.6. Hazardous Waste of Concern and Public Safety Act*)

### CHAPTER 2. RULES FOR SPECIFIC WASTES

Article 1. Electronic Wastes (*Article 10.3. Electronic Waste*)

Article 2. Household Batteries (*Article 10.6. Management Of Small Household Batteries*)

Article 3. Lead Acid Batteries (*Article 10.5. The Lead-Acid Battery Recycling Act of 2016*)

Article 4. Mercury Thermostats (*Article 10.2.2. Mercury*

*Thermostat Collection Act Of 2008)*

Article 5. Motor Vehicle Switches (*Article 10.2. Motor Vehicle Switches*)

Article 6. Paint (*Article 10.7. Recyclable Latex Paint And Oil-Based Paint*)

Article 7. Photovoltaic Modules (*Article 17. Photovoltaic Modules*)

Article 8. Treated Wood Waste (part of *Article 5. Standards*)

Article 9. Used Oil (*Article 13. Management of Used Oil*)

Article 10. Waste From Discarded Appliances (*Article 10.1. Management of Hazardous Wastes Removed from Discarded Appliances*)

CHAPTER 3. LABORATORY ANALYSIS

**Note.** Proposed Chapter 6 recodifies Section 25198. Subdivision (a) of this section defines “state department” for the purposes of the section to mean the “State Department of Health Services.” The term “state department” is only used once in the section. Given the term’s similarity to the defined term “department” and the single use of the defined term “state department,” the proposed legislation would not continue the definition for “state department” and would simply substitute the full agency name in the one spot where “state department” is currently used.

Further, as indicated below, the reference to the “state department” appears to be out of date. See Note to proposed Section 90000.

**Absent comment, the proposed elimination of the “state department” definition and substitution of the full agency name will be presumed correct.**

**§ 90000. Laboratory accreditation for analyses**

90000. Except as provided in subdivision (a) of Section 90005, the analysis of any material required by this division shall be performed by a laboratory accredited by the State Water Resources Control Board pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

**Comment.** Section 90000 restates the first part of former Section 25198(b) without substantive change. The reference to the “state department” (defined as the “State Department of Health Services”) in former Section 25198 has been replaced with a reference to the “State Water Resources Control Board.” Formerly, the State Department of Health Services was the state agency authorized to accredit laboratories under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101. See former Section 100825(c)(1), (4), (18) as added by 2005 Cal. Stat. ch. 406, § 2. Currently, the State Water Resources Control Board is the agency authorized to accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

**Notes.** Subdivision (b) of Section 25198 provides as follows:

“Except as provided in subdivision (c), the analysis of any material required by this chapter shall be performed by a laboratory certified by the state department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101, except that laboratories previously

issued a certificate under this section shall be deemed certified until the time that certification under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 has been either granted or denied, but not beyond the expiration date shown on the certificate previously issued under this section.”

(1) Proposed Section 90000 would restate the first part of this subdivision to make the terminology consistent with Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

In addition, proposed Section 90000 would replace a reference to the “state department” (defined as the “State Department of Health Services”) with a reference to the “State Water Resources Control Board.” Formerly, the State Department of Health Services had the accreditation authority under the referenced article. See former Section 100825(c)(1), (4), (18), as added by 2005 Cal. Stat. ch. 406, § 2 (AB 1317). Currently, the State Water Resources Control Board is the agency granted the authority to accredit laboratories under that article. See Section 100825(c)(1), (4), (11), (12).

**Absent comment, this restatement will be presumed correct.**

As in its prior work on Chapter 6.8, the Commission did not simply delete the agency name, which could prevent future discrepancies from arising if the accrediting agency changes. See proposed Section 78510 in *Hazardous Substance Account Recodification Act*, \_\_ Cal. L. Revision Comm’n Reports \_\_ (2021). The Commission concluded that deleting the agency name could potentially be substantive. The referenced article provides for a second form of accreditation (“TNI accreditation”), which is conducted by accrediting bodies recognized by a national nonprofit (“TNI”). See Section 100825(c)(14)-(20). It is unclear whether such accreditation would be sufficient for the purposes of laboratory analyses conducted under this division.

**The Commission welcomes comment on this issue.**

(2) Section 25198(b) includes a rule about the certification of a laboratory previously issued a certificate under “this section.” This rule is not proposed for continuation as it appears to be long obsolete.

The Commission researched prior versions of Section 25198 to determine which prior version of the statute authorized the issuance of laboratory certificates. Prior to 1988, Section 25198 authorized the issuance of laboratory certifications under specified conditions, consistent with implementing regulations. See 1982 Cal. Stat. ch. 1209, § 2.

In 1988, the Environmental Laboratory Improvement Act of 1988 was enacted, which consolidated, reorganized, and revised the laboratory certification functions. See 1988 Cal. Stat. ch. 894, § 1. At that time, Section 25198 was amended to refer to laboratories that were previously issued certificates under the section. See 1988 Cal. Stat. ch. 894, § 6. The rule in Section 25198 deems laboratories previously issued a certificate under this section to be certified “until the time that [the new] certification ... has been granted or denied, *but not beyond the expiration date shown on the certificate previously issued under this section*” (emphasis added). It seems almost certain that a laboratory certification issued over 30 years ago would have expired in the intervening years. See former Section 25198.3, as enacted by 1982 Cal. Stat. ch. 1209, § 2 (“The department shall issue a certificate valid for two years from the date of issue to a laboratory when the department determines that the laboratory is competent and equipped to conduct the type of analysis for which certification is sought.”).

**The Commission welcomes comment on whether the rule pertaining to laboratories previously issued certification under Section 25198 has any ongoing validity.**

1   **§ 90005. Exceptions to certification requirements**

2    90005. (a) The requirements of Section 90000 shall not apply to analyses  
3 performed by a laboratory pursuant to the facility’s waste analysis plan if all of the  
4 following conditions are met:

5    (1) The laboratory is owned or operated by the same person who owns or operates  
6 the facility at which the waste will be managed, and the facility is a hazardous waste  
7 treatment, storage, or disposal facility that is required to obtain a hazardous waste  
8 facilities permit pursuant to **Article 9 (commencing with Section 25200)**.

9    (2) The analysis is conducted for any of the following purposes:

10   (A) To determine whether a facility will accept the hazardous waste for transfer,  
11 storage, or treatment, as described in paragraph (3) of subdivision (a) of Section  
12 66264.13 of, and paragraph (3) of subdivision (a) of Section 66265.13 of, Title 22  
13 of the California Code of Regulations, as those sections read on January 1, 2001.

14   (B) To ensure that the analysis used to determine whether a facility will accept  
15 the hazardous waste for transfer, storage, or treatment is accurate and up to date, as  
16 described in paragraph (4) of subdivision (a) of Section 66264.13 of, and paragraph  
17 (4) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of  
18 Regulations, as those sections read on January 1, 2001.

19   (C) To determine whether the hazardous waste received at the facility for transfer,  
20 storage, or treatment matches the identity of the hazardous waste designated on an  
21 accompanying manifest or shipping paper, as described in paragraph (5) of  
22 subdivision (a) of Section 66264.13 of, and paragraph (5) of subdivision (a) of  
23 Section 66265.13 of, the California Code of Regulations, as those sections read on  
24 January 1, 2001.

25   (3) The facility’s waste analysis plan is prepared in accordance with the  
26 regulations adopted by the department pursuant to this division.

27   (b)(1) An analysis performed in accordance with subdivision (a) is not an analysis  
28 performed for regulatory purposes within the meaning of paragraph (9) of  
29 subdivision (c) of Section 100825.

30   (2) The exemption provided by subdivision (a) does not exempt the analyses of  
31 waste for purposes of disposal from the requirements of Section 90000 requiring  
32 certified laboratory analyses. The analyses described in subdivision (a) are not  
33 exempt from any other requirement of law, regulation, or guideline governing  
34 quality assurance and quality control.

35   **Comment.** Section 90005 restates former Section 25198(c), (d), and (e) without substantive  
36 change. An erroneous cross-reference to Section 100825(c)(19) was corrected to refer to Section  
37 100825(c)(9).

38    See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”),  
39 83215 (“hazardous waste facility”), 83250 (“manifest”), 83295 (“person”), 83355 (“storage”),  
40 83370 (“treatment”), 83395 (“waste”).

41   **Notes. (1)** The introductory clause of Section 25198(c) provides as follows:

42    “The requirements of subdivision (b) shall not apply to analyses performed by a laboratory  
43 pursuant to the facility’s waste analysis plan, that is prepared in accordance with the regulations

adopted by the Department of Toxic Substances Control pursuant to this chapter, if both of the following conditions are met:”

This provision is restated for readability and to make clear that the waste analysis plan being prepared in accordance with the regulations is a condition that must be satisfied for this rule to apply.

**Absent comment, this proposed restatement will be presumed correct.**

In addition, the reference to the “Department of Toxic Substances Control” in Section 25198(c) was replaced with the defined term “department.” See proposed Section 83160.

(2) Section 25198(d) refers to an “analysis performed for regulatory purposes within the meaning of paragraph (19) of subdivision (c) of Section 100825.” This reference appears to be erroneous, as the definition of “regulatory purposes” is found in paragraph (9) of Section 100825(c). The reference has been corrected accordingly.

**Absent comment, this correction will be presumed correct.**

(3) Section 25198(c)(1) refers to a “hazardous waste treatment, storage, or disposal facility.” This term is similar to the defined term “hazardous waste facility.” See proposed Section 83215; see also proposed Section 83180 (defining another similar term, “disposal site”). A “hazardous waste facility” means “all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste.”

**The Commission welcomes comment on whether the defined term “hazardous waste facility” could be substituted here or whether this reference intends a narrower set of facilities (e.g., not hazardous waste recycling facilities).**

#### § 90010. Certification required for contracts for laboratory analyses

90010. No person or public entity of the state shall contract with a laboratory for environmental analyses for which certification is required pursuant to this division, unless the laboratory holds a valid certificate.

**Comment.** Section 90010 continues former Section 25198(f) without substantive change. See Section 83295 (“person”).

**Note.** Section 25198(f) refers to a “person or public entity of the state.” “Person” is a defined term, which seems to include public entities of the state. Specifically, proposed Section 83295 provides that “person” includes “the state or any department, agency, or political subdivision thereof.” It is unclear what the “or public entity of the state” adds to this provision. It appears to be redundant.

**The Commission welcomes comment on this issue.**

1 CHAPTER 4. HAZARDOUS WASTE REDUCTION, RECYCLING, AND TREATMENT  
2 RESEARCH AND DEMONSTRATION ACT OF 1985

3 Article 1. Preliminary Provisions

4 § 90050. Short title

5 90050. This chapter shall be known and may be cited as the Hazardous Waste  
6 Reduction, Recycling, and Treatment Research and Demonstration Act of 1985.

7 **Comment.** Section 90050 continues former Section 25244 without substantive change.

8 § 90055. Legislative findings and intent

9 90055. (a) The Legislature hereby finds and declares that, whenever possible, the  
10 generation of hazardous waste is to be reduced or eliminated as expeditiously as  
11 possible, and that waste that is generated should be recycled, treated, or disposed of  
12 in a manner that minimizes any present or future threats to human health or the  
13 environment.

14 (b) The Legislature further finds that there exist many promising but as yet  
15 unproven technologies for the reduced generation of hazardous waste and for  
16 recycling and treating hazardous waste.

17 (c) The Legislature further finds that financial commitment by public agencies  
18 and private industry for the expeditious development and dispersion of hazardous  
19 waste reduction, recycling, and treatment technologies depends upon further  
20 research, as well as credible and timely demonstrations of the feasibility,  
21 environmental acceptability, and reliability of those technologies.

22 (d) It is the intent of the Legislature, in enacting this chapter, to promote the  
23 research, development, and expeditious demonstration of technologies that have the  
24 potential to reduce, recycle, and treat hazardous waste, and to encourage private  
25 sector participation in this program to the greatest extent possible.

26 **Comment.** Section 90055 continues former Section 25244.1 without substantive change.

27 See Sections 83210 (“hazardous waste”), 83325 (“recycling”), 83355 (“treatment”), 83395  
28 (“waste”).

29 § 90060. “Hazardous waste reduction, recycling, and treatment technologies”

30 90060. (a) For purposes of this chapter, “hazardous waste reduction, recycling,  
31 and treatment technologies” means technologies and techniques that have as their  
32 primary purpose the reduced generation of hazardous waste, the recycling of  
33 hazardous waste, or the conversion of hazardous waste into a less hazardous form.

34 (b) For purposes of this chapter, “hazardous waste reduction, recycling, and  
35 treatment technologies” does not include solidification or treatment occurring  
36 directly in or on the land, such as techniques using evaporation, surface  
37 impoundments, or land farming.

38 **Comment.** Section 90060 continues former Section 25244.2 without substantive change.

39 See Sections 83210 (“hazardous waste”), 83325 (“recycling”), 83355 (“treatment”).



## Article 2. Department Responsibilities

**§ 90075. Department duty to implement contingent on funding**

90075. (a) Except as provided in subdivision (b), the department's duty to implement this chapter is contingent upon, and limited to, the availability of funding.

(b) Subdivision (a) does not apply to **Section 25244.4**.

**Comment.** Section 90075 continues former Section 25244.01 without substantive change. See Section 83160 ("department").

**§ 90080. Hazardous Waste Technology, Research, Development, and Demonstration Program**

90080. (a) The department shall establish a Hazardous Waste Technology, Research, Development, and Demonstration Program, which shall consist of all of the following elements:

(1) Contracting with, and providing grants to, universities, governmental agencies, and private organizations for the research and development of hazardous waste reduction, recycling, or treatment technologies pursuant to **Section 25244.10**.

(2) Providing grants, under specified conditions, to cities, counties, and private organizations for the commercial demonstration of hazardous waste reduction, recycling, or treatment technologies pursuant to **Section 25244.6**.

(b)(1) For purposes of this subdivision, "commercially successful technology" means a hazardous waste reduction, recycling, or treatment technology that is proven to be profitable, as determined by the department.

(2) The department shall require any university, governmental agency, or private organization that receives a grant pursuant to paragraph (1) or (2) of subdivision (a) to agree to do the following:

(i) Repay the amount of the grant to the department, if the grant results in the development of a commercially successful technology.

(ii) Pay the department a percentage of any royalties derived from that technology, as negotiated between the department and the grant recipient.

(3) The department shall deposit any funds it receives pursuant to this subdivision in the Hazardous Waste Control Account, and upon appropriation by the Legislature may expend those funds to carry out this chapter.

**Comment.** Section 90080 restates former Section 25244.5 without substantive change.

See Sections 83160 ("department"), 83210 ("hazardous waste"), 90060 ("hazardous waste reduction, recycling, and treatment technologies"), 83325 ("recycling"), 83370 ("treatment").

**Notes. (1)** Subdivision (a)(3) of existing Section 25244.5, referencing grants for the development of local hazardous waste reduction programs "pursuant to Section 25244.1101," is proposed to be discontinued, as Section 25244.1101 was renumbered as Section 25244.11.5 in 1994, and repealed effective January 1, 2000. See 1994 Cal. Stat. ch. 370.

**The Commission welcomes comment on the proposed deletion of existing Section 25244.5(a)(3).**

(2) Proposed Section 90080(b)(2) would restate existing Section 25244.5(b)(2) to clarify that the payment of royalties referenced in that subdivision to the department — as contrasted with the referenced repayment of the amount of the received grant — is *not* contingent on the development of “commercially successful technology.” The existing subdivision reads as follows:

“The department shall require any university, governmental agency, or private organization which receives a grant pursuant to paragraph (1) or (2) of subdivision (a) to agree to repay the department for the amount of the grant, if the grant results in the development of a commercially successful technology, and to additionally pay the department a percentage of any royalties derived from that technology, as negotiated between the department and the grant recipient.”

**The Commission welcomes comment on this restatement of existing Section 25244.5(b)(2).**

(3) Proposed Section 90080(b)(3) would restate existing Section 25244.5(b)(3) for clarity. The existing subdivision reads as follows:

“The department shall deposit any repayments or royalties received by the department pursuant to this subdivision in the Hazardous Waste Control Account, and those funds may be expended by the department, upon appropriation by the Legislature, to carry out this article.”

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing subdivision.**

#### **§ 90085. Department responsibilities requiring consultation with other agencies and parties**

90085. The department, in consultation with the State Water Resources Control Board, the State Air Resources Board, and the California Waste Management Board, shall do all of the following:

(a) Implement a program to research, develop, and demonstrate hazardous waste reduction, recycling, and treatment technologies at appropriate locations throughout the state.

(b) On or before January 1, 1987, in consultation with industry and interested parties, adopt criteria for selecting projects that would receive grants for the construction of equipment that would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies, including provisions requiring the department in assessing each project to consider the feasibility of following matters:

(1) The project’s particular technology.

(2) The research and technical spinoffs likely to be generated by the project.

(3) The degree to which the findings of the projects can be disseminated and evaluated for replication elsewhere.

(4) The consistency and contributions of the project to the state’s hazardous waste management program.

(c) Using the criteria adopted pursuant to subdivision (b), select projects to receive grants to construct equipment that would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies, and meet at least one of the following requirements:

(1) The project has both onsite and offsite potential for the reduction, recycling, or treatment of hazardous waste.

(2) The project has the potential to benefit or be utilized by small businesses.

(3) The project is applicable to a range of industries.

(d) A grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, or Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

**Comment.** Section 90085 restates former Section 25244.6 without substantive change.

See Sections 83160 (“department”), 83210 (“hazardous waste”), 83220 (“hazardous waste management”), 90060 (“hazardous waste reduction, recycling, and treatment technologies”), 83325 (“recycling”), 83370 (“treatment”).

**Notes. (1)** Proposed Section 90085(b)(3) would restate existing Section 25244.6 for clarity. The existing section reads as follows:

“The department, in consultation with the State Water Resources Control Board, the State Air Resources Board, and the California Waste Management Board, shall do all of the following:

(a) Implement a program to research, develop, and demonstrate hazardous waste reduction, recycling, and treatment technologies at appropriate locations throughout the state.

(b) On or before January 1, 1987, and, in consultation with industry and interested parties, adopt criteria for selecting projects which would receive grants to pay for the construction of equipment which would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies. The criteria shall include provisions which require that, in assessing each project, the department consider the feasibility of the project’s particular technology, the research and technical spinoffs likely to be generated by the project, the degree to which the findings of the projects can be disseminated and evaluated for replication elsewhere, and the consistency of, and contributions of, the project to the state’s hazardous waste management program.

(c) Using the criteria adopted pursuant to subdivision (b), select projects to receive grants to construct equipment which would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies. A grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, or Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. The department shall select projects which also meet at least one of the following requirements:

(1) The project has onsite, as well as offsite potential, for the reduction, recycling, or treatment of hazardous waste.

(2) The project has the potential to benefit, or be utilized by, small businesses.

(3) The project is applicable to a range of industries.”

**The Commission welcomes comment on this restatement of existing Section 25244.6.**

**(2)** Existing Section 25244.6(b) requires the department to adopt specified criteria “on or before January 1, 1987.” Is this requirement now obsolete, and if so, can the requirement in the subdivision be deleted from proposed Section 90085 without creating any substantive change to any aspect of existing law?

### Article 3. Grants and Contracts

#### § 90100. Grants and contracts for research and development

90100. (a) The department may issue grants to, and enter into contracts with, universities, governmental agencies, and private organizations to research and develop hazardous waste reduction, recycling, or treatment technology.

(b) Grants issued pursuant to subdivision (a) may be applied to personnel, equipment, and administrative costs and shall, to the extent possible, be used to augment other sources of research and development funding, including federal and private funds.

(c) Any grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code.

(d) Any contract entered into pursuant to this section is subject to all applicable state laws governing contracts.

**Comment.** Section 90100 continues former Section 25244.10 without substantive change.

See Sections 83160 (“department”), 83210 (“hazardous waste”), 90060 (“hazardous waste reduction, recycling, and treatment technologies”), 83325 (“recycling”), 83370 (“treatment”).

**Note.** Proposed Section 90100 would restate existing Section 25244.10 for clarity. The existing section reads as follows:

“The department may issue grants to, and enter into contracts with, universities, governmental agencies, and private organizations to research and develop hazardous waste reduction, recycling, or treatment technology. These grants may be applied to personnel, equipment, and administrative costs and shall, to the extent possible, be used to augment other sources of research and development funding, including federal and private funds. Any grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, but a contract entered into pursuant to this section is subject to all applicable state laws governing contracts.”

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing section.**

#### § 90105. Grant funding for relevant equipment construction

90105. Grant funding for equipment construction needed for demonstration of hazardous waste reduction, recycling, and treatment technologies shall be provided to projects selected pursuant to **Section 25244.6** in four consecutive steps:

(a) Step I grants shall be made to study the feasibility of a proposed project, in accordance with the following:

(1) Ninety percent of the costs of the feasibility study shall be eligible for grant funding, up to a maximum of twenty-five thousand dollars (\$25,000) per grant.

(2) In activities funded by a step I grant, the applicant shall develop information needed to select the waste reduction, recycling, or treatment alternative that would be most cost effective.

(b) Step II grants shall be made for project design, in accordance with the following:

(1) Seventy percent of the costs of the design of the project, or 90 percent if the grant applicant is a small business, shall be eligible for grant funding, up to a maximum of fifty thousand dollars (\$50,000) per grant.

(2) In activities funded by a step II grant, the applicant shall prepare detailed plans and specifications for the selected facilities, establish schedules for implementation, and obtain necessary permits.

(c) Step III grants shall be made for the construction of the facilities, in accordance with the following:

(1) Fifty percent of the costs of constructing the project, or 80 percent if the grant applicant is a small business, shall be eligible for grant funding, up to a maximum of four hundred thousand dollars (\$400,000) per grant.

(2) As a condition of receiving a step III grant, the grantee shall allow the results of the project to be evaluated and the information disseminated to other parties.

(3) In activities funded by a step III grant, the applicant shall construct the facilities as designed under a step II grant, procure needed equipment, and obtain necessary permits to operate the facility.

(d)(1) Step IV grants shall be made for the following activities:

(i) Evaluation of the effectiveness of grant-funded facilities.

(ii) Development of information on compliance with regulatory permits.

(iii) Assessment of applicability of the selected approach to other generators of similar hazardous wastes.

(2) Ninety percent of the costs of the activities identified in paragraph (1), or 100 percent if the grant applicant is a small business, shall be eligible for grant funding, up to a maximum of one hundred thousand dollars (\$100,000) per grant.

**Comment.** Section 90105 restates former Section 25244.8 without substantive change.

See Sections 83085 (“applicant”), 90060 (“hazardous waste reduction, recycling, and treatment technologies”), 83325 (“recycling”), 83370 (“treatment”), 83395 (“waste”).

**Note.** Proposed Section 90105 would restate existing Section 25244.8 for clarity. The existing section reads as follows:

“Grant funding for equipment construction needed for demonstration of hazardous waste reduction, recycling, and treatment technologies shall be provided to projects selected pursuant to Section 25244.6 in four consecutive steps:

(a) Step I grants shall be made to study the feasibility of a proposed project. Ninety percent of the costs of the feasibility study shall be eligible for grant funding up to a maximum of twenty-five thousand dollars (\$25,000) per grant. In activities funded by a step I grant, the applicant shall develop information needed to select the waste reduction, recycling, or treatment alternative, which would be most cost-effective.

(b) Step II grants shall be made for project design. Seventy percent of the costs of the design of the project shall be eligible for grant funding, except that a small business may be eligible for 90 percent of those costs, up to a maximum of fifty thousand dollars (\$50,000) per grant. In activities funded by a step II grant, the applicant shall prepare detailed plans and specifications for the selected facilities, establish schedules for implementation, and obtain necessary permits.

(c) Step III grants shall be made for the construction of the facilities. Fifty percent of the costs of constructing the project shall be eligible for grant funding, except that a small business may be eligible for 80 percent of those costs, up to a maximum of four hundred thousand dollars (\$400,000) per grant. As a condition of receiving a step III grant, the grantee shall allow the results of the project to be evaluated and the information disseminated to other parties. In activities funded by a

step III grant, the applicant shall construct the facilities as designed under a step II grant, procure needed equipment, and obtain necessary permits to operate the facility.

(d) Step IV grants shall be made to evaluate the effectiveness of grant-funded facilities, develop information on compliance with regulatory permits, and assess applicability of the selected approach to other generators of similar hazardous wastes. Ninety percent of the costs of those activities shall be eligible for grant funding, except that a small business may be eligible for 100 percent of those costs, up to a maximum of one hundred thousand dollars (\$100,000) per grant.”

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing section.**

#### § 90110. Compilation and availability of project evaluations

90110. (a) The department shall compile the results of all evaluations of projects funded by step IV grants, as specified in **subdivision (d) of Section 25244.8**, or the evaluations of any other project that are available to the department.

(b) The department shall notify any interested party of the availability of the project evaluations, and make the evaluations available to interested parties as expeditiously as possible.

**Comment.** Section 90110 restates former Section 25244.9 without substantive change.  
See Section 83160 (“department”).

**Notes. (1)** Proposed Section 90110 would restate existing Section 25244.9 for clarity. The existing section reads as follows:

“The department shall compile the results of all evaluations of projects funded by step IV grants, as specified in subdivision (d) of Section 25244.8, or the evaluations of any other project which are available to the department, and shall make them available to interested parties as expeditiously as possible. The department shall notify any interested party of the availability of project evaluations.”

**Absent comment to the contrary, the Commission will presume this proposed restatement does not substantively change the meaning of the existing section.**

**(2)** The Commission seeks comment on the intended meaning of the phrase in existing Section 25244.9 that reads as follows: “or the evaluations of any other project which are available to the department.” Specifically,

(a) Is the use of the term “or” intended to provide the department an *alternative* to compiling the results of evaluations of projects funded by step IV grants, or should the word “or” be replaced with the word “and”?

(b) What “other projects” are contemplated by this clause?

#### § 90115. Contracting by department for services to carry out chapter

90115. Consistent with Article VII of the California Constitution, the department may contract for services to be performed to carry out this chapter, including but not limited to environmental control assessment, feasibility analysis, review of project design, field management responsibilities, and project scheduling and control.

**Comment.** Section 90115 continues former Section 25244.7 without substantive change.  
See Section 83160 (“department”).

Article 4. Generator Responsibilities

§ 90130. Required waste reduction reports to department

90130. Every generator of hazardous waste shall submit a report to the department, at least once every two years, reporting the changes in volume and toxicity of waste achieved through waste reduction during the period for which the report is issued.

**Comment.** Section 90130 continues former Section 25244.4 without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”), 83395 (“waste”).

PART 6. HAZARDOUS WASTE GENERATION  
AND MANAGEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Hazardous Waste Management Plans (*Article 3.5. Hazardous Waste Management Plans*)

Article 2. Land Use Restrictions (*Article 11.1. Institutional Control*)

Article 3. Cost Reimbursement (*Article 9.2. Cost Reimbursement*)

Article 4. Standards (*part of Article 5. Standards*)

CHAPTER 2. GENERATORS OF HAZARDOUS WASTE

Article 1. Obligations For Hazardous Waste Generation And Management (*parts of Sections 25150-25158.1*)

CHAPTER 3. TRANSPORTATION OF HAZARDOUS WASTE

Article 1. Transportation (*Article 6. Transportation*)

Article 2. Haulers (*Article 6.5. Hazardous Waste Haulers*)

CHAPTER 4. DISPOSAL ON PUBLIC LAND (*ARTICLE 11.5. HAZARDOUS WASTE*)

CHAPTER 5. COLLECTION PROGRAMS

Article 1. Household Hazardous Waste and Conditionally Exempt Small Quantity Generator Waste (*Article 10.8. Household Hazardous Waste And Small Quantity Generator Waste*)

1 Article 2. Banned, Unregistered, or Outdated Agricultural Wastes (*Article 9.4.*  
2 *Banned, Unregistered, or Outdated Agricultural Wastes*)

3 CHAPTER 7. DEVELOPMENT OF HAZARDOUS WASTE FACILITIES

4 Article 1. Approval Procedures for New Facilities (*Article 8.7.*  
5 *Procedures For The Approval Of New Facilities*)

6 Article 2. Development of Facilities on Indian Country (*Article 8.6.*  
7 *Development of Hazardous Waste Management Facilities on Indian*  
8 *Country*)

9 CHAPTER 8. HAZARDOUS WASTE FACILITIES

10 Article 1. Permitting (*Article 9. Permitting of Facilities*)

11 Article 2. Existing Facilities as of May 1, 1981 (*Article 4.5. State*  
12 *Regulation of Existing Hazardous Waste Facilities*)

13 CHAPTER 9. RULES FOR SPECIFIC TYPES OF FACILITIES OR TREATMENTS

14 Article 1. Hazardous Waste Treatment Reform Act of 1995 (*Article*  
15 *7.7. Hazardous Waste Treatment Reform Act of 1995*)

16 Article 2. Land Treatment Units (*Article 9.6. Land Treatment Units*)

17 Article 3. Metal Shredding Facilities (*parts of Article 5. Standards*  
18 *Re Metal Shredding Facilities*)

19 Article 4. Solar Evaporators For on-Farm Drainage Management  
20 (*Article 9.7. Integrated on-Farm Drainage Management*)

21 Article 5. Surface Impoundments (*Article 9.5. Surface*  
22 *Impoundments*)

23 Article 6. Toxic Injection Wells (*Article 5.6. The Toxic Injection*  
24 *Well Control Act of 1985*)

25 CHAPTER 10. FACILITY CLOSURE (*Article 12. Financial Responsibility and*  
26 *Closure And Maintenance of Facilities*)

27 CHAPTER 11. HAZARDOUS WASTE ENFORCEMENT COORDINATOR AND STRIKE  
28 FORCE (*Article 8.3. Hazardous Waste Enforcement Coordinator and Strike Force*)



## PART 7. ENFORCEMENT

## CHAPTER 1. AUTHORITY

## § 95000. General authority to enforce standards and regulations

95000. (a) Except as provided in subdivision (b), the standards in this division and the regulations adopted by the department to implement this division shall be enforced by the department, and by any local health officer or any local public officer designated by the director.

(b) The standards of this division listed in **paragraph (1) of subdivision (c) of Section 25404**, and the regulations adopted to implement the standards of this division listed in **paragraph (1) of subdivision (c) of Section 25404**, shall be enforced by the department and one of the following:

(1) 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 division 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 the standards and regulations referenced in paragraph (1) pursuant to this subdivision shall perform 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 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”).

#### **§ 95010. Authority of California Highway Patrol**

95010. Notwithstanding any limitation in Section 95005, a member of the California Highway Patrol may enforce **Sections 25185, 25189, 25189.2, 25189.5, 25191, and 25195, and Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1)**, as those provisions relate to the transportation of hazardous waste.

**Comment.** Section 95010 continues former Section 25180(c) without substantive change. See Section 83210 (“hazardous waste”).

#### **§ 95015. Authority of city attorney**

95015. Actions pursuant to **Sections 25189.5, 25189.6, 25189.7, 25190, and 25191** may be brought by any city attorney.

**Comment.** Section 95015 continues former Section 25191.2 without substantive change.

#### **§ 95020. Equal and consistent treatment of similar violations**

95020. In enforcing this division, including, but not limited to, the issuance of orders imposing administrative penalties, the referral of violations to prosecutors for civil or criminal prosecution, the settlement of cases, and the adoption of enforcement policies and standards related to those matters, the department and the local officers and agencies authorized to enforce this division pursuant to Section 95000 shall exercise their enforcement authority in such a manner that generators, transporters, and operators of storage, treatment, transfer, and disposal facilities are treated equally and consistently with regard to the same types of violations.

**Comment.** Section 95020 continues former Section 25180(d) without substantive change. See Sections 83175 (“disposal”), 83355 (“storage”), 83370 (“treatment”).

## **CHAPTER 2. PRIORITIES AND COORDINATION**

1   **§ 95050. Prioritization of actions affecting most impacted communities**

2       95050. The department shall prioritize an enforcement action authorized by this  
3 division affecting communities that have been identified by the California  
4 Environmental Protection Agency as being the most impacted environmental justice  
5 communities.

6       **Comment.** Section 95050 continues former Section 25180.2 without substantive change.  
7       See Section 83160 (“department”).

8   **§ 95055. Required notices to other entities**

9       95055. (a) The department, the State Water Resources Control Board, and the  
10 California regional water quality control boards shall notify the local health officer  
11 and director of environmental health of a county, city, or district, and the CUPA for  
12 the jurisdiction, as specified in subdivision (c), within 15 days after any of the  
13 following occur:

14       (1) The department’s or board’s employees are informed or discover that a  
15 disposal of hazardous waste has occurred within that county, city, or district and  
16 that the disposal violates a state or local law, ordinance, regulation, rule, license, or  
17 permit or that the disposal is potentially hazardous to the public health or the  
18 environment.

19       (2) The department or board proposes to issue an abatement order or a cease and  
20 desist order, to file a civil or criminal action, or to settle a civil or criminal action,  
21 concerning a disposal of hazardous waste within that county, city, or district.

22       (b) The notice given by the department or board pursuant to subdivision (a) shall  
23 include all test results and any relevant information which the department or board  
24 has obtained and which do not contain trade secrets, as defined by **Section 25173**,  
25 as determined by the department or board.

26       (c) If the department or board determines that the test results or information cannot  
27 be disseminated because of current or potential litigation, the department or board  
28 shall inform the local health officer, the director of environmental health, and the  
29 CUPA for the jurisdiction that the test results and information shall be used by the  
30 local health officer, the director of environmental health, and the unified program  
31 agencies only in connection with their statutory responsibilities, and shall not  
32 otherwise be released to the public.

33       **Comment.** Section 95055 restates former Section 25180.5(a) and (b) without substantive  
34 change.

35       See Sections 83110 (“CUPA”), 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous  
36 waste”), 83240 (“local health officer”), 83375 (“unified program agency”).

37       **Staff Note.** Proposed Section 95055 would restate subdivisions (a) and (b) of Section 25180.5  
38 for clarity. Currently, those subdivisions provide:

39       “25180.5. (a) The department, the State Water Resources Control Board, and the California  
40 regional water quality control boards shall notify the local health officer and director of  
41 environmental health of a county, city, or district, and the CUPA for the jurisdiction as specified in  
42 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.**

#### § 95060. Coordination of agencies

95060. The department, the State Water Resources Control Board, and the California regional water quality control boards shall coordinate with the unified program agencies regarding violations of this chapter, or violations of regulations adopted pursuant to this chapter, at a unified program facility.

**Comment.** Section 95060 continues former Section 25180.5(c) without substantive change.

See Sections 83160 ("department"), 83375 ("unified program agency"), 83380 ("unified program facility").

#### § 95065. Obligations of prosecuting attorney

95065. (a) In any case filed in any court or administrative tribunal, including, but not limited to, the Office of Administrative Hearings, which alleges any violations of this chapter or any statute, regulation, or requirement specified in **Section 25186**, the prosecuting attorney shall, within 30 days of the date of filing, forward, to the office of Attorney General located in the City of Los Angeles, a summary of the case which provides all of the following information:

(1) The case name and court or administrative number.

(2) The court or administrative tribunal in which the case is being prosecuted.

(3) The agency prosecuting the case.

(4) The name, business address, and telephone number of the prosecuting attorney.

(5) The statutes, regulations, or requirements which are alleged to have been violated.

(6) The date of filing and date or dates of alleged violations.

(7) A brief summary of the action.

(8) The names, addresses, and telephone numbers of all respondents or defendants in the action.

- 1 (9) The status of the case.
- 2 (b) Within 30 days of the conclusion of a case specified in subdivision (a) by
- 3 verdict, award, judgment, dismissal, or settlement, the prosecuting attorney shall
- 4 forward, to the office of the Attorney General located in the City of Los Angeles,
- 5 an update of the information required by subdivision (a), including a statement
- 6 describing the final outcome of the case.
- 7 (c) The cases subject to this section shall include those cases which are brought
- 8 for purposes of clarifying, enforcing, limiting, or overturning any case which arose
- 9 out of a violation of this chapter or statute, regulation, or requirement specified in
- 10 **Section 25186**, including, but not limited to, appeals, actions for contempt, and
- 11 revocations of probation.
- 12 **Comment.** Section 95065 continues former Section 25186.6 without substantive change.
- 13 See Section 83160 (“department”).

## 14 CHAPTER 3. PROCEDURES

### 15 Article 1. General Provisions

#### 16 § 95075. Activities by authorized representative

17 95075. (a) In order to carry out the purposes of this chapter, any authorized  
18 representative of the department or the local officer or agency authorized to enforce  
19 this chapter pursuant to Section 95000, may, at any reasonable hour of the day, or  
20 as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of  
21 the Code of Civil Procedure, do any of the following:

22 (1) Enter and inspect a factory, plant, construction site, disposal site, transfer  
23 facility, or any establishment or any other place or environment where hazardous  
24 wastes are stored, handled, processed, disposed of, or being treated to recover  
25 resources.

26 (2) Stop and inspect any vehicle reasonably suspected of transporting hazardous  
27 wastes when accompanied by a uniformed peace officer in a clearly marked vehicle.

28 (3) Inspect and copy any records, reports, test results, or other information  
29 required to carry out this chapter.

30 (4) Photograph any waste, waste container, waste container label, vehicle, waste  
31 treatment process, waste disposal site, or condition constituting a violation of law  
32 found during an inspection.

33 (5) Carry out any sampling activities necessary to carry out this chapter, including  
34 obtaining samples from any individual or taking samples from the property of any  
35 person or from any vehicle in which any authorized representative of the department  
36 or the local officer or agency authorized to enforce this chapter pursuant to Section  
37 95000 reasonably believes has transported or is transporting hazardous waste.

38 (b) Upon request, split samples obtained pursuant to paragraph (5) of subdivision  
39 (a) shall be given to the person from whom, or from whose property or vehicle, the  
40 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”).

#### **§ 95085. Judgment to collect administrative penalty**

95085. (a) If any administrative order or decision that imposes a penalty is issued pursuant to this division or Part 2 (commencing with Section 78000) of Division 45, the administrative order or decision has become final, and, if applicable, a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code, the department may apply to the clerk of the appropriate court for a judgment to collect the administrative penalty.

(b) The department’s application, which shall include a certified copy of the final administrative order or decision, constitutes a sufficient showing to warrant issuance of the judgment.

(c) The court clerk shall enter the judgment immediately in conformity with the application.

(d) The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

**Comment.** Section 95085 continues former Section 25184.1 without substantive change. See Section 83160 (“department”).

#### **§ 95090. Reward for providing information**

95090. (a) A person who provides information that materially contributes to the imposition of a civil penalty or criminal fine against a person for violating this division shall be paid a reward pursuant to regulations adopted by the department under subdivision (j).

(b) The reward shall be equal to 10 percent of the amount of the civil penalty or criminal fine collected by the department, district attorney, county counsel, or city attorney.

(c) The department shall pay the award to the person who provides information that results in the imposition of a civil penalty, and the county shall pay the award

1 to the person who provides information that results in the imposition of a criminal  
2 fine.

3 (d) No reward paid pursuant to this subdivision shall exceed five thousand dollars  
4 (\$5,000).

5 (e) No informant shall be eligible for a reward for a violation known to the  
6 department, unless the information materially contributes to the imposition of  
7 criminal or civil penalties for a violation specified in this section.

8 (f) If there is more than one informant for a single violation, the first notification  
9 received by the department shall be eligible for the reward.

10 (g) If the notifications are postmarked on the same day or telephoned notifications  
11 are received on the same day, the reward shall be divided equally among those  
12 informants.

13 (h) Public officers and employees of the United States, the State of California, or  
14 counties and cities in California are not eligible for the reward pursuant to  
15 subdivision (a), unless reporting those violations does not relate in any manner to  
16 their responsibilities as public officers or employees.

17 (i) An informant who is an employee of a business and who provides information  
18 that the business violated this division is not eligible for a reward if the employee  
19 intentionally or negligently caused the violation or if the employee's primary and  
20 regular responsibilities included investigating the violation, unless the business  
21 knowingly caused the violation.

22 (j) The department shall adopt regulations that establish procedures for the receipt  
23 and review of claims for payment of rewards.

24 (k) All decisions concerning the eligibility for an award and the materiality of the  
25 provided information shall be made pursuant to these regulations.

26 (l) In each case brought under subdivision (a), the department, the office of the  
27 city attorney, the county counsel, or the district attorney, whichever office brings  
28 the action, shall determine whether the information materially contributed to the  
29 imposition of civil or criminal penalties for violations of this division.

30 (m) The department shall continuously publicize the availability of the rewards  
31 pursuant to this section for persons who provide information pursuant to this section.

32 (n) Claims may be submitted only for those referrals made on or after January 1,  
33 1982.

34 **Comment.** Section 95090 continues former Section 25191.7 without substantive change.  
35 See Section 83160 ("department").

## 36 Article 2. Inspections

### 37 § 95100. Inspection requirements

38 95100. (a) During an inspection pursuant to Section 95075, the inspector shall  
39 comply with all reasonable security, safety, and sanitation measures, and reasonable  
40 precautionary measures specified by the operator.



1 (b) At the conclusion of the inspection, the inspector shall deliver to the operator  
2 of the facility or site a written summary of all violations alleged by the inspector.

3 (c) The inspector shall, prior to leaving the facility or site, deliver the written  
4 summary to the operator and shall discuss any questions or observations that the  
5 operator might have concerning the inspection.

6 (d) The department or the local officer or agency authorized to enforce this  
7 division pursuant to Section 95000 shall prepare an inspection report that shall fully  
8 detail all observations made at the facility or site, all alleged violations, the factual  
9 basis for alleging those violations, and any corrective actions that should be taken  
10 by the operator of the facility or site.

11 (e) The department or the local officer or agency shall provide a copy of the  
12 inspection report to the operator within five days from the date of the preparation of  
13 the inspection report, and, in any event, not later than 65 days from the date of the  
14 inspection.

15 (f) The inspection report shall include all pertinent information, including, but not  
16 limited to, documents, photographs, and sampling results concerning the alleged  
17 violations.

18 (g) The department or the local officer or agency shall provide the information  
19 described in subdivision (f) to the operator with the inspection report, including all  
20 photographs taken by the department in the course of the inspection and all  
21 laboratory results obtained as a result of the inspection.

22 (h)(1) If sampling or laboratory results are not available at the time that the  
23 inspection report is prepared, that fact shall be contained in the report.

24 (2) The results referenced in paragraph (1) shall be provided to the operator within  
25 10 working days of their receipt by the department or the local officer or agency.

26 **Comment.** Subdivision (a) of Section 95100 continues former Section 25185(b) without  
27 substantive change.

28 Subdivision (b) continues the first sentence of former Section 25185(c)(1) without substantive  
29 change.

30 Subdivision (c) continues the second sentence of former Section 25185(c)(1) without substantive  
31 change.

32 Subdivision (d) continues the first sentence of former Section 25185(c)(2)(A) without  
33 substantive change.

34 Subdivision (e) continues the second sentence of former Section 25185(c)(2)(A) without  
35 substantive change.

36 Subdivision (f) continues the third sentence of former Section 25185(c)(2)(A) without  
37 substantive change.

38 Subdivision (g) continues the fourth sentence of former Section 25185(c)(2)(A) without  
39 substantive change.

40 Paragraph (1) of subdivision (h) continues the fifth sentence of former Section 25185(c)(2)(A)  
41 without substantive change.

42 Paragraph (2) of subdivision (h) continues the sixth sentence of former Section 25185(c)(2)(A)  
43 without substantive change.

44 See Sections 83160 (“department”), 83245 (“local officer”).

1   **§ 95105. Extension of time period**

2       95105. A time period specified in subdivision (e) or subdivision (h) of Section  
3       95100 may be extended as a result of a natural disaster, inspector illness, or other  
4       circumstances beyond the control of the department, or the local officer or agency,  
5       if the department or the local officer or agency so notifies the operator within 70  
6       days from the date of the inspection and provides the inspection report to the  
7       operator in a timely manner after the reason for the delay is ended.

8       **Comment.** Section 95105 continues former Section 25185(c)(2)(B) without substantive change.  
9       See Sections 83160 (“department”), 83245 (“local officer”).

10   **§ 95110. Withholding of information if necessary to investigation**

11       95110. Information from the inspection report, or the report itself, may be  
12       withheld by the department or the local officer or agency if necessary to a criminal  
13       investigation or other ongoing investigation in which the department or the local  
14       officer or agency determines, in writing, that disclosure of the information will  
15       result in a substantial probability of destruction of evidence, intimidation of  
16       witnesses, or other obstruction of justice.

17       **Comment.** Section 95110 continues former Section 25185(c)(2)(C) without substantive change.  
18       See Sections 83160 (“department”), 83245 (“local officer”).

19   **§ 95115. Discussion and review of inspection report**

20       95115. The department or the local officer or agency shall, at the operator’s  
21       request, discuss the inspection report with the operator and shall, upon the request  
22       of the operator, review the inspection report and determine whether the operator’s  
23       responses and documented or proposed corrective actions would be sufficient to  
24       comply with this division, or if any allegation of a violation is unwarranted.

25       **Comment.** Section 95115 continues former Section 25185(c)(2)(D) without substantive change.  
26       See Sections 83160 (“department”), 83245 (“local officer”).

27   **§ 95120. Written response to inspection report**

28       95120. (a) The operator of the site or facility that receives an inspection report  
29       pursuant to Section 95100 shall submit a written response to the department or the  
30       local officer or agency authorized to enforce this division pursuant to Section 95000  
31       within 60 days of receipt of the inspection report, or within a shorter time as the  
32       department or the local officer or agency may reasonably require, which shall  
33       include a statement documenting corrective actions taken by the operator or  
34       proposing corrective actions that will be taken by the operator, for purposes of  
35       compliance with this division, or disputing the existence of the violation.

36       (b) Upon receiving the written response from the operator, the department or the  
37       local officer or agency shall, upon the request of the operator, meet and confer with  
38       the operator regarding any questions, concerns, or comments that the operator may  
39       have concerning the inspection report.

(c) The department or the local officer or agency shall, within 30 working days from the date of receipt of a response that documents or proposes corrective action, or which disputes the existence of a violation, determine whether the corrective actions documented or proposed to be taken by the operator, if implemented as stated or proposed, will achieve compliance with this division, or whether a violation is still alleged, as applicable, and shall submit a written copy of that determination to the operator, in the form of a report of violation or other appropriate document.

(d) If the department or the local officer or agency fails to make the determination and submit a copy of the determination within 30 working days from the date of receipt of the operator's response, the department or the local officer or agency may not seek penalties for continuing violations or any alleged new violations caused by the corrective actions taken by the operator, until the department or the local officer or agency submits the determination to the operator and provides the operator with a reasonable time in which to make necessary operational modifications 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, 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").

1 **§ 95130. Inspection of hazardous waste or border zone property**

2 95130. (a) For a property that is designated as a hazardous waste property or  
3 border zone property pursuant to **the former Article 11 (commencing with Section**  
4 **25220)**, an authorized representative of the department may, at any reasonable hour  
5 of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50)  
6 of Part 3 of the Code of Civil Procedure, enter and inspect any real property that is  
7 within 2,000 feet of a deposit of hazardous waste or a hazardous waste property and  
8 do any of the following:

9 (1) Obtain samples of the soil, vegetation, air, water, and biota on or beneath the  
10 land.

11 (2) Set up and maintain monitoring equipment for the purpose of assessing or  
12 measuring the actual or potential migration of hazardous wastes on, beneath, or  
13 toward the land.

14 (3) Survey and determine the topography and geology of the land.

15 (4) Photograph any equipment, sample, activity, or environmental condition  
16 described in paragraphs (1), (2), or (3), with the photographs subject to the  
17 requirements of Section 95125.

18 (b) This section does not apply to any hazardous waste facility that is required to  
19 be permitted pursuant to this division and that is subject to inspection pursuant to  
20 Section 95075.

21 (c) An inspector who inspects pursuant to this section shall do all of the following:

22 (1) Make a reasonable effort to inform the owner or their authorized representative  
23 of the inspection.

24 (2) Provide split samples to the owner or representative upon request.

25 (3) Comply with the provisions of subdivision (a) of Section 95100.

26 **Comment.** Section 95130 continues former Section 25185.5 without substantive change.  
27 See Section 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

28 **Staff Note.** Proposed Section 95130 would restate existing Section 25185.5 for clarity.  
29 Currently, Section 25185.5 provides:

30 “25185.5. For a property that is designated as a hazardous waste property or border zone property  
31 pursuant to the former Article 11 (commencing with Section 25220), an authorized representative  
32 of the department may, at any reasonable hour of the day, or as authorized pursuant to Title 13  
33 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, enter and inspect any  
34 real property that is within 2,000 feet of a deposit of hazardous waste or a hazardous waste property  
35 and do any of the following:

36 (a) Obtain samples of the soil, vegetation, air, water, and biota on or beneath the land.

37 (b) Set up and maintain monitoring equipment for the purpose of assessing or measuring the  
38 actual or potential migration of hazardous wastes on, beneath, or toward the land.

39 (c) Survey and determine the topography and geology of the land.

40 (d) Photograph any equipment, sample, activity, or environmental condition described in  
41 subdivision (a), (b), or (c). The photographs shall be subject to the requirements of subdivision (d)  
42 of Section 25185.

43 (e) This section does not apply to any hazardous waste facility that is required to be permitted  
44 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:

(a) Any person who owns or operates any hazardous waste facility.

(b) Any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous waste.

(c) Any person who has generated, stored, treated, transported, disposed of, or otherwise handled hazardous waste.

(d) Any person who arranges, or has arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(e) Any person who applies, or has applied, for any permit, registration, or certification under this division.

**Comment.** Section 95150 continues former Section 25185.6(a)(1) without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

#### § 95155. Information relating to ability to pay for or perform corrective action

95155. (a) The department, or a local officer or agency authorized to enforce this division pursuant to Section 95000, may require a person described in Section 95150 to furnish and transmit, upon reasonable notice, to the designated offices of the department or the local officer or agency, any information relating to the person’s ability to pay for, or to perform, a response or corrective action.

(b) Subdivision (a) 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 division how to finance a response or corrective action or otherwise for the purpose of enforcing this division.

**Comment.** Section 95155 continues former Section 25185.6(a)(2) without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

1    **§ 95160. Activity relating to hazardous substances, waste or materials**

2    95160. (a) The department may require any person who has information regarding  
3 the activities of a person described in Section 95150 relating to hazardous  
4 substances, hazardous wastes, or hazardous materials to furnish and transmit, upon  
5 reasonable notice, that information to the designated offices of the department.

6    (b) (1) The department may require any person who has information regarding the  
7 activities of a person described in Section 95150 relating to the ability of the person  
8 described in that section to pay for, or to perform, a response or corrective action,  
9 upon reasonable notice, to furnish and transmit that information to the designated  
10 offices of the department.

11    (2) This subdivision applies only if there is a reasonable basis to believe that there  
12 has been or may be a release or threatened release of a hazardous substance,  
13 hazardous wastes, or hazardous material, and only for the purpose of determining  
14 under this division how to finance a response or corrective action or otherwise for  
15 the purpose of enforcing this division.

16    **Comment.** Section 95160 continues former Section 25185.6(b) without substantive change.  
17 See Sections 83160 (“department”), 83210 (“hazardous waste”), 83245 (“local officer”).

18    **§ 95165. Costs of photocopying or transmitting information**

19    95165. Any person required to furnish information pursuant to this article shall  
20 pay any costs of photocopying or transmitting this information.

21    **Comment.** Section 95165 continues former Section 25185.6(c) without substantive change.

22    **§ 95170. Trade secrets**

23    95170. (a) When requested by the person furnishing information pursuant to this  
24 article, the department or the local officer or agency shall follow the procedures  
25 established under **Section 25173**.

26    (b) A person providing information pursuant to this article shall, at the time of its  
27 submission, identify all information that the person believes is a trade secret.

28    (c) Any information or record provided pursuant to this article that is not identified  
29 as a trade secret pursuant is available to the public, unless exempted from disclosure  
30 by other provisions of law.

31    (d) For purposes of this section, “trade secret” is defined as in **Section 25173**.

32    **Comment.** Subdivision (a) of Section 95170 continues former Section 25185.6(d) without  
33 substantive change.

34    Subdivisions (b) through (d) restate former Section 25185.6(h) without substantive change.

35    See Sections 83160 (“department”), 83245 (“local officer”).

36    **Staff Note.** Proposed Section 95170 would restate existing Section 25185.6(d) and (h) for clarity.  
37 The other subdivisions of existing Section 25185.6 are continued in other sections of this proposed  
38 article.

39    Currently, Section 25185.6 in its entirety provides:

40    “25185.6. (a) (1) The department or a local officer or agency authorized to enforce this chapter  
41 pursuant to subdivision (a) of Section 25180, in connection with any action authorized by this  
42 chapter, 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:

(A) Any person who owns or operates any hazardous waste facility.

(B) Any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous waste.

(C) Any person who has generated, stored, treated, transported, disposed of, or otherwise handled hazardous waste.

(D) Any person who arranges, or has arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(E) Any person who applies, or has applied, for any permit, registration, or certification under this chapter.

(2) (A) The department, or a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, may require a person described in paragraph (1) to furnish and transmit, upon reasonable notice, to the designated offices of the department or the local officer or agency, any information relating to the person's ability to pay for, or to perform, a response or corrective action.

(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.

(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”).



1 **§ 95185. Required disclosure statements by hazardous waste licenseholder or applicant**

2 95185. (a) Every hazardous waste licenseholder or applicant, other than a federal,  
3 state, or local agency, who is not otherwise required to file a disclosure statement  
4 on or before January 1, 1989, shall file a disclosure statement with the department  
5 on or before January 1, 1989.

6 (b) If changes or additions of information regarding majority ownership, the  
7 business name, or the information required by **paragraphs (6) and (8) of**  
8 **subdivision (a) of Section 25112.5** occur after the filing of the statement, the  
9 licenseholder or applicant shall provide that information to the department, in  
10 writing, within 30 days of the change or addition.

11 (c) Any person submitting a disclosure statement shall pay a fee set by the  
12 department in an amount adequate to defray the costs of implementing this section,  
13 per person, officer, director, or partner required to be listed in the disclosure  
14 statement, in addition to any other fees required.

15 (d) The department shall deposit fees paid pursuant to subdivision (c) in the  
16 Hazardous Waste Control Account.

17 (e) Fees deposited pursuant to subdivision (d) shall be made available, upon  
18 appropriation by the Legislature, to cover the costs of conducting the necessary  
19 background searches.

20 (f) Any person who knowingly makes any false statement or misrepresentation in  
21 a disclosure statement filed pursuant to the requirements of this division is, upon  
22 conviction, subject to the penalties specified in **Sections 25189 and 25189.2 and**  
23 **subdivision (a) of Section 25191.**

24 (g) The disclosure statement submitted pursuant to subdivision (b) is exempt from  
25 the requirements of the California Public Records Act (Division 10 (commencing  
26 with Section 7920.000) of Title 1 of the Government Code).

27 **Comment.** Subdivision (a) of Section 95185 continues former Section 25186.5(b) without  
28 substantive change.

29 Subdivision (b) continues former Section 25186.5(c) without substantive change.

30 Subdivision (c) continues the first sentence of former Section 25186.5(d) without substantive  
31 change.

32 Subdivision (d) continues the second sentence of former Section 25186.5(d) without substantive  
33 change.

34 Subdivision (e) continues the third sentence of former Section 25186.5(d) without substantive  
35 change.

36 Subdivision (f) continues former Section 25186.5(e) without substantive change.

37 Subdivision (g) continues former Section 25186.5(f) without substantive change.

38 See Sections 83065 (“applicant”), 83160 (“department”), 83170 (“disclosure statement”).

39 **Article 4. Permits**

40 **§ 95200. Proceedings generally relating to permit, registration or certificate**

41 95200. (a) Proceedings to determine whether to grant, issue, modify, or deny a  
42 permit, registration, or certificate shall be conducted in accordance with the  
43 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) 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 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 operator has exhausted the dispute resolution procedures adopted by the department pursuant to **subparagraph (H) of paragraph (2) of subdivision (b) of Section 25206.2**.

(c)(1) The department shall suspend the permit of any facility for nonpayment of a penalty assessed upon the owner or operator for failure to comply with this division or the regulations adopted pursuant to this division, if the penalty has been imposed by a trial court judge or by an administrative hearing officer, if the person has agreed to pay the penalty pursuant to a written agreement resolving a lawsuit or an administrative order, or if the penalty has become final due to the person's failure to respond to the lawsuit or order.

(2) The department may suspend a permit pursuant to this subdivision only if the owner or operator is delinquent in the payment of the penalty and the department has notified the owner or operator of the delinquency pursuant to subdivision (d).

(d) Before suspending a permit pursuant to this section, the department shall notify the owner or operator of its intent to do so, and shall allow the owner or operator a minimum of 30 days in which to cure the delinquency.

(e) The department may deny a new permit or refuse to renew a permit on the same grounds for which the department is required to suspend a permit under this section, subject to the same requirements and conditions.

(f)(1) The department shall reinstate a permit that is suspended pursuant to this section upon payment of the amount due if the permit has not otherwise been revoked or suspended pursuant to any other provision of this division or regulation.

(2) Until the department reinstates a permit suspended pursuant to this section, if the facility stores, treats, disposes of, or recycles hazardous wastes, the facility shall be in violation of this division.

(3) If the operator of the facility subsequently pays the amount due, the period of time for which the operator shall have been in violation of this division shall be from the date of the activity that is in violation until the day after the owner or operator submits the payment to the department.

(4) Except as otherwise provided in this section, the department is not required to take any other statutory or regulatory procedures governing the suspension of the permit before suspending a permit in compliance with the procedures of this section.

(g) (1) A suspension under this section shall be stayed while an authorized appeal of the fee or penalty is pending before a court or an administrative agency.

(2) For purposes of this subdivision, “an authorized appeal” means any appeal allowed pursuant to an applicable regulation or statute.

(h) The department may suspend a permit under this section based on a failure to pay the required fee or penalty that commenced before January 1, 2002, if the failure to pay has been ongoing for at least 30 days following that date.

(i) Notwithstanding Section 43651 of the Revenue and Taxation Code, the suspension of a permit pursuant to this section, the reason for the suspension, and 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

1 and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous  
2 Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive  
3 Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec.  
4 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or  
5 any other equivalent federal or state statute or any requirement or regulation adopted  
6 pursuant thereto relating to the generation, transportation, treatment, storage,  
7 recycling, disposal, or handling of a hazardous waste, as defined in **Section 25117**,  
8 a hazardous substance, as defined in subdivision (a) of Section 78075, or a  
9 hazardous material, as defined in Section 353 of the Vehicle Code, if the violation  
10 or noncompliance shows a repeating or recurring pattern or may pose a threat to  
11 public health or safety or the environment.

12 (b) The aiding, abetting, or permitting of any violation of, or noncompliance with,  
13 this division, Chapter 6.7 (commencing with Section 25280), Part 2 (commencing  
14 with Section 78000) of Division 45, the Porter-Cologne Water Quality Act  
15 (Division 7 (commencing with Section 13000) of the Water Code), the Resource  
16 Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.),  
17 the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the  
18 Comprehensive Environmental Response, Compensation, and Liability Act of 1980  
19 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec.  
20 2601 et seq.), or any other equivalent federal or state statute or any requirement or  
21 regulation adopted pursuant thereto relating to the generation, transportation,  
22 treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined  
23 in **Section 25117**, a hazardous substance, as defined in subdivision (a) of Section  
24 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if  
25 the violation or noncompliance shows a repeating or recurring pattern or may pose  
26 a threat to public health or safety or the environment.

27 (c) Any violation of, or noncompliance with, any order issued by a state or local  
28 agency or by a hearing officer or a court relating to the generation, transportation,  
29 treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined  
30 in **Section 25117**, a hazardous substance, as defined in subdivision (a) of Section  
31 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code.

32 (d) Any misrepresentation or omission of a significant fact or other required  
33 information in the application for the permit, registration, or certificate, or in  
34 information subsequently reported to the department or to a local officer or agency  
35 authorized to enforce this division pursuant to subdivision (a) of Section 25180.

36 (e) Activities resulting in the revocation or suspension of a license, permit,  
37 registration, or certificate held by the applicant or holder of the permit, registration,  
38 or certificate or, if the applicant or holder of the permit, registration, or certificate is  
39 a business concern, by any trustee, officer, director, partner, or any person holding  
40 more than 5 percent of the equity in, or debt liability of, that business concern  
41 relating to, the generation, transportation, treatment, storage, recycling, disposal, or  
42 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”).

1 **§ 95265. Multiple incidents of violation or noncompliance**

2 95265. (a) For the purposes of this section, “violation” and “noncompliance”  
3 mean only the following:

4 (1) A violation or noncompliance pursuant to Section 95250 or 95255 that creates  
5 a significant risk of harm to the public health or safety of the environment resulting  
6 from acute or chronic exposure to hazardous waste or hazardous waste constituents,  
7 and that threat makes it reasonably necessary to take action to prevent, reduce, or  
8 mitigate that exposure.

9 (2) A violation of, or noncompliance with, any order issued by the department to  
10 the applicant or holder of the permit.

11 (3) A federal or state felony conviction for a violation of this division or its  
12 equivalent in the federal act, or of any requirement or regulation adopted pursuant  
13 to that authority relating to the generation, transportation, treatment, storage,  
14 recycling, disposal, or handling of hazardous waste, as described in subdivision (e)  
15 of Section 25186.

16 (b) A violation or noncompliance by a federal hazardous waste facility, pursuant  
17 to Section 6961 of Title 42 of the United States Code, shall, for purposes of this  
18 section, be limited to a violation or noncompliance caused by an action or inaction  
19 within the boundaries identified in Part B of the federal hazardous waste permit  
20 application, pursuant to Section 270.14 of Title 40 of the Code of Federal  
21 Regulations, for that facility.

22 (c) “Violation” and “noncompliance” shall not include a minor violation as  
23 defined in Section 25117.6.

24 (d) (1) Except as provided in paragraph (2), the department shall consider three or  
25 more incidents of violation of, or noncompliance with, a requirement specified in  
26 subdivision (a) or (b) of Section 95250 for which a person or entity has been found  
27 liable or has been convicted, with respect to a single facility within a five-year  
28 period, as compelling cause to deny, suspend, or revoke the permit, registration, or  
29 certificate.

30 (2) This subdivision does not apply to a third violation or noncompliance if the  
31 department finds that extraordinary circumstances exist, including that a denial,  
32 suspension, or revocation would endanger the public health or safety or the  
33 environment.

34 (3) This subdivision does not limit or modify the department’s authority to deny,  
35 suspend, or revoke any permit, registration, or certificate pursuant to Section 95250,  
36 Section 95255, or any other law.

37 **Comment.** Section 95265 continues former Section 25186.05 without substantive change.

38 See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83215  
39 (“hazardous waste facility”), 83355 (“storage”), 83370 (“treatment”).

40 **§ 95270. Proceedings relating to permit, registration or certificate**

41 95270. (a) Except as specified in Section 95275, proceedings for the suspension  
42 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 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.**

#### § 95280. Temporary suspension of operation of facility with extended permit

95280. (a) The department may temporarily suspend the operation of a facility operating under an expired permit that has been extended pursuant to **subparagraph (B) of paragraph (1) of subdivision (c) of Section 25200** or an interim status pursuant to **Section 25200.5** prior to a hearing, if the department determines that the action is necessary to prevent or mitigate a risk to the public health or safety or the environment.

(b) The department shall notify the owner and operator of the facility of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the person with an accusation.

(c) Upon receipt by the department of a notice of defense to the accusation from the owner or operator of the facility, 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.

(d) 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.

(e) If the determination is not transmitted within this period, the temporary suspension shall be of no further effect.

**Comment.** Subdivision (a) of Section 95280 continues the first sentence of former Section 25186.2.5 without substantive change.

Subdivision (b) continues the second sentence of former Section 25186.2.5 without substantive change.

Subdivision (c) continues the third sentence of former Section 25186.2.5 without substantive change.

Subdivision (d) continues the fourth sentence of former Section 25186.2.5 without substantive change.

Subdivision (e) continues the fifth sentence of former Section 25186.2.5 without substantive change.

See Section 83160 (“department”).

**Staff Note.** The second sentence of existing Section 25186.2.5 (which would be continued by proposed Section 95280(b)) 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 identified by the Commission for possible future study?

**Public comment on this issue is welcome and invited.**

## **§ 95285. Suspension or revocation of other authorizations**

95285. (a) The department may suspend or revoke any grant of authorization to operate pursuant to a permit-by-rule or authorization to conduct treatment pursuant to **subdivision (a) or (c) of Section 25201.5**, in accordance with the procedures specified in Sections **25186.1** and **25186.2**, for any of the grounds specified in **Section 25186**.

(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 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 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 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 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.**

1   **§ 95350. “Hazardous waste facility”**

2       95350. For purposes of this article, “hazardous waste facility” includes the entire  
3 site that is under the control of an owner or operator engaged in the management of  
4 hazardous waste.

5       **Comment.** Section 95350 continues former Section 25187(b)(6) without substantive change.  
6 See Sections 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

7   **§ 95355. Limitation on orders issued by unified program agency**

8       95355. The authority granted under this article to a unified program agency is  
9 limited to issuance of the following orders:

10      (a) An order to impose penalties and to correct violations of the requirements of  
11 this chapter and its implementing regulations, only when the violations are  
12 violations of requirements applicable to hazardous waste generators and persons  
13 operating pursuant to a permit-by-rule, conditional authorization, or conditional  
14 exemption, when the violations occur at a unified program facility within the  
15 jurisdiction of the CUPA.

16      (b) An order to require corrective action when there has been a release of  
17 hazardous waste or constituents only when the unified program agency is authorized  
18 to do so pursuant to **Section 25404.1**.

19       **Comment.** Section 95355 continues former Section 25187(l) without substantive change.

20       See Sections 83110 (“CUPA”), 83125 (“conditional authorization”), 83130 (“conditional  
21 exemption”), 83210 (“hazardous waste”), 83290 (permit-by-rule”), 83330 (“release”), 83380  
22 (“unified program facility”).

23   **§ 95360. Order correcting violation and imposing administrative penalty**

24       95360. (a) For purposes of this section, “threaten” has the meaning set forth in  
25 subdivision (e) of Section 13304 of the Water Code.

26       (b) The department or a unified program agency, upon a determination that a  
27 person has violated, is in violation of, or threatens to violate, a provision of this  
28 division or a provision of Part 2 (commencing with Section 78000) of Division 45,  
29 or any permit, rule, regulation, standard, or requirement issued or adopted pursuant  
30 to this division or pursuant to Part 2 (commencing with Section 78000) of Division  
31 45, may issue an order requiring that the violation or threat of violation be corrected,  
32 and imposing an administrative penalty.

33       (c) In an order proposing a penalty pursuant to this section, the department or  
34 unified program agency shall take into consideration the nature, circumstances,  
35 extent, and gravity of the violation, the violator’s past and present efforts to prevent,  
36 abate, or clean up conditions posing a threat to the public health or safety or the  
37 environment, the violator’s ability to pay the proposed penalty, and the prophylactic  
38 effect that the imposition of the proposed penalty would have on both the violator  
39 and the regulated community as a whole.

40       **Comment.** Subdivision (a) and (b) of Section 95360 restate former Section 25187(a)(1) without  
41 substantive change.

42       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 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 implementation of Section 9605 of Title 42 of the United States Code, to pay for the cost of corrective action to address the release.

(c) The person responsible for the release is unwilling, as determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code, to perform corrective action to address the release.

(d) The release is part of a regional or multisite groundwater contamination problem that cannot, in its entirety, be addressed using the legal remedies available pursuant to this division and for which other releases that are part of the regional or multisite groundwater contamination problem are being addressed using the legal remedies available pursuant to Part 2 (commencing with Section 78000) of Division 45.

(e) 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) The hazardous waste facility is owned or operated by the federal government.

**Comment.** Section 95370 restates former Section 25187(b)(1) without substantive change.

See Sections 83160 (“department”), 83210 (“hazardous waste”), 83215 (“hazardous waste facility”).

**Staff Note.** Proposed Section 95370 would restate existing Section 25187(b)(1) for clarity. Currently, Section 25187(a)(1) provides:

“25187. (b)(1) 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 chapter, including the issuance of an order for corrective action pursuant to this section, before using the legal remedies available pursuant to Part 2 (commencing with Section 78000) of Division 45, except in any of the following circumstances:

(A) If 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) If the person who is responsible for the release is unable to pay for the cost of corrective action to address the release. For purposes of this subparagraph, the inability of a person to pay for the cost of corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(C) If the person responsible for the release is unwilling to perform corrective action to address the release. For purposes of this subparagraph, the unwillingness of a person to take corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(D) If the release is part of a regional or multisite groundwater contamination problem that cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and for which other releases that are part of the regional or multisite groundwater contamination problem are being addressed using the legal remedies available pursuant to Part 2 (commencing 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 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 served of the right to a hearing.

(b) If a unified program agency issues the order, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (a) of Section 95340 may be requested by the person served with the order.

**Comment.** Section 95380 continues former Section 25187(c) without substantive change.

See Section 83375 (“unified program agency”).



1 **§ 95385. Request for hearing and filing notice of defense**

2 95385. (a) Any person served with an order pursuant to this article who has been  
3 unable to resolve any violation or deficiency on an informal basis with the  
4 department or unified program agency may, within 15 days after service of the  
5 order, request that a hearing be conducted pursuant to Section 95390 by filing a  
6 notice of defense with the department or unified program agency.

7 (b)(1) If a hearing is requested on an order issued by a unified program agency,  
8 and as of the date the order is issued the agency has selected a designated hearing  
9 officer and established a program for conducting a hearing in accordance with  
10 paragraph (2) of subdivision (a) of Section 95340, the person requesting the hearing  
11 may select that hearing process in the notice of defense.

12 (b) The notice of defense shall be filed with the office that issued the order.

13 (c) A notice of defense shall be deemed filed within the 15-day period provided  
14 by this subdivision if it is postmarked within that 15-day period.

15 (d) If a notice of defense is not filed within the time limits provided by this  
16 subdivision, the order shall become final.

17 **Comment.** Section 95385 restates former Section 25187(d) without substantive change.  
18 See Section 83375 (“unified program agency”).

19 **Staff Note.** Proposed Section 95385 would restate existing Section 25187(d) for clarity.  
20 Currently, Section 25187(d) provides:

21 “25187. (d) Any person served with an order pursuant to this section who has been unable to  
22 resolve any violation or deficiency on an informal basis with the department or unified program  
23 agency may, within 15 days after service of the order, request a hearing pursuant to subdivision (e)  
24 or (f) by filing with the department or unified program agency a notice of defense. The notice shall  
25 be filed with the office that issued the order. A notice of defense shall be deemed filed within the  
26 15-day period provided by this subdivision if it is postmarked within that 15-day period. If a notice  
27 of defense is not filed within the time limits provided by this subdivision, the order shall become  
28 final.”

29 **Absent comment, this proposed restatement will be presumed correct.**

30 **§ 95390. Hearing process**

31 95390. (a) Within 90 days of receipt of the notice of defense by the unified  
32 program agency, the hearing shall be conducted using one of the following  
33 procedures:

34 (1) An administrative law judge of the Office of Administrative Hearings of the  
35 Department of General Services shall conduct the hearing in accordance with  
36 Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of  
37 the Government Code, at which the department shall have all the authority granted  
38 to an agency by those provisions.

39 (2) If the unified program agency has selected a designated hearing officer and  
40 established a program for conducting a hearing in accordance with this section as of  
41 the date the order is issued, a hearing officer designated by the unified program  
42 agency shall conduct the hearing in accordance with Chapter 4.5 (commencing with  
43 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 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 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.

**Comment.** Subdivision (a) of Section 95455 continues former Section 25187.3(b) without substantive change.

Subdivision (b) continues former Section 25187.3(d) without substantive change.

See Section 83160 (“department”).

#### § 95460. Approved financial assurance mechanisms

95460. (a) For purposes of Section 94555, an owner or operator of a facility for which corrective action under department oversight is required shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

(b) As an alternative to the financial assurance requirement of subdivision (a), an owner or operator of a facility for which corrective action under department oversight is required may demonstrate and maintain financial assurances by means of a financial assurance mechanism other than those described in subdivision (a), if the alternative financial assurance mechanism has been submitted to, and approved by, the department as being at least equivalent to the financial assurance mechanisms described in subdivision (a).

(c) The department shall evaluate the equivalency of the proposed alternative financial assurance mechanism described in subdivision (b), principally in terms of the certainty of the availability of funds for required corrective action activities and the amount of funds that will be made available.

(d) The department shall require the owner or operator of the facility to submit any information deemed necessary by the department to make a determination regarding the equivalency of the proposed alternative financial assurance mechanism described in subdivision (b).

**Comment.** Subdivision (a) of Section 95460 continues former Section 25187.3(c)(1) without substantive change.

Subdivision (b) continues former Section 25187.3(c)(2)(A) without substantive change.

Subdivision (c) continues the first sentence of former Section 25187.3(c)(2)(B) without substantive change.

Subdivision (d) continues the second sentence of former Section 25187.3(c)(2)(B) without substantive change.

See Section 83160 (“department”).

#### **§ 95465. Prior financial assurances to water control board**

95465. An owner or operator may satisfy the requirements of this article by demonstrating to the department that it has provided financial assurance for corrective action to the State Water Resources Control Board or a California regional water quality control board for the same release identified by the department.

**Comment.** Section 95465 continues former Section 25187.3(e) without substantive change. See Section 83160 (“department”), 83330 (“release”).

#### **§ 95470. Exemption based on participation in hazardous waste facility regulation and permitting consolidation program**

95470. For facilities for which sole jurisdiction has been granted pursuant to **subdivision (b) of Section 25204.6**, the department shall not require additional financial assurances unless it is the lead agency or is directed by the lead agency that has sole jurisdiction pursuant to **subdivision (b) of Section 25204.6**.

**Comment.** Section 95470 continues the first sentence of former Section 25187.3(f) without substantive change.

See Section 83160 (“department”).

#### **§ 95475. Impact of State Water Resources Control Board rules and regulations**

95475. This article does not alter the State Water Resources Control Board’s rules and regulations regarding financial assurances.

**Comment.** Section 95475 continues the second sentence of former Section 25187.3(f) without substantive change.

### **Article 5. Corrective Action by Department**

#### **§ 95500. Grounds for corrective action by department**

95500. (a) If corrective action is not taken on or before the date specified in an order issued pursuant to Article 3 (commencing with Section 95350), or if in the judgment of the department immediate corrective action is necessary to remedy or prevent an imminent substantial danger to the public health, domestic livestock, wildlife, or the environment, the department may take, or contract for the taking of, that corrective action, and recover the cost for doing so, as provided in Section 95510.

**Comment.** Section 95470 continues former Section 25187.5(a) without substantive change. See Section 83160 (“department”).

1   **§ 95505. Expenditure of funds**

2    94505. (a) The department may expend up to one hundred thousand dollars  
3 (\$100,000) in a 12-month period of available funds in the Hazardous Waste Control  
4 Account in the General Fund to take corrective action pursuant to Section 95500.

5    (b) Notwithstanding any other provision of law, the department may enter into  
6 written contracts for corrective action taken or to be taken pursuant to subdivision  
7 (a).

8    (c) Notwithstanding any other provision of law, the department may enter into  
9 oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when in  
10 the judgment of the department immediate corrective action is necessary to remedy  
11 or prevent an imminent substantial danger to the public health, domestic livestock,  
12 wildlife, or the environment.

13   (d) The contracts entered into pursuant to this section, whether written or oral,  
14 may include provisions for the rental of tools or equipment, either with or without  
15 operators furnished, and for the furnishing of labor and materials necessary to  
16 accomplish the work.

17   (e) Any contract entered into by the department pursuant to this subdivision shall  
18 be exempt from approval by the Department of General Services pursuant to Section  
19 10295 of the Public Contract Code.

20    **Comment.** Section 95505 continues former Section 25187.5(b) without substantive change.  
21    See Section 83160 (“department”).

22   **§ 95510. Financial liability to department**

23    95510. (a) If corrective action is taken pursuant to Section 95500, the person or  
24 persons who were subject to the order issued pursuant to Article 3 (commencing  
25 with Section 95350), or any person or persons whose violation resulted in the  
26 imminent and substantial danger to health or the environment, shall be liable to the  
27 department for the reasonable cost actually incurred in taking corrective action.

28    (b) In addition to the liability specified in subdivision (a), the person or persons  
29 referenced in subdivision (a) shall be liable to the department for administrative  
30 costs in an amount equal to 10 percent of the reasonable cost actually incurred or  
31 five hundred dollars (\$500), whichever is greater.

32    (c) The amount of cost determined pursuant to this section shall be recoverable in  
33 a civil action by the department, in addition to any other fees or penalties.

34    (d) Persons who may be liable pursuant to this section shall include, but not be  
35 limited to, present or prior owners, lessees, or operators of the property where the  
36 hazardous waste is located and producers, transporters or disposers of the hazardous  
37 waste.

38    **Comment.** Section 95510 continues former Section 25187.5(c) without substantive change.  
39    See Sections 83160 (“department”), 83210 (“hazardous waste”).



**§ 95515. Absence of civil or criminal liability for trespass**

95515. Neither the department nor any person authorized by the department to enter upon any lands for the purpose of taking corrective action pursuant to Section 95500 is liable to civil or criminal action for trespass for any acts that are necessary to carry out the corrective action.

**Comment.** Section 95515 continues former Section 25187.5(d) without substantive change. See Sections 83160 (“department”), 83210 (“hazardous waste”).

**§ 95520. Absence of liability for acts occurring before January 1, 1981**

95520. This article does not impose any new liability associated with acts that occurred before January 1, 1981, if the acts were not in violation of existing law or regulations at the time they occurred.

**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 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 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 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”).

1 **§ 95610. Compliance with notice**

2 95610. (a) A facility that receives a notice to comply pursuant to Section 95600  
3 shall have not more than 30 days from the date of receipt of the notice to comply in  
4 which to achieve compliance with the permit conditions, rule, regulation, standard,  
5 or other requirement cited on the notice to comply.

6 (b) Within five working days of achieving compliance, an appropriate person who  
7 is an owner or operator of or an employee at the facility shall sign the notice to  
8 comply stating that the facility has complied with the notice, and return the signed  
9 notice to the department representative or to the authorized local officer or agency.

10 (c) A false statement that compliance has been achieved is a violation of this  
11 division pursuant to Section 25191.

12 (d) A department representative or authorized local officer or agency shall not  
13 take any other enforcement action specified in this division against a facility for a  
14 violation alleged in a notice to comply, if the facility complies with this article.

15 **Comment.** Subdivision (a) of Section 95610 continues the first sentence of former Section  
16 25187.8(b) without substantive change.

17 Subdivision (b) restates the second sentence of former Section 25187.8(b) without substantive  
18 change.

19 Subdivision (c) continues the third sentence of former Section 25187.8(b) without substantive  
20 change.

21 Subdivision (d) restates the second sentence of former Section 25187.8(e) without substantive  
22 change.

23 See Sections 83160 (“department”), 83245 (“local officer”).

24 **Staff Notes.** (1) Proposed Section 95610(b) would restate the second sentence of existing Section  
25 25187.8(b) for clarity. Currently, that sentence reads:

26 “25187.8. (b) ... Within five working days of achieving compliance, an appropriate person who  
27 is an owner or operator of, or an employee at, the facility shall sign the notice to comply and return  
28 it to the department representative or to the authorized local officer or agency, as the case may be,  
29 which states that the facility has complied with the notice to comply.”

30 **Absent comment, this proposed restatement will be presumed correct.**

31 (2) Proposed Section 95610(d) would restate the second sentence of existing Section 25187.8(e)  
32 for clarity. Currently, that sentence reads:

33 “25187.8. (e) ... The department representative or the authorized local officer or agency shall  
34 not take any other enforcement action specified in this chapter against a facility which has received  
35 a notice to comply if the facility complies with this section.”

36 **Absent comment, this proposed restatement will be presumed correct.**

37 **§ 95615. Enforcement action based on failure to comply with notice**

38 (i) Nothing in this article shall be construed as preventing the department, or  
39 authorized local officer or agency, on a case-by-case basis, from requiring a facility  
40 to submit reasonable and necessary documentation to support the facility’s claim of  
41 compliance pursuant to Section 95615.

42 **Comment.** Section 95615 continues the second sentence of former Section 25187.8(h) without  
43 substantive change.

44 See Sections 83160 (“department”), 83245 (“local officer”).

1 **§ 95620. Multiple violations**

2 95620. A single notice to comply shall be issued for all minor violations cited  
3 during the same inspection that shall separately list each of the cited minor  
4 violations and the manner in which each of the minor violations may be brought  
5 into compliance.

6 **Comment.** Section 95615 continues former Section 25187.8(c) without substantive change.  
7 See Sections 83160 (“department”), 83245 (“local officer”).

8 **§ 95625. Immediate correction of violation in presence of an inspector**

9 95625. Immediate correction of a minor violation in the presence of an inspector  
10 may be noted in an inspection report, but a notice to comply shall not be issued for  
11 the violation, and the facility shall not be subject to any further action by the  
12 department representative or by the authorized local officer or agency.

13 **Comment.** Section 95615 restates former Section 25187.8(d) without substantive change.  
14 See Sections 83160 (“department”), 83245 (“local officer”).

15 **Staff Note.** Proposed Section 95625 would restate existing Section 25187.8(d) for clarity.  
16 Currently, Section 25187.8(d) provides:

17 “(d) A notice to comply shall not be issued for any minor violation which is corrected  
18 immediately in the presence of the inspector. Immediate compliance in that manner may be noted  
19 in the inspection report, but the facility shall not be subject to any further action by the department  
20 representative or by the authorized local officer or agency.”

21 **Absent comment, this proposed restatement will be presumed correct.**

22 **§ 95630. Exclusive means of citation for minor violation**

23 95630. Except as otherwise provided in Sections 95635 and 95650, a notice to  
24 comply shall be the only means by which a department representative or authorized  
25 local officer or agency shall cite a minor violation.

26 **Comment.** Section 95630 continues the first sentence of former Section 25187.8(e) without  
27 substantive change.

28 See Sections 83160 (“department”), 83245 (“local officer”).

29 **§ 95635. Additional assessment of civil penalty**

30 95635. Notwithstanding any other provision of this article, if the department, or  
31 an authorized local officer or agency, determines that the circumstances surrounding  
32 a particular minor violation or combination of minor violations are such that the  
33 assessment of a civil penalty pursuant to this division is warranted or is required by  
34 the federal act, in addition to issuance of a notice to comply, the department or  
35 authorized local officer or agency shall assess that civil penalty in accordance with  
36 this division, if the department or authorized local officer or agency makes written  
37 findings that set forth the basis for the department’s or authorized local officer’s or  
38 agency’s determination.

39 **Comment.** Section 95635 continues former Section 25187.8(g)(2) without substantive change.  
40 See Sections 83160 (“department”), 83200 (“federal act”), 83245 (“local officer”).

1    **§ 95640. Disagreement with notice to comply**

2       95640. If a facility that receives a notice to comply pursuant to Section 95600  
3    disagrees with one or more of the alleged violations listed on the notice to comply,  
4    the owner shall give the person who issued the notice to comply written notice of  
5    disagreement.

6       **Comment.** Section 95640 continues the first sentence of former Section 25187.8(f) without  
7    substantive change.

8    **§ 95645. Appeal of enforcement action**

9       95645. If the issuing agency takes administrative enforcement action on the basis  
10   of a disputed violation, that action may be appealed in the same manner as for other  
11   alleged violations under **subdivisions (d) to (j), inclusive, of Section 25187.**

12      **Comment.** Section 95645 continues the second sentence of former Section 25187.8(f) without  
13   substantive change.

14   **§ 95650. Need for immediate enforcement**

15      95650. Notwithstanding any other provision of this article, if a facility fails to  
16   comply with a notice to comply within the prescribed period, or if the department,  
17   or an authorized local officer or agency, determines that the circumstances  
18   surrounding a particular minor violation or combination of minor violations are such  
19   that immediate enforcement is warranted to prevent harm to the public health or  
20   safety or to the environment, the department or authorized local officer or agency  
21   may take any needed enforcement action authorized by this chapter.

22      **Comment.** Section 95650 continues former Section 25187.8(g)(1) without substantive change.  
23   See Sections 83160 (“department”), 83245 (“local officer”).

24   **§ 95655. Disagreement with notice to comply**

25      95655. Nothing in this article shall be construed as preventing the reinspection of  
26   a facility to ensure compliance with this division or to ensure that minor violations  
27   cited in a notice to comply have been corrected and that the facility is in compliance  
28   with this division.

29      **Comment.** Section 95655 continues former Section 25187.8(i) without substantive change.

30                                   CHAPTER 5. LIABILITY

31                                   Article 1. General Provisions

32   **§ 95700. Cumulative remedies permissible**

33      95700. The remedies provided by this division are cumulative, and shall not be  
34   construed as restricting any remedy, provisional or otherwise, provided by law for  
35   the benefit of any party, and no judgment under this division shall preclude any  
36   party from obtaining additional relief based upon the same facts.

37      **Comment.** Section 95700 continues former Section 25193 without substantive change.

1    **§ 95705. Non-abatement of action or proceeding**

2       95705. Any action brought pursuant to this division against a person shall not  
3    abate by reason of a sale or other transfer of ownership, except with the express  
4    written consent of the director.

5       **Comment.** Section 95705 continues former Section 25194 without substantive change.

6    **§ 95710. Proceeding relating to withdrawn application**

7       95710. (a) The withdrawal of an application for a permit, registration, or  
8    certificate after it has been filed with the department shall not, unless the department  
9    consents in writing to the withdrawal, deprive the department of its authority to  
10   institute or continue a proceeding against the applicant for the denial of the permit,  
11   registration, or certificate upon any ground provided by law, or enter an order  
12   denying the permit, registration, or certificate on any ground.

13     (b) A withdrawal described in subdivision (a) shall not affect the authority of the  
14   department, or a local officer or agency authorized to enforce this division pursuant  
15   to **subdivision (a) of Section 25180**, to institute or continue a proceeding against  
16   the applicant pertaining to any violation of this division or any rule, regulation,  
17   standard, or requirement issued or promulgated pursuant to this division.

18     (c) The suspension, expiration, or forfeiture by operation of law of a permit,  
19   registration, or certificate issued by the department, or its suspension, forfeiture, or  
20   cancellation by order of the department or by order of a court, or its surrender or  
21   attempted or actual transfer without the written consent of the department shall not  
22   affect the authority of the department, or a local officer or agency authorized to  
23   enforce this division pursuant to **subdivision (a) of Section 25180**, to institute or  
24   continue a disciplinary proceeding against the holder of a permit, registration, or  
25   certificate upon any ground, or the authority of the department to enter an order  
26   suspending or revoking the permit, registration, or certificate, or otherwise taking  
27   an action against the holder of a permit, registration, or certificate on any ground.

28     **Comment.** Section 95710 continues former Section 25194.5 without substantive change.  
29     See Sections 83160 (“department”), 83245 (“local officer”).

30   **§ 95715. Apportionment of penalties**

31     95715. (a) All civil and criminal penalties collected pursuant to this division shall  
32   be apportioned in the following manner:

33     (1) Fifty percent shall be deposited in the Toxic Substances Control Account in  
34   the General Fund.

35     (2) Twenty-five percent shall be paid to the office of the city attorney, city  
36   prosecutor, county counsel, district attorney, or the Attorney General, whichever  
37   office brought the action.

38     (3) Twenty-five percent shall be paid to the department and used to fund the  
39   activity of the CUPA, the local health officer, or other local public officer or agency  
40   authorized to enforce the provisions of this division pursuant to **Section 25180**,  
41   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").



1    **§ 95810. Temporary restraining order or injunctive relief**

2       95810. In any civil action brought pursuant to this division in which a temporary  
3    restraining order, preliminary injunction, or permanent injunction is sought, it shall  
4    not be necessary to allege or prove at any stage of the proceeding that irreparable  
5    damage will occur should the temporary restraining order, preliminary injunction,  
6    or permanent injunction not be issued, or that the remedy at law is inadequate, and  
7    the temporary restraining order, preliminary injunction, or permanent injunction  
8    shall issue without such allegations and without such proof.

9       **Comment.** Section 95810 continues former Section 25184 without substantive change.

10   **§ 95815. Additional liability for costs and expenses**

11       95815. (a) In addition to liability under any other provision of law, any person  
12    who is liable for a civil penalty pursuant to **subdivision (c) or (d) of Section 25189**  
13    **or subdivision (c) of Section 25189.2**, or is convicted pursuant to **subdivision (b)**  
14    **of Section 25189.5**, is also civilly liable for all the costs or expenses which may be  
15    incurred by the state, or by a local agency, in doing any of the following:

16       (1) Assess short-term or long-term injury to, degradation or destruction of, or any  
17    loss of, any natural resource resulting from the disposal of the hazardous waste  
18    which is the subject of the civil penalty or conviction.

19       (2) Restore, rehabilitate, replace, or acquire the equivalent of, any natural resource  
20    injured, degraded, destroyed, or lost as a result of the disposal of the hazardous  
21    waste which is the subject of the civil penalty or conviction.

22       (b) The liability imposed by subdivision (a) is separate and in addition to any civil  
23    penalty imposed pursuant to **subdivision (c) or (d) of Section 25189 or subdivision**  
24    **(c) of Section 25189.2** or any fine imposed pursuant to **subdivision (e) of Section**  
25    **25189.5**.

26       (c) Any funds collected pursuant to this section are in addition to any other funds  
27    which may be collected pursuant to this division.

28       (d) A state or local agency may collect funds pursuant to this section prior to  
29    carrying out the actions specified in paragraph (1) or (2) of subdivision (a).

30       (e) An action brought pursuant to this section may be brought by the trustee of the  
31    natural resources specified in **Section 79685**.

32       (f) The action may be prosecuted by the Attorney General or the district attorney,  
33    but by the district attorney only after the trustee, in consultation with the Office of  
34    the Attorney General, approves that prosecution in writing.

35       (g) The trustee shall have 30 days to consider any requested action, and approval  
36    shall be presumed to have been granted if a written denial is not issued within 30  
37    days.

38       (h) The trustee may not unreasonably withhold approval.

39       (i) All funds collected pursuant to this section by the trustee of the natural  
40    resources shall be deposited, at the discretion of the trustee, in the Fish and Wildlife  
41    Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund  
42    or in a special deposit trust fund.

**Comment.** Section 95815 continues former Section 25189.1 without substantive change. See Sections 83175 (“disposal”), 83210 (“hazardous waste”), 83260 (“natural resource”).

### Article 3. Primary Civil Liability [Former Section 25189]

#### § 95850. False statements

95850. A person who intentionally or negligently 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 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.

See Sections 83160 (“department”), 83175 (“disposal”), 83210 (“hazardous waste”), 83215 (“hazardous waste facility”), 83355 (“storage”), 83370 (“treatment”), 83395 (“waste”).

### **§ 95925. Prohibition of double imposition of penalty**

95925. A person shall not be liable for a civil penalty imposed under this section and for a civil penalty imposed under Section 25189 for the same act or failure to act.

**Comment.** Section 95925 continues former Section 25189.2(f) without substantive change.

**§ 95930. Alternative administrative imposition of penalty**

95930. Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Article 3 (commencing with Section 95350) of Chapter 4.

**Comment.** Section 95925 continues former Section 25189.2(g) without substantive change.

## Article 5. Criminal Liability

**§ 95950. Required disclosure of violations by designated government employees**

95950. (a) Within the meaning of this section, a “designated government employee” is any person defined as a “designated employee” by Government Code Section 82019, as amended.

(b)(1) Any designated government employee who obtains information in the course of their official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his or her jurisdiction and who knows that the discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within 72 hours, disclose that information to the local Board of Supervisors and to the local health officer.

(2) No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that this disclosure would adversely affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge.

(c)(1) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) 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.

(2) The court may also impose upon the person a fine of not less than five thousand dollars (\$5000) or more than twenty-five thousand dollars (\$25,000).

(3) The felony conviction for violation of this section shall require forfeiture of 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.



1   **§ 95980. Miscellaneous criminal liability**

2       95980. (a)(1) Any person who knowingly does any of the acts specified in  
3       subdivision (b) shall, upon conviction, be punished by a fine of not less than two  
4       thousand dollars (\$2,000) or more than twenty-five thousand dollars (\$25,000) for  
5       each day of violation, or by imprisonment in a county jail for not more than one  
6       year, or by both that fine and imprisonment.

7       (2) If the conviction is for a second or subsequent violation of subdivision (b), the  
8       person shall be punished by imprisonment pursuant to subdivision (h) of Section  
9       1170 of the Penal Code for 16, 20, or 24 months, or in a county jail for not more  
10      than one year, or by a fine of not less than two thousand dollars (\$2,000) or more  
11      than fifty thousand dollars (\$50,000) for each day of violation, or by both that fine  
12      and imprisonment.

13      (3) Each day or partial day that a violation occurs is a separate violation.

14      (b) A person who does any of the following is subject to the punishment  
15      prescribed in subdivision (a):

16          (1) Makes any false statement or representation in any application, label, manifest,  
17          record, report, permit, notice to comply, or other document filed, maintained, or  
18          used for the purposes of compliance with this division.

19          (2) Has in his or her possession any record relating to the generation, storage,  
20          treatment, transportation, disposal, or handling of hazardous waste required to be  
21          maintained pursuant to this division, that has been altered or concealed.

22          (3) Destroys, alters, or conceals any record relating to the generation, storage,  
23          treatment, transportation, disposal, or handling of hazardous waste required to be  
24          maintained pursuant to this division.

25          (4) Withholds information regarding a real and substantial danger to the public  
26          health or safety when that information has been requested by the department, or by  
27          a local officer or agency authorized to enforce this division pursuant to **subdivision**  
28          **(a) of Section 25180**, and is required to carry out the responsibilities of the  
29          department or the authorized local officer or agency pursuant to this division in  
30          response to a real and substantial danger.

31          (5) Except as otherwise provided in this division, engages in transportation of  
32          hazardous waste in violation of **Section 25160 or 25161, or subdivision (a) of**  
33          **Section 25163**, or in violation of any regulation adopted by the department pursuant  
34          to those provisions, including, but not limited to, failing to complete or provide the  
35          manifest in the form and manner required by the department.

36          (6) Except as otherwise provided in this division, produces, receives, stores, or  
37          disposes of hazardous waste, or submits hazardous waste for transportation, in  
38          violation of **Section 25160 or 25161** or any regulation adopted by the department  
39          pursuant to those sections, including, but not limited to, failing to complete, provide,  
40          or submit the manifest in the form and manner required by the department.

41          (7) Transports any waste, for which there is provided a manifest, if the  
42          transportation is in violation of this division or the regulations adopted by the  
43          department pursuant thereto.

1 (8) Violates **Section 25162**.

2 (c)(1) The penalties imposed pursuant to subdivision (a) on any person who  
3 commits any of the acts specified in paragraph (5), (7), or (8) of subdivision (b) shall  
4 be imposed only on the owner or lessee of the vehicle in which the hazardous wastes  
5 are unlawfully transported, carried, or handled, or the person who authorizes or  
6 causes the transporting, carrying, or handling.

7 (2) The penalties shall not be imposed on the driver of the vehicle, unless the  
8 driver is also the owner or lessee of the vehicle or authorized or caused the  
9 transporting, carrying, or handling.

10 (3) If any person other than the person producing the hazardous waste prepares  
11 the manifest specified in **Section 25160**, that other person is also subject to the  
12 penalties imposed on a person who commits any of the acts specified in paragraph  
13 (6) of subdivision (b).

14 (d) Any person who knowingly does any of the following acts, each day or partial  
15 day that a violation occurs constituting a separate violation, shall, upon conviction,  
16 be punished by a fine of not more than five hundred dollars (\$500) for each day of  
17 violation, or by imprisonment in the county jail for not to exceed six months, or by  
18 both that fine and imprisonment:

19 (1) Carries or handles, or authorizes the carrying or handling of, a hazardous waste  
20 without having in the driver's possession the manifest specified in Section 25160.

21 (2) Transports, or authorizes the transportation of, hazardous waste without  
22 having in the driver's possession a valid registration issued by the department  
23 pursuant to **Section 25163**.

24 (e) Whenever any person is prosecuted for a violation pursuant to **paragraph (5),**  
25 **(6), (7), or (8) of subdivision (b), subdivision (d), or subdivision (c) of Section**  
26 **25189.5**, the prosecuting attorney may take appropriate steps to make the owner or  
27 lessee of the vehicle in which the hazardous wastes are unlawfully transported,  
28 carried, or handled, the driver of the vehicle, or any other person who authorized or  
29 directed the loading, maintenance, or operation of the vehicle, who is reasonably  
30 believed to have violated these provisions, a codefendant.

31 (f) If a codefendant is held solely responsible and found guilty, the court may  
32 dismiss the charge against the person who was initially so charged.

33 **Comment.** Section 95980 continues former Section 25191 without substantive change.  
34 See Sections 83175 ("disposal"), 83355 ("storage"), 83370 ("treatment").

### 35 **§ 95985. Additional misdemeanor violations**

36 95985. It is a misdemeanor for any person to do any of the following:

37 (a) Willfully prevent, interfere with, or attempt to impede in any way the work of  
38 any duly authorized representative of the department, or a local officer or agency  
39 authorized to enforce this division pursuant to subdivision (a) of Section 25180, in  
40 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 6. 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”).

1   **§ 96015. Failure to provide information relating to generated hazardous waste**

2       96015. (a) A person who generates or has generated hazardous waste that fails to  
3   provide information to the department as required pursuant to this division and  
4   regulations adopted pursuant to this division is liable for a civil or administrative  
5   penalty not to exceed seventy thousand dollars (\$70,000) for each separate violation  
6   or, for continuing violations, for each day that the violation continues.

7       (b) The department may adopt regulations to implement subdivision (a).

8       **Comment.** Section 96015 continues former Section 25196.1 without substantive change.  
9       See Sections 83160 (“department”), 83210 (“hazardous waste”).

10   **§ 96020. Noncompliance with order requiring corrective action**

11       96020. A person subject to an order issued pursuant to Article 3 (commencing  
12   with Section 95350) of Chapter 4 who does not comply with that order shall be  
13   subject to a civil penalty of not more than seventy thousand dollars (\$70,000) for  
14   each day of noncompliance.

15       **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 cumulative draft, of provisions in Chapter 6.5 of Division 20 of the Health and Safety Code (§§ 25100-25259), as that law existed on January 1, 2025. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	New Provision
25100.....	83000
25101.....	83005
25103.....	83010
25105.....	83015
25106.....	83020
25110.....	83075
25110.02.....	83080
25110.1.....	83085
25110.2.....	not cont'd
25110.3.....	83090
25110.4.....	83095
25110.5.....	83100
25110.8.....	83105
25110.8.5 (except 2nd sentence of subd. (b)).....	83115
25110.8.5, 2nd sentence of subd. (b).....	83120
25110.9(b).....	83140
25110.9(a).....	83135
25110.9.1(b).....	83130
25110.9.1(a).....	83125
25110.9.3.....	83145
25110.10(a).....	83150
25110.10(b)-(e).....	[not yet recodified]
25110.10.1.....	not cont'd
25110.11.....	83155
25111.....	83160
25111.1.....	not cont'd
25112.....	83165
25112.5(a) (preceding numbered paragraphs).....	83170
25112.5(a)(1)-(d).....	[not yet recodified]
25113.....	83175
25114.....	83180
25114.5.....	83190
25115.....	83195
25115.1.....	83200
25116.....	83205
25116.5.....	83220
25117(a)-(c).....	83210(a)
25117(d).....	[not yet recodified]

Existing Provision	Proposed New Provision
25117.1.....	83215
25117.10.....	83235
25117.11.....	83275
25117.12.....	83280
25117.13.....	83230
25117.14.....	83290
25117.2.....	83220
25117.3.....	[not yet recodified]
25117.4.1(b).....	83245
25117.4.1(a).....	83240
25117.5.....	83210(b)
25117.6.....	83255
25117.8.....	83260
25117.9.....	83265
25117.9.1.....	83270
25117.10.....	83235
25117.11.....	83275
25117.12.....	83280
25117.13.....	83230
25117.14.....	83290
25118.....	83295
25119.....	83300
25120.....	83305
25120.2.....	83310
25120.5.....	83315
25120.55.....	[not yet recodified]
25121.....	83320
25121.1.....	83325
25121.2.....	83330
25121.3(a).....	83335
25121.3(b), (c).....	[not yet recodified]
25121.5.....	83340
25122.7.....	83345
25122.8.....	not cont'd
25122.9.....	83350
25123.....	83355
25123.3(a).....	[not yet recodified]
25123.3(b), initial clause.....	83360
25123.3(b) (remainder of subdivision), (c)-(i).....	[not yet recodified]
25123.4.....	83365
25123.5.....	83370
25123.6.....	83390
25123.7(a).....	83380
25123.7(b).....	83110
25123.7(c).....	83285
25123.7(d).....	83375
25123.8.....	83385

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25125(a), (b), (c) .....	83650
25125(d) .....	83655
25125(e) .....	83700
25125(f).....	83660
25125(g) .....	83725
25125(h) .....	83720
25125(i).....	83705(a)
25125(j).....	83710
25125(k).....	83705(b)
25125(l).....	83675
25125(m).....	83665
25125(n).....	83715
25125(o).....	83670
25125.2(a) .....	83750
25125.2(b)(1) .....	83775
25125.2(b)(2) .....	83780
25125.2(b)(3) .....	83785
25125.2(b)(4) .....	83790
25125.2(b)(5) .....	83795
25125.2(b)(6) .....	83800
25125.2(b)(7) .....	83805
25125.3.....	83755
25125.4.....	83835
25125.5.....	83650
25125.6.....	83760
25125.7.....	83810
25125.8(a), 1st sentence.....	83845
25125.8(a), 2nd sentence .....	83850
25125.8(b) .....	83855
25125.8(c) .....	83860
25125.8(d) .....	83865
25125.8(e) .....	83870
25125.9.....	83815
25130-25149.7 .....	[not yet recodified]
25150.....	83450
25150.1 – 25150.4.....	[not yet recodified]
25150.5.....	83470
25150.65.....	83460
25150.82 – 25150.87.....	[not yet recodified]
25151.....	83455
25152.....	83465
25152.5 – 25159.25.....	[not yet recodified]
25160(a)(2).....	83185
25160(a)(1), (3).....	83250
25160(b) – 25169.9 .....	[not yet recodified]
25170.....	83420



Existing Provision	Proposed New Provision
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25173.....	83505
25173.5.....	[not yet recodified]
25173.6(a) .....	84000
25173.6(b), (c).....	84005
25173.6(d), (e).....	84010
25173.6(f).....	84015
25173.6(g), (h) .....	84020
25173.6(i).....	not cont'd
25173.7(a) .....	84025
25173.7(b).....	84030
25173.7(c) .....	84050
25174(a) .....	83900
25174(b) .....	83905
25174(c) .....	84045
25174(d).....	83910
25174.01.....	[not yet recodified]
25174.02(a) .....	84075
25174.02(b).....	84080
25174.02(c) .....	84085
25174.02(d).....	84090
25174.02(e) .....	84095
25174.02(f).....	not cont'd
25174.8 – 25174.8.1.....	[not yet recodified]
25174.9.....	83915
25175.....	[not yet recodified]
25177.....	83500
25178.....	83550
25178.1 – 25179.....	[not yet recodified]
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 <sup>st</sup> sent .....	95100(b)

Existing Provision	Proposed New Provision
25185(c)(1), 2 <sup>nd</sup> sent .....	95100(c)
25185(c)(2)(A), 1 <sup>st</sup> sent.....	95100(d)
25185(c)(2)(A), 2 <sup>nd</sup> sent.....	95100(e)
25185(c)(2)(A), 3 <sup>rd</sup> sent .....	95100(f)
25185(c)(2)(A), 4 <sup>th</sup> sent .....	95100(g)
25185(c)(2)(A), 5 <sup>th</sup> sent .....	95100(h)(1)
25185(c)(2)(A), 6 <sup>th</sup> sent .....	95100(h)(2)
25185(c)(2)(B) .....	95105
25185(c)(2)(C) .....	95110
25185(c)(2)(D).....	95115
25185(c)(3), 1 <sup>st</sup> sent .....	95120(a)
25185(c)(3), 2 <sup>nd</sup> sent .....	95120(b)
25185(c)(3), 3 <sup>rd</sup> sent.....	95120(c)
25185(c)(3), 4 <sup>th</sup> sent.....	95120(d)
25185(d), 1 <sup>st</sup> sent.....	95125(a)
25185(d), 2 <sup>nd</sup> and 3 <sup>rd</sup> sent.....	95125(b)
25185.5.....	95130
25185.6(a)(1).....	95150
25185.6(a)(2).....	95155
25185.6(b) .....	95160
25185.6(c) .....	95165
25185.6(d) .....	95170(a)
25185.6(e) .....	95175
25186.5(f), 1 <sup>st</sup> sent .....	95180(a)
25186.5(f), 2 <sup>nd</sup> sent.....	95180(b)
25185.6(g) .....	95180(c)
25185.6(h), 1 <sup>st</sup> sent .....	95170(b)
25185.6(h), 2 <sup>nd</sup> sent .....	95170(c)
25185.6(h), 3 <sup>rd</sup> 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 <sup>st</sup> sent.....	95185(c)
25185.6(d), 2 <sup>nd</sup> sent .....	95185(d)
25185.6(d), 3 <sup>rd</sup> 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 <sup>st</sup> and 2 <sup>nd</sup> sent .....	95270
25186.1, 3 <sup>rd</sup> sent.....	95200(a)

Existing Provision	Proposed New Provision
25186.1, 4 <sup>th</sup> sent .....	95200(b)
25186.2, 1 <sup>st</sup> sent .....	95275(a)
25186.2, 2 <sup>nd</sup> sent.....	95275(b)
25186.2, 3 <sup>rd</sup> sent.....	95275(c)
25186.2, 4 <sup>th</sup> sent .....	95275(d)
25186.2, 5 <sup>th</sup> sent .....	95275(e)
25186.2, 6 <sup>th</sup> sent .....	95275(f)
25186.2.5, 1 <sup>st</sup> sent .....	95280(a)
25186.2.5, 2 <sup>nd</sup> sent.....	95280(b)
25186.2.5, 3 <sup>rd</sup> sent.....	95280(c)
25186.2.5, 4 <sup>th</sup> sent .....	95280(d)
25186.2.5, 5 <sup>th</sup> 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)
25187(b)(4), 1 <sup>st</sup> sent .....	95365(d)
25187(b)(4), 2 <sup>nd</sup> sent .....	95365(e)
25187(b)(5) .....	95375
25187(b)(6) .....	95350
25187(c) .....	95380
25187(d) .....	95385
25187(e) .....	95390(a)
25187(f) 2 <sup>nd</sup> sent.....	95390(a)
25187(f)(1) .....	95390(a)
25187(f)(2)(A) 1 <sup>st</sup> sent .....	95390(a)
25187(f)(2)(A), 2 <sup>nd</sup> sent .....	95390(b)
25187(g), 1 <sup>st</sup> sent.....	95390(c)
25187(g), 2 <sup>nd</sup> 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 <sup>st</sup> sent.....	95415(a)
25187(p), 2 <sup>nd</sup> sent.....	95415(b)
25187(q).....	95420
25187.1(a) .....	95300

Existing Provision	Proposed New Provision
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 <sup>st</sup> sent .....	95460(c)
25187.3(c)(2)(B), 2 <sup>nd</sup> sent .....	95460(d)
25187.3(d) .....	95455(b)
25187.3(e) .....	95465
25187.3(f), 1 <sup>st</sup> sent .....	95470
25187.3(f), 2 <sup>nd</sup> sent .....	95475
25187.5(a) .....	95500
25187.5(b) .....	95505
25187.5(c) .....	95510
25187.5(d) .....	95515
25187.5(e) .....	95520
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 <sup>st</sup> sent .....	95610(a)
25187.8(b), 2 <sup>nd</sup> sent .....	95610(b)
25187.8(b), 3 <sup>rd</sup> sent .....	95610(c)
25187.8(c) .....	95620
25187.8(d) .....	95625
25187.8(e), 1 <sup>st</sup> sent .....	95630
25187.8(e), 2 <sup>nd</sup> sent .....	95610(d)
25187.8(f), 1 <sup>st</sup> sent .....	95640
25187.8(f), 2 <sup>nd</sup> sent .....	95645
25187.8(g)(1) .....	95650
25187.8(g)(2) .....	95635
25187.8(h), 1 <sup>st</sup> sent .....	95605
25187.8(h), 2 <sup>nd</sup> sent .....	95615
25187.8(i) .....	95655
25188 .....	96020
25189(a) .....	95850
25189(b) .....	95855

Existing Provision	Proposed New Provision
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
25191.7 .....	95090
25192 .....	95715
25193 .....	95700
25194 .....	95705
25194.5 .....	95710
25195 .....	95985
25196 .....	96005
25196.1 .....	96015
25197– 25197.3 .....	[not yet recodified]
25198(a) .....	not cont'd
25198(b), 1st part .....	90000
25198(b), 2nd part .....	not cont'd
25198(c)–(e) .....	90005
25198(f) .....	90010
25198.1 – 25214.10.2 .....	[not yet recodified]
25205.1 (intro) .....	84150
25205.1(a) .....	84155
25205.1(b) .....	84180
25205.1(c) .....	84200
25205.1(d) .....	84205
25205.1(e) .....	84185
25205.1(f) .....	84210
25205.1(g) .....	84215
25205.1(h) .....	84220
25205.1(i) .....	84225
25205.1(j) .....	84230

Existing Provision	Proposed New Provision
25205.1(k) .....	84245
25205.1(l) .....	84160, 84165, 84170
25205.1(m) .....	84190
25205.1(n) .....	84195
25205.1(o) .....	84175, 84235, 84240
25210 .....	85500
25210.1 .....	85505
25210.10 .....	85525
25210.12 .....	85535
25210.2 .....	85510
25210.5 .....	85450
25210.6 .....	85455
25210.7 .....	85460
25210.9 .....	85530
25211 .....	85550
25211.1 .....	85555
25211.2 .....	85560
25211.3 .....	85565
25211.4 .....	85570
25211.5 .....	85590
25212 .....	85575
25213 .....	85580
25214 .....	85585
25214.1 .....	85650
25214.1.5 .....	85655
25214.2 .....	85660
25214.3 .....	85665
25214.3.1 .....	85670
25214.3.2 .....	85675
25214.3.3 .....	85680
25214.3.4 .....	85685
25214.3.5 .....	85690
25214.4 .....	85695
25214.4.1 .....	85700
25214.4.2 .....	85705
25214.4.3 .....	85750
25214.5 .....	85775
25214.6 .....	85780
25214.7 .....	85785
25214.8 .....	85790
25249.1 .....	85475
25249.2 .....	85480
25214.11(a) .....	85155
25214.11(b) .....	85150
25214.12 (intro) .....	85180
25214.12 (a) .....	85180
25214.12 (b) .....	85185

Existing Provision	Proposed New Provision
25214.12 (c) .....	85195
25214.12 (d) .....	85205
25214.12 (e) .....	85200
25214.12 (f) .....	85210
25214.12 (g) .....	85215
25214.12 (h) .....	85220
25214.12 (i) .....	85225
25214.12 (j) .....	85230
25214.12 (k) .....	85235
25214.12 (l) .....	85240
25214.12 (m) .....	85245
25214.12 (n) .....	85250
25214.13(a) .....	85315
25214.13(b) .....	85310(b)
25214.13(c) .....	85310(c)
25214.14(a), (b), (d) .....	85330
25214.14(c), (e), (f), (g) .....	85335
25214.15(a) .....	85350
25214.15(b) .....	85355
25214.15(c) .....	85360
25214.15(d) .....	not cont'd
25214.15(e) .....	85365
25214.15(f) .....	not cont'd
25214.15(g) .....	not cont'd
25214.15(h) .....	not cont'd
25214.15(i) .....	85370 (a), (b)
25214.15(j) .....	85370(c)
25214.16 .....	85375
25214.17(a) .....	85290
25214.17(b) .....	85295
25214.18 .....	85285
25214.19 .....	85165
25214.20 .....	85160
25214.21 .....	85270(a)
25214.22 .....	85390
25214.22.1 .....	85410
25214.23 (except 2 <sup>nd</sup> sent. of (a)(3)) .....	85275
25214.23(a)(3) (2 <sup>nd</sup> sent.) .....	85395
25214.24 .....	85280
25214.26 .....	85270(b)
25215 – 25242.3 .....	[not yet recodified]
25244 .....	90050
25244.01 .....	90075
25244.1 .....	90055
25244.2 .....	90060
25244.4 .....	90130
25244.5 .....	90080

Existing Provision	Proposed New Provision
25244.6.....	90085
25244.7.....	90115
25244.8.....	90105
25244.9.....	90110
25244.10.....	90100
25244.12.....	84850
25244.13.....	84855
25244.13.1.....	84865
25244.14 (intro) .....	84880
25244.14(a) .....	84885
25244.14(b) .....	84890
25244.14(c) .....	84895
25244.14(d) .....	84900
25244.14(e) .....	84905
25244.14(f).....	84910
25244.14(g) .....	84915
25244.14(h) .....	84920
25244.14(i).....	84925
25244.14(j).....	84930
25244.14(k) .....	84935
25244.15.....	84860
25244.15.1(a) .....	84950
25244.15.1(b).....	84955
25244.15.1(c) .....	84960
25244.15.1(d).....	84965
25244.15.1(e) .....	84970
25244.16(a) .....	85065
25244.16(b).....	85050
25244.17.....	85070
25244.17.1.....	85005
25244.17.2(a) .....	85015(a), (b)
25244.17.2(b), (c).....	85020
25244.17.2(d).....	85015(c)
25244.18.....	85045
25244.19.....	85030
25244.20.....	85035
25244.21(a), (b).....	85040
25244.21(c) .....	85050
25244.22(a) .....	84985
25244.22(b) .....	84990
25244.23.....	85075
25245–25250.65.....	[not yet recodified]
25251 (intro) .....	84400
25251(a) .....	84405
25251(b).....	84415
25251(c) .....	84420
25251(d).....	84425



Existing Provision	Proposed New Provision
25251(e) .....	84430
25251(f).....	84435
25252(a), 1st and 2nd sent .....	84525
25252(a), 3rd sent .....	84530
25252(b)(1) .....	84535
25252(b)(2), (b)(3) .....	84540
25252.5(a) .....	84600(a)
25252.5(b) .....	84605
25252.5(c) .....	84610
25252.5(d) .....	84615
25252.5(e) .....	84600(b)
25252.5(f).....	84600(c)
25252.5(g) .....	84595
25253(a)(1).....	84555
25253(a)(2).....	84560
25253(b) .....	84570
25253(c) .....	84565
25253(d) .....	84575
25253(e)(1).....	84580(a)
25253(e)(2).....	84580(b)
25253(f).....	84580(c)
25253.5 .....	84485
25253.6 .....	84480
25253.7(a)(1), 1st sent .....	84670(a)
25253.7(a)(1), 2nd sent .....	84670(b)
25253.7(a)(1), 3rd sent.....	84675(a)
25253.7(a)(1), 4th sent.....	84670(c)
25253.7(a)(2)(A) .....	84675(b)
25253.7(a)(2)(B) .....	84675(c)
25253.7(a)(2)(C) .....	84680
25253.7(a)(3).....	84685
25253.7(a)(4).....	84690
25253.7(a)(5).....	84695
25253.7(b) .....	84700
25253.9 .....	84490
25254(a) .....	84500(a)
25254(b), 1st sent.....	84500(b)
25254(b), 2nd sent.....	84500(c)
25254(c), 1st sent .....	84505(a)
25254(c), 2nd sent.....	84500(d)
25254(d) .....	84505(b)
25255.....	84510
25256, 1st sent .....	84630
25256, 2nd sent, 1st part .....	84650
25256, 2nd sent, 2nd part.....	84655
25256.1 .....	84635
25256.2.....	84640

Existing Provision	Proposed New Provision
25256.3.....	84645
25257(a), 1st sent.....	84720(a)
25257(a), 2nd sent.....	84720(b)
25257(b).....	84725
25257(c), 1st sent.....	84720(c)
25257(c), 2nd sent.....	84720(d)
25257(d).....	84730
25257(e).....	84740
25257(f).....	84745
25257.1(a).....	84455
25257.1(b).....	84460
25257.1(c).....	84465
25257.2(a).....	84765
25257.2(b).....	84770
25257.2(c).....	84775
25257.2(d).....	84780
25257.2(e).....	84785
25257.2(f).....	84790
25257.2(g).....	84795
25257.2(h).....	84800
25258– 25259.....	[not yet recodified]

## DERIVATION OF NEW LAW

**Note.** This table shows the derivation of each provision in proposed Division 46 of the Health and Safety Code, as reflected in this cumulative draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

<b>Proposed New Provision</b>	<b>Existing Provision</b>
83000 .....	25100
83005 .....	25101
83010 .....	25103
83015 .....	25105
83020 .....	25106
83035 .....	new
83040 .....	new
83045 .....	new
83050 .....	new
83055 .....	new
83060 .....	new
83075 .....	25110
83080 .....	25110.02
83085 .....	25110.1
83090 .....	25110.3
83095 .....	25110.4
83100 .....	25110.5
83105 .....	25110.8
83110 .....	25123.7(b)
83115 .....	25110.8.5 (except 2nd sentence of subd. (b))
83120 .....	25110.8.5, 2nd sentence of subd. (b)
83125 .....	25110.9.1(a)
83130 .....	25110.9.1(b)
83135 .....	25110.9(a)
83140 .....	25110.9(b)
83145 .....	25110.9.3
83150 .....	25110.10(a)
83155 .....	25110.11
83160 .....	25111
83165 .....	25112
83170 .....	25112.5(a) (preceding numbered paragraphs)
83175 .....	25113
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83365 .....	25123.4
83370 .....	25123.5
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83665 .....	25125(m)
83670 .....	25125(o)
83675 .....	25125(l)
83700 .....	25125(e)
83705(a).....	25125(i)
83705(b).....	25125(k)
83710 .....	25125(j)
83715 .....	25125(n)
83720 .....	25125(h)
83725 .....	25125(g)
83750 .....	25125.2(a)
83755 .....	25125.3
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83815 .....	25125.9
83835 .....	25125.4
83845 .....	25125.8(a), 1st sentence
83850 .....	25125.8(a), 2nd sentence
83855 .....	25125.8(b)
83860 .....	25125.8(c)
83865 .....	25125.8(d)
83870 .....	25125.8(e)
83900 .....	25174(a)
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83910 .....	25174(d)
83915 .....	25174.9
84000 .....	25173.6(a)
84005 .....	25173.6(b), (c)
84010 .....	25173.6(d), (e)
84015 .....	25173.6(f)
84020 .....	25173.6(g), (h)
84025 .....	25173.7(a)
84030 .....	25173.7(b)
84045 .....	25174(c)
84050 .....	25173.7(c)

84075(a).....	25174.02(a)
84075(b) .....	25174.02(b), 2 <sup>nd</sup> sent.
84080 .....	25174.02(b), 1 <sup>st</sup> sent
84085 .....	25174.02(c)
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84095 .....	25174.02(e)
84150 .....	25205.1 (intro)
84155 .....	25205.1(a)
84160 .....	25205.1(l) (part applicable to “Class 1 modification”)
84165 .....	25205.1(l) (part applicable to “Class 2 modification”)
84170 .....	25205.1(l) (part applicable to “Class 3 modification”)
84175 .....	25205.1(o) (part applicable to “disposal”)
84180 .....	25205.1(b)
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84190 .....	25205.1(m)
84195 .....	25205.1(n)
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84205 .....	25205.1(d)
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84215 .....	25205.1(g)
84220 .....	25205.1(h)
84225 .....	25205.1(i)
84230 .....	25205.1(j)
84235 .....	25205.1(o) (part applicable to “storage”)
84240 .....	25205.1(o) (part applicable to “treatment”)
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84405 .....	25251(a)
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84430 .....	25251(e)
84435 .....	25251(f)
84455 .....	25257.1(a)
84460 .....	25257.1(b)
84465 .....	25257.1(c)
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84485 .....	25253.5
84490 .....	25253.9
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84500(d).....	25254(c), 2nd sent
84505(a).....	25254(c), 1st sent
84505(b).....	25254(d)
84510 .....	25255

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84575 .....	25253(d)
84580(a).....	25253(e)(1)
84580(b).....	25253(e)(2)
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84600(a).....	25252.5(a)
84600(b).....	25252.5(e)
84600(c).....	25252.5(f)
84605 .....	25252.5(b)
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84630 .....	25256, 1st sent
84635 .....	25256.1
84640 .....	25256.2
84645 .....	25256.3
84650 .....	25256, 2nd sent, 1st part
84655 .....	25256, 2nd sent, 2nd part
84670(a).....	25253.7(a)(1), 1st sent
84670(b).....	25253.7(a)(1), 2nd sent
84670(c).....	25253.7(a)(1), 4th sent
84675(a).....	25253.7(a)(1), 3rd sent
84675(b).....	25253.7(a)(2)(A)
84675(c).....	25253.7(a)(2)(B)
84680 .....	25253.7(a)(2)(C)
84685 .....	25253.7(a)(3)
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84695 .....	25253.7(a)(5)
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84720(a).....	25257(a), 1st sent
84720(b).....	25257(a), 2nd sent
84720(c).....	25257(c), 1st sent
84720(d).....	25257(c), 2nd sent
84725 .....	25257(b), 2nd sent
84730 .....	25257(d)
84735 .....	25257(b), 1st sent
84740 .....	25257(e)
84745 .....	25257(f)
84765 .....	25257.2(a)
84770 .....	25257.2(b)

84775 .....	25257.2(c)
84780 .....	25257.2(d)
84785 .....	25257.2(e)
84790 .....	25257.2(f)
84795 .....	25257.2(g)
84800 .....	25257.2(h)
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84860 .....	25244.15
84865 .....	25244.13.1
84880 .....	25244.14 (intro)
84885 .....	25244.14(a)
84890 .....	25244.14(b)
84895 .....	25244.14(c)
84900 .....	25244.14(d)
84905 .....	25244.14(e)
84910 .....	25244.14(f)
84915 .....	25244.14(g)
84920 .....	25244.14(h)
84925 .....	25244.14(i)
84930 .....	25244.14(j)
84935 .....	25244.14(k)
84950 .....	25244.15.1(a)
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84960 .....	25244.15.1(c)
84965 .....	25244.15.1(d)
84970 .....	25244.15.1(e)
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85000 .....	25244.17
85005 .....	25244.17.1
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85035 .....	25244.20
85040 .....	25244.21(a), (b)
85045 .....	25244.18
85050 .....	25244.21(c)
85065 .....	25244.16(a)
85070 .....	25244.16(b)
85075 .....	25244.23
85150 .....	25214.11(b)
85155 .....	25214.11(a)
85160 .....	25214.20
85165 .....	25214.19
85180 .....	25214.12 (intro)
85185 .....	25214.12(b)



85190 .....	25214.12(a)
85195 .....	25214.12(c)
85200 .....	25214.12(e)
85205 .....	25214.12(d)
85210 .....	25214.12(f)
85215 .....	25214.12(g)
85220 .....	25214.12(h)
85225 .....	25214.12(i)
85230 .....	25214.12(j)
85235 .....	25214.12(k)
85240 .....	25214.12(l)
85245 .....	25214.12(m)
85250 .....	25214.12(n)
85270 .....	25214.21
85275 .....	25214.23 (excepting 2 <sup>nd</sup> sent. of 25214.23(a)(3))
85280 .....	25214.24
85285 .....	25214.18
85290 .....	25214.17(a)
85295 .....	25214.17(b)
85310(a).....	25214.13(b)
85310(b).....	25214.13(c)
85315 .....	25214.13(a)
85330 .....	25214.17.14(a), (b), (d)
85335 .....	25214.14(c), (e), (f), (g)
85350 .....	25214.15(a)
85355 .....	25214.15(b)
85360 .....	25214.15(c)
85365 .....	25214.15(e)
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85370(c).....	25214.15(j)
85375 .....	25214.16
85390 .....	25214.22
85395 .....	2 <sup>nd</sup> sent. of 25214.23(a)(3)
85410 .....	25214.22.1
85475 .....	25249.1
85480 .....	25249.2
85500 .....	25210
85505 .....	25210.1
85525 .....	25210.10
85535 .....	25210.12
85510 .....	25210.2
85450 .....	25210.5
85455 .....	25210.6
85460 .....	25210.7
85530 .....	25210.9
85550 .....	25211
85555 .....	25211.1

85560 .....	25211.2
85565 .....	25211.3
85570 .....	25211.4
85590 .....	25211.5
85575 .....	25212
85580 .....	25213
85585 .....	25214
85650 .....	25214.1
85660 .....	25214.2
85665 .....	25214.3
85670 .....	25214.3.1
85695 .....	25214.4
85675 .....	25214.3.2
85700 .....	25214.4.1
85775 .....	25214.5
85655 .....	25214.1.5
85680 .....	25214.3.3
85705 .....	25214.4.2
85780 .....	25214.6
85685 .....	25214.3.4
85750 .....	25214.4.3
85785 .....	25214.7
85690 .....	25214.3.5
85790 .....	25214.8
90000 .....	25198(b), 1st part
90005 .....	25198(c), (d), (e)
90010 .....	25198(f)
90050 .....	25244
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90060 .....	25244.2
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90080 .....	25244.5
90085 .....	25244.6
90100 .....	25244.10
90105 .....	25244.8
90110 .....	25244.9
90115 .....	25244.7
90130 .....	25244.4
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 <sup>st</sup> sent
95100(c).....	25185(c)(1), 2 <sup>nd</sup> sent
95100(d).....	25185(c)(2)(A), 1 <sup>st</sup> sent
95100(e).....	25185(c)(2)(A), 2 <sup>nd</sup> sent
95100(f).....	25185(c)(2)(A), 3 <sup>rd</sup> sent
95100(g).....	25185(c)(2)(A), 4 <sup>th</sup> sent
95100(h)(1).....	25185(c)(2)(A), 5 <sup>th</sup> sent
95100(h)(2).....	25185(c)(2)(A), 6 <sup>th</sup> sent
95105 .....	25185(c)(2)(B)
95110 .....	25185(c)(2)(C)
95115 .....	25185(c)(2)(D)
95120(a).....	25185(c)(3), 1 <sup>st</sup> sent
95120(b).....	25185(c)(3), 2 <sup>nd</sup> sent
95120(c).....	25185(c)(3), 3 <sup>rd</sup> sent
95120(d).....	25185(c)(3), 4 <sup>th</sup> sent
95125(a).....	25185(d), 1 <sup>st</sup> sent
95125(b).....	25185(d), 2 <sup>nd</sup> and 3 <sup>rd</sup> 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 <sup>st</sup> sent
95170(c).....	25185.6(h), 2 <sup>nd</sup> sent
95170(d).....	25185.6(h), 3 <sup>rd</sup> sent
95175 .....	25185.6(e)
95180(a).....	25186.5(f), 1 <sup>st</sup> sent
95180(b).....	25186.5(f), 2 <sup>nd</sup> sent
95180(c).....	25185.6(g)
95185(a).....	25186.5(b)
95185(b).....	25186.5(c)
95185(c).....	25185.6(d), 1 <sup>st</sup> sent
95185(d).....	25185.6(d), 2 <sup>nd</sup> sent
95185(e).....	25185.6(d), 3 <sup>rd</sup> sent
95185(f).....	25185.6(e)
95185(g).....	25186.5(f)
95200(a).....	25186.1, 3 <sup>rd</sup> sent
95200(b).....	25186.1, 4 <sup>th</sup> 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 <sup>st</sup> and 2 <sup>nd</sup> sent
95275(a).....	25186.2, 1 <sup>st</sup> sent
95275(b).....	25186.2, 2 <sup>nd</sup> sent
95275(c).....	25186.2, 3 <sup>rd</sup> sent
95275(d).....	25186.2, 4 <sup>th</sup> sent
95275(e).....	25186.2, 5 <sup>th</sup> sent
95275(f) .....	25186.2, 6 <sup>th</sup> sent
95280(a).....	25186.2.5, 1 <sup>st</sup> sent
95280(b).....	25186.2.5, 2 <sup>nd</sup> sent
95280(c).....	25186.2.5, 3 <sup>rd</sup> sent
95280(d).....	25186.2.5, 4 <sup>th</sup> sent
95280(e).....	25186.2.5, 5 <sup>th</sup> 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)
95365(a).....	25187(b) (intro para)
95365(b).....	25187(b)(2)
95365(c).....	25187(b)(3)
95365(d).....	25187(b)(4), 1 <sup>st</sup> sent
95365(e).....	25187(b)(4), 2 <sup>nd</sup> sent
95370 .....	25187(b)(1)
95375 .....	25187(b)(5)
95380 .....	25187(c)
95385 .....	25187(d)
95390(a).....	25187(e), 25187(f) 2 <sup>nd</sup> sent, 25187(f)(1), 25187(f)(2)(A) 1 <sup>st</sup> sent
95390(b).....	25187(f)(2)(A), 2 <sup>nd</sup> sent
95390(c).....	25187(g), 1 <sup>st</sup> sent
95390(d).....	25187(g), 2 <sup>nd</sup> 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 <sup>st</sup> sent
95415(b).....	25187(p), 2 <sup>nd</sup> 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 <sup>st</sup> sent
95460(d).....	25187.3(c)(2)(B), 2 <sup>nd</sup> sent
95465 .....	25187.3(e)
95470 .....	25187.3(f), 1 <sup>st</sup> sent
95475 .....	25187.3(f), 2 <sup>nd</sup> 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)
95580(a).....	25187.6(f)
95580(b).....	25187.6(g)
95600 .....	25187.8(a)
95605 .....	25187.8(h), 1 <sup>st</sup> sent
95610(a).....	25187.8(b), 1 <sup>st</sup> sent
95610(b).....	25187.8(b), 2 <sup>nd</sup> sent
95610(c).....	25187.8(b), 3 <sup>rd</sup> sent
95610(d).....	25187.8(e), 2 <sup>nd</sup> sent
95615 .....	25187.8(h), 2 <sup>nd</sup> sent
95620 .....	25187.8(c)
95625 .....	25187.8(d)
95630 .....	25187.8(e), 1 <sup>st</sup> sent
95635 .....	25187.8(g)(2)
95640 .....	25187.8(f), 1 <sup>st</sup> sent
95645 .....	25187.8(f), 2 <sup>nd</sup> 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
95985 .....	25195
96000 .....	25189.4
96005 .....	25196
96010 .....	25181.5
96015 .....	25196.1
96020 .....	25188



## SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapter 6.5 of Division 20 of the Health and Safety Code, the Legislature directed the Commission to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” See 2024 Cal. Stat. res. ch. 138. The Legislature’s grant of authority for this project precludes the Commission from making “any substantive changes to the law.” See *id.*

In the course of the Commission’s study of Chapter 6.5, the Commission has identified the substantive issues listed below for possible future study. Unless otherwise indicated, all statutory citations refer to provisions of the Health & Safety Code. All references to proposed provisions refer to provisions of the proposed legislation in this recommendation.

- (1) Should the provisions defining different types of violations (see proposed Sections 83115, 83120, and 83255, which define “class I violation,” “class II violation,” and “minor violation,” respectively) be revised for consistency and clarity?
- (2) Should the definition of “treatment” (proposed Section 83370) be restated for clarity?
- (3) Should the use of terms that are undefined in proposed Division 46, but are defined in Part 2 of Division 45, be addressed by incorporating the definitions from Part 2 of Division 45 by reference (either individually or globally)?
- (4) Should proposed Section 83550, which specifies materials that the department is obligated to post on its website, be revised to eliminate obsolescence (see DTSC Independent Review Panel Recommendations to the Governor and the Legislature Pursuant to Health and Safety Code Section 57014(f), p. 31 (January 8, 2018))?



