

Memorandum 2019-41

**Recodification of Toxic Substance Statutes
(Site Clean-Up)**

In this study, the Commission¹ is undertaking a nonsubstantive reorganization of Chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.² The Commission decided to proceed with the recodification of Chapter 6.8 first, then move to the recodification of Chapter 6.5.³

The Commission has been preparing a draft of the proposed recodification for Chapter 6.8. Attached to this memorandum is an initial draft of “Chapter 5: Cleanup of Hazardous Substance Releases,” “Chapter 6. Site-Specific Rules for Cleanup,” and “Chapter 7. Enforcement.”

Commissioners and other interested persons should review the attached draft and raise any concerns identified. **Comments on any aspect of the draft, including issues that the Commission should consider adding to the list of substantive items for possible future study, would be welcome.**

Unless otherwise indicated, any statutory citations are to the Health and Safety Code.

GENERAL DRAFTING APPROACH

As with the prior draft legislation for this project, the staff has taken a fairly conservative approach to drafting. For the most part, the language used in the draft is drawn from existing law verbatim.

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

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

2. See 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)).

3. Minutes (Feb. 2019), p. 3.

Certain minor language changes to conform to legislative drafting practices or correct clear technical errors were made without notation.⁴ Otherwise, any proposed changes to the language of the provision are described in the corresponding Staff Note.⁵

In accordance with the Commission's prior decisions in this study, certain minor changes were made as a matter of course, but these changes are flagged in the corresponding Staff Note.⁶

In several instances, the staff discovered problems with the existing language or cross-references. Where possible, the staff proposed correcting the provision and discussed the issue in a Staff Note.⁷ Where the appropriate resolution was unclear, the staff requested comment on the issue.⁸

In addition, the staff identified a few provisions that could seemingly benefit from restatement for clarity.⁹ Generally, the staff was unsure whether these provisions might be sufficiently clear to practitioners familiar with this area of law. For these provisions, a Staff Note was included requesting comment on the whether the provision is sufficiently clear. Based on the comment received, the Commission can decide on the appropriate course of action for these provisions (i.e., leave unchanged, restate, or add to list for future study).

The proposed legislation contains an introductory, explanatory Staff Note.¹⁰ This initial Staff Note describes the Commission's comments, the tables included in the proposed legislation, the Staff Notes, and other helpful information for stakeholders reviewing the proposed legislation. This Staff Note will be reproduced in future drafts of proposed legislation and will be updated as needed.

4. Changes the staff made to conform to legislative drafting practice included eliminating uses of the words "such" and "thereof," changing uses of the word "which" to "that," and correcting a missing or extraneous comma. In rare cases, these changes may be flagged in a Staff Note. See, e.g., proposed Section 68855 (Note 1).

5. See, e.g., Staff Notes for proposed Sections 68925, 68935 (Note 2), 68960, 69065, and 69320.

6. See Minutes (Apr. 2019), p. 3-4. Such changes are discussed, for example, in Staff Notes for proposed Sections 68870 (Note 1), 68975 (Note 1), 69450 (Note 2), and 69475 (Note 1).

7. See, e.g., Staff Note for proposed Sections 69070 (Notes 1 and 3), 69100 (Note 1), 69225 (Note 1), and 69230 (Note 1).

8. See, e.g., Staff Notes for proposed Sections 69100 (Note 3), 69235, and 69475 (Note 3).

9. See Staff Notes for proposed Sections 69160 and 69355.

10. See page i of attached draft proposed legislation.

STRUCTURE OF PROPOSED CHAPTERS 5, 6, AND 7

Proposed Chapter 5 includes provisions related to cleaning up hazardous substance releases. The chapter is organized into the following articles:

- (1) General Provisions
- (2) Exigent Actions
- (3) Referral of Site to Department by State or Regional Water Board
- (4) Public Participation
- (5) Community Advisory Groups
- (6) Oversight and Review of Responsible Party Actions
- (7) Orders to Potentially Responsible Parties
- (8) Expenditures
- (9) Preliminary Endangerment Assessment
- (10) Initiation of Removal or Remedial Action
- (11) Local Government Removal or Remedial Actions
- (12) Planning
- (13) Standards
- (14) On-site Hazardous Waste Facility for Response Action
- (15) Operation and Maintenance
- (16) Illegal Drug Lab Cleanup
- (17) Judicial Review of Response Actions

Proposed Chapter 6 includes rules related to cleanup of hazardous substance releases at specific sites. The chapter is organized into the following articles:

- (1) Financial Provisions
- (2) Santa Susana Field Laboratory
- (3) Stringfellow Quarry Class I Hazardous Waste Disposal Site

Proposed Chapter 7 includes enforcement rules related to hazardous substance release cleanups. The chapter is organized into the following articles:

- (1) Noncompliance with Order
- (2) Response Action
- (3) Natural Resource Damages
- (4) Administrative Process for Penalty Collection

Proposed Section 68875 (Section 25354)

As indicated in Memorandum 2019-40, the staff is proposing changes to one of the provisions contained in the cumulative draft. Proposed Section 68240, which continues much of Section 25354, relates to the reserve account for emergencies. Proposed Section 68240 also includes authority for taking cleanup actions with funds in that account. Originally, this material was all included in “Chapter 2. Financial Provisions.” That location seems to be an appropriate location for the provisions related to the reserve account generally. However, proposed Chapter 5 seems to be a better location for the provisions related to cleanup authority.¹¹

For ease of reference, the text of proposed Section 68240 is reproduced below:

§ 68240. Reserve account for emergencies

68240. (a) There is hereby continuously appropriated from the state account to the department the sum of one million dollars (\$1,000,000) for each fiscal year as a reserve account for emergencies, notwithstanding Section 13340 of the Government Code. The department shall expend moneys available in the reserve account only for the purpose of taking immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an explosion of, or human exposure to, hazardous substances caused by the release or threatened release of a hazardous substance.

(b)(1) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when, in the judgment of the department, immediate corrective action is necessary to remedy or prevent an emergency specified in subdivision (a).

(3) The contracts made pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(4) If the department finds that the corrective action includes the relocation of individuals, the department may contract with those individuals for out-of-pocket expenses incurred in moving for an amount of not more than one thousand dollars (\$1,000).

11. Those provisions include the second sentence of subdivision (a) and all of subdivision (b) of proposed Section 68240.

(c) Once the appropriation made pursuant to subdivision (a) is fully expended, the director may file a report with the Legislature if it is in session or, if it is not in session, with the Committee on Rules of the Assembly and the Senate as to the moneys expended pursuant to this section. The Legislature may appropriate moneys from the state account, in addition to those moneys appropriated pursuant to subdivision (a), to the department for the purpose of taking corrective action pursuant to subdivision (a).

(d) Except as provided in subdivision (c), the amount deposited in the reserve account and appropriated pursuant to this section shall not exceed one million dollars (\$1,000,000) in any fiscal year. On June 30 of each year, the unencumbered balance of the reserve account shall revert to and be deposited in the state account.

In preparing the attached draft, the staff found that the cleanup authority provisions are cross-referenced frequently.¹² And, these provisions are strongly related to the topic and contents of proposed Chapter 5.

For these reasons, the staff proposes removing the cleanup authority provisions from proposed Section 68240 and, instead, recodifying those provisions in proposed Section 68875, as shown in the attached draft. **Does the Commission approve of that approach?**

If the Commission approves the change, the necessary implementing changes will be made in the next iteration of the cumulative draft.

Uses of the Term “Remediation”

Several provisions in this draft use the term “remediation.”¹³

“Remediation” is similar to the defined terms, “remedy” and “remedial action.”¹⁴ Read strictly, the definition for “remedy” appears not to apply to uses of the term “remediation.”

In some cases, however, it seems that “remediation” was used as a synonym of the defined terms.¹⁵ While in other cases, it is not clear whether “remediation” is being used that way.¹⁶ In either situation, the draft includes a Staff Note requesting comment on the issue.

Alternatively, it may make sense to address the issue more comprehensively, as an issue for future study.

12. See, e.g., proposed Sections 68880, 68930, 69060, 69135.

13. See proposed Sections 69100, 69105, 69260, 69380, 69475.

14. See proposed Section 68125 in cumulative draft.

15. See, e.g., proposed Section 69105 (Note 1).

16. See, e.g., proposed Section 69100 (Note 4).

Would the Commission like to include this issue on the list of items for possible future study?

NEXT STEPS

The staff will prepare an updated cumulative draft, which incorporates these provisions and reflects any decisions made by the Commission on the attached proposed legislation.

Respectfully submitted,

Kristin Burford
Staff Counsel

PROPOSED CHAPTERS 5, 6, & 7 OF PART 2 OF DIVISION 45 OF
HEALTH & SAFETY CODE

1 **Staff Note.** This is a work in progress. The material shown below may be changed.

2 All of the proposed provisions would be located in the Health & Safety Code. All references
3 are to the Health & Safety Code unless otherwise indicated.

4 **Comments.** A draft of an official Commission “Comment” follows each proposed code section in
5 the recodification. Such Comments will be included in any final recommendation. The Comments
6 are drafted as if the existing code sections have been repealed and replaced with the proposed
7 legislation. Thus, existing code sections are referred to as “former” sections. The Comments
8 indicate the source of each recodified code section and describe how the recodified code section
9 compares with prior law. Courts have routinely held that the Commission’s Comments are
10 evidence of legislative intent with regard to any legislation that implements a Commission
11 recommendation.

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

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

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

21 Staff Notes serve to flag issues requiring special attention or treatment. The staff does not plan
22 to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft,
23 identify any issues of concern, and then raise those issues for discussion at the meeting or express
24 their concerns in writing before the meeting, or both. Where a Staff Note serves as a prompt for
25 public comment, these prompts for comment will typically be continued in the Commission’s
26 tentative recommendation as “Notes” calling for comment. However, where the Commission
27 decides against a staff-proposed restatement and reverts to existing statutory language, the Staff
28 Note would not be continued in future drafts.

29 **Cross-references.** In some places, the provisions proposed for recodification in this draft cross-
30 refer to provisions contained in Chapter 6.8. Where the cross-referenced provision has not yet
31 been included in the recodification draft, the cross-reference is unchanged and is shown in bold
32 text. As new Division 45 is drafted, these references will be updated to reflect the new numbering
33 scheme. Where the cross-referenced material is contained in this or a prior draft of the
34 recodification, the cross-reference was updated to reflect the proposed recodification. When a
35 cross-reference needs to be updated, but there are questions about the cross-reference or how it
36 should be updated, the cross-reference is shown in bracketed bold text and a Staff Note describes
37 the issue and seeks comment on how the provision should be changed.

38 **Public comment.** The Commission welcomes public comment on any issue relating to the
39 content of this draft or any other aspect of its ongoing Recodification of Toxic Substance Statutes
40 study. Comments should be directed to Kristin Burford (kburford@clrc.ca.gov).

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DRAFT LEGISLATION

1 **Health & Safety Code §§ 68000-[6XXXX] (added). Hazardous substance response**

2 SEC. ____ . Division 45 (commencing with Section 68000) is added to the Health
3 and Safety Code, to read:

4 DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE

5 ...

6 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

7 ...

8 CHAPTER 5. CLEANUP OF HAZARDOUS SUBSTANCE RELEASES

9 Article 1. General Provisions

10 **§ 68850. Coordination of response actions by Governor**

11 68850. The Governor is responsible for the coordination of all state response
12 actions for sites identified in Article 5 (commencing with Section 68760) of
13 Chapter 4 in order to assure the maximum use of available federal funds.

14 **Comment.** Section 68850 continues subdivision (a) of former Section 25355 without
15 substantive change.

16 See Sections 68140 (“response” defined), 68155 (“site” defined).

17 **Staff Note.** Section 25355(a) refers to “sites identified in Section 25356.” Section 25356 has been
18 proposed for recodification as Article 5 of Chapter 4 of this part. The cross-reference has been
19 updated accordingly. Section 25356 relates to the listing and prioritization of sites for response
20 actions. However, Section 25356 also indicates that there may be a class of sites that is not listed
21 (i.e., those that fall below the minimum hazard threshold). The staff sees benefit in clarifying the
22 intended meaning of “sites identified in Section 25356.” **The staff welcomes comment on this**
23 **issue.**

24 **§ 68855. Consistency requirements for response actions**

25 68855. (a) For response actions taken pursuant to the federal act, only those
26 costs for actions that are consistent with the priorities, guidelines, criteria, and
27 regulations contained in the national contingency plan, as revised and republished
28 pursuant to Section 105 of the federal act (42 U.S.C. Sec. 9605), shall qualify for
29 appropriation by the Legislature and expenditure by the director pursuant to
30 Sections 68240, 68875, and 69450.

1 (b) For response actions not taken pursuant to the federal act or for response
2 actions taken that are not specifically addressed by the priorities, guidelines,
3 criteria, and regulations contained in the national contingency plan, as revised and
4 republished, the costs of the response actions shall also qualify for appropriation
5 by the Legislature and expenditure by the department pursuant to Sections 68240,
6 68875, and 69450 provided they are, to the maximum extent possible, consistent
7 with the priorities, guidelines, criteria, and regulations contained in the national
8 contingency plan for similar releases, situations, or events.

9 **Comment.** Section 68855 restates the first two sentences of former Section 25350 without
10 substantive change.

11 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
12 defined), 68105 (“release” defined), 68140 (“response” defined).

13 **Staff Notes. (1)** Proposed Section 68855 restates part of Section 25330 to add subdivision
14 designations and eliminate the word “thereof.” “Thereof” was replaced with the phrase “of the
15 response actions.” These changes are intended to be nonsubstantive. **The staff welcomes any
16 comment on the proposed changes.**

17 **(2)** Subdivision (a) of proposed Section 68855 refers to “expenditure by the director pursuant to”
18 three specified sections, while subdivision (b) refers to “expenditure by the department pursuant
19 to” the same three specified sections. It is not clear why these subdivisions do not refer to the
20 same entity (either the department or the director). As indicated in Note #3 below, one of the
21 sections has been repealed. Section 25352 permits appropriation of funds “to the department” for
22 certain purposes, while Section 25354 allows the department to “expend moneys in the reserve
23 account.” Given that, it appears that both subdivisions should refer to “expenditure by the
24 department.” **The staff welcomes comment on this issue.**

25 **(3)** Section 25350 refers to expenditures pursuant to three specified sections, including Section
26 25351.

27 Currently, Section 25351 does not exist. See 1997 Cal. Stat. ch 870, § 43. The staff did not find
28 relevant substance from this former provision that is currently continued elsewhere in this code.
29 For that reason, the cross-reference to Section 25351 was not continued.

30 **The staff welcomes comment on this proposed cross-reference update.**

31 **(4)** Section 25350 also refers to expenditures pursuant to Section 25352.

32 Section 25352 has been divided into multiple provisions in this recodification. The cross-
33 reference to Section 25352 has been updated to refer to only the provisions related to
34 expenditures (subdivisions (a) and (b) of Section 25352, which are proposed for recodification as
35 Section 69450). Subdivision (c) of Section 25352, which will be recodified separately, will be
36 omitted from the cross-reference, as it relates to cost recovery and does not appear relevant.

37 **The staff welcomes comment on this proposed cross-reference update.**

38 **(5)** Section 25350 also refers to expenditures pursuant to Section 25354.

39 Section 25354 has been proposed for recodification as three sections (proposed Sections
40 68240, 68580, and 68875). One of those sections, proposed Section 68580, was omitted from this
41 cross-reference, as it contains only a reporting requirement and does not appear to be relevant for
42 this cross-reference.

43 **The staff welcomes comment on this proposed cross-reference update.**

1 § 68860. No duplication of federal response actions

2 68860. No response actions taken pursuant to this part by the department or
3 regional or local agencies shall duplicate federal response actions.

4 **Comment.** Section 68855 continues the third sentence of former Section 25350 without
5 substantive change.

6 See Sections 68050 (“department” defined), 68140 (“response” defined).

7 Article 2. Exigent Actions

8 § 68870. Powers of director to address imminent or substantial endangerment

9 68870. Whenever the director determines that there may be an imminent or
10 substantial endangerment to the public health or welfare or to the environment,
11 because of a release or a threatened release of a hazardous substance, the director
12 may do any or all of the following:

13 (a) Order any responsible party to take or pay for appropriate removal or
14 remedial action necessary to protect the public health and safety and the
15 environment. No order under this section shall be made to an owner of real
16 property solely on the basis of that ownership as specified in Sections 101(35) and
17 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)). The director
18 shall give the responsible party an opportunity to assert all defenses to the order.

19 (b) Take or contract for any necessary removal or remedial action.

20 (c) Request the Attorney General to secure such relief as may be necessary from
21 the responsible party to abate the danger or threat. The superior court of the county
22 in which the threat or danger occurs shall have jurisdiction to grant the relief the
23 public interest and equities of the case may require to protect public health and
24 welfare and the environment. Upon a showing by the department that a release or
25 threatened release of a hazardous substance has occurred or is occurring, and that
26 there may be an imminent or substantial endangerment to the public health and
27 safety or to the environment, the court may grant a temporary restraining order or
28 a preliminary or permanent injunction pursuant to subdivision (a) of Section
29 68660.

30 **Comment.** Section 68870 restates subdivision (a) of former Section 25358.3 without
31 substantive change.

32 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
33 defined), 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125 (“remedy”
34 defined), 68135 (“remove” defined), 68145 (“responsible party” defined).

35 **Staff Notes. (1)** Proposed Section 68870 restates Section 25358.3(a)(1) and (a)(3) to eliminate a
36 use of the singular and plural form of the same word: “responsible party or parties.”

37 It does not appear to be necessary to use both the singular and plural forms. Section 13
38 provides “[t]he singular number includes the plural, and the plural the singular.” Proposed
39 Section 68870 was simplified to use only the singular form in accordance with standard drafting
40 practice.

41 Aside from these changes, the only other wording change was replacing a use of the word
42 “which” in Section 25358.3(a)(3) with “that.”

1 The changes reflected in proposed Section 68870 are intended to be nonsubstantive. **The staff**
2 **welcomes any comment on the proposed restatement.**

3 (2) Section 25358.3(a) specifies that no order “under this section” shall be made to a real property
4 owner solely on the basis of ownership. Section 25358.3 has been proposed for recodification as
5 multiple provisions. Proposed Section 68870 continues the only part of Section 25358.3 that
6 expressly authorizes orders issued by the director to a responsible party. For this reason, the
7 cross-reference will refer only to “this section” and omit the remainder of Section 25358.3
8 (proposed for recodification as Article 1 of Chapter 4). **The staff welcomes comment on this**
9 **proposed treatment of this reference.**

10 (3) Proposed Section 68870(a) precludes an order made to a real property owner “solely on the
11 basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act....” Those
12 federal act sections do not directly preclude making an order to a property owner based on
13 ownership. Rather, these sections provide certain defenses to landowners under specified
14 situations (e.g., act of God or act of war). If a landowner had a defense, the defense would
15 presumably be raised in response to an order (and would not preclude issuance of the order). **The**
16 **staff welcomes comment on whether this provision has caused problems or confusion in**
17 **practice.**

18 **§ 68875. Immediate corrective action**

19 68875. (a) The department shall expend moneys available in the reserve
20 account, established pursuant to subdivision (a) of Section 68240, only for the
21 purpose of taking immediate corrective action necessary to remedy or prevent an
22 emergency resulting from a fire or an explosion of, or human exposure to,
23 hazardous substances caused by the release or threatened release of a hazardous
24 substance.

25 (b)(1) Notwithstanding any other provision of law, the department may enter
26 into written contracts for corrective action taken or to be taken pursuant to
27 subdivision (a).

28 (2) Notwithstanding any other provision of law, the department may enter into
29 oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when, in
30 the judgment of the department, immediate corrective action is necessary to
31 remedy or prevent an emergency specified in subdivision (a).

32 (3) The contracts made pursuant to this subdivision, whether written or oral,
33 may include provisions for the rental of tools or equipment, either with or without
34 operators furnished, and for the furnishing of labor and materials necessary to
35 accomplish the work.

36 (4) If the department finds that the corrective action includes the relocation of
37 individuals, the department may contract with those individuals for out-of-pocket
38 expenses incurred in moving for an amount of not more than one thousand dollars
39 (\$1,000).

40 **Comment.** Section 68875 restates the second sentence of subdivision (a) and the whole of
41 subdivision (b) of former Section 25354 without substantive change.

42 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
43 (“release” defined), 68125 (“remedy” defined).

1 **Staff Note.** Section 25354 has been proposed for recodification as multiple provisions. Separating
2 this section into multiple provisions required the addition of a cross-reference to provide context.
3 In subdivision (a), the phrase “established pursuant to subdivision (a) of Section 68240” was
4 added to identify the reserve account. Aside from this change, proposed Section 68875 does not
5 modify the language it contains from Section 25354. **The staff welcomes comment on this**
6 **proposed restatement.**

7 **§ 68880. Exemptions for exigent actions**

8 68880. Any removal or remedial action taken or contracted by the department
9 pursuant to Section 68870 or 68875 shall be exempt from all of the following
10 provisions:

11 (a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of
12 Division 2 of the Public Contract Code).

13 (b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the
14 Government Code.

15 (c) Section 10295 of, and Article 4 (commencing with Section 10335) of
16 Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

17 **Comment.** Section 68880 continues former Section 25358.5 without substantive change.

18 See Sections 68050 (“department” defined), 68125 (“remedy” defined), 68135 (“remove”
19 defined).

20 **Staff Notes. (1)** Section 25358.5 provides exemptions for actions taken “pursuant to Section
21 25354”

22 Section 25354 has been proposed for restatement as three provisions (proposed Sections
23 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision
24 authorizing expenditures for immediate corrective action (proposed Section 68875). The
25 remaining provisions, which relate to appropriations and the funding of the emergency reserve
26 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
27 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

28 **The staff welcomes comment on this proposed cross-reference update.**

29 **(2)** Section 25358(c) cross-refers to several provisions of the Public Contract Code. This cross-
30 reference includes two articles, Articles 4 and 5, of Chapter 2 of Part 2 of Division 2 of that code.
31 One of those articles, Article 5, no longer exists. See 2000 Cal. Stat. ch. 759, § 18 (repealing the
32 heading of Article 5). The provisions of former Article 5 that have not been repealed are now in
33 Article 4, the final section of which is Section 10381 (former Article 5 commenced with Section
34 10355). For these reasons, the cross-reference to Article 5 was not continued. **The staff**
35 **welcomes comment on this cross-reference update.**

36 **§ 68885. Prequalification of bidders for exigent actions**

37 68885. (a) The department may prequalify bidders for remedial or removal
38 actions taken pursuant to Section 68870 or 68875. The department may reject the
39 bid of any prospective bidder that has not been prequalified.

40 (b) To prequalify bidders, the department shall adopt and apply a uniform
41 system of rating bidders. In order to obtain information for such rating, the
42 department may require from prospective bidders answers to questions, including,
43 but not limited to, questions about the bidder’s financial ability, the bidder’s

1 experience in removal and remedial action involving hazardous substances, the
2 bidder’s past safety record, and the bidder’s past performance on federal, state, or
3 local government projects. The department may also require prospective bidders to
4 submit financial statements.

5 (c) The department shall utilize the business financial data and information
6 submitted by a bidder pursuant to subdivision (b) only for the purposes of
7 prequalifying bidders pursuant to this section and shall not otherwise disseminate
8 this data or information.

9 (d) The system of rating bidders may be adopted by the department as
10 emergency regulations in accordance with Chapter 3.5 (commencing with Section
11 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for
12 purposes of that chapter, when these regulations are adopted as emergency
13 regulations pursuant to Section 11349.6 of the Government Code, the regulations
14 shall be deemed to be necessary for the immediate preservation of the public
15 peace, health and safety, and general welfare. It is the intent of the Legislature that
16 emergency regulations adopted pursuant to this subdivision shall remain in effect
17 until the regulations are adopted as final regulations, pursuant to Chapter 3.5
18 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
19 Government Code.

20 **Comment.** Section 68885 continues former Section 25358.6 without substantive change.

21 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68125
22 (“remedy” defined), 68135 (“remove” defined).

23 **Staff Notes. (1)** Section 68885 permits prequalification of bidders for action taken “pursuant to
24 Section 25354” This cross-reference has been updated, as described in Note 1 to proposed
25 Section 68880. **The staff welcomes comment on this proposed cross-reference update.**

26 **(2)** Subdivision (d) of Section 25358.6 pertains to regulations adopted for rating bidders. This
27 provision, which was originally adopted in 1983, seems to focus on the adoption of regulations at
28 that time. It is unclear whether this provision has continuing application. **The staff welcomes**
29 **comment on this issue.**

30 Article 3. Referral of Site to Department by
31 State or Regional Water Board

32 **Staff Note.** Section 25355.6, which is proposed for recodification in this article, contains several
33 references to a “California regional water resources control board” or a “California regional water
34 quality control board.” The staff believes that these references were all intended to refer to a
35 “California regional water quality control board.” In this proposed article, those references have
36 all been replaced with the defined term, “regional board.” In proposed Section 68100, “regional
37 board” is defined as “a California regional water quality control board.”

38 **§ 68900. Referral of sites to department for listing**

39 68900. The State Water Resources Control Board or a regional board that has
40 jurisdiction over a hazardous substance release site pursuant to Division 7
41 (commencing with Section 13000) of the Water Code may refer the site to the

1 department as a candidate for listing pursuant to Article 5 (commencing with
2 Section 68760) of Chapter 4. After determining that the site meets the criteria
3 adopted pursuant to Section 68765, the department may place the site on the list of
4 sites subject to this part and establish its priority ranking pursuant to Article 5
5 (commencing with Section 68760) of Chapter 4.

6 **Comment.** Section 68900 continues subdivision (a) of former Section 25355.6 without
7 substantive change.

8 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
9 (“regional board” defined), 68105 (“release” defined), 68155 (“site” defined).

10 **§ 68905. Authority of department at listed, referred site**

11 68905. If a hazardous substance release site is referred to the department and is
12 listed pursuant to Section 68900, the department may expend money from the state
13 account for removal or remedial action at the site, upon appropriation by the
14 Legislature, without first issuing an order or entering into an agreement pursuant
15 to paragraph (1) of subdivision (a) of Section 69055, if all of the following apply:

16 (a) The State Water Resources Control Board or a regional board has issued
17 either a cease and desist order pursuant to Section 13301 of the Water Code or a
18 cleanup and abatement order pursuant to Section 13304 of the Water Code to the
19 potentially responsible party for the site.

20 (b) The State Water Resources Control Board or the regional board has made a
21 final finding that the potentially responsible party has not complied with the order
22 issued pursuant to subdivision (a).

23 (c) The State Water Resources Control Board or the regional board has notified
24 the potentially responsible party of the determination made pursuant to subdivision
25 (b) and that the hazardous substance release site has been referred to the
26 department pursuant to Section 68900.

27 **Comment.** Section 68905 continues subdivision (b) of former Section 25355.6 without
28 substantive change.

29 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
30 (“regional board” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135
31 (“remove” defined), 68145 (“responsible party” defined), 68155 (“site” defined), 68165 (“state
32 account” defined).

33 **§ 68910. Notice to state or regional board regarding referred site**

34 68910. (a) If a hazardous substance release site is referred to the department
35 pursuant to Section 68900, and the department makes either of the following
36 determinations, the department shall notify the appropriate regional board and the
37 State Water Resources Control Board:

38 (1) The department determines that the site does not meet the criteria established
39 pursuant to Section 68765 and the site cannot be placed, pursuant to Article 5
40 (commencing with Section 68760) of Chapter 4, on the list of sites subject to this
41 part.

1 (2) The department determines that a removal or remedial action at the site will
2 not commence for a period of one year from the date of listing due to a lack of
3 funds or the low priority of the site.

4 (b) If a regional board or the State Water Resources Control Board receives a
5 notice pursuant to subdivision (a), the regional board or state board may take any
6 further action concerning the hazardous substance release site that the regional
7 board or state board determines to be necessary or feasible, and that is authorized
8 by this part or Division 7 (commencing with Section 13000) of the Water Code.

9 **Comment.** Section 68910 continues subdivisions (c) and (d) of former Section 25355.6
10 without substantive change.

11 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
12 (“regional board” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135
13 (“remove” defined), 68155 (“site” defined).

14 **Staff Note.** Section 25355.6(c)(1) refers to criteria established “pursuant to subdivision (a).” This
15 cross-reference appears to be erroneous, as Section 25355.6(a) does not involve the establishment
16 of criteria. Instead, it appears that this cross-reference should refer to “subdivision (a) of Section
17 25356,” which is proposed for recodification as Section 68765. Proposed Section 68765(a)
18 pertains to the criteria for listing sites. **The staff welcomes comment on this proposed cross-**
19 **reference correction.**

20 Article 4. Public Participation

21 § 68925. Role of community service offices

22 68925. With regard to sites listed pursuant to Article 5 (commencing with
23 Section 68760) of Chapter 4 where the department or regional board is taking
24 action to investigate or remediate the site, the community service offices shall
25 facilitate communication between the department or regional board, the
26 responsible parties, and the affected community, including any community
27 advisory group that may have been formed in the community where the hazardous
28 substance release site is located.

29 **Comment.** Section 68925 restates the second sentence of subdivision (a) of former Section
30 25358.7.2 without substantive change.

31 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
32 (“regional board” defined), 68105 (“release” defined), 68145 (“responsible party” defined),
33 68155 (“site” defined).

34 **Staff Note.** The second sentence of Section 25358.7.2(a) describes the role of the “community
35 assistance offices.” This section also establishes “community service offices.” See proposed
36 Section 68420. The staff found no other references to a “community assistance office” in the
37 Health and Safety Code. It appears that the reference to “community assistance offices” is an
38 error and this provision should apply to “community service offices.” For this reason, proposed
39 Section 68925 replaces the term “community assistance offices” with “community service
40 offices.” **The staff welcomes comment on this proposed correction.**

1 **§ 68930. Department or regional board facilitation of public participation in response**
2 **actions**

3 68930. (a) The department or the regional board, as appropriate, shall take the
4 actions specified in this section to provide an opportunity for meaningful public
5 participation in response actions undertaken for sites listed pursuant to Article 5
6 (commencing with Section 68760) of Chapter 4.

7 (b) The department, or the regional board, as appropriate, shall inform the
8 public, and in particular, persons living in close proximity to a hazardous
9 substance release site listed pursuant to Article 5 (commencing with Section
10 68760) of Chapter 4, of the existence of the site and the department's or regional
11 board's intention to conduct a response action at the site.

12 (c)(1) The department shall conduct a baseline community survey to determine
13 the level of public interest and desire for involvement in the department's or
14 regional board's activities, and to solicit concerns and information regarding the
15 site from the affected community.

16 (2) Based on the results of the baseline survey, the department or regional board
17 shall develop a public participation plan that shall establish appropriate
18 communication and outreach measures commensurate with the level of interest
19 expressed by survey respondents. The public participation plan shall be updated as
20 necessary to reflect any significant changes in the degree of public interest as the
21 site investigation and cleanup process moves toward completion.

22 (d) The department or regional board shall provide any person affected by a
23 response action undertaken for sites listed pursuant to Article 5 (commencing with
24 Section 68760) of Chapter 4 with the opportunity to participate in the department's
25 or regional board's decisionmaking process regarding that action by taking all of
26 the following actions:

27 (1) Provide access to information that the department or regional board is
28 required to release pursuant to the California Public Records Act (Chapter 3.5
29 (commencing with Section 6250) of Division 7 of Title 1 of the Government
30 Code), relating to the action, except for the following:

31 (A) Trade secrets, as defined in Section 68480.

32 (B) Business financial data and information, as specified in subdivision (c) of
33 Section 68885.

34 (C) Information that the department or regional board is prohibited from
35 releasing pursuant to any state or federal law.

36 (2) Provide factsheets, based on the expressed level of public interest, regarding
37 plans to conduct the major elements of the site investigation and response actions.
38 The factsheets shall present the relevant information in nontechnical language and
39 shall be detailed enough to provide interested persons with a good understanding
40 of the planned activities. The factsheets shall be made available in languages other
41 than English if appropriate.

1 (3) Provide notification, upon request, of any public meetings held by the
2 department or regional board concerning the action.

3 (4) Provide the opportunity to attend and to participate at those public meetings.

4 (5) Based on the results of the baseline community survey, provide opportunities
5 for public involvement at key stages of the response action process, including the
6 health risk assessment, the preliminary assessment, the site inspection, the
7 remedial investigation, and the feasibility study stages of the process. If the
8 department or regional board determines that public meetings or other
9 opportunities for public comment are not appropriate at any of the stages listed in
10 this section, the department or regional board shall provide notice of that decision
11 to the affected community.

12 (e) The department or regional board shall develop and make available to the
13 public a schedule of activities for each site for which remedial action is expected
14 to be taken by the department or regional board pursuant to this part and shall
15 make available to the public any plan provided to the department or regional board
16 by any responsible party, unless the department is prohibited from releasing the
17 information pursuant to any state or federal law.

18 (f) In making decisions regarding the methods to be used for removal or
19 remedial actions taken pursuant to this part, the department or regional board shall
20 incorporate or respond in writing to the advice of persons affected by the actions.

21 (g) This section does not apply to emergency actions taken pursuant to Section
22 68875.

23 **Comment.** Section 68930 restates former Section 25358.7 without substantive change.

24 See Sections 68050 (“department” defined), 68060 (“feasibility study” defined), 68075
25 (“hazardous substance” defined), 68085 (“person” defined), 68100 (“regional board” defined),
26 68105 (“release” defined), 68120 (“remedial investigation” defined), 68125 (“remedy” defined),
27 68135 (“remove” defined), 68140 (“response” defined), 68145 (“responsible party” defined),
28 68155 (“site” defined).

29 **Staff Notes.** (1) Subdivision (b) of Section 25358.7 was restated as two subdivisions,
30 subdivisions (b) and (c), in proposed Section 68930. Section 25358.7(b) currently provides:

31 “The department, or the regional board, as appropriate, shall inform the public, and in
32 particular, persons living in close proximity to a hazardous substance release site listed pursuant
33 to Section 25356, of the existence of the site and the department’s or regional board’s intention to
34 conduct a response action at the site, and shall conduct a baseline community survey to determine
35 the level of public interest and desire for involvement in the department’s or regional board’s
36 activities, and to solicit concerns and information regarding the site from the affected community.
37 Based on the results of the baseline survey, the department or regional board shall develop a
38 public participation plan that shall establish appropriate communication and outreach measures
39 commensurate with the level of interest expressed by survey respondents. The public
40 participation plan shall be updated as necessary to reflect any significant changes in the degree of
41 public interest as the site investigation and cleanup process moves toward completion.”

42 The changes reflected in proposed Section 68930 are intended to be nonsubstantive. **The staff**
43 **welcomes comment on the proposed restatement of this provision.**

1 (2) Proposed paragraph (d)(1)(B) excepts “[b]usiness financial data and information, as specified
2 in subdivision (c) of 25358.6” from the information to which the department or regional board
3 must provide access. In updating this cross-reference, the staff reviewed the cross-referenced
4 provision, but was left uncertain of the scope of “business financial data and information.” It is
5 unclear whether this term is sufficiently clear in practice. **The staff welcomes comment on this
6 issue.**

7 (3) Subdivision (f) of Section 25358.7 exempts “emergency actions taken pursuant to Section
8 25354” from the public participation requirements of this section.

9 Section 25354 has been proposed for restatement as three provisions (proposed Sections
10 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision
11 authorizing expenditures for immediate corrective action (proposed Section 68875). The
12 remaining provisions, which relate to appropriations and the funding of the emergency reserve
13 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
14 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

15 **The staff welcomes comment on this proposed cross-reference update.**

16 (4) Subdivision (f) of Section 25358.7 exempts “emergency actions taken pursuant to Section
17 25354” from the public participation requirements of this section.

18 Chapter 6.8 of Division 20 contains two provisions relating to response actions undertaken in
19 exigent circumstances. See proposed Sections 68870 and 68875. Typically, a provision providing
20 exemptions or special treatment for exigent actions will apply to action taken under either of
21 those provisions. See, e.g., proposed Sections 68880, 69135. However, subdivision (f) only
22 applies to actions taken under one provision. The staff noticed the different treatment, but was
23 unsure why this exemption was more limited. **The staff welcomes comment on this issue.**

24 **§ 68935. Notice and comment opportunity for local agencies**

25 68935. The department or regional board shall advise local environmental
26 regulatory agencies and other appropriate local agencies of planned response
27 actions and provide opportunities for review and comment.

28 **Comment.** Section 68935 continues the third sentence of subdivision (a) of former Section
29 25358.7.1 without substantive change.

30 See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68140
31 (“response” defined).

32 **Staff Notes. (1)** Proposed Section 68935 continues the third sentence of subdivision (a) of
33 Section 25358.7.1. This provision is proposed for recodification separately, as it does not appear
34 to be related to community advisory groups. These groups are the focus of the remainder of
35 Section 25358.7.1. **The staff welcomes comment on whether this provision relates to and
36 should be recodified with the provisions on community advisory groups.**

37 (2) This provision originally provided that a “department or regional board shall *also* advise...”
38 (emphasis added). The word “also” appears to be superfluous and was not continued. The
39 omission of the word “also” is intended to be a nonsubstantive, technical change. This was the
40 only change to the wording of this provision. **The staff welcomes any comment on this change.**

41 (3) This provision refers to “planned response actions.” The staff did not find any other uses of
42 this phrase in Chapter 6.8 of Division 20. The staff is not sure whether this phrase is sufficiently
43 clear as to when this duty to advise is triggered. In particular, it is not clear whether a “planned
44 response action” would be a response action for which there is a “response action plan” (see
45 proposed Article 12 in this draft). Or, instead, it may be that a “planned response action” is
46 simply a response action anticipated to occur soon. **The staff welcomes comment on this issue.**

Article 5. Community Advisory Groups

§ 68950. Establishment of group

68950. (a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community.

(b)(1) If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site, the department or regional board shall assist the petitioners to establish a community advisory group to review the response action at the site.

(2) If the department or regional board, whichever is overseeing a response action, receives a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the legislative body to establish a community advisory group to review the response action at the site.

Comment. Section 68950 continues the first sentence and restates the fourth sentence of subdivision (a) of former Section 25358.7.1 without substantive change.

See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68140 (“response” defined), 68155 (“site” defined).

Staff Note. The fourth sentence of Section 25358.7.1 has been restated for clarity. That provision currently provides:

“If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.”

The changes reflected in proposed Section 68950(b) are intended to be nonsubstantive. **The staff welcomes comment on the proposed restatement of this provision.**

§ 68955. Composition of group

68955. To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(a) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(b) Individuals from the local business community.

(c) Local political or government agency representatives.

(d) Local citizen, civic, environmental, or public interest group members residing in the community.

1 **Comment.** Section 68955 continues subdivision (b) of former Section 25358.7.1 without
2 substantive change.

3 See Sections 68075 (“hazardous substance” defined), 68085 (“person” defined), 68100
4 (“regional board” defined), 68105 (“release” defined), 68140 (“response” defined), 68155 (“site”
5 defined).

6 **§ 68960. Communication with group**

7 68960. The department or regional board shall regularly communicate, and
8 confer as appropriate, with the community advisory group.

9 **Comment.** Section 68960 continues the second sentence of subdivision (a) of former Section
10 25358.7.1 without substantive change.

11 See Sections 68050 (“department” defined), 68100 (“regional board” defined).

12 **Staff Note.** Section 25358.7.1(a) specifies that the department or regional board “shall regularly
13 communicate ... with the community advisory *committee*” (emphasis added). Otherwise, this
14 section uses the term “community advisory group.” It seems likely that the use of “committee”
15 was an error, as the term “community advisory committee” is not used elsewhere. For this reason,
16 proposed Section 68960 replaces “community advisory committee” with “community advisory
17 group.” **The staff welcomes comment on this proposed correction.**

18 **§ 68965. Participation in group meetings**

19 68965. The following entities may participate in community advisory group
20 meetings in order to provide information and technical expertise:

21 (a) The department or regional boards.

22 (b) Representatives of local environmental regulatory agencies.

23 (c) The potentially responsible parties or other persons who are conducting the
24 response action.

25 **Comment.** Section 68965 continues subdivision (c) of former Section 25358.7.1 without
26 substantive change.

27 See Sections 68050 (“department” defined), 68085 (“person” defined), 68100 (“regional
28 board” defined), 68140 (“response” defined), 68145 (“responsible party” defined).

29 **§ 68970. Relationship with other public participation provisions**

30 68970. (a) The existence of a community advisory group shall not diminish any
31 other obligation of the department or regional board with respect to public
32 participation requirements specified in Section 68930.

33 (b) Nothing in **[this article]** shall affect the status of any citizen advisory group
34 formed before **[May 26, 1999]**, a federal Department of Defense Restoration
35 Advisory Board, or a federal Department of Energy Advisory Board.

36 **Comment.** Section 68970 continues subdivision (d) of former Section 25358.7.1 without
37 substantive change.

38 See Sections 68050 (“department” defined), 68100 (“regional board” defined).

39 **Staff Note.** (1) Subdivision (b) of proposed Section 68970 appears to be stating a transitional rule
40 addressing different types of community groups that may have been in existence when this
41 section was enacted. As discussed in Note #2 below, this provision was enacted in 1999. It is

1 unclear whether this rule has ongoing utility and needs to be continued. **The staff welcomes**
2 **comment on this issue.**

3 (2) Section 25358.7.1(d) provides, in part, that nothing in “this section” affects the status of
4 certain specified boards or a citizen advisory group formed before the enactment of “this section.”
5 The proposed updates to these cross-references are described below. The cross-references were
6 treated differently because the first is a reference to the substantive contents of the section, while
7 the second is a reference to the section’s date of enactment.

8 For the reference to the substantive contents of the section, Section 25358.7.1 has been
9 proposed for recodification as several sections in this article. Rather than referring to the five
10 sections in this article that continue Section 25358.7.1, it seems simpler to update the cross-
11 reference simply refer to “this article” as a whole.

12 In addition to the sections continuing Section 25358.7.1, this article also includes a provision
13 continuing Section 25358.8. Expanding the cross-reference to include this provision appears to be
14 nonsubstantive, as it appears that nothing in Section 25358.8 affects the status of a citizen
15 advisory group formed before the enactment of Section 25358.7.1, a federal Department of
16 Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board. **The**
17 **staff welcomes comment on this proposed cross-reference update.**

18 For the cross-reference to the enactment date, it appears that this section was added in 1999.
19 See 1999 Cal. Stat. ch. 23, § 2 (SB 47). The bill adding this section was urgency legislation and
20 was enacted on May 26, 1999. For this reason, the phrase “before the enactment of this section”
21 was replaced with “before May 26, 1999.” **The staff welcomes comment on this proposed**
22 **update.**

23 **§ 68975. Technical assistance grants for group**

24 68975. A community advisory group established pursuant to Section 68950 may
25 request, in writing, and a potentially responsible party may fund, a technical
26 assistance grant for a site, for the purpose of providing technical assistance to the
27 community advisory group.

28 **Comment.** Section 68975 restates former Section 25358.8 without substantive change.
29 See Sections 68145 (“responsible party” defined), 68155 (“site” defined).

30 **Staff Notes. (1)** Proposed Section 68975 restates Section 25358.8 to eliminate a use of the
31 singular and plural form of the same word: “potentially responsible party or parties.”

32 It does not appear to be necessary to use both the singular and plural forms. Section 13
33 provides “[t]he singular number includes the plural, and the plural the singular.” Proposed
34 Section 68975 was simplified to use only the singular form in accordance with standard drafting
35 practice.

36 Aside from this change, the only other change to this section was the addition of a comma after
37 the word “site.”

38 The changes reflected in proposed Section 68975 are intended to be nonsubstantive. **The staff**
39 **welcomes any comment on the proposed restatement.**

40 (2) Section 25358.8 refers to “[a] community advisory group established pursuant to Section
41 25358.7.1.” Section 25358.7.1 is proposed for recodification as several sections in this proposed
42 article. The cross-reference has been updated to refer only to proposed Section 68950, which
43 relates to the establishment of a community advisory group. The remaining provisions of Section
44 25358.7.1 do not seem to relate to the purpose of this cross-reference. **The staff welcomes**
45 **comment on this proposed cross-reference update.**

1 Article 6. Oversight and Review of Responsible Party Actions

2 **§ 69000. Policies and procedures for oversight by department or state board**

3 69000. The department and the State Water Resources Control Board
4 concurrently shall establish policies and procedures consistent with this part that
5 the department’s representatives shall follow in overseeing and supervising the
6 activities of responsible parties who are carrying out the investigation of, and
7 taking removal or remedial actions at, hazardous substance release sites. The
8 policies and procedures shall be consistent with the policies and procedures
9 established pursuant to Section 13307 of the Water Code, and shall include, but
10 are not limited to, all of the following:

11 (a) The procedures the department will follow in making decisions as to when a
12 potentially responsible party may be required to undertake an investigation to
13 determine if a hazardous substance release has occurred.

14 (b) Policies for carrying out a phased, step-by-step investigation to determine the
15 nature and extent of possible soil and groundwater contamination at a site.

16 (c) Procedures for identifying and utilizing the most cost-effective methods for
17 detecting contamination and carrying out removal or remedial actions.

18 (d) Policies for determining reasonable schedules for investigation and removal
19 or remedial action at a site. The policies shall recognize the dangers to public
20 health and the environment posed by a release and the need to mitigate those
21 dangers, while taking into account, to the extent possible, the financial and
22 technical resources available to a responsible party.

23 **Comment.** Section 69000 continues former Section 25355.7 without substantive change.

24 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
25 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
26 party” defined), 68155 (“site” defined).

27 **§ 69005. Voluntary enforceable agreements for actions at petroleum release sites**

28 69005. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 68075,
29 any person may voluntarily enter into an enforceable agreement with the
30 department pursuant to **[this section]** that allows removal or remedial actions to be
31 conducted under the oversight of the department at sites with petroleum releases
32 from sources other than underground storage tanks, as defined in Section
33 25299.24.

34 (b) If the department determines that there may be an adverse impact to water
35 quality as a result of a petroleum release, the department shall notify the
36 appropriate regional board prior to entering into the enforceable agreement
37 pursuant to this section. The department may enter into an enforceable agreement
38 pursuant to this section unless, within 60 days of the notification provided by the
39 department, the regional board provides the department with a written notice that

1 the regional board will assume oversight responsibility for the removal or remedial
2 action.

3 (c) Agreements entered into pursuant to this section shall provide that the party
4 will reimburse the department for all costs incurred including, but not limited to,
5 oversight costs pursuant to the enforceable agreement associated with the
6 performance of the removal or remedial actions and Chapter 6.66 (commencing
7 with Section 25269) of Division 20.

8 **Comment.** Section 69005 restates paragraph (c)(2) of former Section 25355 without
9 substantive change.

10 See Sections 68050 (“department” defined), 68085 (“person” defined), 68100 (“regional
11 board” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”
12 defined), 68155 (“site” defined).

13 **Staff Notes. (1)** Section 25355(c)(2)(A) allows a person to enter a voluntary agreement pursuant
14 to “this subdivision.” The remainder of subdivision (c) (proposed Section 69135(a)) obligates the
15 department to, before undertaking a remedial or removal action, make an effort to notify
16 potentially responsible parties and publish notice in a newspaper. That provision does not appear
17 to be relevant to the entry into a voluntary agreement for department oversight of a removal or
18 remedial action at a petroleum release site. For this reason, it appears appropriate to update the
19 cross-reference to refer only to “this section,” which continues paragraph (2) of subdivision (c).
20 **The staff welcomes comment on this proposed cross-reference change.**

21 **(2)** Section 25355(c)(2) is not consistent in its references to which provision authorizes
22 enforceable agreements. The reference either points to the subdivision as a whole (see Note #1,
23 above), the paragraph as a whole, or only subparagraph (A). For consistency, these references
24 have all been updated to refer to “this section” (which continues paragraph (2) of Section
25 25355(c)). **The staff welcomes comment on the proposed restatement of these cross-
26 references.**

27 Article 7. Orders to Potentially Responsible Parties

28 § 69020. Issuance of orders

29 69020. In exercising its authority at a hazardous substance release site pursuant
30 to Sections 68870 or 69055, the department shall issue orders to the largest
31 manageable number of potentially responsible parties after considering all of the
32 following:

33 (a) The adequacy of the evidence of each potentially responsible party’s
34 liability.

35 (b) The financial viability of each potentially responsible party.

36 (c) The relationship or contribution of each potentially responsible party to the
37 release, or threat of release, of hazardous substances at the site.

38 (d) The resources available to the department.

39 **Comment.** Section 69020 continues subdivision (a) of former Section 25356.1.3 without
40 substantive change.

41 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
42 (“release” defined), 68145 (“responsible party” defined), 68155 (“site” defined).

1 **Staff Notes. (1)** This provision focuses on orders issued by the department in its exercise of
2 authority at a hazardous substance release site. One of the cross-referenced provisions, Section
3 25358.3, focuses on authority of the director, as opposed to the department. **The staff welcomes**
4 **comment on whether this discrepancy has caused any problems in practice.**

5 **(2)** Subdivision (a) of Section 25356.1.3 refers to the department exercising its authority pursuant
6 to “subdivision (a) of Section 25355.5 or 25358.3.” The staff understands this cross-reference to
7 refer to subdivision (a) of Section 25355.5 or subdivision (a) of Section 25358.3. The cross-
8 reference has been updated to refer to the proposed sections recodifying those subdivisions. **The**
9 **staff welcomes comment on this proposed cross-reference update.**

10 **§ 69025. Meeting with potentially responsible parties**

11 69025. The department shall schedule a meeting pursuant to Section 25269.5
12 and notify all identified potentially responsible parties of the date, time, and
13 location of the meeting.

14 **Comment.** Section 69025 continues subdivision (b) of former Section 25356.1.3 without
15 substantive change.

16 See Sections 68050 (“department” defined), 68145 (“responsible party” defined).

17 **§ 69030. Request for issuance of order to potentially responsible party**

18 69030. (a) A person issued an order pursuant to Section 68870 or 69055 may
19 identify additional potentially responsible parties for the site to which the order is
20 applicable and may request the department to issue an order to those parties. The
21 request shall include, with appropriate documentation, the factual and legal basis
22 for identifying those parties as potentially responsible parties for the site.

23 (b) The department shall review the request and accompanying information and,
24 within a reasonable period of time, determine if there is a factual and legal basis
25 for identifying other persons as potentially responsible parties, and notify the
26 person that made the request of the action the department will take in response to
27 the request.

28 **Comment.** Section 69030 continues subdivision (c) of former Section 25356.1.3 without
29 substantive change.

30 See Sections 68050 (“department” defined), 68085 (“person” defined), 68140 (“response”
31 defined), 68145 (“responsible party” defined), 68155 (“site” defined).

32 **Staff Note.** Proposed Section 69030(a) governs a request made by “[a] person issued an order
33 pursuant to Section 25355.5 or 25358.3.” Each of these cross referenced sections is discussed in
34 turn below.

35 **(1)** Section 25355.5 has been proposed for recodification as multiple sections (proposed
36 Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (which recodifies Section
37 25355.5(a)) is the only one of those provisions that addresses the issuance of orders and, thus,
38 appears to be the only provision relevant to this cross-reference. For this reason, the cross-
39 reference to Section 25355.5 has been updated to refer only to Section 69055. **The staff**
40 **welcomes any comment on this proposed cross-reference update.**

41 **(2)** Section 25358.3 has been proposed for recodification as several sections (proposed
42 Sections 68650, 68655, 68660, and 68870). Proposed Section 68870 (which recodifies Section
43 25358.3(a)) is the only provision that addresses the department’s issuance of orders to parties and,
44 thus, appears to be the only provision that is relevant to this cross-reference. Proposed Section

1 68660 relates to relief sought in court, in which case the court would be the one to issue orders.
2 However, it does not appear that court orders would be subject to the rule contained in proposed
3 Section 69030. For this reason, the cross-reference to Section 25358.3 has been updated to refer
4 only to Section 68870. **The staff welcomes any comment on this proposed cross-reference**
5 **update.**

6 **§ 69035. Determination not subject to judicial review**

7 69035. Any determination made by the department regarding the largest
8 manageable number of potentially responsible parties or the identification of other
9 persons as potentially responsible parties pursuant to this article is not subject to
10 judicial review. This section does not affect the rights of any potentially
11 responsible party or the department under any other provision of this part.

12 **Comment.** Section 69035 continues subdivision (d) of former Section 25356.1.3 without
13 substantive change.

14 See Sections 68050 (“department” defined), 68085 (“person” defined), 68145 (“responsible
15 party” defined).

16 Article 8. Expenditures

17 **§ 69055. Required actions before expenditures by department at listed site**

18 69055. (a) Except as provided in Sections 69060 and 69065, no money shall be
19 expended from the state account for removal or remedial actions on any site
20 selected for inclusion on the list established pursuant to Article 5 (commencing
21 with Section 68760) of Chapter 4, unless the department first takes both of the
22 following actions:

23 (1) The department issues one of the following orders or enters into the
24 following agreement:

25 (A) The department issues an order specifying a schedule for compliance or
26 correction pursuant to Section 25187.

27 (B) The department issues an order establishing a schedule for removing or
28 remedying the release of a hazardous substance at the site, or for correcting the
29 conditions that threaten the release of a hazardous substance. The order shall
30 include, but is not limited to, requiring specific dates by which necessary
31 corrective actions shall be taken to remove the threat of a release, or dates by
32 which the nature and extent of a release shall be determined and the site
33 adequately characterized, a remedial action plan shall be prepared, the remedial
34 action plan shall be submitted to the department for approval, and a removal or
35 remedial action shall be completed.

36 (C) The department enters into an enforceable agreement with a potentially
37 responsible party for the site that requires the party to take necessary corrective
38 action to remove the threat of the release, or to determine the nature and extent of
39 the release and adequately characterize the site, prepare a remedial action plan,

1 and complete the necessary removal or remedial actions, as required in the
2 approved remedial action plan.

3 (2) The department determines, in writing, that the potentially responsible party
4 or parties for the hazardous substance release site have not complied with all of the
5 terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or
6 an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before
7 the department determines that a potentially responsible party is not in compliance
8 with the order or agreement, the department shall give the potentially responsible
9 party written notice of the proposed determination and an opportunity to correct
10 the noncompliance or show why the order should be modified. After the
11 department has made the final determination that a potentially responsible party is
12 not in compliance with the order or agreement, the department may expend money
13 from the state account for a removal or remedial action.

14 (b) Any enforceable agreement entered into pursuant to this section may provide
15 for the execution and recording of a written instrument that imposes an easement,
16 covenant, restriction, or servitude, or combination thereof, as appropriate, upon the
17 present and future uses of the site. The instrument shall provide that the easement,
18 covenant, restriction, or servitude, or combination thereof, as appropriate, is
19 subject to the variance or removal procedures specified in Sections 25223 and
20 25224. Notwithstanding any other provision of law, an easement, covenant,
21 restriction, or servitude, or any combination thereof, as appropriate, executed
22 pursuant to this section and recorded so as to provide constructive notice runs with
23 the land from the date of recordation, is binding upon all of the owners of the land,
24 their heirs, successors, and assignees, and the agents, employees, or lessees of the
25 owners, heirs, successors, and assignees, and is enforceable by the department
26 pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division
27 20.

28 **Comment.** Section 69055 continues subdivision (a) of former Section 25355.5 without
29 substantive change. An undesignated paragraph in former Section 25355.5(a)(1)(C) has been
30 recodified as subdivision (b) of this section.

31 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
32 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
33 party” defined), 68155 (“site” defined), 68165 (“state account” defined).

34 **Staff Notes. (1)** Subdivision (a) of Section 25355.5 is cited in other provisions of this proposed
35 part, seemingly for authority for the department to enter into certain agreements or issue certain
36 orders. See, e.g., proposed Sections 69020, 69065, 69070. While the department’s authority to
37 issue the orders and enter the agreements is clearly implied by this section, this section pertains to
38 expenditures by the department. In the staff’s view, the department’s authority regarding the
39 orders and agreements could be stated more directly and more clearly. While there seems to be no
40 question that this provision indirectly provides the department with necessary authority for the
41 orders and agreements, drafting a provision that provides the authority directly poses a risk of
42 substantive change. **The staff welcomes comment on whether addition of a provision directly**
43 **authorizing the department to issue orders (described in proposed Section 69055(a)(1)(B))**
44 **and enter agreements (described in proposed Section 69055(a)(1)(C)) would be a helpful**

1 **addition.** If so, this issue could be added to the list of substantive issues for possible future study
2 that will be included in the Commission’s recommendation.

3 (2) Section 25355.5(a)(1)(C) contains an undesignated paragraph. The language in that paragraph,
4 which relates to land use restrictions contained in an enforceable agreement, is continued as
5 proposed Section 69055(b). However, given that the subject matter of this provision is only
6 indirectly related to the topic addressed by this proposed article (“Expenditures”), this location
7 does not seem to be a good fit. At this point, the staff has not identified a more appropriate
8 location for this provision. **The staff welcomes comment on the placement of this provision.**

9 (3) The undesignated paragraph is Section 25355.5(a)(1)(C) relates to an “enforceable agreement
10 entered into pursuant to this section.” Section 25355.5 is proposed for recodification as several
11 sections (proposed Sections 69055, 69060, 69065, and 69130(b)). This proposed section contains
12 the only provision that discusses entering into an enforceable agreement. For this reason, the
13 references to “this section” have not been adjusted to refer to the other proposed sections that
14 recodify Section 25355.5, as they do not appear to be relevant. **The staff welcomes comment on
15 this proposed cross-reference update.**

16 (4) Section 25355.5(a)(1)(C) refers to “to the variance or removal procedures specified in
17 Sections 25233 and 25234.” The cross-referenced sections do not currently exist. They were
18 repealed in 2012. See 2012 Cal. Stat. ch. 39. It appears that the substance of these provisions was
19 continued in Sections 25223 and 25224. See 2012 Cal. Stat. ch. 39, § 75 (amending a different
20 cross-reference to Sections 25233 and 25234 to instead cross-refer to Sections 25223 and 25224).
21 In proposed Section 69055, the cross-reference has been updated to refer to Sections 25223 and
22 25224. **The staff welcomes comment on this proposed cross-reference correction.**

23 **§ 69060. Conditions where required actions not applicable for expenditure**

24 69060. Section 69055 does not apply, and money from the state account shall be
25 available, upon appropriation by the Legislature, for removal or remedial actions,
26 if any of the following conditions apply:

27 (a) The department, after a reasonable effort, is unable to identify a potentially
28 responsible party for the hazardous substance release site.

29 (b) The department determines that immediate corrective action is necessary, as
30 provided in Section 68875.

31 (c) The director determines that removal or remedial action at a site is necessary
32 because there may be an imminent and substantial endangerment to the public
33 health or welfare or to the environment.

34 **Comment.** Section 69060 restates subdivision (b) of former Section 25355.5 without
35 substantive change.

36 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous
37 substance” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”
38 defined), 68145 (“responsible party” defined), 68155 (“site” defined), 68165 (“state account”
39 defined).

40 **Staff Notes.** (1) Section 25355.5(b)(1) permits expenditures where the department is unable to
41 identify “a potential responsible party.” This seems to be an error, as it is the only use of this
42 phrase in Chapter 6.8. The correct phrase appears to be “a *potentially* responsible party,” a phrase
43 that is used repeatedly in Chapter 6.8. For this reason, the provision has been restated to refer to
44 “a potentially responsible party.” This change is intended to be nonsubstantive. **The staff
45 welcomes comment on this proposed correction.**

1 (2) Section 25355.5(b)(2) permits expenditures if “immediate corrective action is necessary, as
2 provided in Section 25354.”

3 Section 25354 is proposed for recodification as multiple sections (proposed Sections 68240,
4 68580, and 68875). This cross-reference has been updated to refer only to the provision
5 authorizing expenditures for immediate corrective action (proposed Section 68875). The
6 remaining provisions, which relate to appropriations and the funding of the emergency reserve
7 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
8 appear to be relevant to this cross-reference and will be omitted from the cross-reference.

9 **The staff welcomes comment on this proposed cross-reference update.**

10 (2) Section 25355.5(b)(3) involves action taken in a situation of “imminent and substantial
11 endangerment to the public health or welfare or to the environment.” Proposed Section 68870
12 appears to be the authority for the director to act when “there may be an imminent or substantial
13 endangerment to the public health or welfare or to the environment.” For this reason, it would
14 seem helpful to include a cross-reference to proposed Section 68870 here. **The staff welcomes**
15 **comment on this issue.**

16 **§ 69065. Authorized expenditures**

17 69065. (a) Notwithstanding Section 69055, the department may expend funds,
18 upon appropriation by the Legislature, from the state account to conduct activities
19 necessary to verify that an uncontrolled release of hazardous substances has
20 occurred at a suspected hazardous substance release site, to issue an order or enter
21 into an enforceable agreement pursuant to paragraph (1) of subdivision (a) of
22 Section 69055, and to review, comment upon, and approve or disapprove remedial
23 action plans submitted by potentially responsible parties subject to the orders or
24 the enforceable agreement.

25 (b) Notwithstanding Section 69055, the department may expend funds, upon
26 appropriation by the Legislature, from the state account, to provide for oversight
27 of removal and remedial actions, or, if the site is also listed on the National
28 Priorities List by the United States Environmental Protection Agency pursuant to
29 the federal act, to provide the state’s share of a removal or remedial action
30 pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

31 **Comment.** Section 69065 continues subdivision (c) and restates subdivision (d) of former
32 Section 25355.5 without substantive change.

33 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68075 (“hazardous
34 substance” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”
35 defined), 68145 (“responsible party” defined), 68155 (“site” defined), 68165 (“state account”
36 defined).

37 **Staff Note.** Subdivision (d) of Section 25355.5 was restated for clarity and to correct an apparent
38 error. Currently, that subdivision states:

39 “(d) Notwithstanding subdivision (a), the department may expend funds, upon
40 appropriation by the Legislature, from the state account, to provide for oversight of removal and
41 remedial actions, or, if the site is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3))
42 [Section 104(c)(3)], to provide the state’s share of a removal or remedial action.”

43 Section 104(c)(3) of the federal act does not appear to provide for any list or listing of sites.
44 Instead, Section 104 conditions the federal government’s authority to conduct remedial actions
45 (pursuant to that section) at a site on whether the state in which the site is located has provided

1 certain assurances in a contract or cooperative agreement. One of the assurances a state must
2 provide is expressly financial:

3 “...[T]he State will pay or assure payment of (i) 10 per centum of the costs of the
4 remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater
5 amount as the President may determine appropriate, taking into account the degree of
6 responsibility of the State or political subdivision, of any sums expended in response to a release
7 at a facility that was owned at the time of any disposal of hazardous substances therein by the
8 State or a political subdivision thereof.”

9 Thus, the citation to Section 104 appears to be misplaced, as it relates to the state’s share of a
10 removal or remedial action. This issue could be addressed by moving this citation to the end of
11 the subdivision to read: “...the state’s share of a removal or remedial action pursuant to Section
12 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).”

13 In addition, the reference to a site “listed on the federal act” appears to be erroneous. The staff
14 understands that sites are not listed in the federal act. The staff believes that this should be a
15 reference to the federal National Priorities List (authorized by Section 105(a)(8)(B)). For
16 information on the National Priorities List (NPL), see <https://www.epa.gov/superfund/superfund-national-priorities-list-npl>. The National Priorities List is also cited in proposed Section 69225 in
17 this draft. The staff used that citation as a model for drafting the citation in this proposed
18 provision.
19

20 The changes reflected in proposed Section 69065 are intended to be nonsubstantive. **The staff**
21 **welcomes comment on this proposed restatement.**

22 **§ 69070. Limitations on expenditures for sites owned or operated by federal, state, or local**
23 **governments or agencies**

24 69070. (a) Except as provided in subdivision (b), the department may not
25 expend funds from the state account for a removal or remedial action with respect
26 to a hazardous substance release site owned or operated by the federal government
27 or a state or local agency at the time of disposal to the extent that the federal
28 government or the state or local agency would otherwise be liable for the costs of
29 that action, except that the department may expend those funds, upon
30 appropriation by the Legislature, to oversee the carrying out of a removal or
31 remedial action at the site by another party.

32 (b) Except as provided in subdivision (d), the department may expend funds
33 from the state account, upon appropriation by the Legislature, to take a removal or
34 remedial action at a hazardous substance release site that was owned or operated
35 by a local agency at the time of release, if all of the following requirements are
36 met:

37 (1) The department has substantial evidence that a local agency is not the only
38 responsible party for the site.

39 (2) The department has issued a cleanup order to, or entered into an enforceable
40 agreement with, the local agency pursuant to Section 69055 and has made a final
41 determination that the local agency is not in compliance with the order or
42 enforceable agreement.

43 (c) If a local agency is identified as a potentially responsible party in a remedial
44 action plan prepared pursuant to Article 12 (commencing with Section 69190), and

1 the department expends funds pursuant to this part to pay for the local agency’s
 2 share of the removal and remedial action, the expenditure of these funds shall be
 3 deemed to be a loan from the state to the local agency. If the department
 4 determines that the local agency is not making adequate progress toward repaying
 5 the loan made pursuant to this section, the State Board of Equalization shall, upon
 6 notice by the department, withhold the unpaid amount of the loan, in increments
 7 from the sales and use tax transmittals made pursuant to Section 7204 of the
 8 Revenue and Taxation Code, to the city or county in which the local agency is
 9 located. The State Board of Equalization shall structure the amounts to be
 10 withheld so that complete repayment of the loan, together with interest and
 11 administrative charges, occurs within five years after a local agency has been
 12 notified by the department of the amount that it owes. The State Board of
 13 Equalization shall deposit any funds withheld pursuant to this section into the state
 14 account.

15 (d) The department may not expend funds from the state account for a removal
 16 or remedial action at any waste management unit owned or operated by a local
 17 agency if it meets both of the following conditions:

18 (1) It is classified as a class III waste management unit pursuant to Article 3
 19 (commencing with Section 20240) of Subchapter 2 of Chapter 3 of Subdivision 1
 20 of Division 2 of Title 27 of the California Code of Regulations.

21 (2) It was in operation on or after January 1, 1988.

22 **Comment.** Section 69070 continues former Section 25353, with the exception of subdivisions
 23 (c) and (e), without substantive change. An obsolete cross-reference to the California
 24 Administrative Code in paragraph (d)(1) has been updated to refer to the relevant provisions of
 25 the California Code of Regulations.

26 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
 27 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
 28 party” defined), 68155 (“site” defined), 68165 (“state account” defined).

29 **Staff Notes.** (1) The introductory clause of subdivision (a) of Section 25353 is missing a word.
 30 Proposed Section 69070(a) has been corrected to read “[e]xcept as provided in *subdivision (b)*”
 31 (added word in italics).

32 (2) Proposed Section 69070(b)(2) relates to issuance of a cleanup order or entry into an
 33 enforceable agreement “pursuant to Section 25355.5.” Section 25355.5 has been proposed for
 34 recodification as multiple sections (proposed Sections 69055, 69060, 69065, and 69130(b)). With
 35 the exception of proposed Section 69055, all of the proposed Sections were omitted from this
 36 cross-reference, as they do not appear relevant. Proposed Section 69055 (Section 25355.5(a)) is
 37 the only provision that addresses the issuance of orders and entry into enforceable agreements
 38 and, thus, appears to be the only provision relevant to this cross-reference. For this reason, the
 39 cross-reference to Section 25355.5 has been updated to refer only to Section 69055.

40 (3) Proposed Section 69070(e) prohibits the expenditure of funds from the state account for
 41 response actions at a local-agency-owned or -operated waste management unit if it meets the
 42 specified conditions. One of the conditions is:

43 “[The facility] is classified as a class III waste management unit pursuant to Subchapter
 44 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Administrative
 45 Code.”

1 The cross-referenced regulatory provisions do not currently relate to a “class III waste
2 management unit.” Repealed Section 2533 was entitled “Class III: Landfills for Nonhazardous
3 Solid Waste.” It appears that the provisions related to Class III landfills are now located in Title
4 27 of the California Code of Regulations. In particular, Article 3 (commencing with Section
5 20240) of Subchapter 2 of Chapter 3 of Subdivision 1 of Division 2 of Title 27 of the California
6 Code of Regulations addresses classification and siting for waste management units, facilities,
7 and disposal sites.

8 **The staff welcomes comment on this proposed cross-reference update.**

9 **§ 69075. Limitation on expenditure for natural resources damages prior to September 25,**
10 **1981**

11 69075. The department may not expend funds from the state account for the
12 purposes specified in Section 69450 where the injury, degradation, destruction, or
13 loss to natural resources, or the release of a hazardous substance from which the
14 damages to natural resources resulted, has occurred prior to September 25, 1981.

15 **Comment.** Section 69075 continues subdivision (e) of former Section 25353 without
16 substantive change.

17 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
18 (“release” defined), 68155 (“site” defined), 68165 (“state account” defined).

19 **Staff Note.** Section 25353(c) includes a cross-reference to Section 25352.

20 Section 25352 has been divided into multiple provisions in this recodification. The cross-
21 reference has been updated to refer to only the provisions related to expenditures (subdivisions (a)
22 and (b) of Section 25352, which are proposed for recodification as Section 69450). Subdivision
23 (c) of Section 25352, which will be recodified separately, will be omitted from the cross-
24 reference, as it relates to cost recovery and does not appear relevant.

25 **The staff welcomes comment on this proposed cross-reference update.**

26 Article 9. Preliminary Endangerment Assessment

27 **§ 69100. Required action prior to preliminary endangerment assessment or no further**
28 **action letter**

29 69100. (a) The department shall not agree to oversee the preparation of, or to
30 review, a preliminary endangerment assessment for property if action is, or may
31 be, necessary to address a release or threatened release of a hazardous substance,
32 and the department shall not issue a letter stating that no further action is necessary
33 with regard to property, unless the person who made the request does either of the
34 following:

35 (1) Provides the department with all of the following:

36 (A) Proof of the identity of all current record owners of fee title to the property
37 and their mailing addresses.

38 (B) Written evidence that the owners of record have been sent a notice that
39 describes the actions completed or proposed by the requesting person.

40 (C) An acknowledgment of the receipt of the notice required in subparagraph
41 (B), from the property owners or proof that the requesting person has made

1 reasonable efforts to deliver the notice to the property owner and was unable to do
2 so.

3 (2) Provides the department with proof of the identity of all current record
4 owners of fee title to the property and proof that the requesting person has made
5 reasonable efforts to locate the property owners and was unable to do so.

6 (b) The department shall take all reasonable steps necessary to accommodate
7 property owner participation in the site remediation process and shall consider all
8 input and recommendations received from the owner of property that is the subject
9 of the proposed action.

10 (c)(1) This section only applies to instances where a person requests the
11 department to oversee the preparation of, or to review, a preliminary
12 endangerment assessment, or requests the department to issue a letter stating that
13 no further action is necessary with regard to property.

14 (2) Nothing in this section imposes a condition upon, limits, or impacts in any
15 way, the department's authority to compel any potentially responsible party to take
16 any action in response to a release or threatened release of a hazardous substance
17 or to recover costs incurred from any potentially responsible party.

18 **Comment.** Section 69100 restates former Section 25355.8 without substantive change.

19 See Sections 68050 ("department" defined), 68075 ("hazardous substance" defined), 68085
20 ("person" defined), 68095 ("preliminary endangerment assessment" defined), 68105 ("release"
21 defined), 68140 ("response" defined), 68145 ("responsible party" defined), 68155 ("site"
22 defined).

23 **Staff Notes. (1)** Section 25355.8(a) has been restated to reduce uses of the term "action" in
24 different contexts and to correct an apparent error in paragraph (2).

25 The introductory clause to subdivision (a) contains three uses of the term "action," as indicated
26 below.

27 "The department shall not agree to oversee the preparation of, or to review, a preliminary
28 endangerment assessment for property if *action* is, or may be, necessary to address a release or
29 threatened release of a hazardous substance, and the department shall not issue a letter stating that
30 no further *action* is necessary with regard to property, unless the person requesting the
31 department *action* does either of the following..."

32 The first two uses of the term appear to refer to cleanup actions (i.e., a removal or remedial
33 action). The final use of the term seems to be referring to the act being requested of the
34 department (i.e., oversight or review of a preliminary endangerment assessment or issuance of a
35 no further action letter). To avoid these different uses of "action," the provision has been restated
36 to replace the final phrase with "unless the person who made the request does either of the
37 following."

38 Paragraph (2) appears to be missing an introductory clause specifying that the person must
39 "provide the department with" the relevant information. In relevant part, Section 25355.8(a)
40 provides:

41 "(a) The department shall not agree to [take specified actions], unless the person requesting the
42 department action does either of the following:

43 (1) Provides the department with all of the following:

44 (A) Proof of the identity of all current record owners of fee title to the property and their
45 mailing addresses.

46 ...

1 (2) Proof of the identity of all current record owners of fee title to the property and proof that
2 the requesting person has made reasonable efforts to locate the property owners and was unable
3 to do so.”

4 The missing clause (“provides the department with”) has been added to proposed Section 69100.
5 The changes reflected in proposed Section 69100 are intended to be nonsubstantive. **The staff
6 welcomes comment on this proposed restatement.**

7 (2) Subdivision (a) of Section 25355.8 requires a person seeking specified department action to
8 fulfill one of two conditions relating to the identification and notification of the relevant property
9 owners. The person must either (1) provide identities and addresses for *all* of the relevant
10 property owners (and proof of notice or reasonable efforts at notice) OR (2) provide proof that the
11 person made reasonable efforts to find *all* of the relevant property owners and was unable to do
12 so. The statute does not address a situation where the location of *some*, but not *all* owners can be
13 found. If the person is able to find some property owners, it seems logical that the property
14 owners who can be found should be notified. **The staff requests comment on this issue.**

15 (3) Proposed Section 69100(b) requires the department to take steps to accommodate property
16 owner participation in the site remediation process. By its terms, this subdivision seems to state a
17 general rule about facilitating property owner participation in the cleanup process. If this is the
18 case, this provision would be better located elsewhere (perhaps in proposed “Article 1. General
19 Provisions” of Chapter 5). However, it appears that this seemingly broad rule may have limited
20 application according to proposed subdivision (c). **The staff welcomes comment on this issue.**

21 (4) Proposed Section 69100(b) relates to property owner participation in the “site remediation
22 process.” The definition of “remedy” or “remedial action” does not seem to apply to uses of the
23 term “remediation.” It is unclear whether that definition was intended to apply here or if the term
24 “remediation” is being used in a general sense. **The staff welcomes comment on this issue.**

25 **§ 69105. Reimbursement of department oversight costs for preliminary endangerment**
26 **assessment**

27 69105. (a) Except as provided in subdivisions (b) and (c), any potentially
28 responsible party at a site, or any person who has notified the department of that
29 person’s intent to undertake removal or remediation at a site, shall reimburse the
30 department, pursuant to Chapter 6.66 (commencing with Section 25269) of
31 Division 20, for the costs incurred by the department for its oversight of any
32 preliminary endangerment assessment at that site.

33 (b) This section does not apply to any notice of intent submitted to the
34 department prior to July 1, 1998. Any person who submitted such a notice shall
35 pay the fee, if not already paid, as required by Section 25343 as it read on
36 December 31, 1997, unless the department and that person mutually agree to enter
37 into a reimbursement agreement in lieu of any unpaid portion of the required fee.

38 (c) The changes made in Section 25343 by Chapter 870 of the Statutes of 1997
39 do not require amendment of, or otherwise affect, any agreement entered into prior
40 to July 1, 1998, pursuant to which any person has agreed to reimburse the
41 department for the costs incurred by the department for its oversight of a
42 preliminary endangerment assessment.

43 **Comment.** Section 69105 continues former Section 25343 without substantive change.

1 See Sections 68050 (“department” defined), 68085 (“person” defined), 68095 (“preliminary
2 endangerment assessment” defined), 68135 (“remove” defined), 68145 (“responsible party”
3 defined), 68155 (“site” defined).

4 **Staff Notes. (1)** Subdivision (a) of Section 25343 uses the term “remediation.” “Remediation” is
5 not a defined term, but, in this case, appears to be used as a synonym of “remedial action”
6 (defined in proposed Section 68125). In the staff’s view, replacing the term “remediation” in this
7 section with “remedial action” would be beneficial and promote consistency. **The staff welcomes**
8 **comment on this issue.**

9 **(2)** Subdivisions (b) and (c) relate to certain documents prepared before July 1, 1998.
10 Subdivision (b) requires that a person who submitted a notice of intent prior to July 1, 1998 pay
11 the fee required by Section 25343 as it read on December 31, 1997. Subdivision (c) makes clear
12 that any agreement to pay the department costs of overseeing a preliminary endangerment
13 assessment entered into prior to July 1, 1998 is not affected by changes to Section 25343. These
14 provisions seem largely transitional, clarifying how the change in this statute should affect
15 ongoing activities at the time. Since more than 30 years have passed since those statutory
16 changes, it seems likely that these provisions are now functionally obsolete. For this reason,
17 subdivisions (b) and (c) may not need to be continued. **The staff welcomes comment on**
18 **whether either or both of these subdivisions have any continuing effect.**

19 **(3)** Subdivision (b) refers to the fee “as required by this section as it read on December 31, 1997.”
20 Assuming this provision has continuing effect, it may be helpful to change this language to refer
21 to the statutory provision last amending the version of Section 25343 that was operative on
22 December 31, 1997. See 1995 Cal. Stat. ch. 630, § 11. **The staff welcomes comment on**
23 **whether this would be a helpful change.**

24 Article 10. Initiation of Removal or Remedial Actions

25 **§ 69130. Authority to initiate removal or remedial action**

26 69130. (a) The director may initiate removal or remedial action pursuant to this
27 part unless these actions have been taken, or are being taken properly and in a
28 timely fashion, by any responsible party.

29 (b) A responsible party who fails, as determined by the department in writing, to
30 comply with an order issued pursuant to subparagraph (A) or (B) of paragraph (1)
31 of subdivision (a) of Section 69055, or to comply with all of the terms of an
32 enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1)
33 of subdivision (a) of Section 69055, shall be deemed, for purposes of subdivision
34 (a), to have failed to take action properly and in a timely fashion with respect to a
35 hazardous substance release or a threatened release.

36 **Comment.** Subdivision (a) of Section 69130 continues subdivision (b) of former Section
37 25355 without substantive change.

38 Subdivision (b) continues subdivision (e) of former Section 25355.5 without substantive
39 change.

40 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous
41 substance” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”
42 defined), 68145 (“responsible party” defined).

1 **§ 69135. Actions required prior to initiation of removal or remedial action**

2 69135. (a) At least 30 days before initiating removal or remedial actions, the
 3 department shall make a reasonable effort to notify the persons identified by the
 4 department as potentially responsible parties and shall also publish a notification
 5 of this action in a newspaper of general circulation pursuant to the method
 6 specified in Section 6061 of the Government Code. This subdivision does not
 7 apply to actions taken pursuant to Section 68870 or immediate corrective actions
 8 taken pursuant to Section 68875. A responsible party may be held liable pursuant
 9 to this part whether or not the person was given the notice specified in this
 10 subdivision.

11 (b) The department shall notify the owner of the real property of the site of a
 12 hazardous substance release within 30 days after listing a site pursuant to Article 5
 13 (commencing with Section 68760) of Chapter 4, and at least 30 days before
 14 initiating a removal or remedial action pursuant to this part, by sending the
 15 notification by certified mail to the person to whom the real property is assessed,
 16 as shown upon the last equalized assessment roll of the county, at the address
 17 shown on the assessment roll. The requirements of this subdivision do not apply to
 18 actions taken pursuant to Section 68870 or to immediate corrective actions taken
 19 pursuant to Section 68875.

20 **Comment.** Section 69135 continues paragraph (c)(1) and subdivision (d) of former Section
 21 25355 without substantive change.

22 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085
 23 (“person” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”
 24 defined), 68145 (“responsible party” defined), 68155 (“site” defined).

25 **Staff Notes. (1)** The provisions proposed for recodification in this section refer to “actions taken
 26 pursuant to subdivision (b) of Section 25358.3 ...” These cross-references appear to be
 27 erroneous. Section 25358.3(b) (proposed Section 68650) does not appear to authorize response
 28 actions. Section 25358.3(a) (proposed Section 68870) appears to be the relevant provision for
 29 these cross-references, as Section 25358.3(a) provides for emergency response actions. For this
 30 reason, the cross-references have been updated to refer to proposed Section 68870. **The staff**
 31 **welcomes comment on this proposed cross-reference correction.**

32 **(2)** Proposed Section 69135 also refers to “immediate corrective actions taken pursuant to Section
 33 25354.” Section 25354 is proposed for recodification as multiple sections (proposed Sections
 34 68240, 68580, and 68875). This cross-reference has been updated to refer only to the provision
 35 authorizing expenditures for immediate corrective action (proposed Section 68875). The
 36 remaining provisions, which relate to appropriations and the funding of the emergency reserve
 37 account (proposed Section 68420) and a reporting requirement (proposed Section 68580), do not
 38 appear to be relevant to this cross-reference and will be omitted from the cross-reference. **The**
 39 **staff welcomes comment on this proposed cross-reference update.**

40 **(3)** Section 25355(c)(1), which pertains to notices to potentially responsible parties, cross-
 41 references “this subdivision.” In particular, Section 25355(c)(1) provides that “this subdivision”
 42 does not apply to certain emergency actions and persons who fail to receive the notice specified
 43 by “this subdivision” can still be held liable. Currently, Section 25355(c) has two paragraphs.
 44 Paragraph (2), which is proposed for recodification elsewhere in this draft, relates to voluntary
 45 enforceable agreements for the removal or remedial actions to address certain petroleum releases.

1 The voluntary agreements do not appear to be relevant to the purposes of the “this subdivision”
2 cross-references. For this reason, proposed Section 69135 only references the material contained
3 in paragraph (1) of subdivision (c), as opposed to the entirety of subdivision (c). **The staff**
4 **welcomes comment on this proposed cross-reference update.**

5 Article 11. Local Government Removal or Remedial Actions

6 § 69160. Prerequisites to local government-initiated removal or remedial actions

7 69160. A city or county may initiate a removal or remedial action for a site
8 listed pursuant to Article 5 (commencing with Section 68760) of Chapter 4 in
9 accordance with this article. Except as provided in Section 69175, the city or
10 county shall, before commencing the removal or remedial action, take all of the
11 following actions:

12 (a) The city or county shall notify the department of the planned removal or
13 remedial action. Upon receiving this notification, the department shall make a
14 reasonable effort to notify any person identified by the department as a potentially
15 responsible party for the site. If a potentially responsible party is taking the
16 removal or remedial action properly and in a timely fashion, or if a potentially
17 responsible party will commence the action within 60 days of this notification, the
18 city or county may not initiate a removal or remedial action pursuant to this
19 article.

20 (b) If a potentially responsible party for the site has not taken the action
21 specified in subdivision (a), the city or county shall submit the estimated cost of
22 the removal or remedial action to the department, which shall, within 30 days after
23 receiving the estimate, approve or disapprove the reasonableness of the cost
24 estimate. If the department disagrees with the cost estimate, the city or county and
25 the department shall, within 30 days, attempt to enter into an agreement
26 concerning the cost estimate.

27 (c) The city or county shall demonstrate to the department that it has sufficient
28 funds to carry out the approved removal or remedial action without taking into
29 account any costs of the action that may be, or have been, paid by a potentially
30 responsible party.

31 **Comment.** Section 69160 continues subdivision (a) of former Section 25351.2 without
32 substantive change.

33 See Sections 68050 (“department” defined), 68085 (“person” defined), 68125 (“remedy”
34 defined), 68135 (“remove” defined), 68145 (“responsible party” defined), 68155 (“site” defined).

35 **Staff Note.** Section 25351.2(a) would seem to benefit from a restatement for clarity. This
36 provision specifies that, prior to initiating a removal or remedial action, a city or county “shall ...
37 take all of the following actions.” Each listed “action” repeats the phrase “the city or county
38 shall.” Most importantly, it is not clear whether the listed actions are independent actions or
39 sequential steps in a process that must be followed. If the latter, then it would be helpful to
40 rephrase the introductory clause to make clear that the enumerated items are steps in a process.
41 **The staff welcomes comment on how this provision is intended to operate and whether it is**
42 **sufficiently clear.**

1 § 69165. Local government deemed to be acting in place of department

2 69165. If the director approves the request of the city or county to initiate a
3 removal or remedial action and a final remedial action plan has been issued
4 pursuant to Article 12 (commencing with Section 69190) for the hazardous
5 substance release site, the city or county shall be deemed to be acting in place of
6 the department for purposes of implementing the remedial action plan pursuant to
7 this part.

8 **Comment.** Section 69165 continues subdivision (b) of former Section 25351.2 without
9 substantive change.

10 See Sections 68050 (“department” defined), 68055 (“director” defined), 68075 (“hazardous
11 substance” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135 (“remove”
12 defined), 68155 (“site” defined).

13 § 69170. Department recovery of costs reimbursed to local government

14 69170. Upon reimbursing a city or county for the costs of a removal or remedial
15 action, the department shall recover these costs pursuant to **Section 25360**.

16 **Comment.** Section 69170 continues subdivision (c) of former Section 25351.2 without
17 substantive change.

18 See Sections 68050 (“department” defined), 68125 (“remedy” defined), 68135 (“remove”
19 defined).

20 § 69175. Reimbursement eligibility of local government removal or remedial action costs

21 69175. (a) In order for a city or county to be reimbursed for the costs of a
22 removal or remedial action incurred by the city or county from the state account,
23 the city or county shall obtain the approval of the director before commencing the
24 removal or remedial action.

25 (b) The director shall grant an approval only when all actions required by law
26 prior to implementation of a remedial action plan have been taken.

27 **Comment.** Section 69175 continues subdivision (d) of former Section 25351.2 without
28 substantive change.

29 See Sections 68055 (“director” defined), 68125 (“remedy” defined), 68135 (“remove”
30 defined), 68165 (“state account” defined).

31 Article 12. Planning

32 **Staff Note.** “Remedial action plan” is a phrase used often in Section 25356.1. This term,
33 however, is not defined in this law, Section 101 of the federal act, or Section 300.5 of Title 40 of
34 the Code of Federal Regulations (definitions for the National Contingency Plan).

35 Contrary to what the term seems to imply, a “remedial action plan” does not appear to be
36 strictly a plan for “remedial action” (defined term in proposed Section 68125). Instead, a
37 “remedial action plan” appears to be required for a “removal action” that exceeds a certain dollar
38 threshold. See proposed Section 69225(a).

1 § 69190. “State board”

2 69190. For purposes of this article, “state board” means the State Water
3 Resources Control Board.

4 **Comment.** Section 69190 continues subdivision (a) of former Section 25356.1 without
5 substantive change. A definition for “regional board” contained in former Section 25356.1(a) was
6 not continued, as this term is already defined in Section 68100.

7 **Staff Note.** Subdivision (a) of Section 25356.1 defines two terms, “regional board” and “state
8 board,” for the purposes of the section.

9 “Regional board” is defined as “a California regional water quality control board.” This term
10 has already been defined for the part as a whole. Proposed Section 68100 defines “regional
11 board” for this part as “a California regional water quality control board.” For this reason, the
12 redundant definition of “regional board” in Section 25356.1(a) was not continued.

13 “State board” is defined as “the State Water Resources Control Board.” However, the term
14 “state board” is not otherwise used in Section 25356.1. For this reason, the staff is considering
15 whether the definition of “state board” should be continued. **The staff welcomes comment on
16 whether the definition of “state board” has any ongoing utility.**

17 § 69195. Preparation or approval of plans

18 69195. Except as provided in Sections 69225 and 69230, the department, or, if
19 appropriate, the regional board shall prepare or approve remedial action plans for
20 the sites listed pursuant to Article 5 (commencing with Section 68760) of Chapter
21 4.

22 **Comment.** Section 69195 continues subdivision (b) of former Section 25356.1 without
23 substantive change.

24 See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68125
25 (“remedy” defined), 68155 (“site” defined).

26 **Staff Note.** The first clause of subdivision (b) of Section 25356.1 is “[e]xcept as provided in
27 subdivision (h).” Subdivision (h) is proposed for recodification as three sections (proposed
28 Sections 69225, 69230, and 69235). One of those provisions, proposed Section 69235, was
29 omitted from the cross-reference. That section contains only a rule for calculating the costs of a
30 removal action and does not appear to be relevant to this cross-reference. For this reason, the
31 cross-reference was updated to refer only to Sections 69225 and 69230. **The staff welcomes
32 comment on this proposed cross-reference update.**

33 § 69200. Request by party for preparation or approval of plan

34 69200. (a) A potentially responsible party may request the department or the
35 regional board, when appropriate, to prepare or approve a remedial action plan for
36 a site not listed pursuant to Article 5 (commencing with Section 68760) of Chapter
37 4, if the department or the regional board determines that a removal or remedial
38 action is required to respond to a release of a hazardous substance. The department
39 or the regional board shall respond to a request to prepare or approve a remedial
40 action plan within 90 days of receipt.

41 (b) This section does not affect the authority of a regional board to issue and
42 enforce a cleanup and abatement order pursuant to Section 13304 of the Water
43 Code or a cease and desist order pursuant to Section 13301 of the Water Code.

1 **Comment.** Section 69200 continues subdivision (c) of former Section 25356.1 without
2 substantive change.

3 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
4 (“regional board” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135
5 (“remove” defined), 68140 (“response” defined), 68145 (“responsible party” defined), 68155
6 (“site” defined).

7 **§ 69205. Standards for plan**

8 69205. All remedial action plans prepared or approved pursuant to this article
9 shall be based upon Sections 68855 and 68860 and Subpart E of the National Oil
10 and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et
11 seq.), as amended, and upon all of the following factors, to the extent that these
12 factors are consistent with these federal regulations and do not require a less
13 stringent level of cleanup than these federal regulations:

14 (a) Health and safety risks posed by the conditions at the site. When considering
15 these risks, the department or the regional board shall consider scientific data and
16 reports that may have a relationship to the site.

17 (b) The effect of contamination or pollution levels upon present, future, and
18 probable beneficial uses of contaminated, polluted, or threatened resources.

19 (c) The effect of alternative remedial action measures on the reasonable
20 availability of groundwater resources for present, future, and probable beneficial
21 uses. The department or the regional board shall consider the extent to which
22 remedial action measures are available that use, as a principal element, treatment
23 that significantly reduces the volume, toxicity, or mobility of the hazardous
24 substances, as opposed to remedial actions that do not use this treatment. The
25 department or the regional board shall not select remedial action measures that use
26 offsite transport and disposal of untreated hazardous substances or contaminated
27 materials if practical and cost-effective treatment technologies are available.

28 (d) Site-specific characteristics, including the potential for offsite migration of
29 hazardous substances, the surface or subsurface soil, and the hydrogeologic
30 conditions, as well as preexisting background contamination levels.

31 (e) Cost-effectiveness of alternative remedial action measures. In evaluating the
32 cost-effectiveness of proposed alternative remedial action measures, the
33 department or the regional board shall consider, to the extent possible, the total
34 short-term and long-term costs of these actions and shall use, as a major factor,
35 whether the deferral of a remedial action will result, or is likely to result, in a rapid
36 increase in cost or in the hazard to public health or the environment posed by the
37 site. Land disposal shall not be deemed the most cost-effective measure merely on
38 the basis of lower short-term cost.

39 (f) The potential environmental impacts of alternative remedial action measures,
40 including, but not limited to, land disposal of the untreated hazardous substances
41 as opposed to treatment of the hazardous substances to remove or reduce its
42 volume, toxicity, or mobility prior to disposal.

1 **Comment.** Section 69205 restates subdivision (d) of former Section 25356.1 without
2 substantive change.

3 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
4 (“regional board” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68155 (“site”
5 defined).

6 **Staff Note.** Section 25356.1(d) provides that remedial action plans shall be based on “Section
7 25350, Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40
8 C.F.R. 300.400 et seq.), and any amendments thereto.” In proposed Section 69205, the cross-
9 reference to Section 25350 has been updated and the phrase “and any amendments thereto” has
10 been replaced with “as amended.” **The staff welcomes any comment on this proposed**
11 **restatement.**

12 **§ 69210. Content of plan**

13 69210. A remedial action plan prepared pursuant to this article shall include the
14 basis for the remedial action selected and shall include an evaluation of each
15 alternative considered and rejected by the department or the regional board for a
16 particular site. The plan shall include an explanation for rejection of alternative
17 remedial actions considered but rejected. The plan shall also include an evaluation
18 of the consistency of the selected remedial action with the requirements of the
19 federal regulations and the factors specified in Section 69205, if those factors are
20 not otherwise adequately addressed through compliance with the federal
21 regulations. The remedial action plan shall also include a nonbinding preliminary
22 allocation of responsibility among all identifiable potentially responsible parties at
23 a particular site, including those parties that may have been released, or may
24 otherwise be immune, from liability pursuant to this part or any other provision of
25 law.

26 **Comment.** Section 69210 continues the four sentences of subdivision (e) of former Section
27 25356.1 without substantive change.

28 See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68105
29 (“release” defined), 68125 (“remedy” defined), 68145 (“responsible party” defined), 68155
30 (“site” defined).

31 **§ 69215. Public review and comment on plan**

32 69215. (a) Before adopting a final remedial action plan, the department or the
33 regional board shall prepare or approve a draft remedial action plan and shall do
34 all of the following:

35 (1) Circulate the draft plan for at least 30 days for public comment.

36 (2) Notify affected local and state agencies of the removal and remedial actions
37 proposed in the remedial action plan and publish a notice in a newspaper of
38 general circulation in the area affected by the draft remedial action plan. The
39 department or the regional board shall also post notices in the location where the
40 proposed removal or remedial action would be located and shall notify, by direct
41 mailing, the owners of property contiguous to the site addressed by the plan, as
42 shown in the latest equalized assessment roll.

1 (3) Hold one or more meetings with the lead and responsible agencies for the
2 removal and remedial actions, the potentially responsible parties for the removal
3 and remedial actions, and the interested public, to provide the public with the
4 information that is necessary to address the issues that concern the public. The
5 information to be provided shall include an assessment of the degree of
6 contamination, the characteristics of the hazardous substances, an estimate of the
7 time required to carry out the removal and remedial actions, and a description of
8 the proposed removal and remedial actions.

9 (4) Comply with Section 68930.

10 (b) After complying with subdivision (a), the department or the regional board
11 shall review and consider any public comments, and shall revise the draft plan, if
12 appropriate. The department or the regional board shall then issue the final
13 remedial action plan.

14 **Comment.** Section 69215 continues subdivision (e), with the exception of the first four
15 sentences, and subdivision (f) of former Section 25356.1 without substantive change.

16 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
17 (“regional board” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68135
18 (“remove” defined), 68145 (“responsible party” defined).

19 **Staff Note.** Subdivision (f) of Section 25356.1 requires the department or regional board to
20 review and consider comments “after complying with subdivision (e).” Subdivision (e) is
21 proposed for recodification as two separate provisions in this recodification (subdivision (a) of
22 this proposed section and proposed Section 69210). The cross-reference to “subdivision (e)”
23 appears to state a timing rule related to the public notice and comment opportunity that is
24 proposed for recodification as subdivision (a) of this proposed section. The portion of subdivision
25 (e) in proposed Section 69210 relates to requirements for the substantive contents of a plan. This
26 provision does not appear relevant to the cross-reference and was omitted. For this reason, the
27 cross-reference in proposed Section 69215 was updated to refer only to “subdivision (a).” **The**
28 **staff welcomes comment on this proposed cross-reference update.**

29 **§ 69220. Judicial review of plan**

30 69220. (a)(1) A potentially responsible party named in the final remedial action
31 plan issued by the department or the regional board may seek judicial review of
32 the final remedial action plan by filing a petition for writ of mandate pursuant to
33 Section 1085 of the Code of Civil Procedure within 30 days after the final
34 remedial action plan is issued by the department or the regional board. No action
35 may be brought by a potentially responsible party to review the final remedial
36 action plan if the petition for writ of mandate is not filed within 30 days of the date
37 that the final remedial action plan was issued.

38 (2) Any other person who has the right to seek judicial review of the final
39 remedial action plan by filing a petition for writ of mandate pursuant to Section
40 1085 of the Code of Civil Procedure shall do so within one year after the final
41 remedial action plan is issued. No action may be brought by any other person to
42 review the final remedial action plan if the petition for writ of mandate is not filed
43 within one year of the date that the final remedial action plan was issued.

1 (3) The filing of a petition for writ of mandate to review the final remedial
2 action plan shall not stay any removal or remedial action specified in the final
3 plan.

4 (b) For purposes of judicial review, the court shall uphold the final remedial
5 action plan if the plan is based upon substantial evidence available to the
6 department or the regional board, as the case may be.

7 (c) This section does not prohibit the court from granting any appropriate relief
8 within its jurisdiction, including, but not limited to, enjoining the expenditure of
9 funds pursuant to paragraph (2) of subdivision (b) of Section 68305.

10 **Comment.** Paragraph (a)(1) of Section 69220 continues the first and third sentences of
11 paragraph (1) of subdivision (g) of former Section 25356.1 without substantive change.

12 Paragraph (a)(2) continues the second and fourth sentences of paragraph (1) of subdivision (g)
13 of former Section 25356.1 without substantive change.

14 Paragraph (a)(3) continues the fifth sentence of paragraph (1) of subdivision (g) of former
15 Section 25356.1 without substantive change.

16 Subdivision (b) continues paragraph (2) of subdivision (g) of former Section 25356.1 without
17 substantive change.

18 Subdivision (c) continues paragraph (3) of subdivision (g) of former Section 25356.1 without
19 substantive change.

20 See Sections 68050 (“department” defined), 68085 (“person” defined), 68100 (“regional
21 board” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
22 party” defined).

23 **§ 69225. Situations in which plan not required**

24 69225. (a) This article does not require the department or a regional board to
25 prepare a remedial action plan if conditions present at a site present an imminent
26 or substantial endangerment to the public health and safety or to the environment
27 or, if the department, a regional board, or a responsible party takes a removal
28 action at a site and the estimated cost of the removal action is less than two million
29 dollars (\$2,000,000).

30 (b) The department or a regional board shall prepare or approve a removal
31 action work plan for all sites where a nonemergency removal action is proposed
32 and where a remedial action plan is not required. For sites where removal actions
33 are planned and are projected to cost less than two million dollars (\$2,000,000),
34 the department or a regional board shall make the local community aware of the
35 hazardous substance release site and shall prepare, or direct the parties responsible
36 for the removal action to prepare, a community profile report to determine the
37 level of public interest in the removal action. Based on the level of expressed
38 interest, the department or regional board shall take appropriate action to keep the
39 community informed of project activity and to provide opportunities for public
40 comment that may include conducting a public meeting on proposed removal
41 actions.

42 (c)(1) A remedial action plan is not required pursuant to Section 69195 if the site
43 is listed on the National Priorities List by the United States Environmental

1 Protection Agency pursuant to the federal act, if the department or the regional
2 board concurs with the remedy selected by the United States Environmental
3 Protection Agency’s record of decision. The department or the regional board may
4 sign the record of decision issued by the United States Environmental Protection
5 Agency if the department or the regional board concurs with the remedy selected.

6 (2) Paragraph (1) does not apply to a removal action paid from the state
7 account.

8 **Comment.** Section 69225 continues paragraphs (1), (2) and (5) of subdivision (h) of former
9 Section 25356.1 without substantive change.

10 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68075 (“hazardous
11 substance” defined), 68100 (“regional board” defined), 68105 (“release” defined), 68125
12 (“remedy” defined), 68130 (“removal action work plan” defined), 68135 (“remove” defined),
13 68145 (“responsible party” defined), 68155 (“site” defined), 68165 (“state account” defined).

14 **Staff Notes.** (1) Section 25356.1(h)(2) refers to the “National Priority List.” It appears that the
15 correct name is the “National Priorities List.” This reference has been corrected. This paragraph
16 also contained several references to the “Environmental Protection Agency,” without designating
17 whether it was the state or federal Environmental Protection Agency. Given the context, it seems
18 clear that these are references to the federal agency, so these references have been updated to
19 refer to the “United States Environmental Protection Agency.”

20 (2) Paragraph 5 of Section 25356.1(h) contains a reference to “[p]aragraph (2) of this
21 subdivision.” The “of this subdivision” language is unnecessary and counter to standard drafting
22 practice. That language has not been continued.

23 **§ 69230. Waiver from required standards for plan**

24 69230. The department may waive the requirement that a remedial action plan
25 meet the requirements specified in Section 69205 if all of the following apply:

26 (a) The responsible party adequately characterizes the hazardous substance
27 conditions at a site listed pursuant to Article 5 (commencing with Section 68760)
28 of Chapter 4.

29 (b) The responsible party submits to the department, in a form acceptable to the
30 department, all of the following:

31 (1) A description of the techniques and methods to be employed in excavating,
32 storing, handling, transporting, treating, and disposing of materials from the site.

33 (2) A listing of the alternative remedial measures that were considered by the
34 responsible party in selecting the proposed removal action.

35 (3) A description of methods that will be employed during the removal action to
36 ensure the health and safety of workers and the public during the removal action.

37 (4) A description of prior removal actions with similar hazardous substances and
38 with similar public safety and environmental considerations.

39 (c) The department determines that the remedial action plan provides protection
40 of human health and safety and for the environment at least equivalent to that
41 which would be provided by a remedial action plan prepared in accordance with
42 **[Section 69205]**.

1 (d) The total cost of the removal action is less than two million dollars
 2 (\$2,000,000).

3 **Comment.** Section 69230 continues paragraph (3) of subdivision (h) of former Section
 4 25356.1 without substantive change.

5 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68125
 6 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible party” defined), 68155
 7 (“site” defined).

8 **Staff Notes. (1)** Section 25356.1(h)(3) allows the department to waive the requirement that a
 9 remedial action plan meet requirements in “subdivision (d)” as long as the specified conditions
 10 apply. One of those conditions, is a determination by the department that the plan is as protective
 11 of health, safety, and the environment as a plan prepared in accordance with “subdivision (c).”
 12 Subdivision (c) does not place conditions on preparation of a plan. This appears to be an
 13 erroneous reference that should refer to “subdivision (d).” For this reason, the cross-reference has
 14 been updated to refer to proposed Section 69205, the provision that would continue the substance
 15 of Section 25356.1(d). **The staff welcomes comment on this proposed correction.**

16 **(2)** Under Section 25356.1(h)(3), one of the necessary conditions for a waiver of the remedial
 17 action plan requirements is that the “total cost of the removal action is less than two million
 18 dollars (\$2,000,000).” However, a remedial action plan does not appear to be required for a
 19 removal action if the total cost falls below this dollar amount. See proposed Section 69225(a). It
 20 is not clear why a waiver of plan requirements would be needed when no plan is required. **The**
 21 **staff welcomes comment on this issue.**

22 **§ 69235. Costs of removal action**

23 69235. For purposes of this article, the cost of a removal action includes the
 24 cleanup or removal of released hazardous substances from the environment or the
 25 taking of other actions that are necessary to prevent, minimize, or mitigate damage
 26 that may otherwise result from a release or threatened release, as further defined
 27 by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

28 **Comment.** Section 69235 restates paragraph (4) of subdivision (h) of former Section 25356.1
 29 without substantive change.

30 See Sections 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68105
 31 (“release” defined), 68135 (“remove” defined).

32 **Staff Note.** Section 25356.1(h)(4) contains an apparent typographical error and a possibly
 33 incorrect cross-reference to the federal act. That provision provides (with emphasis added):

34 “For purposes of this section, the cost of a removal action includes the cleanup *of* removal of
 35 released hazardous substances from the environment or the taking of other actions that are
 36 necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or
 37 threatened release, *as further defined by Section 9601 (23) of Title 42 of the United States Code.*”

38 A typographical error in the phrase “the cleanup of removal of released hazardous substances”
 39 has been corrected. The phrase now reads “the cleanup *or* removal of released hazardous
 40 substances.”

41 The form of the cross-reference to the federal act has been standardized. In checking this cross-
 42 reference, the staff found that this refers to the federal act’s definition of “remove.” While this
 43 may have been intended, the placement of this cross-reference suggests that the relevant
 44 definition would be “release,” which is found in Section 101(22). **The staff welcomes comment**
 45 **on whether this provision cross-refers to the appropriate term in the federal act.** If so, it may

1 be appropriate to move this cross-reference to follow the term “removal.” If not, it may be
2 appropriate to revise this cross-reference to refer to the definition for “release.”

3 **§ 69240. Application of Water Code provisions**

4 69240. Article 2 (commencing with Section 13320), Article 3 (commencing
5 with Section 13330), Article 5 (commencing with Section 13350), and Article 6
6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code
7 apply to an action or failure to act by a regional board pursuant to this article.

8 **Comment.** Section 69240 continues subdivision (i) of former Section 25356.1 without
9 substantive change.

10 See Section 68100 (“regional board” defined).

11 Article 13. Standards

12 **§ 69260. Standards for response actions**

13 69260. Any response action taken or approved pursuant to this part shall be
14 based upon, and no less stringent than, all of the following requirements:

15 (a) The requirements established under federal regulation pursuant to Subpart E
16 of the National Oil and Hazardous Substances Pollution Contingency Plan (40
17 C.F.R. 300.400 et seq.), as amended.

18 (b) The regulations established pursuant to Division 7 (commencing with
19 Section 13000) of the Water Code, all applicable water quality control plans
20 adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing
21 with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all
22 applicable state policies for water quality control adopted pursuant to Article 3
23 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code,
24 to the extent that the department or the regional board determines that those
25 regulations, plans, and policies do not require a less stringent level of remediation
26 than the federal regulations specified in subdivision (a) and to the degree that
27 those regulations, plans, and policies do not authorize decisionmaking procedures
28 that may result in less stringent response action requirements than those required
29 by the federal regulations specified in subdivision (a).

30 (c) Any applicable provisions of this part, to the extent those provisions are
31 consistent with the federal regulations specified in subdivision (a) and do not
32 require a less stringent level of remediation than, or decisionmaking procedures
33 that are at variance with, the federal regulations set forth in subdivision (a).

34 **Comment.** Section 69260 continues subdivision (a) of former Section 25356.1.5 without
35 substantive change.

36 See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68140
37 (“response” defined).

1 **§ 69265. Standards for risk assessment for response action**

2 69265. (a) Any health or ecological risk assessment prepared in conjunction
3 with a response action taken or approved pursuant to this part shall be based upon
4 Subpart E of the National Oil and Hazardous Substances Pollution Contingency
5 Plan (40 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the
6 United States Environmental Protection Agency developed pursuant to the federal
7 act, and the most current sound scientific methods, knowledge, and practices of
8 public health and environmental professionals who are experienced practitioners
9 in the fields of epidemiology, risk assessment, environmental contamination,
10 ecological risk, fate and transport analysis, and toxicology.

11 (b) Risk assessment practices shall include the most current sound scientific
12 methods for data evaluation, exposure assessment, toxicity assessment, and risk
13 characterization, documentation of all assumptions, methods, models, and
14 calculations used in the assessment.

15 (c) Any health risk assessment shall include all of the following:

16 (1) Evaluation of risks posed by acutely toxic hazardous substances based on
17 levels at which no known or anticipated adverse effects on health will occur, with
18 an adequate margin of safety.

19 (2) Evaluation of risks posed by carcinogens or other hazardous substances that
20 may cause chronic disease based on a level that does not pose any significant risk
21 to health.

22 (3) Consideration of possible synergistic effects resulting from exposure to, or
23 interaction with, two or more hazardous substances.

24 (4) Consideration of the effect of hazardous substances upon subgroups that
25 comprise a meaningful portion of the general population, including, but not
26 limited to, infants, children, pregnant women, the elderly, individuals with a
27 history of serious illness, or other subpopulations, that are identifiable as being at
28 greater risk of adverse health effects due to exposure to hazardous substances than
29 the general population.

30 (5) Consideration of exposure and body burden level that alter physiological
31 function or structure in a manner that may significantly increase the risk of illness
32 and of exposure to hazardous substances in all media, including, but not limited to,
33 exposures in drinking water, food, ambient and indoor air, and soil.

34 **Comment.** Section 69265 continues subdivision (b) of former Section 25356.1.5 without
35 substantive change.

36 See Sections 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68140
37 (“response” defined).

38 **§ 69270. Level of hazardous substance that is protective of public health**

39 69270. If currently available scientific data are insufficient to determine the
40 level of a hazardous substance at which no known or anticipated adverse effects
41 on health will occur, with an adequate margin of safety, or the level that poses no

1 significant risk to public health, the risk assessment prepared in conjunction with a
2 response action taken or approved pursuant to this part shall be based on the level
3 that is protective of public health, with an adequate margin of safety. This level
4 shall be based exclusively on public health considerations, shall, to the extent
5 scientific data are available, take into account the factors set forth in paragraphs
6 (1) to (5), inclusive, of subdivision (c) of Section 69265, and shall be based on the
7 most current principles, practices, and methods used by public health professionals
8 who are experienced practitioners in the fields of epidemiology, risk assessment,
9 fate and transport analysis, and toxicology.

10 **Comment.** Section 69270 continues subdivision (c) of former Section 25356.1.5 without
11 substantive change.

12 See Sections 68075 (“hazardous substance” defined), 68140 (“response” defined).

13 **§ 69275. Content of exposure assessment**

14 69275. (a) The exposure assessment of any risk assessment prepared in
15 conjunction with a response action taken or approved pursuant to this part shall
16 include the development of reasonable maximum estimates of exposure for both
17 current land use conditions and reasonably foreseeable future land use conditions
18 at the site.

19 (b) The exposure assessment of any risk assessment prepared in conjunction
20 with a response action taken or approved pursuant to this part shall include the
21 development of reasonable maximum estimates of exposure to volatile organic
22 compounds that may enter structures that are on the site or that are proposed to be
23 constructed on the site and may cause exposure due to accumulation of those
24 volatile organic compounds in the indoor air of those structures.

25 **Comment.** Section 69275 continues subdivisions (d) and (e) of former Section 25356.1.5
26 without substantive change.

27 See Sections 68140 (“response” defined), 68155 (“site” defined).

28 **Article 14. On-site Hazardous Waste Facility for Response Action**

29 **§ 69290. Discretion to exclude from permitting requirements**

30 69290. To the extent consistent with the federal Resource Conservation and
31 Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department
32 may exclude any portion of a response action conducted entirely onsite from the
33 hazardous waste facility permit requirements of Section 25201 if both of the
34 following apply:

35 (a) The removal or remedial action is carried out pursuant to a removal action
36 work plan or a remedial action plan prepared pursuant to Article 12 (commencing
37 with Section 69190).

38 (b) The removal action work plan or the remedial action plan requires that the
39 response action complies with all laws, rules, regulations, standards, and

1 requirements, criteria, or limitations applicable to the construction, operation, and
2 closure of the type of facility at the hazardous substance release site and with any
3 other condition imposed by the department as necessary to protect public health
4 and safety and the environment.

5 **Comment.** Section 69290 continues subdivision (a) of former Section 25358.9 without
6 substantive change.

7 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
8 (“release” defined), 68125 (“remedy” defined), 68130 (“removal action work plan” defined),
9 68135 (“remove” defined), 68140 (“response” defined), 68155 (“site” defined).

10 **§ 69295. Enforcement**

11 69295. (a) The department may enforce in the court for the county in which a
12 response action exempted pursuant to Section 69290 is located any federal or state
13 law, rule, regulation, standard, requirements, criteria, or limitation with which the
14 remedial or removal action is required to comply.

15 (b)(1) Any consent decree entered into pursuant to an enforcement action
16 authorized by this section shall require the parties to attempt expeditiously to
17 informally resolve any disagreements concerning the implementation of the
18 response action with the appropriate federal and state agencies and shall provide
19 for administrative enforcement.

20 (2) The consent decree shall stipulate that the penalty for violation of the
21 consent decree shall be an amount not more than twenty-five thousand dollars
22 (\$25,000) per day, which may be enforced by the state. These penalties do not
23 impair or affect the authority of the court to order compliance with the specific
24 terms of the consent decree.

25 **Comment.** Section 69295 continues subdivision (b) of former Section 25358.9 without
26 substantive change.

27 See Sections 68050 (“department” defined), 68125 (“remedy” defined), 68135 (“remove”
28 defined), 68140 (“response” defined).

29 **Article 15. Operation and Maintenance**

30 **§ 69310. “Small business”**

31 69310. For purposes of this article, “small business” is a business that meets the
32 requirements set forth in subdivision (d) of Section 14837 of the Government
33 Code.

34 **Comment.** Section 69310 continues subdivision (f) of former Section 25355.2 without
35 substantive change.

36 **§ 69315. Financial assurance for operation and maintenance**

37 69315. Except as provided in subdivision (a) of Section 69325, the department
38 or the regional board shall require any responsible party who is required to comply
39 with operation and maintenance requirements as part of a response action, to

1 demonstrate and to maintain financial assurance in accordance with this article.
2 The responsible party shall demonstrate financial assurance prior to the time that
3 operation and maintenance activities are initiated and shall maintain it throughout
4 the period of time necessary to complete all required operation and maintenance
5 activities.

6 **Comment.** Section 69315 continues subdivision (a) of former Section 25355.2 without
7 substantive change.

8 See Sections 68050 (“department” defined), 68080 (“operation and maintenance” defined),
9 68100 (“regional board” defined), 68140 (“response” defined), 68145 (“responsible party”
10 defined), 68155 (“site” defined).

11 **§ 69320. Valid financial assurance mechanisms**

12 69320. (a) For purposes of Section 69315, the responsible party shall
13 demonstrate and maintain one or more of the financial assurance mechanisms set
14 forth in subsections (a) to (e), inclusive, of Section 66265.143 of Title 22 of the
15 California Code of Regulations.

16 (b) As an alternative to the requirement of subdivision (a), a responsible party
17 may demonstrate and maintain financial assurance by means of a financial
18 assurance mechanism other than those specified in subdivision (a), if the
19 alternative financial assurance mechanism has been submitted to, and approved
20 by, the department or the regional board as being at least equivalent to the
21 financial assurance mechanisms specified in subdivision (a). The department or
22 the regional board shall evaluate the equivalency of the proposed alternative
23 financial assurance mechanism principally in terms of the certainty of the
24 availability of funds for required operation and maintenance activities and the
25 amount of funds that will be made available. The department or the regional board
26 shall require the responsible party to submit any information necessary to make a
27 determination as to the equivalency of the proposed alternative financial assurance
28 mechanism.

29 **Comment.** Section 69320 restates subdivision (b) of former Section 25355.2 without
30 substantive change. A cross-reference to the California Code of Regulations was corrected to
31 refer to “subsections” as opposed to “subdivisions.”

32 See Sections 68050 (“department” defined), 68080 (“operation and maintenance” defined),
33 68100 (“regional board” defined), 68145 (“responsible party” defined).

34 **Staff Note.** Section 25355.2(b) refers to “a financial assurance mechanism other than those listed
35 in paragraph (1) [proposed subdivision (a)].” Paragraph (1) does not list financial assurance
36 mechanisms, but refers to those mechanisms set forth in specified provisions of the California
37 Code of Regulations. Since paragraph (1) does not “list” financial assurance mechanisms, the
38 reference has been changed to read: “a financial assurance mechanism other than those *specified*
39 in [subdivision (a)].” This change is consistent with a subsequent reference to subdivision (a) in
40 this provision. This change and a correction to the citation to the California Code of Regulations
41 noted in the Comment are the only language changes made in this provision. **The staff welcomes**
42 **comment on this proposed restatement.**

1 **§ 69325. Conditions for waiver of financial assurance requirement**

2 69325. (a) The department or the regional board shall waive the financial
3 assurance required by Section 69315 if the department or the regional board makes
4 one of the following determinations:

5 (1) The responsible party is a small business and has demonstrated all of the
6 following:

7 (A) The responsible party cannot qualify for any of the financial assurance
8 mechanisms set forth in subsections (b), (c), and (d) of Section 66265.143 of Title
9 22 of the California Code of Regulations.

10 (B) The responsible party financially cannot meet the requirements of subsection
11 (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

12 (C) The responsible party is not capable of meeting the eligibility requirements
13 set forth in subsection (e) of Section 66265.143 of Title 22 of the California Code
14 of Regulations.

15 (2) The responsible party is a small business and has demonstrated that the
16 responsible party financially is not capable of establishing one of the financial
17 assurance mechanisms set forth in subsections (a) to (e), inclusive, of Section
18 66265.143 of Title 22 of the California Code of Regulations while at the same
19 time financing the operation and maintenance requirements applicable to the site.

20 (3) The responsible party is not separately required to demonstrate and maintain
21 a financial assurance mechanism for operation and maintenance activities at a site
22 because of all of the following conditions:

23 (A) The site is a multiple responsible party site.

24 (B) Financial assurance that operation and maintenance activities at the site will
25 be carried out is demonstrated and maintained by a financial assurance mechanism
26 established jointly by all, or some, of the responsible parties.

27 (C) The financial assurance mechanism specified in subparagraph (B) meets the
28 requirements of Sections 69315 and 69320.

29 (4) The responsible party is a federal, state, or local government entity.

30 (b) The department or the regional board shall withdraw a waiver granted
31 pursuant to paragraph (1) or (2) of subdivision (a) if the department or the regional
32 board determines that the responsible party that obtained the waiver no longer
33 meets the eligibility requirements for the waiver.

34 **Comment.** Section 69325 continues subdivisions (c) and (d) of former Section 25355.2
35 without substantive change. Cross-references to the California Code of Regulations were
36 corrected to refer to “subsections” as opposed to “subdivisions.”

37 See Sections 68050 (“department” defined), 68080 (“operation and maintenance” defined),
38 68100 (“regional board” defined), 68145 (“responsible party” defined), 68155 (“site” defined),
39 69310 (“small business” defined).

40 **§ 69330. Reporting on financial assurance**

41 69330. On or before January 15, 2001, the department shall report to the
42 Legislature all of the following:

1 (a) The number of requests the department and the regional boards have
2 received for waivers from the financial assurance requirements of this article
3 during the period between May 26, 1999, and January 1, 2001.

4 (b) The disposition of the requests that were received and the reasons for
5 granting the waivers that were allowed and rejecting the waivers that were
6 disallowed.

7 (c) The total number of businesses or other entities that were required by this
8 article to demonstrate and maintain financial assurance, the number of businesses
9 or other entities that were able to comply with the requirement, the number that
10 were unable to comply and the reasons why they could not or did not comply, and
11 the history of compliance with this part and Chapter 6.5 (commencing with
12 Section 25100) of Division 20 by responsible parties that requested waivers.

13 (d) Financial assurance mechanisms other than the financial assurance
14 mechanisms referenced in subdivision (a) of Section 69320 that may be available
15 to responsible parties.

16 **Comment.** Section 69330 continues subdivision (e) of former Section 25355.2 without
17 substantive change.

18 See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68145
19 (“responsible party” defined).

20 **Staff Notes. (1)** Section 25355.2(e) requires a report to Legislature “[n]otwithstanding Section
21 7550.5 of the Government Code.” Former Government Code Section 7550.5 related to the
22 submission of written reports to the Legislature, Governor, or any state legislative or executive
23 body. Section 7550.5 did not require the submission of written reports except in certain
24 enumerated circumstances; one of those circumstances was that “[t]he Legislature expressly
25 provides that, notwithstanding this section, a written report shall be prepared and submitted.” See
26 former Gov’t Code § 7550.5(b)(3), as amended by 2005 Cal. Stat. ch. 77, § 13. Government Code
27 Section 7550.5 was repealed by its own terms in 2008. See *id.* § 7550.5(g). For this reason, the
28 phrase “[n]otwithstanding Section 7550.5 of the Government Code” appears to be obsolete and
29 was not continued. **The staff welcomes comment on this proposed change.**

30 **(2)** Section 25355.2(e) requires the department to submit a report to the Legislature “on or before
31 January 15, 2001.” Given that this provision appears to relate to a single report due in 2001, it
32 seems to be obsolete. **The staff welcomes comment on this issue.**

33 Article 16. Illegal Drug Lab Cleanup

34 **Staff Note.** This proposed article contains the material in Section 25354.5, with the exception of a
35 provision focused on the Illegal Drug Lab Cleanup Account. That provision has been recodified
36 as proposed Section 68370 in the chapter for financial provisions. The staff reviewed the
37 references to “this section” contained in proposed Section 25354.5 and generally concluded that
38 proposed Section 68370 was not relevant to the purpose of the cross-reference. Accordingly, the
39 cross-references to “this section” have been updated to refer only to this proposed article (i.e., not
40 proposed Section 68370). See proposed Sections 69350, 69370, 69375, 69385. **The staff**
41 **welcomes comment on these proposed updates.**

1 § 69350. Expenditures and contracting

2 69350. (a) The department may expend funds appropriated from the Illegal Drug
3 Lab Cleanup Account created pursuant to Section 68370 to pay the costs of
4 removal actions required by this article.

5 (b) The department may enter into oral contracts, not to exceed ten thousand
6 dollars (\$10,000) in obligation, when, in the judgment of the department,
7 immediate corrective action to a hazardous substance subject to this article is
8 necessary to remedy or prevent an emergency.

9 **Comment.** Section 69350 continues the second and third sentences of paragraph (1) of
10 subdivision (b) of former Section 25354.5 without substantive change.

11 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68125
12 (“remedy” defined), 68135 (“remove” defined).

13 § 69355. Notice to department by law enforcement

14 69355. A state or local law enforcement officer or investigator or other law
15 enforcement agency employee who, in the course of an official investigation or
16 enforcement action regarding the manufacture of an illegal controlled substance,
17 comes in contact with, or is aware of, the presence of a substance that the person
18 suspects is a hazardous substance at a site where an illegal controlled substance is
19 or was manufactured, shall notify the department for the purpose of taking
20 removal action, as necessary, to prevent, minimize, or mitigate damage that might
21 otherwise result from the release or threatened release of the hazardous substance,
22 except for samples required under Section 11479.5 to be kept for evidentiary
23 purposes.

24 **Comment.** Section 69355 continues subdivision (a) of former Section 25354.5 without
25 substantive change.

26 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085
27 (“person” defined), 68105 (“release” defined), 68135 (“remove” defined), 68155 (“site” defined).

28 **Staff Note.** Proposed Section 69355 would appear to benefit from restatement for clarity.

29 To improve readability, it may be helpful to add a defined term, “law enforcement agent.”

30 In addition, the application of the exception in the final clause is unclear. While it seems clear
31 that material required to be kept for evidentiary purposes should not itself be removed, the
32 primary purpose of this provision appears to be a notice obligation for law enforcement agents. If
33 the exception is intended only to avoid evidentiary samples from being subject to removal, it
34 seems that such an exception should be recodified with proposed Section 69360, which obligates
35 the department to take a removal action.

36 Similarly, this proposed section provides that law enforcement must notify the department for
37 the purpose of taking a removal action “as necessary, to prevent, minimize, or mitigate damage
38 that might otherwise result from the release or threatened release of the hazardous substance.” For
39 simplicity, it may be helpful to simply cite to a removal action taken pursuant to proposed Section
40 69360 and to incorporate this language into proposed Section 69360.

41 **The staff welcomes comment on these issues and whether this provision is sufficiently**
42 **clear in practice.**

1 § 69360. Department obligation upon receipt of notice

2 69360. Notwithstanding any other provision of law, upon receipt of a
3 notification pursuant to Section 69355, the department shall take removal action,
4 as necessary, with respect to a hazardous substance that is an illegal controlled
5 substance, a precursor of a controlled substance, a material intended to be used in
6 the unlawful manufacture of a controlled substance, and a container for the
7 material, a waste material from the unlawful manufacture of a controlled
8 substance, or any other item contaminated with a hazardous substance used or
9 intended to be used in the manufacture of a controlled substance.

10 **Comment.** Section 69360 continues the first sentence of paragraph (1) of subdivision (b) of
11 former Section 25354.5 without substantive change.

12 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68125
13 (“remedy” defined), 68135 (“remove” defined).

14 § 69365. Notification of local environmental health officer

15 69365. The department shall, as soon as the information is available, report the
16 location of a removal action that will be carried out pursuant to Section 69360, and
17 the time that the removal action will be carried out, to the local environmental
18 health officer within whose jurisdiction the removal action will take place, if the
19 local environmental officer does both of the following:

20 (a) Requests, in writing, that the department report this information to the local
21 environmental health officer.

22 (b) Provides the department with a single 24-hour telephone number to which
23 the information can be reported.

24 **Comment.** Section 69365 continues paragraph (2) of subdivision (b) of former Section
25 25354.5 without substantive change.

26 See Sections 68050 (“department” defined), 68135 (“remove” defined).

27 **Staff Note.** Section 25354.5(b)(2) refers to a removal action “pursuant to paragraph (1) [of
28 subdivision (b)].” Subdivision (b) of Section 25354.5 has been proposed for recodification as two
29 provisions (proposed Sections 69350 and 69360). Only one of those provisions appears to be
30 relevant to the cross-reference. Proposed Section 69350, related to expenditures and contracting,
31 does not appear to be relevant and has been omitted from the cross-reference. For this reason, the
32 cross-reference has been updated to refer only to proposed Section 69360. **The staff welcomes**
33 **comment on this proposed cross-reference update.**

34 § 69370. Generator of hazardous waste and substances at site

35 69370. (a) For purposes of Chapter 6.5 (commencing with Section 25100) of
36 Division 20, Chapter 6.9.1 (commencing with Section 25400.10) of Division 20,
37 or this part, a person who is found to have operated a site for the purpose of
38 manufacturing an illegal controlled substance or a precursor of an illegal
39 controlled substance is the generator of a hazardous substance at, or released from,
40 the site that is subject to removal action pursuant to this article.

1 (b) During the removal action, for purposes of complying with the manifest
2 requirements in Section 25160, the department, the county health department, the
3 local environmental health officer, or their designee may sign the hazardous waste
4 manifest as the generator of the hazardous waste. In carrying out that action, the
5 department, the county health department, the local environmental health officer,
6 or their designee shall be considered to have acted in furtherance of their statutory
7 responsibilities to protect the public health and safety and the environment from
8 the release, or threatened release, of hazardous substances, and the department, the
9 county health department, the local environmental health officer, or their designee
10 is not a responsible party for the release, or threatened release, of the hazardous
11 substances.

12 (c) The officer, investigator, or agency employee specified in Section 69355 is
13 not a responsible party for the release, or threatened release, of hazardous
14 substances at, or released from, the site.

15 **Comment.** Section 69370 continues subdivision (c) of former Section 25354.5 without
16 substantive change.

17 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68085
18 (“person” defined), 68105 (“release” defined), 68135 (“remove” defined), 68145 (“responsible
19 party” defined), 68155 (“site” defined).

20 § 69375. Regulations

21 69375. The department may adopt regulations to implement this article in
22 consultation with appropriate law enforcement and local environmental agencies.

23 **Comment.** Section 69375 continues subdivision (d) of former Section 25354.5 without
24 substantive change.

25 See Section 68050 (“department” defined).

26 § 69380. Methods, standards, and procedures

27 69380. (a) The department shall develop sampling and analytical methods for
28 the collection of methamphetamine residue.

29 (b) The department shall, to the extent funding is available, develop health-
30 based target remediation standards for iodine, methyl iodide, and phosphine.

31 (c) To the extent that funding is available, the department, using guidance
32 developed by the Office of Environmental Health Hazard Assessment, may
33 develop additional health-based target remediation standards for additional
34 precursors and byproducts of methamphetamine.

35 (d) The department shall adopt investigation and cleanup procedures for use in
36 the remediation of sites contaminated by the illegal manufacturing of
37 methamphetamine. The procedures shall ensure that contamination by the illegal
38 manufacturing of methamphetamine can be remediated to meet the standards
39 adopted pursuant to subdivisions (b) and (c), to protect the health and safety of all
40 future occupants of the site.

1 (e) The department shall implement this section in accordance with Section
2 69375.

3 **Comment.** Section 69380 continues subdivision (e) of former Section 25354.5 without
4 substantive change.

5 See Sections 68050 (“department” defined), 68155 (“site” defined).

6 **Staff Note.** Section 25354.5(e)(4) requires the department to adopt investigation and cleanup
7 procedures “[o]n or before October 1, 2009.” This language specifying the date for adoption of
8 these procedures seems to be obsolete. The staff proposes deleting the language “[o]n or before
9 October 1, 2009,” while retaining the substantive requirement that the department adopt the
10 specified procedures. **The staff welcomes comment on this proposed change.**

11 **§ 69385. Applicability of article contingent on funding**

12 69385. The responsibilities assigned to the department by this article apply only
13 to the extent that sufficient funding is made available for that purpose.

14 **Comment.** Section 69385 continues subdivision (g) of former Section 25354.5 without
15 substantive change.

16 See Section 68050 (“department” defined).

17 Article 17. Judicial Review of Response Actions

18 **§ 69400. Judicial review of response action adequacy**

19 69400. (a) In any judicial action under this part, judicial review of any issues
20 concerning the adequacy of any response action taken or ordered by the
21 department shall be limited to the administrative record. Otherwise applicable
22 principles of administrative law shall govern whether any supplemental materials
23 may be considered by the court.

24 (b) If the court finds that the selection of the response action was not in
25 accordance with law, the court shall award only the response costs or damages that
26 are not inconsistent with the National Contingency Plan, as specified in Part 300
27 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the
28 Code of Federal Regulations, and any other relief that is consistent with the
29 National Contingency Plan.

30 (c) In reviewing an action brought by the department under this part, in which
31 alleged procedural errors by the department are raised as a defense, the court may
32 impose costs or damages only if the errors were serious and related to matters of
33 central relevance to the action, so that the action would have been significantly
34 changed had the errors not been made.

35 **Comment.** Section 69400 continues former Section 25357.5 without substantive change.

36 See Sections 68050 (“department” defined), 68140 (“response” defined).

CHAPTER 6. SITE-SPECIFIC RULES RELATED TO CLEANUP

Article 1. Financial Provisions

§ 69450. Site-specific appropriations for state account monies

69450. (a) Money deposited in the state account may also be appropriated by the Legislature to the department on a specific site basis for the following purposes:

(1) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of any release of a hazardous substance, to the extent the costs are not reimbursed pursuant to the federal act and taking into account processes of natural rehabilitation, restoration, and replacement.

(2) For all costs incurred in assessing short-term and long-term injury to, degradation or destruction of, or any loss of any natural resource resulting from a release of a hazardous substance, to the extent that the costs are not reimbursed pursuant to the federal act.

(b) No costs may be incurred for any release of a hazardous substance from any facility or project pursuant to subdivision (a) for injury, degradation, destruction, or loss of any natural resource where the injury, degradation, destruction, or loss was specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement prepared under the authority of the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), or was identified as a significant environmental effect to the natural resources that cannot be avoided in an environmental impact report prepared pursuant to the California Environmental Quality Act (Division 13 commencing with Section 21000) of the Public Resources Code), and a decision to grant a permit, license, or similar authorization for any facility or project is based upon a consideration of the significant environmental effects to the natural resources, and the facility or project was otherwise operating within the terms of its permit, license, or similar authorization at the time of release.

Comment. Section 69450 continues subdivisions (a) and (b) of former Section 25352 without substantive change.

See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68105 (“release” defined), 68155 (“site” defined), 68165 (“state account” defined).

Staff Notes. (1) Section 25352(b) precludes incurring certain costs “pursuant to subdivision (a) or this subdivision.” The provision of Section 25352(b) discussing the incurred costs has been proposed for continuation as paragraph (2) of subdivision (a). Thus, all of the material relevant to the cross-reference can be found in proposed Section 69450(a). For this reason, the cross-reference to “this subdivision” has been omitted. **The staff welcomes comment on this proposed cross-reference update.**

(2) Subdivision (b) of Section 25352 refers to the “National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.)” This reference was corrected to read “the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)” in proposed Section 69450.

Article 2. Santa Susana Field Laboratory

§ 69465. Legal remedies

69465. Notwithstanding paragraph (1) of subdivision (b) of Section 25187, the department may use any legal remedies available pursuant to this part or Chapter 6.5 (commencing with Section 25100) of Division 20 to compel a responsible party to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site in Ventura County.

Comment. Section 69465 restates subdivision (a) of former Section 25359.20 without substantive change.

See Sections 68050 (“department” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible party” defined), 68155 (“site” defined).

Staff Notes. (1) Section 25359.20(a) cross-refers to “paragraph (1) of subdivision (b) of Section 25187 of the Health and Safety Code.” As the cross-referenced provision is located in the same code, it is unnecessary to provide the code name in the cross-reference. For this reason, the language “of the Health and Safety Code” was not continued.

(2) Subdivision (a) allows the department to use specified legal remedies to compel “a responsible party or parties” to take appropriate actions at the site. This provision was restated to eliminate use of the plural and singular form of the word “party.” It does not appear to be necessary to use both the singular and plural forms. Section 13 provides “[t]he singular number includes the plural, and the plural the singular.” Proposed Section 69465 was simplified to use only the singular form in accordance with standard drafting practice.

The changes reflected in proposed Section 69465 are intended to be nonsubstantive. **The staff welcomes any comment on the proposed restatement.**

§ 69470. Response action

69470. (a) A response action taken or approved at the Santa Susana Field Laboratory site shall be conducted in accordance with the provisions of this part.

(b) A response action taken or approved pursuant to this part for the Santa Susana Field Laboratory site shall be based upon, and be no less stringent than, the provisions of [Article 13 (commencing with Section 69260) of Chapter 5].

(1) In calculating the risk, the cumulative risk from radiological and chemical contaminants at the site shall be summed, and the land use assumption shall be either suburban residential or rural residential (agricultural), whichever produces the lower permissible residual concentration for each contaminant.

(2) In the case of radioactive contamination, the department shall use as its risk range point of departure the concentrations in the Preliminary Remediation Goals issued by the Superfund Office of the United States Environmental Protection Agency in effect as of January 1, 2007.

1 **Comment.** Section 69470 continues subdivisions (b) and (c) of former Section 25359.20
2 without substantive change.

3 See Sections 68050 (“department” defined), 68140 (“response” defined), 68155 (“site”
4 defined).

5 **Staff Note.** Subdivision (c) of Section 25359.20 specifies that a response action for Santa Susana
6 Field Laboratory shall be “based upon, and be no less stringent than, the provisions of Section
7 25356.1.5. Section 25356.1.5 has been proposed for recodification as Article 13 (commencing
8 with Section 69260) of Chapter 5. It appears that proposed Section 69260 is the only section that
9 contains standards for a response action. The other sections contain standards for risk assessments
10 and exposure assessments. It is not clear whether those sections are relevant to this cross-
11 reference. If not, the staff would propose updating the cross-reference to refer only to Section
12 69260. **The staff welcomes comment on this issue.**

13 **§ 69475. Land transfers**

14 69475. (a) Notwithstanding any other provision of law regarding transfers of
15 land, no person or entity shall sell, lease, sublease, or otherwise transfer land
16 presently or formerly occupied by the Santa Susana Field Laboratory, except as
17 provided in subdivision (b).

18 (b) As a condition for a sale, lease, sublease, or transfer of land presently or
19 formerly occupied by the Santa Susana Field Laboratory, the director or the
20 director’s designee shall certify that the land has undergone complete remediation
21 pursuant to the most protective standards in **[subdivisions (a) to (c), inclusive]**.

22 **Comment.** Section 69475 continues subdivisions (d) and (e) of former Section 25359.20
23 without substantive change. A comma after the word “presently” was not continued.

24 See Sections 68055 (“director” defined), 68085 (“person” defined).

25 **Staff Notes. (1)** Subdivision (e) refers to “the Director of the Department of Toxic Substances
26 Control.” The staff believes that this reference was intended to refer to “the Director of Toxic
27 Substances Control.” In the proposed section, the reference has been replaced with the defined
28 term, “director.” In proposed Section 68055, “director” is defined as “the Director of Toxic
29 Substances Control.”

30 **(2)** Subdivision (e) requires the director “or his or her designee” to make a certification prior to a
31 land transfer. The phrase “his or her” is no longer used in legislative drafting practice. This phrase
32 has been replaced with “the director’s.”

33 **(3)** Subdivision (e) requires a certification of remediation pursuant to “the most protective
34 standards in subdivisions (a) to (c), inclusive.” The cited subdivisions have been proposed for
35 recodification as Sections 69465 and 69470. The cross-reference could simply be updated to refer
36 to these two proposed sections. However, it is unclear whether this citation is correct, as most of
37 the material in these proposed sections does not appear to be relevant to this cross-reference.
38 Subdivision (c) appears to be the only subdivision that itself contains standards, although those
39 standards appear to be for risk assessment. Subdivision (c) also refers to “the provisions in
40 Section 25356.1.5,” which contains standards for response actions and risk assessments. See
41 proposed Sections 69260, 69265. **The staff welcomes comment on how the cross-reference to**
42 **“subdivisions (a) to (c), inclusive” should be updated.**

1 Article 3. Stringfellow Quarry Class I
2 Hazardous Waste Disposal Site

3 § 69490. Use of onsite treatment, storage, transfer or disposal facility

4 69490. Any treatment, storage, transfer, or disposal facility built on the
5 Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the
6 purpose of a remedial or removal action at that site, shall only be used to treat,
7 store, transfer, or dispose of hazardous substances removed from that site.

8 **Comment.** Section 69490 continues former Section 25351.7 without substantive change.

9 See Section 68075 (“hazardous substance” defined), 68125 (“remedy” defined), 68135
10 (“remove” defined), 68155 (“site” defined).

11 § 69495. Priority of removal and remedial actions

12 69495. Notwithstanding any other provision of law, including, but not limited
13 to, Article 5 (commencing with Section 68760) of Chapter 4, the department shall
14 place the highest priority on taking removal and remedial actions at the
15 Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote
16 sufficient resources to accomplish the tasks required by this section.

17 **Comment.** Section 69495 continues former Section 25351.8 without substantive change. And
18 obsolete cross-reference to Section 25334.5, which has been repealed, was not continued.

19 See Section 68050 (“department” defined), 68125 (“remedy” defined), 68135 (“remove”
20 defined).

21 **Staff Note.** Section 25351.8 cross-refers to Section 25334.5. Section 25334.5 has been repealed.
22 See 1999 Cal. Stat. ch. 23, § 1 (SB 47). Prior to its repeal, Section 25334.5 related to a site-
23 specific plan for expenditures that would be prepared by the department and included in the
24 budget. See former Section 25334.5, as amended by 1985 Cal. Stat. ch. 1439, § 1. The staff is not
25 aware of such a requirement elsewhere in the current law. For this reason, the cross-reference to
26 Section 25334.5 was not continued.

27 **The staff welcomes comment on this proposed cross-reference update.**

28 CHAPTER 7. ENFORCEMENT

29 Article 1. Noncompliance with Order

30 § 69550. Penalty for noncompliance with order

31 69550. Any person subject to a removal or remedial action order or other order
32 issued pursuant to Section 68660, 68870, or 69055 who does not comply with that
33 order without sufficient cause shall be subject to a civil penalty of not more than
34 twenty-five thousand dollars (\$25,000) for each day of noncompliance. Liability
35 under this section may be imposed in a civil action or liability may be imposed
36 administratively pursuant to Section 69590.

37 **Comment.** Section 69550 continues former Section 25359.2 without substantive change.

38 See Sections 68085 (“person” defined), 68125 (“remedy” defined), 68135 (“remove” defined).

1 **Staff Note.** Proposed Section 69550 refers to an order “issued pursuant to Section 25355.5 or
2 25358.3.” Each of these cross-referenced provisions is discussed in turn below.

3 (1) Section 25355.5 has been proposed for recodification as several provisions (proposed
4 Sections 69055, 69060, 69065, and 69130(b)). Proposed Section 69055 (Section 25355.5(a))
5 appears to be the only provision that is relevant to this cross-reference, as it is the only provision
6 that addresses the issuance of orders. For this reason, the cross-reference to Section 25355.5 has
7 been updated to refer only to Section 69055.

8 **The staff welcomes any comment on this proposed cross-reference update.**

9 (2) Section 25358.3 has been proposed for recodification as several sections (proposed
10 Sections 68650, 68655, 68660, and 68870). Proposed Sections 68650 and 68655 do not appear to
11 be relevant to the purposes of this cross-reference, as these provisions do not relate to the
12 issuance of orders to parties. For this reason, those proposed sections have been omitted from the
13 cross-reference. Accordingly, the cross-reference to Section 25358.3 has been updated to refer to
14 Sections 68660 and 68870.

15 **The staff welcomes any comment on this proposed cross-reference update.**

16 **§ 69555. Treble damages from noncompliant contribution defendant**

17 69555. (a)(1) A responsible party who has entered into an agreement with the
18 department and is in compliance with the terms of that agreement, or who is in
19 compliance with an order issued by the department, may seek, in addition to
20 contribution, treble damages from any contribution defendant who has failed or
21 refused to comply with any order or agreement, was named in the order or
22 agreement, and is subject to contribution.

23 (2) A contribution defendant from whom treble damages are sought in a
24 contribution action shall not be assessed treble damages by any court where the
25 contribution defendant, for sufficient cause, as determined by the court, failed to
26 comply with an agreement or with an order issued by the department, or where the
27 contribution defendant is an owner of real property who did not generate, treat,
28 transport, store, or dispose of the hazardous substance on, in, or at the facility
29 located on that real property, as specified in Sections 101(35) and 107(b) of the
30 federal act (42 U.S.C. Secs. 9601(35) and 9607(b)), or where the principles of
31 fundamental fairness would be violated, as determined by the court.

32 (3) A party seeking treble damages pursuant to this section shall show that the
33 party, the department, or another entity provided notice, by means of personal
34 service or certified mail, of the order or agreement to the contribution defendant
35 from whom the party seeks treble damages.

36 (b)(1) One-half of any treble damages awarded pursuant to this section shall be
37 paid to the department, for deposit in the state account.

38 (2) Nothing in this subdivision affects the rights of any party to seek
39 contribution pursuant to any other statute or under common law.

40 (c) A contribution defendant from whom treble damages are sought pursuant to
41 this section shall be deemed to have acted willfully with respect to the conduct that
42 gave rise to this liability for purposes of Section 533 of the Insurance Code.

43 **Comment.** Section 69555 continues former Section 25359.4.5 without substantive change.

1 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68075 (“hazardous
2 substance” defined), 68145 (“responsible party” defined), 68165 (“state account” defined).

3 Article 2. Response Actions

4 § 69570. Treble damages for failure to provide response action

5 69570. (a) Any person who is liable for a release, or threat of a release, of
6 hazardous substances and who fails, without sufficient cause, as determined by the
7 court, to properly provide a removal or remedial action upon either an order of the
8 director, pursuant to Section 68870, or an order of the court, pursuant to Section
9 68660, is liable to the department for damages equal to three times the amount of
10 any costs incurred by the state account pursuant to this part as a result of the
11 failure to take proper action.

12 (b) No treble damages shall be imposed under this section against an owner of
13 real property who did not generate, treat, transport, store, or dispose of any
14 hazardous substance on, in, or at the facility located on that real property, as
15 specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs.
16 9601(35) and 9607(b)).

17 **Comment.** Section 69570 restates former Section 25359 without substantive change.

18 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
19 defined), 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release”
20 defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68165 (“state account” defined).

21 **Staff Note.** Proposed Section 69570 refers to an “order of the director or the court, pursuant to
22 Section 25358.3.” Section 25358.3 has been recodified as several sections (proposed Sections
23 68650, 68655, 68660, and 68870). Proposed Section 68870 recodifies the portion of Section
24 25358.3 that relates to the issuance of orders by the director, while proposed Section 68660
25 recodifies the portion of Section 25358.3 that relates to the issuance of orders by a court. For this
26 reason, proposed Section 69570 restates the quoted language to read “either an order of the
27 director, pursuant to Section 68870, or an order of the court, pursuant to Section 68660.” **The
28 staff welcomes comment on this proposed restatement.**

29 Article 3. Natural Resources Damages

30 § 69580. Prohibition on recovery of damages for certain losses occurring before September
31 25, 1981

32 69580. There shall be no recovery of punitive damages under Section 69570 for
33 an injury to or loss of natural resources that occurred wholly before September 25,
34 1981. This section shall not be construed as precluding the recovery of punitive
35 damages for injury to or loss of natural resources in an action brought pursuant to
36 any other provision of law.

37 **Comment.** Section 69580 continues former Section 25359.1 without substantive change.

Article 4. Administrative Process for Penalty Collection

§ 69590. Complaint for penalties

69590. (a)(1) The department may issue a complaint to any person subject to a penalty pursuant to Sections 68680 and 69550.

(2) The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed penalty.

(3) The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing.

(b)(1) Any person served with a complaint pursuant to this section may, within 45 days after service of the complaint, request a hearing by filing a notice of defense with the department. A notice of defense is deemed to be filed within a 45-day period if it is postmarked within the 45-day period.

(2) If no notice of defense is filed within 45 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint, unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement.

(3) Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

Comment. Section 69590 continues subdivision (a) of former Section 25359.3 without substantive change.

See Sections 68050 (“department” defined), 68085 (“person” defined).

Staff Note. Subdivision (a) of Section 25359.3 refers to a person subject to a penalty pursuant to Section 25359.4. Section 25359.4 has been proposed for recodification as two sections (proposed Sections 68675 and 68680). Only one of those proposed sections, Section 68680, provides for penalties. For this reason, the cross-reference to Section 25359.4 has been updated to refer only to Section 68680.

The staff welcomes comment on this proposed cross-reference update.

§ 69595. Hearing for penalties

69595. (a) Any hearing required under this article 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 powers granted by those provisions.

(b) In making a determination, the administrative law judge shall consider the nature, circumstances, extent, and gravity of the violation, the violator’s past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety or the environment, the violator’s ability to pay the proposed penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

1 **Comment.** Section 69595 continues subdivision (b) of former Section 25359.3 without
2 substantive change.

3 See Section 68050 (“department” defined).

4 **§ 69600. Deposit and expenditure of penalties**

5 69600. All penalties collected under this article and Section 69550 shall be
6 deposited in the state account and shall be available for expenditure by the
7 department upon appropriation by the Legislature.

8 **Comment.** Section 69600 continues subdivision (c) of former Section 25359.3 without
9 substantive change.

10 See Sections 68050 (“department” defined), 68165 (“state account” defined).

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this staff draft, of provisions in Chapter 6.8 of Division 20 of the Health and Safety Code (§§ 25300-25395.45), as the law existed on January 1, 2019. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	Corresponding New Provision
25343	69105
25350, 1st and 2nd sent.....	68855
25350, 3rd sent.....	68860
25351.2(a)	69160
25351.2(b).....	69165
25351.2(c)	69170
25351.2(d).....	69175
25351.7	69490
25351.8	69495
25352(a), (b)	69450
25353(a), (b), (d), (f).....	69070
25353(e)	69075
25354(a) (2nd sent.), (b)	68875
25354.5(a)	69355
25354.5(b)(1) (2nd and 3rd sent.)	69350
25354.5(c)	69370
25354.5(d).....	69375
25354.5(e)	69380
25354.5(g).....	69385
25354.5(b)(2)	69365
25354.5(b)(1) (1st sent.)	69360
25355(a)	68850
25355(b).....	69130(a)
25355(c)(1), (d).....	69135
25355(c)(2)	69005
25355.2(f)	69310
25355.2(a)	69315
25355.2(b).....	69320
25355.2(c), (d)	69325
25355.2(e)	69330
25355.5(b).....	69060
25355.5(a)	69055
25355.5(c), (d)	69065
25355.5(e)	69130(b)
25355.6(a)	68900
25355.6(b).....	68905
25355.6(c), (d)	68910
25355.7	69000

25355.8	69100
25356.1(a)	69190
25356.1(b)	69195
25356.1(c)	69200
25356.1(d)	69205
25356.1(e) (except 1st 4 sent.), (f)	69215
25356.1(g)	69220
25356.1(h)(1), (2), (5)	69225
25356.1(h)(3)	69230
25356.1(h)(4)	69235
25356.1(i)	69240
25356.1(e) (1st 4 sent.)	69210
25356.1.3(d)	69035
25356.1.3(a)	69020
25356.1.3(b)	69025
25356.1.3(c)	69030
25356.1.5(a)	69260
25356.1.5(b)	69265
25356.1.5(c)	69270
25356.1.5(d), (e)	69275
25357.5	69400
25358.3(a)	68870
25358.5	68880
25358.6	68885
25358.7	68930
25358.7.1(b)	68955
25358.7.1(a), 3rd sent.	68935
25358.7.1(a), 1st and 4th sent.	68950
25358.7.1(c)	68965
25358.7.1(d)	68970
25358.7.1(a), 2nd sent.	68960
25358.7.2(a), 2nd sent.	68925
25358.8	68975
25358.9(a)	69290
25358.9(b)	69295
25359	69570
25359.1	69580
25359.2	69550
25359.20(a)	69465
25359.20(b), (c)	69470
25359.20(d), (e)	69475
25359.3(a)	69590
25359.3(b)	69595
25359.3(c)	69600
25359.4.5	69555

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in the proposed Hazardous Substance Account Recodification Act of 2020, as reflected in this staff draft. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Proposed New Provision	Corresponding Existing Provision
68850	25355(a)
68855	25350, 1st and 2nd sent.
68860	25350, 3rd sent.
68870	25358.3(a)
68875	25354(a) (2nd sent.), (b)
68880	25358.5
68885	25358.6
68900	25355.6(a)
68905	25355.6(b)
68910	25355.6(c), (d)
68925	25358.7.2(a), 2nd sent.
68930	25358.7
68935	25358.7.1(a), 3rd sent.
68950	25358.7.1(a), 1st and 4th sent.
68955	25358.7.1(b)
68960	25358.7.1(a), 2nd sent.
68965	25358.7.1(c)
68970	25358.7.1(d)
68975	25358.8
69000	25355.7
69005	25355(c)(2)
69020	25356.1.3(a)
69025	25356.1.3(b)
69030	25356.1.3(c)
69035	25356.1.3(d)
69055	25355.5(a)
69060	25355.5(b)
69065	25355.5(c), (d)
69070	25353(a), (b), (d), (f)
69075	25353(e)
69100	25355.8
69105	25343
69130(a)	25355(b)
69130(b)	25355.5(e)
69135	25355(c)(1), (d)
69160	25351.2(a)
69165	25351.2(b)
69170	25351.2(c)
69175	25351.2(d)

69190	25356.1(a)
69195	25356.1(b)
69200	25356.1(c)
69205	25356.1(d)
69210	25356.1(e) (1st 4 sent.)
69215	25356.1(e) (except 1st 4 sent.), (f)
69220	25356.1(g)
69225	25356.1(h)(1), (2), (5)
69230	25356.1(h)(3)
69235	25356.1(h)(4)
69240	25356.1(i)
69260	25356.1.5(a)
69265	25356.1.5(b)
69270	25356.1.5(c)
69275	25356.1.5(d), (e)
69290	25358.9(a)
69295	25358.9(b)
69310	25355.2(f)
69315	25355.2(a)
69320	25355.2(b)
69325	25355.2(c), (d)
69330	25355.2(e)
69350	25354.5(b)(1) (2nd and 3rd sent.)
69355	25354.5(a)
69360	25354.5(b)(1) (1st sent.)
69365	25354.5(b)(2)
69370	25354.5(c)
69375	25354.5(d)
69380	25354.5(e)
69385	25354.5(g)
69400	25357.5
69450	25352(a), (b)
69465	25359.20(a)
69470	25359.20(b), (c)
69475	25359.20(d), (e)
69490	25351.7
69495	25351.8
69550	25359.2
69555	25359.4.5
69570	25359
69580	25359.1
69590	25359.3(a)
69595	25359.3(b)
69600	25359.3(c)