

Memorandum 2021-8

**Recodification of Toxic Substance Statutes:
Chapter 6.5
(Discussion of Issues)**

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 work on Chapter 6.8 first, then move to Chapter 6.5.³

In mid-2020, while awaiting comment on its Chapter 6.8 tentative recommendations, the Commission considered an initial memorandum on Chapter 6.5.⁴ At that time, the Commission approved a tentative structure for the Chapter 6.5 recodification.⁵ The material would be organized in a single division, divided into the following parts:

- Part 1. General Provisions
- Part 2. Toxics Reduction
- Part 3. Hazardous Waste
- Part 4. Hazardous Waste Generation and Management

Since then, the staff has discussed the possibility of taking a different approach, breaking Chapter 6.5 into multiple divisions. This memorandum addresses that approach briefly. **It is purely informational.** No Commission decision is needed at this time. The staff does not intend to present the memorandum orally at the upcoming meeting, unless a Commissioner requests that it be discussed.

Unless otherwise indicated, all of the citations to articles refer to the articles in Chapter 6.5 of Division 20 of the Health and Safety Code.

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 2020 Cal. Stat. res. ch. 46 (ACR 173 (Gallagher)).

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

4. Memorandum 2020-13.

5. Minutes (May 2020), p. 4.

CONTENTS OF CHAPTER 6.5

Although Chapter 6.5 is entitled “Hazardous Waste Control,” the substance of Chapter 6.5 is not limited to hazardous waste.⁶

Very generally, the substantive provisions in Chapter 6.5 fall into one of two categories: (1) provisions that govern hazardous waste⁷ and (2) provisions that aim to reduce or eliminate toxics in products.⁸

However, Chapter 6.5 is not organized in a way that clearly separates these two categories of materials. They are intermingled. Consequently, there is no easy way to refer to only the Chapter 6.5 provisions in one of these two categories (e.g., only the hazardous waste provisions).

WHY PRESERVE CHAPTER 6.5 AS A WHOLE?

Preserving Chapter 6.5 in a single division simplifies the treatment of provisions that apply to Chapter 6.5 as a whole.⁹

Take, for instance, a provision in Chapter 6.5 that applies to “this chapter.” If the substance of Chapter 6.5 were kept together in a single division, it would be straightforward to preserve the effect of that provision by simply making it applicable to “this division” (as opposed to “this chapter”).

If, instead, the contents of Chapter 6.5 were recodified in multiple divisions, the situation would be much more complicated. Each provision that applies to the chapter as a whole would require an individualized assessment to determine whether it really applies to the entire chapter and, if not, which pieces of the chapter are relevant.

In some situations, the staff anticipates that it will be impossible to know with certainty whether a reference to “this chapter” really refers to *all* of the chapter or

6. It appears that, originally, Chapter 6.5 focused on hazardous waste. The material related to toxics reduction in products was added more recently. See, e.g., Article 10.02 (Lighting Toxics Reduction), added by 2007 Cal. Stat. ch. 534, § 3.

While there is a conceptual relationship between these two categories, the placement of the product-focused material in Chapter 6.5 may have been more a matter of convenience (as opposed to reflecting a considered choice that these materials should be located in and amongst the hazardous waste law).

7. See, e.g., Articles 6.5 (Hazardous Waste Haulers) and 10.1 (Management of Hazardous Wastes Removed From Discarded Appliances).

8. See, e.g., Articles 10.02 (Lighting Toxics Reduction) and 10.4 (Toxics in Packaging Prevention Act).

9. Chapter 6.5 contains over 500 references to “this chapter” (based on search of text file containing the provisions of Chapter 6.5). The California Codes contain on the order of 75 sections that refer to “Chapter 6.5 (commencing with Section 25100)” (based on searches on leginfo.ca.gov and Westlaw).

only one kind of provision in the chapter. Unfortunately, where there is such ambiguity, any approach to continuing the reference would be problematic.

Narrowing the reference to just one kind of provision (e.g., hazardous waste provisions) would risk a substantive narrowing of the intended scope of provision.

Keeping the provision applicable to the entirety of Chapter 6.5 would require creating express references to every one of its constituent divisions. That would create a very strong inference that the provision actually applies to all of those divisions — otherwise, why would the reference exist? At best, such changes would be confusing. At worst, they could be construed as a change to the meaning of the law.

At this point, the staff is not aware of any problems with preserving the contents of Chapter 6.5 in a single division. In the absence of such problems, the staff believes that the Commission's provisional decision to keep Chapter 6.5 together in a single division is the better approach.

If any stakeholders have comments on this issue, the staff would welcome those comments at this time.

Respectfully submitted,

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