

Memorandum 2021-19

**Recodification of Toxic Substance Statutes:
Chapter 6.5 – First Portion of Part 1**

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

While the Commission was awaiting comment on its tentative recommendations related to Chapter 6.8, the Commission considered an initial memorandum discussing Chapter 6.5 and approving drafting practices and a tentative outline for the recodification of Chapter 6.5.⁴

This memorandum presents an initial draft of Chapters 1-5 of Part 1 of proposed Division 44 (where the substance of Chapter 6.5 would be recodified).

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, all of the statutory citations are to sections in the Health and Safety Code and all citations to “proposed” sections are to the proposed sections found in the attached draft legislation.

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; Minutes (May 2020), p. 4.

UPDATE REGARDING ALTERNATIVE ORGANIZATIONAL APPROACH

Memorandum 2021-8 discussed the possibility of recodifying the contents of Chapter 6.5 in multiple divisions (as opposed to a single division). As indicated in that memorandum, recodifying the contents of Chapter 6.5 in a single division has significant practical benefits, as Chapter 6.5 is often referenced as a whole in the codes. The memorandum sought comments on whether there were problems with the single-division approach.

The staff has not received any comments on this issue to date. If the staff receives comments, those comments will be shared with the Commission in a future memorandum.

In the absence of comment, the staff has proceeded with drafting the recodification based on the tentative outline previously approved by the Commission.⁵

GENERAL DRAFTING APPROACH

Drafting Practices

As with the prior draft legislation for this project and consistent with the Commission's decisions, the staff has taken a fairly conservative approach to drafting.⁶ For the most part, the language used in the draft is drawn from existing law verbatim.

Certain minor language changes to conform to legislative drafting practices or correct clear technical errors were made without notation.⁷

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 Comment or Staff Note.⁸ Any other proposed changes to the language of the provision would also be described in the corresponding Comment or Staff Note.⁹

5. See Memorandum 2020-13; Minutes (May 2020), p. 4.

6. See Memorandum 2020-13, p. 3.

7. Changes the staff made to conform to legislative drafting practice included eliminating certain uses of the word "such," standardizing the format of the phrase "internet website," and changing uses of the word "which" to "that." In rare cases where making these changes requires additional, conforming adjustments, these changes may be flagged in a Staff Note. See, e.g., Staff Note for proposed Section 60655.

8. See Minutes (May 2020), p. 4; Memorandum 2020-13, p. 4. Such changes are discussed, for example, in the Comment for proposed Section 60075 and the Staff Notes for proposed Sections 60495 (Note #1) and 60550 (Note #1).

9. See, e.g., Staff Note to proposed Section 60110.

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.¹⁰ Where the appropriate resolution was unclear, the staff requested comment on the issue.¹¹

In addition, the staff identified a few provisions that could seemingly benefit from further study and possible substantive reform. In some cases, a Note seeks comment on whether the provision is causing problems in practice.¹² In other cases, the staff concluded the provision would be good candidate for future work and recommends the provision be added to the list of substantive issues for possible future study.¹³

The proposed legislation contains an introductory, explanatory Staff Note.¹⁴ 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 updated as needed.

Additional Changes Made Consistently

In the course of preparing this draft, there were several issues that the staff identified as matters that should be subject to consistent treatment throughout the recodification. Those issues (and their proposed treatment) are described below:

- References to applicable definitions — in some cases, a section will use a term that is defined for Chapter 6.5 and then include a reference to the definition (e.g., "RCRA hazardous waste, as defined in Section 25120.2"). The "as defined in ..." language is redundant. Where a section provides a reference to an already applicable definition, that redundant language was not continued.¹⁵
- Obsolete state agency references — in some cases, a referenced state agency has been renamed or the agency's responsibilities have changed, but the referencing section has not been updated accordingly. In these cases, the appropriate agency has been

10. See, e.g., Staff Note to proposed Section 60230 (Note #2); Comment and Staff Note (Note #2) to proposed Section 60670; Comment and Staff Note (Note # 2) to proposed Section 60700.

11. See, e.g., Staff Notes for proposed Sections 60215 (Note #3), 60245 (Note #1), 60380, 60385 and 60670 (Note #1).

12. See Staff Notes for proposed Sections 60075, 60230 (Note #1), 60245 (Note #2), 60370 (Note #2).

13. See Staff Notes for proposed Sections 60255, 60365, 60495 (Note #2), and Staff Note to proposed Chapter 4 of Part 1; see also discussion of "Addition of Issues to List of Substantive Issues for Future Study" *supra*.

14. See page i of attached draft proposed legislation.

15. See, e.g., Staff Notes to proposed Sections 60265, 60455 (Note #1).

substituted in the proposed law. The substitution is noted in the Comment.¹⁶ In some cases, the change is also described or flagged in a Staff Note.¹⁷

- References to the “Environmental Protection Agency” where the federal agency is intended¹⁸ — In each case, the reference to the federal agency was recodified as the “*United States* Environmental Protection Agency.” This change is not noted in the Comment, but is flagged in a Staff Note.¹⁹
- References to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 — several provisions in the draft refer to this federal law, which is the main federal law at issue in Chapter 6.8.²⁰ In Chapter 6.8, the “federal act” definition includes an “as amended” designation. In all but one case (in this draft), the provision specifies that reference is to this federal act “as amended.” In general, it seems very unlikely that this reference is intended to refer to the federal law as originally adopted. To avoid possible confusion, the staff recommends consistently referring to the federal law “as amended.” This change is noted in the Comment and Staff Note.²¹

CONTENTS OF DRAFT

The Commission previously approved an organizational outline and proposed location for the recodification of Chapter 6.5.²² The recodification of Chapter 6.5 would be located in a new Division 44 in the Health and Safety Code.

Consistent with the Commission’s tentative outline for the recodification, the attached draft presents proposed legislation for Chapters 1-5 of Part 1 of the new Division 44.

The remainder of this memorandum discusses a few specific issues that the staff encountered in preparing the attached draft.

Proposed Name of Division 44 & Recodification Act (proposed Section 60035)

Currently, Chapter 6.5 is designated “Hazardous Waste Control.”²³

16. See, e.g., Comments to proposed Sections 60575, 60670.

17. The substitution would be noted in a Staff Note if the staff concluded additional explanation may be helpful. See, e.g., Staff Notes to proposed Sections 60575 (Note #1), 60670 (Note #2).

18. This change is to avoid possible confusion between the federal agency and California’s state Environmental Protection Agency. See Section 57000.

19. See, e.g., Staff Note to proposed Section 60385, 60670 (Note #1).

20. See Section 25315.

21. See Comment and Staff Note (Note #2) to proposed Section 60575.

22. Memorandum 2020-13, Minutes (May 2020), p. 4.

23. The chapter does not have a formal, codified short title (i.e., a section that specifies that the chapter “shall be known and may be cited as” a specified name).

Since this study will be recodifying Chapter 6.5, the staff elected to use the name of Chapter 6.5 in the short title for the recodification act.²⁴ The recodification act is designated the “Hazardous Waste Control Recodification Act.” This name is used in the provisions that describe the nonsubstantive nature of the act.²⁵

In naming the new Division, however, the staff sought to find a better description of the actual contents of Chapter 6.5. As noted previously, Chapter 6.5 contains a great deal of material related specifically to hazardous waste generation, management, transportation, and disposal.²⁶ However, Chapter 6.5 also contains material related to reducing toxics in products (i.e., rules about sale and manufacture of products).²⁷ Given that, the tentatively proposed name for Division 44 is “Toxics Reduction and Management.” A Note requests comment on this proposed title, seeking input on whether an alternative would better describe the contents for users of the law.

Proposed Section 60005. Legislative Declarations

Proposed Section 60005 continues the legislative declarations for Chapter 6.5. The section contains several obsolete cross-references, as well as obsolete references to a “Hazardous Waste Management Council” (that was created by those now-repealed provisions).

In general, the staff makes minimal changes to legislative findings and declarations provisions in a nonsubstantive recodification project. And, in this case, the obsolete references could not be updated or easily excised without disrupting the substance of the Legislature’s declarations.

For this reason, the staff elected to simply reproduce the declarations section without change, noting in the Comment that the obsolete references have been retained for ease of historical reference.

Definitions, Generally (Proposed Chapter 3 of Part 1)

Unused Definitions

The staff identified four defined terms for Chapter 6.5 that were not used in the chapter, nor were they used elsewhere in the California codes. Given that, the staff proposed discontinuing the definitions of those terms.

24. See proposed Section 60035.

25. See proposed Chapter 2 of Part 1.

26. See, e.g., Articles 5.6, 6.5, 7.7, 9.1, and 11.5 of Chapter 6.5.

27. See, e.g., Articles 10.1.1, 10.4, and 14 of Chapter 6.5.

A Note on the heading for Chapter 3 identifies the terms and seeks comment on whether any of those definitions have ongoing utility (and should, thus, be continued).

Definitions Applicable to the Entire Chapter

For the most part, all of the definitions that apply to the whole of Chapter 6.5 are currently in Article 2 of that chapter. And, those chapter-wide definitions would be recodified together in Chapter 3 of Part 1 in the recodified law.

The staff identified two defined terms (“manifest,” “Electronic manifest system”) that apply to the entire chapter, but are not currently located with the other chapter-wide definitions.

The staff proposes recodifying the definitions for those terms in proposed Chapter 3 of Part 1 with the other chapter-wide definitions. If the staff encounters other definitions that apply chapter-wide, the staff would propose placing those definitions in this location as well.

Definitions with Significant Substantive Content

The definitions for two defined terms, “disclosure statement” and “storage facility,” were quite lengthy. Each definition includes significant substantive requirements related to the term at issue. Rather than retain the substantive details in the definition provision, the staff proposes brief definitions that cross-reference the substantive rules and restrictions, which would be recodified later in the division.²⁸

For each of these proposed Sections defining these terms, a Note briefly describing this approach is included to facilitate stakeholder review.

Proposed Section 60075. Applicable Definitions

Proposed Section 60075 continues Section 25110, which provides for the application of definitions in state regulations, federal law, and federal regulations to Chapter 6.5.

The staff looked briefly at the other possibly applicable definitions in the state regulations, federal law, and federal regulations. The staff found that there were many potentially applicable definitions and, in some cases, defined terms may have a much narrower definition than the term’s colloquial meaning.

28. See proposed Sections 60170, 60355.

The staff did not propose restating this provision. However, the staff raised several issues in the Notes, seeking comment on whether this provision provides sufficient clarity as to which definitions found outside of Chapter 6.5 apply to the chapter. The staff believes that this may be an issue that could benefit from future attention, depending on the comment received.

Proposed Section 60190. “Environmental Assessor”

Proposed Section 60190 continues Section 25114.5, which defines “environmental assessor.” The definition expressly states that it applies “for all California statutes, unless the context requires otherwise.”

Given this extremely broad scope, the staff was unsure whether this definition should be relocated (or reproduced) elsewhere in the codes. A Note requests comment on this issue.

ADDITION OF ISSUES TO LIST OF SUBSTANTIVE ISSUES FOR FUTURE STUDY

In the proposed legislation, the staff recommends the addition of several issues to the list of issues for future study.²⁹ Those issues are discussed in turn below.

Defined Types of Violations³⁰

Proposed Section 60255 defines “minor violation.” This term is related to other terms for violations of differing severity (“class I violation,” “class II violation”). Overall, the rules do not seem to be fully coordinated and appear to be somewhat redundant.

In proposed Section 60255, “minor violation” specifically excludes both a “class I violation” and a “class II violation that is a chronic violation or that is committed by a recalcitrant violator” (hereafter, “repeated class II violation”). The section also includes a rule for assessing whether a class II violation is a repeated class II violation. The rule only applies for the purposes of that section.

However, a “class I violation” is also defined to include a repeated class II violation, but does not contain the same rule for determining whether a class II violation is a repeated violation.³¹

The staff believes that the rule regarding repeated class II violations is likely intended to apply more broadly. And, that such violations do not need to be

29. See *supra* note 13.

30. See Staff Note for proposed Section 60255

31. See proposed Section 60110(b).

separately excluded from the definition of “minor violation” (since they would be “class I violations” and excluded on that ground).

The staff recommends adding this issue to the list of substantive issues for future work.

“Treatment”

Proposed Section 60365 defines “treatment.” The definition is a bit difficult to follow and could benefit from a restatement for clarity. Given the complexity of the definition and the degree of restatement that is needed, the staff believes that this matter could better be addressed as a matter for future work.

The staff recommends adding this issue to the list of substantive issues for future work.

Use of Defined Terms from Chapter 6.8 (Without Reference to the Definition)

In several cases, provisions of Chapter 6.5 use terminology that is defined in Chapter 6.8, without reference to the applicable definitions.³²

In particular, this issue occurs in the financial provisions of Chapter 6.5, which are proposed for recodification in Chapter 4 of the attached draft. Those provisions pertain to the accounts and funding of the Department of Toxic Substances Control generally, applying also to department programs found in Chapter 6.8.

In some cases, it seems sufficiently clear that the definitions from Chapter 6.8 should apply to the uses of those terms.

The staff recommends adding this issue to the list of substantive issues for future work. In general, it is not clear whether this matter should be addressed as a global issue (incorporating certain definitions from Chapter 6.8 for the whole of Chapter 6.5) or individually (adding references to the relevant Chapter 6.8 definition each time a term is used).

Proposed Section 60700

Proposed Section 60700 specifies information that the department is obligated to post on its website. The Independent Review Panel (“IRP”), whose work preceded the assignment of this study to the Commission, concluded that this section is at least partially obsolete.³³

For this reason, the staff recommends adding this issue to the list of substantive issues for future work, with attribution to the IRP.

32. See, e.g., Staff Notes to proposed Chapter 4 of Part 1 and proposed Section 60490 (Note #2).

33. See Staff Note to proposed Section 60700 (Note #3).

COMMISSION DECISION ON THE DRAFT

Does the Commission tentatively approve the proposed legislation contained in the attached draft for inclusion in a future tentative recommendation?

PREPARATION OF CUMULATIVE DRAFTS

In the Commission's prior work on this study, the staff prepared cumulative drafts of proposed legislation. The staff plans to prepare such drafts for the recodification of Chapter 6.5, unless otherwise directed by the Commission.

Respectfully submitted,

Kristin Burford
Staff Counsel

PROPOSED CHAPTERS 1-5 OF PART 1 OF
DIVISION 44 OF THE HEALTH & SAFETY
CODE

Staff Note. This is a work in progress. The material shown below may be changed. For a tentative outline of new Division 44 of the Health & Safety Code, see Memorandum 2020-13, pp. EX 3-5. All of the proposed provisions would be located in the Health & Safety Code. All references are to the Health & Safety Code unless otherwise indicated.

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

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

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

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

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

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

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

As new Division 44 is drafted, these references will be updated to reflect the new numbering scheme. Where the cross-referenced material is contained in this draft, the cross-reference was updated to reflect the recodified section number.

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

In some instances, provisions in this draft refer to Chapter 6.8 (commencing with Section 25300) of Division 20 or provisions contained within that chapter. The Commission has finalized a proposal to recodify Chapter 6.8. Where a provision in this draft references Chapter 6.8 or its contents, the reference was updated to refer to the proposed provision that would continue the relevant substance, consistent with the proposed cross-reference update in the Commission’s conforming revisions tentative recommendation. If changes are made to the Chapter 6.8 recodification, these references will need to be revised accordingly. Any updated reference to Chapter 6.8 or its contents contained in this draft is in italics.

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

Contents

DIVISION 44. TOXICS REDUCTION AND MANAGEMENT	1
PART 1. GENERAL PROVISIONS	1
CHAPTER 1. FINDINGS AND DECLARATIONS	1
§ 60000. Legislative findings	1
§ 60005. Legislative declarations	2
§ 60010. Findings related to access to public records	2
§ 60015. Construction of division related to state or local agency enforcement or administration	3
§ 60020. Relationship of division with law governing administrative regulations and rulemaking	3
CHAPTER 2. EFFECT OF RECODIFICATION	3
§ 60035. Short title	3
§ 60040. Nonsubstantive reform	3
§ 60045. Continuation of existing law.....	4
§ 60050. Judicial decision interpreting former law	4
§ 60055. Constitutionality	5
§ 60060. Conforming rule change	5
CHAPTER 3. DEFINITIONS.....	6
§ 60075. Applicable definitions.....	6
§ 60080. “Acutely hazardous waste”	7
§ 60085. “Applicant”	7
§ 60090. “Buffer zone”	8
§ 60095. “Business”	8
§ 60100. “Business concern”	8
§ 60105. “Certified Unified Program Agency” or “CUPA”	8
§ 60110. “Class I violation”	8
§ 60115. “Class II violation”	9
§ 60120. “Conditional authorization”	9
§ 60125. “Conditional exemption”	10
§ 60130. “Conditionally exempt small quantity treatment”	10
§ 60135. “Conditionally exempt specified waste stream”	11
§ 60140. “Consolidated manifest”	11
§ 60150. “Consolidation site”	11
§ 60155. “Contained gaseous material”	11
§ 60160. “Department”	12
§ 60165. “Director”	12
§ 60170. “Disclosure statement”	12
§ 60175. “Disposal”	12
§ 60180. “Disposal site”	13
§ 60185. “Electronic manifest system” or “e-Manifest system”	13
§ 60190. “Environmental assessor”	13
§ 60195. “Extremely hazardous waste”	13
§ 60200. “Federal act”	14
§ 60205. “Handling”	14
§ 60210. “Intermediate manufacturing process stream”	14
§ 60215. “Hazardous waste”	15
§ 60220. “Hazardous waste facility”	16
§ 60225. “Hazardous waste management” or “management”	16
§ 60230. “Land use restriction”	16

§ 60235. “License”	17
§ 60240. “Local health officer”	17
§ 60245. “Local officer”	18
§ 60250. “Manifest”	19
§ 60255. “Minor violation”	20
§ 60260. “Natural resources”	20
§ 60265. “Non-RCRA hazardous waste”	20
§ 60270. “Notice to comply”	21
§ 60275. “Offsite facility”	21
§ 60280. “Onsite facility”	21
§ 60285. “Participating Agency” or “PA”	21
§ 60290. “Permit-by-rule”	22
§ 60295. “Person”	22
§ 60300. “Processing”	22
§ 60305. “Producer”	22
§ 60310. “RCRA hazardous waste”	22
§ 60315. “Recyclable material”	23
§ 60320. “Recycled material”	23
§ 60325. “Recycling”	23
§ 60330. “Remote site”	24
§ 60335. “Retrograde material”	24
§ 60340. “Restricted hazardous waste”	25
§ 60345. “Secretary”	25
§ 60350. “Storage”	26
§ 60355. “Storage facility”	26
§ 60360. “Transportable hazardous waste treatment unit” or “transportable treatment unit”	26
§ 60365. “Treatment”	26
§ 60370. “Unified Program Agency” or “UPA”	27
§ 60375. “Unified Program Facility”	28
§ 60380. “Universal waste”	29
§ 60385. “Volatile organic compound”	29
§ 60390. “Waste”	30
CHAPTER 4. FINANCIAL PROVISIONS	31
Article 1. Hazardous Waste Control Account	32
§ 60450. Funds to be deposited in account	32
§ 60455. Appropriations from account	32
§ 60460. Expenditures from account for support of other state agencies	33
§ 60465. Loans from general fund to account	34
§ 60470. Required reserve	34
§ 60475. Successor fund to Federal Receipts Account	34
Article 2. Toxic Substances Control Account	34
§ 60490. Funds to be deposited in account	34
§ 60495. Appropriations from account	36
§ 60500. Expenditures	38
§ 60505. Loans to account	39
§ 60510. Account as successor fund	39
§ 60515. Report on expenditures	39
§ 60520. Legislative intent regarding appropriations to account	40
§ 60525. Annual adjustments for cost of living	41
Article 3. Fees, Surcharges, Fines, Penalties, and Funds to be Deposited	41
§ 60550. Fees, surcharges, fines, penalties, and funds deposited into accounts	41

Article 4. Reporting for Budget.....43
 § 60575. Reporting on specified budget amounts43
 § 60580. Report regarding estimated funding for direct site remediation costs45
CHAPTER 5. GENERAL POWERS AND DUTIES46
Article 1. Contracting46
 § 60620. Contracts for specialized training programs46
Article 2. Duties46
 § 60635. Department obligations.....46
Article 3. Information Distribution48
 § 60650. Reporting and distribution of information.....48
 § 60655. Protection of trade secrets.....48
Article 4. Regulations and Standards49
 § 60670. Hazardous waste management to protect against hazards to public health, to
 domestic livestock, to wildlife, or to the environment49
 § 60675. Authority to adopt varying regulations.....50
 § 60680. Regulations adopted prior to January 1, 200851
 § 60685. Public hearing on proposed regulations.....51
 § 60690. Permissible format for contingency plan.....51
Article 5. Reporting.....52
 § 60700. Information to be posted online.....52
DISPOSITION OF EXISTING LAW55
DERIVATION OF NEW LAW59
SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY63

DRAFT LEGISLATION

1 **Health & Safety Code §§ 60000-[XXXXX] (added). Toxics Reduction and Management**

2 SEC. ____. Division 44 (commencing with Section 60000) is added to the Health and
3 Safety Code, to read:

4 **DIVISION 44. TOXICS REDUCTION AND MANAGEMENT**

5 **Staff Notes. (1)** The proposed title of this division, “Toxics Reduction and Management,” is
6 intended to concisely describe the contents of Chapter 6.5 of Division 20. **The staff welcomes**
7 **comments on whether an alternative title that would better describe the contents for Chapter**
8 **6.5 of Division 20 for users of this law.**

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

14 **PART 1. GENERAL PROVISIONS**

15 **CHAPTER 1. FINDINGS AND DECLARATIONS**

16 **§ 60000. Legislative findings**

17 60000. The Legislature finds that:

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

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

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

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

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

30 **Comment.** Section 60000 continues former Section 25100 without substantive change.

31 See Sections 60205 (“handling”), 60215 (“hazardous waste”), 60325 (“recycling”), 60350
32 (“storage”), 60365 (“treatment”).

1 **§ 60005. Legislative declarations**

2 60005. The Legislature therefore declares that:

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

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

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

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

26 **Comment.** Section 60005 continues former Section 25101 without substantive change. Obsolete
27 references to the “Hazardous Waste Management Council” and associated cross-referenced
28 provisions have been retained for ease of historical reference.

29 See Sections 60165 (“director”), 60205 (“handling”), 60215 (“hazardous waste”), 60225
30 (“hazardous waste management” or “management”), 60260 (“natural resources”), 60325
31 (“recycling”), 60365 (“treatment”).

32 **§ 60010. Findings related to access to public records**

33 60010. The Legislature has found that access by the people of this state to public records
34 is a fundamental and necessary right. The Legislature finds that it is necessary to further
35 the public’s right of access to public records pertaining to hazardous waste management,
36 information, and cleanup, to assure the fullest opportunity for public participation in
37 permitting and other decisions in order to protect public health and the environment.

38 **Comment.** Section 60010 continues former Section 25103 without substantive change.

39 See Section 60225 (“hazardous waste management” or “management”).

1 **§ 60015. Construction of division related to state or local agency enforcement or**
2 **administration**

3 60015. No provision of this division shall limit the authority of any state or local agency
4 in the enforcement or administration of any provision of law that it is specifically permitted
5 or required to enforce and administer.

6 **Comment.** Section 60015 continues former Section 25105 without substantive change.

7 **§ 60020. Relationship of division with law governing administrative regulations and**
8 **rulemaking**

9 60020. Except as expressly provided by statute, this division does not supersede or
10 modify Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of
11 the Government Code.

12 **Comment.** Section 60020 continues former Section 25106 without substantive change.

13 **CHAPTER 2. EFFECT OF RECODIFICATION**

14 **§ 60035. Short title**

15 60035. This division recodifies the provisions of former Chapter 6.5 (commencing with
16 Section 25100) of Division 20. The act that added this division, and the act that consists of
17 conforming revisions to reflect the addition of this division, shall be known and may be
18 cited as the “Hazardous Waste Control Recodification Act.”

19 **Comment.** Section 60035 is new. It provides a convenient means of referring to the
20 recodification of former Chapter 6.5 (commencing with Section 25100) of Division 20. For
21 background, see *Recodification of Hazardous Waste Control Provisions*, __ Cal. L. Revision
22 Comm’n Reports __ (20XX).

23 **§ 60040. Nonsubstantive reform**

24 60040. Nothing in the Hazardous Waste Control Recodification Act is intended to
25 substantively change the law contained in former Chapter 6.5 (commencing with 25100)
26 of Division 20. The act is intended to be entirely nonsubstantive in effect. Every provision
27 of this division and every other provision of this act, including, without limitation, every
28 cross-reference in every provision of the act, shall be interpreted consistent with the
29 nonsubstantive intent of the act.

30 **Comment.** Section 60040 is modeled on Penal Code Section 16005. It makes clear that the
31 Hazardous Waste Control Recodification Act has no substantive effect. The act is intended solely
32 to make the provisions of former Chapter 6.5 (commencing with Section 25000) of Division 20
33 more user-friendly. For background, see *Recodification of Hazardous Waste Control Provisions*,
34 __ Cal. L. Revision Comm’n Reports __ (20XX).

35 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
36 provision in this division, see Section 60050. For specific guidance on the impact of a judicial
37 decision assessing the constitutionality of a predecessor of a provision in this division, see Section
38 60055.

39 See Section 60035 (“Hazardous Waste Control Recodification Act”).

1 **§ 60045. Continuation of existing law**

2 60045. (a) A provision of this division insofar as it is substantially the same as a
3 previously existing provision relating to the same subject matter, shall be considered as a
4 restatement and continuation of the previously existing provision and not as a new
5 enactment.

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

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

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

15 **Comment.** Subdivision (a) of Section 60045 is similar to Section 2, which is a standard provision
16 found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Penal Code
17 §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2.

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

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

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

25 **§ 60050. Judicial decision interpreting former law**

26 60050. (a) A judicial decision interpreting a previously existing provision is relevant in
27 interpreting any provision of this division that restates and continues that previously
28 existing provision.

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

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

35 **Comment.** Section 60050 is modeled on Penal Code Section 16020.

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

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

41 For specific guidance on the impact of a judicial decision assessing the constitutionality of a
42 predecessor of a provision in this division, see Section 60055. For general guidance on the
43 nonsubstantive impact of the Hazardous Waste Control Recodification Act, see Section 60040.

44 See Section 60035 (“Hazardous Waste Control Recodification Act”).

1 **Staff Note.** In another recently-completed recodification project, the Commission included a
2 section similar to proposed Section 60050 that addresses Attorney General opinions, rather than
3 judicial decisions. The staff considered whether such a provision should be included in this project,
4 as well. The staff searched for Attorney General opinions related to Chapter 6.5 and found a couple.
5 See 70 Cal. Ops. Atty. Gen. 130, 70 Cal. Ops. Atty. Gen. 183. Given that there are very few
6 Attorney General opinions, it is not clear whether it would be worthwhile to include a provision
7 about the effect of the recodification on Attorney General opinions. **The staff welcomes comment**
8 **on whether a provision regarding the effect of the recodification on Attorney General**
9 **opinions should be included in this proposed legislation.**

10 **§ 60055. Constitutionality**

11 60055. (a) A judicial decision on the constitutionality of a previously existing provision
12 is relevant in determining the constitutionality of any provision of this division that restates
13 and continues that previously existing provision.

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

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

20 **Comment.** Section 60055 is modeled on Penal Code Section 16025.

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

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

26 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
27 provision in this division, see Section 60050. For general guidance on the nonsubstantive effect of
28 the Hazardous Waste Control Recodification Act, see Section 60040.

29 See Section 60035 (“Hazardous Waste Control Recodification Act”).

30 **§ 60060. Conforming rule change**

31 60060. (a) The department or another state agency may make a conforming rule change
32 without complying with the rulemaking procedure specified in Article 5 (commencing with
33 Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code,
34 if the rule change meets all of the requirements of this section.

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

37 (1) A completed and signed form STD 400.

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

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

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

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

Comment. Section 60060 is new.
See Section 60160 (“department”).

CHAPTER 3. DEFINITIONS

Staff Note. In a few cases, the existing definitions appeared to be obsolete or otherwise unnecessary, as described below. **Absent comment indicating that these definitions have ongoing utility, the following definitions would not be continued in the proposed recodification:**

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

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

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

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

§ 60075. Applicable definitions

60075. (a) Unless expressly incorporated by reference by another statute, the definitions in this chapter govern only the construction of this division.

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

Comment. Section 60075 continues former Section 25110 without substantive change. A reference to the “Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.)” was replaced with the defined term “federal act.” See Section 60200.

See Section 60200 (“federal act”).

Staff Notes. Subdivision (b) of proposed Section 60075 provides for the application of definitions contained in the federal act (42 U.S.C. Sec. 6901 et seq.) if the terms are not defined either in Chapter 6.5 or the associated state regulations. In preparing this recodification, the staff has not exhaustively evaluated the application of definitions in the state regulation, federal law, or federal regulations to the use of those terms in this division. Assessing the applicability of the numerous definitions to uses of the defined terms in this law would be a significant undertaking. And, importantly, the potential benefits of doing such work in this nonsubstantive study are limited.

That said, the staff has identified issues that may be appropriate for future attention. **The staff welcomes comment on the following issues.**

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

4 More broadly, however, Section 66260.10 of Title 22 of the California Code of Regulations
 5 appears to be the key regulatory section defining terms related to hazardous waste management.
 6 That section defines over 400 terms (although some definitions are simply cross-references; e.g.,
 7 “Acute hazardous waste” see “Acutely hazardous waste.”). The regulations include definitions for
 8 a number of terms that are also defined in this proposed division (e.g., “acutely hazardous waste,”
 9 “applicant,” “buffer zone,” “business”); the same term may be defined differently in this proposed
 10 division and the regulations (see, e.g., “disposal site” definitions in proposed Section 68180 and 22
 11 C.C.R. § 66260.10). While many defined terms are sufficiently technical that they would not be
 12 mistakenly used in a more colloquial sense (e.g., “Acute aquatic 96-hour LC₅₀,” “polychlorinated
 13 biphenyls”), there are several defined terms that have a more general colloquial meaning (e.g.,
 14 “activity,” “application,” “assets,” “authorized representative,” “commence,” “component”).

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

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

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

30 (3) Chapter 6.5 contains a number of provisions that apply to DTSC and pertain to programs
 31 other than those in Chapter 6.5. In particular, the financial provisions in Chapter 6.5 involve
 32 programs and terminology used in Chapter 6.8. See Staff Note to proposed Chapter 4. In several
 33 cases, defined terms in Chapter 6.8 are used without reference to the applicable definitions,
 34 although it seems likely that those definitions were intended to apply. It may be worthwhile to
 35 include a provision specifying that, unless otherwise provided in this proposed division, the
 36 definitions in Chapter 6.8 apply to uses of those terms in this law. This is particularly true for the
 37 financial provisions (proposed Chapter 4 in this draft), but may apply to the whole of Chapter 6.5.

38 § 60080. “Acutely hazardous waste”

39 60080. “Acutely hazardous waste” means any hazardous waste classified as an acutely
 40 hazardous waste in regulations adopted by the department.

41 **Comment.** Section 60080 continues former Section 25110.02 without substantive change.
 42 See Sections 60160 (“department”), 60215 (“hazardous waste”).

43 § 60085. “Applicant”

44 60085. “Applicant” means any person seeking an original hazardous waste facilities
 45 permit, or an original hazardous waste hauler’s registration from the department to
 46 generate, transport, treat, store, recycle, dispose of or handle hazardous waste.

47 **Comment.** Section 60085 continues former Section 25110.1 without substantive change.
 48 See Sections 60160 (“department”), 60215 (“hazardous waste”), 60295 (“person”).

1 **§ 60090. “Buffer zone”**

2 60090. “Buffer zone” means an area of land that surrounds a hazardous waste facility
3 and on which certain land uses and activities are restricted to protect the public health and
4 safety and the environment from existing or potential hazards caused by the migration of
5 hazardous waste.

6 **Comment.** Section 60090 continues former Section 25110.3 without substantive change.
7 See Sections 60215 (“hazardous waste”), 60220 (“hazardous waste facility”).

8 **§ 60095. “Business”**

9 60095. “Business” means the conduct of activity and is not limited to a commercial or
10 proprietary activity.

11 **Comment.** Section 60095 continues former Section 25110.5 without substantive change.

12 **§ 60100. “Business concern”**

13 60100. “Business concern” means any sole proprietorship, corporation, association, firm,
14 partnership, trust, or other form of commercial organization.

15 **Comment.** Section 60100 continues former Section 25110.8 without substantive change.

16 **§ 60105. “Certified Unified Program Agency” or “CUPA”**

17 60105. “Certified Unified Program Agency” or “CUPA” means the agency certified by
18 the secretary to implement the unified program specified in Chapter 6.11 (commencing
19 with Section 25404) of Division 20 within a jurisdiction.

20 **Comment.** Section 60105 continues subdivision (b) of former Section 25123.7 without
21 substantive change.

22 See Section 60345 (“secretary”).

23 **§ 60110. “Class I violation”**

24 60110. “Class I violation” means any of the following:

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

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

30 (A) The volume of the waste.

31 (B) The relative hazardousness of the waste.

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

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

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

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

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

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

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

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

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

7 **Comment.** Section 60110 restates former Section 25110.8.5, with the exception of the second
8 sentence of subdivision (b), without substantive change.

9 See Sections 60115 (“class II violation”), 60215 (“hazardous waste”), 60220 (“hazardous waste
10 facility”), 60390 (“waste”).

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

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

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

18 ...

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

22 The second sentence of subdivision (b) is continued in proposed Section 60115.

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

24 **§ 60115. “Class II violation”**

25 60115. “Class II violation” has the same meaning as defined in Section 66260.10 of Title
26 22 of the California Code of Regulations.

27 **Comment.** Section 60115 continues the second sentence of former Section 25110.8.5(b) without
28 substantive change.

29 **Staff Note.** The second sentence of Section 25110.8.5(b) defines “class II violation.” The scope of
30 application for that definition is not expressly limited to the section. The term “class II violation”
31 is also used in the provision defining “minor violation.” See proposed Section 60255 (“minor
32 violation”). For ease of use, the definition is “class II violation” is continued as a separate section.

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

34 **§ 60120. “Conditional authorization”**

35 60120. (a) “Conditional authorization” means a provision of this division that provides
36 that a person or activity is deemed to be operating pursuant to a grant of authorization, as
37 required pursuant to **subdivision (a) of Section 25201**, if the person or activity meets the
38 specified requirements.

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

40 **Comment.** Section 60120 restates subdivision (a) of former Section 25110.9.1 without
41 substantive change.

42 See Section 60295 (“person”).

1 **Staff Note.** Section 25110.9.1(a) was restated to improve readability. Section 25110.9.1(a)
2 provides:

3 25110.9.1. (a) “Conditional authorization” means a provision of this chapter, including,
4 but not limited to, Section 25200.3, which provides that a person or activity is deemed to be
5 operating pursuant to a grant of authorization, as required pursuant to subdivision (a) of Section
6 25201, if the person or activity meets the requirements of that provision.

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

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

11 **§ 60125. “Conditional exemption”**

12 60125. (a) “Conditional exemption” means a provision of this division that provides that
13 a person or activity is exempted from, or is otherwise not subject to, the requirement to
14 obtain a hazardous waste facilities permit or other grant of authorization if the person or
15 activity meets the requirements of that provision.

16 (b) “Conditional exemption” includes, but is not limited to, **Sections 25144.6, 25201.5,**
17 **25201.8, and 25201.13.**

18 **Comment.** Section 60125 restates subdivision (b) of former Section 25110.9.1 without
19 substantive change.

20 See Sections 60215 (“hazardous waste”), 60295 (“person”).

21 **Staff Notes. (1)** Section 25110.9.1(b) was restated to improve readability. Section 25110.9.1(b)
22 provides:

23 25110.9.1. ... (b) “Conditional exemption” means a provision of this chapter, including,
24 but not limited to, Sections 25144.6, 25201.5, 25201.5.1, 25201.8, and 25201.13, which provides
25 that a person or activity is exempted from, or is otherwise not subject to, the requirement to obtain
26 a hazardous waste facilities permit or other grant of authorization if the person or activity meets the
27 requirements of that provision.

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

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

31 **(2)** Section 25110.9.1(b)(2) lists sections that govern conditional exemptions. One of the listed
32 sections, Section 25201.5.1, has been repealed. Former Section 25201.5.1 related to silver halide-
33 based imaging product processing. See 1994 Cal. Stat. ch. 440, § 1. This material does not appear
34 to have been continued elsewhere in the code. For that reason, the obsolete reference to Section
35 25201.5.1 was not continued. **Absent comment, the proposed treatment of this cross-reference**
36 **will be presumed correct.**

37 **§ 60130. “Conditionally exempt small quantity treatment”**

38 60130. “Conditionally exempt small quantity treatment” means the operations of a
39 generator conditionally exempted pursuant to **subdivision (a) of Section 25201.5.**

40 **Comment.** Section 60130 continues subdivision (a) of former Section 25110.9 without
41 substantive change.

1 **§ 60135. “Conditionally exempt specified waste stream”**

2 60135. “Conditionally exempt specified waste stream” means a waste stream treated by
3 a generator conditionally exempted pursuant to **subdivision (c) of Section 25201.5**.

4 **Comment.** Section 60135 continues subdivision (b) of former Section 25110.9 without
5 substantive change.

6 See Section 60390 (“waste”).

7 **§ 60140. “Consolidated manifest”**

8 60140. “Consolidated manifest” means a hazardous waste manifest used by a milk run
9 transporter to combine hazardous waste shipments from multiple generators on one
10 consolidated manifest pursuant to the procedures in **Section 25160.2**.

11 **Comment.** Section 60140 restates former Section 25110.9.3 without substantive change.

12 See Sections 60215 (“hazardous waste”), 60250 (“manifest”).

13 **Staff Note.** Section 25110.9.3 begins with a clause specifying that the definition is “[f]or the
14 purposes of this chapter.” This language appears to be redundant. Proposed Section 60075 (Section
15 25110) provides that the definitions in this proposed chapter govern “only the construction of this
16 division [existing Chapter 6.5].” For this reason, proposed Section 60140 does not continue the
17 “[f]or purposes of this chapter” language.

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

19 **§ 60150. “Consolidation site”**

20 60150. “Consolidation site” means a site to which hazardous waste initially collected at
21 a remote site is transported.

22 **Comment.** Section 60150 restates subdivision (a) of former Section 25110.10 without substantive
23 change.

24 See Sections 60215 (“hazardous waste”), 60330 (“remote site”).

25 **Staff Note.** Section 25110.10(a) includes a clause specifying that “remote site” is “as defined in
26 Section 25121.3.” The “as defined in Section 25121.3” language appears to be redundant. “Remote
27 site” is defined in Section 25121.3 and that definition governs this division. See proposed Section
28 60075. For this reason, the clause cross-referencing the remote site definition was not continued.

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

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

32 **§ 60155. “Contained gaseous material”**

33 60155. (a) “Contained gaseous material” means any gas that is contained in an enclosed
34 cylinder or other enclosed container.

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

39 **Comment.** Section 60155 restates former Section 25110.11 without substantive change.

40 **Staff Notes. (1)** Section 25110.11(a) specifies that the definition of “contained gaseous material”
41 is “for purposes of subdivision (a) of Section 25124 or any other provision of this chapter.” This
42 language appears to be redundant. Proposed Section 60075 (Section 25110) provides that the

1 definitions in this chapter govern “only the construction of this division [existing Chapter 6.5].”
2 For this reason, proposed Section 60155 does not continue the language specifying that the
3 definition applies “for purposes of subdivision (a) of Section 25124 or any other provision of this
4 chapter.”

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

6 (2) Currently, Section 25124(a) (defining “waste”) is the only provision that appears to use the term
7 “contained gaseous material” in Chapter 6.5. Given that, it is unclear if there is value to retaining
8 this provision as a separate definition that applies to the whole of Chapter 6.5. **The staff welcomes
9 comment on whether this definition should be incorporated into the definition of “waste.”**

10 **§ 60160. “Department”**

11 60160. “Department” means the Department of Toxic Substances Control.

12 **Comment.** Section 60160 continues former Section 25111 without substantive change.

13 **§ 60165. “Director”**

14 60165. “Director” means the Director of Toxic Substances Control.

15 **Comment.** Section 60165 continues former Section 25112 without substantive change.

16 **§ 60170. “Disclosure statement”**

17 60170. “Disclosure statement” means a statement submitted to the department by an
18 applicant, signed by the applicant under penalty of perjury, that includes all of the
19 information specified in [Section XXXXX].

20 **Comment.** Section 60170 restates the portion of subdivision (a) of former Section 25112.5 that
21 precedes the numbered paragraphs without substantive change.

22 See Sections 60085 (“applicant”), 60160 (“department”).

23 **Staff Note.** Section 25112.5 contains the definition of “disclosure statement,” along with
24 supporting rules about the contents of the disclosure statement. Proposed Section 60170 recodifies
25 the portion of Section 25112.5 that defines disclosure statement, which provides:

26 (a) “Disclosure statement” means a statement submitted to the department by an applicant,
27 signed by the applicant under penalty of perjury, which includes all of the following information:
28 ...

29 Proposed Section 60170 is restated to include a (placeholder) cross-reference to the proposed
30 provision(s) that will recodify the remainder of Section 25112.5. The remaining material in Section
31 25112.5 (i.e., subdivisions (b)-(d) and the numbered paragraphs of subdivision (a)) will be
32 recodified later in this proposed division.

33 **§ 60175. “Disposal”**

34 60175. (a) “Disposal” means either of the following:

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

39 (2) The abandonment of any waste.

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

1 **Comment.** Section 60175 restates former Section 25113 without substantive change.
2 See Section 60390 (“waste”).

3 **Staff Note.** Section 25113(b) is restated to replace the phrase “[t]he amendment of the section made
4 at the 1989-90 Regular Session of the Legislature” with a reference to “[t]he amendment of former
5 Section 25113 by Section 2 of Chapter 1436 of the Statutes of 1989.” **Absent comment, this
6 proposed restatement will be presumed correct.**

7 **§ 60180. “Disposal site”**

8 60180. “Disposal site” means the location where any final deposition of hazardous waste
9 occurs.

10 **Comment.** Section 60180 continues former Section 25114 without substantive change.
11 See Section 60215 (“hazardous waste”).

12 **§ 60185. “Electronic manifest system” or “e-Manifest system”**

13 60185. “Electronic manifest system” or “e-Manifest system” means the United States
14 Environmental Protection Agency’s national information technology system through
15 which an electronic manifest may be obtained, completed, transmitted, and distributed to
16 users of the electronic manifest, and to regulatory agencies.

17 **Comment.** Section 60185 restates paragraph (2) of subdivision (a) of former Section 25160
18 without substantive change.
19 See Section 60250 (“manifest”).

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

24 The prefatory “for the purposes of this chapter” text is redundant and therefore is not continued.
25 Proposed Section 60075 (Section 25110) provides that the definitions in this chapter govern “only
26 the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 60185
27 does not continue the “[f]or purposes of this chapter” language.

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

29 **§ 60190. “Environmental assessor”**

30 60190. “Environmental assessor” means an environmental professional as defined in
31 Section 312.10 of Title 40 of the Code of Federal Regulations. Notwithstanding Section
32 60075, this definition shall apply for all California statutes, unless the context requires
33 otherwise.

34 **Comment.** Section 60190 continues former Section 25114.5 without substantive change.

35 **Staff Note.** Section 25114.5 indicates that the definition of environmental assessor “shall apply for
36 all California statutes, unless the context requires otherwise.” This is a very broad scope of
37 application and raises the question of whether this definition should be relocated to a more general
38 location or reproduced elsewhere. **The staff welcomes comment on this issue**

39 **§ 60195. “Extremely hazardous waste”**

40 60195. “Extremely hazardous waste” means any hazardous waste or mixture of
41 hazardous wastes that, if human exposure should occur, may likely result in death,

1 disabling personal injury or serious illness caused by the hazardous waste or mixture of
2 hazardous wastes because of its quantity, concentration, or chemical characteristics.

3 **Comment.** Section 60195 continues former Section 25115 without substantive change.
4 See Section 60215 (“hazardous waste”).

5 **§ 60200. “Federal act”**

6 60200. “Federal act” means the federal Resource Conservation and Recovery Act of
7 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

8 **Comment.** Section 60200 continues former Section 25115.1 without substantive change.

9 **§ 60205. “Handling”**

10 60205. (a) “Handling” means either of the following:

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

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

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

14 **Comment.** Section 60205 restates former Section 25116 without substantive change.

15 See Sections 60215 (“hazardous waste”), 60300 (“processing”), 60390 (“waste”).

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

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

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

21 **§ 60210. “Intermediate manufacturing process stream”**

22 60210. (a) “Intermediate manufacturing process stream” means a material, or
23 combination of materials, that meets all of the following conditions:

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

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

27 (3) It is not a recyclable material.

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

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

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

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

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

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

7 **Comment.** Section 60210 continues former Section 25116.5 without substantive change.

8 See Sections 60200 (“federal act”), 60295 (“person”), 60315 (“recyclable material”), 60365
9 (“treatment”).

10 **§ 60215. “Hazardous waste”**

11 60215. (a)(1) Except as provided in **subdivision (d) [of Section 25117]**, “hazardous
12 waste” means a waste that meets any of the criteria for the identification of a hazardous
13 waste adopted by the department pursuant to **Section 25141**.

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

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

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

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

23 **Comment.** Subdivision (a) of Section 60215 continues subdivisions (a) to (c) of former Section
24 25117 without substantive change.

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

26 See Sections 60080 (“acutely hazardous waste”), 60160 (“department”), 60195 (“extremely
27 hazardous waste”), 60310 (“RCRA hazardous waste”), 60390 (“waste”).

28 **Staff Notes. (1)** Subdivision (d) of Section 25117 contains a rule about satisfying “the element of
29 proof that the waste is hazardous waste” in a criminal or civil prosecution for violations of Chapter
30 6.5. That subdivision will be recodified with the enforcement provisions in this proposed part.

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

33 **(3)** Section 25117.5(b) (which will be recodified as paragraph (b)(2) of this proposed section)
34 provides:

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

37 Section 117635 has been repealed. See 2014 Cal. Stat. ch. 564, § 5. Former Section 117635(f) and
38 (g) related to biological waste that was only hazardous due to the presence of chemical fixatives,
39 chemotherapeutic agents, or pharmaceuticals. See 1996 Cal. Stat. ch. 536, § 1. Former Section
40 117635 also specified that these types of waste “are not subject to” Chapter 6.5.

41 The definition of biohazardous waste was moved to Section 117690 and no longer has separate
42 provisions about the types of waste addressed by former subdivisions (f) and (g). In the current
43 provision, medical waste as a whole is defined as certain types of waste “not regulated by RCRA.”

1 It is unclear how this cross-reference should be updated (i.e., by referring to former law or to refer
2 to a different provision in the current law).

3 More generally, it is unclear whether this exclusion for biohazardous waste is intended to be
4 different in scope than the exclusion for medical waste in paragraph (b)(1) of this proposed section
5 (existing Section 25117.5(a)). **The staff welcomes comment on these issues.**

6 **§ 60220. “Hazardous waste facility”**

7 60220. (a) “Hazardous waste facility” means all contiguous land and structures, other
8 appurtenances, and improvements on the land used for the treatment, transfer, storage,
9 resource recovery, disposal, or recycling of hazardous waste.

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

13 **Comment.** Section 60220 continues former Section 25117.1 without substantive change.

14 See Sections 60175 (“disposal”), 60215 (“hazardous waste”), 60225 (“hazardous waste
15 management” or “management”), 60325 (“recycling”), 60350 (“storage”), 60365 (“treatment”).

16 **§ 60225. “Hazardous waste management” or “management”**

17 60225. “Hazardous waste management” or “management” means the transportation,
18 transfer, recycling, recovery, disposal, handling, processing, storage, and treatment of
19 hazardous waste.

20 **Comment.** Section 60225 continues former Section 25117.2 without substantive change.

21 See Sections 60175 (“disposal”), 60205 (“handling”), 60215 (“hazardous waste”), 60300
22 (“processing”), 60325 (“recycling”), 60350 (“storage”), 60365 (“treatment”).

23 **§ 60230. “Land use restriction”**

24 60230. “Land use restriction” means any limitation regarding the uses of property which
25 may be provided by, but is not limited to, a written instrument that imposes an easement,
26 covenant, restriction, or servitude, or a combination thereof, as appropriate, upon the
27 present and future uses of all, or part of, the land, pursuant to Section **25202.5** or *79055* or
28 former Section 25222.1 or 25230.

29 **Comment.** Section 60230 continues former Section 25117.13 without substantive change.

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

33 The staff identified certain sections that are not listed here that provide for restrictions on land
34 use. It is not clear whether those omissions were intentional. For instance, Section 25221 discusses
35 agreements between the property owner and the department that provide for restricting property
36 uses. The section provides that such an agreement “shall be recorded...as a hazardous waste
37 easement, covenant, restriction, or servitude, or any combination of those servitudes.” It is unclear
38 why this section is not a listed land use restriction. See also Section 25220(a) (citing the land use
39 restrictions imposed pursuant to former Sections 25229, 25230, and 25398.7 and current Sections
40 25202.5, 25221, and 25355.5).

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

1 **Based on the comment received, it may be appropriate to add this definition to the list of**
2 **substantive issues for possible future study that will be included in the Commission’s**
3 **recommendation.**

4 (2) Section 25117.13 lists two sections that have been repealed, Sections 25222.1 and 25230. See
5 2012 Cal. Stat. ch. 39, § 38. Since the land use restrictions enacted under these repealed laws may
6 still be in effect, proposed Section 60230 has been drafted to refer to land use restrictions pursuant
7 to the “former” sections. For these references, no statutory citation was provided to avoid an
8 implication that only certain restrictions under these former sections are “land use restrictions” for
9 the purpose of this definition (i.e., those restrictions adopted when a specified version of the section
10 was in effect).

11 **§ 60235. “License”**

12 60235. “License” includes, but is not limited to any, permit, registration, or certification
13 issued by any local, state, or federal agency for the generation, transportation, treatment,
14 storage, recycling, disposal, or handling of hazardous waste.

15 **Comment.** Section 60235 continues former Section 25117.10 without substantive change.

16 See Sections 60175 (“disposal”), 60205 (“handling”), 60215 (“hazardous waste”), 60325
17 (“recycling”), 60350 (“storage”), 60365 (“treatment”).

18 **§ 60240. “Local health officer”**

19 60240. “Local health officer” means county health officers, city health officers, and
20 district health officers, as defined in this code.

21 **Comment.** Section 60240 continues subdivision (a) of former Section 25117.4.1 without
22 substantive change.

23 **Staff Note.** The definition of “local health officer” includes three specified types of officers
24 (county, city, and district health officers) “as defined in this code.” **The staff welcomes comment**
25 **on whether it would be helpful to specify where exactly these different officers are defined in**
26 **the code.**

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

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

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

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

45 More broadly, it appears that a “local health officer” under this section may be the same as a “health
46 officer” under Section 111015. If so, the definition in this section could either cite to Section

1 111015 (or duplicate the text of that definition). **The staff welcomes comment on whether these**
2 **two definitions have an identical scope.**

3 **§ 60245. “Local officer”**

4 60245. “Local officer” means a local public officer authorized to implement this division
5 pursuant to **subdivision (a) of Section 25180.**

6 **Comment.** Section 60245 continues subdivision (b) of former Section 25117.4.1 without
7 substantive change.

8 **Staff Notes. (1)** Section 25117.4.1(b) defines “local officer” as a “local public officer authorized
9 to implement [Chapter 6.5] pursuant to” Section 25180(a). This definition differs from that of a
10 “designated local public officer,” which is defined in Section 25111.1 as “a local public officer
11 designated by the director pursuant to subdivision (a) of Section 25180.” The definition of
12 “designated local public officer” is not proposed for continuation, as the term is not used in Chapter
13 6.5. However, given that both of these defined terms rely on authority in Section 25180, it is helpful
14 to consider them together in assessing who would be a “local officer” under this proposed section.

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

17 (1) For provisions of this chapter that are part of the unified program (see Section 25404(c)(1))
18 and where there is a Certified Unified Program Agency (CUPA), the unified program agencies are
19 “authorized to enforce” the chapter’s requirements that are part of the unified program. (Section
20 25180(a)(2)(B)). See proposed Section 60370 (defining “unified program agency”).

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

24 (3) For provisions of this chapter that are not part of the unified program, “any local health officer
25 or any local public officer designated by the director” may enforce this chapter’s standards. (Section
26 25180(a)(1)).

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

33 This provision defines “local officer” by referring specifically to a “local public officer.” This
34 terminology differs from that in Section 25180, which refers to “any officer.” It is not clear whether
35 any officer authorized under Section 25180 would necessarily be a “local public officer” (in which
36 case, consistent terminology would be preferable). Alternatively, it may be that “local public
37 officers” are only a subset of those officers authorized under Section 25180 (in which case, the staff
38 would recommend adjusting the language of the provision to make this clear). **The staff welcomes**
39 **comment on these issues.**

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

41 First, it is not clear why this defined term includes only officers (and not agencies). As indicated
42 above, Section 25180(a)(2)(A) provides for authorizing either “an officer or agency.” In Chapter
43 6.5, the term “local officer” is consistently used in combination with a reference to an “agency
44 authorized ... pursuant to Section 25180(a).” See, e.g., proposed Section 60225, Sections
45 25110.10(e), 25150(b), 25201.8(b). Given that, defining a term for an “authorized local officer or
46 agency” would provide significant drafting convenience, as it better reflects how these
47 agencies/officers are referenced in the statutes.

1 And, in fact, some sections use this shorthand term after first referring to “local officer or agency
2 authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.” See, e.g., Section
3 25187.8 (numerous references to an “authorized local officer or agency”).

4 **For this reason, the staff seeks comment on whether this issue (improving the different**
5 **defined terms related to officers and agencies) should be considered as a matter for future**
6 **study.**

7 **§ 60250. “Manifest”**

8 60250. (a) “Manifest” means a shipping document originated and signed by a generator
9 of hazardous waste that contains all of the information required by the department and that
10 complies with all applicable federal and state regulations, and includes any of the
11 following:

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

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

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

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

23 (b) For purposes of **this section [Section 25260]** and **Section 25205.15**, a shipment is
24 initiated on the date when the manifest is signed by the first transporter and the hazardous
25 waste leaves the site where it is generated.

26 **Comment.** Section 60250 restates paragraphs (1) and (3) of subdivision (a) of former Section
27 25160 without substantive change.

28 See Sections 60160 (“department”), 60185 (“electronic manifest system,” “e-manifest system”),
29 60215 (“hazardous waste”).

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

34 The prefatory “for the purposes of this chapter” text is redundant and therefore is not continued.
35 Proposed Section 60075 (Section 25110) provides that the definitions in this chapter govern “only
36 the construction of this division [existing Chapter 6.5].” For this reason, proposed Section 60250
37 does not continue the “[f]or purposes of this chapter” language.

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

39 **(2)** Subdivision (b) of this proposed section continues Section 25160(a)(3). That paragraph provides
40 a rule for the date of shipment initiation. That rule applies specifically for the purposes of “this
41 section” (Section 25160) and Section 25205.15. The cross-reference to this section will be updated
42 when the remainder of Section 25160 is proposed for recodification.

43 Another definition from Section 25160 is included in this draft, but is not proposed for inclusion
44 in the cross-reference as it does not pertain to the date of shipment initiation. See proposed Section
45 60185.

1 § 60255. “Minor violation”

2 60255. (a) “Minor violation” means a deviation from the requirements of this division,
3 or any regulation, standard, requirement, or permit or interim status document condition
4 adopted pursuant to this division, that is not a class I violation.

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

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

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

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

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

16 **Comment.** Section 60255 continues former Section 25117.6 without substantive change.

17 See Sections 60110 (“class I violation”), 60115 (“class II violation”), 60160 (“department”),
18 60245 (“local officer”).

19 **Staff Note.** Section 25117.6(a) specifies that a “minor violation” does not include a “class I
20 violation.” A “class I violation” is defined to include “a class II violation that is a chronic violation
21 or committed by a recalcitrant violator” (hereafter, a chronic class II violation). See proposed
22 Section 60110. Thus, a chronic class II violation is not a minor violation.

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

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

32 **The staff recommends that this issue be added to the list of issues for future work to
33 eliminate redundancy and improve consistency.**

34 § 60260. “Natural resources”

35 60260. “Natural resources” includes, but is not limited to, disposal site capacity and
36 substances that are hazardous waste, or that are in hazardous waste, the reuse of which is
37 technologically and economically feasible.

38 **Comment.** Section 60260 continues former Section 25117.8 without substantive change.

39 See Sections 60180 (“disposal site”), 60215 (“hazardous waste”).

40 § 60265. “Non-RCRA hazardous waste”

41 60265. (a) “Non-RCRA hazardous waste” means all hazardous waste regulated in the
42 state, other than RCRA hazardous waste.

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

4 **Comment.** Section 60265 restates former Section 25117.9 without substantive change.

5 See Sections 60160 (“department”), 60215 (“hazardous waste”), 60310 (“RCRA hazardous
6 waste”).

7 **Staff Note.** Section 25117.9 was restated to add subdivision designators and delete redundant
8 language at the end of the first sentence specifying that RCRA hazardous waste is “as defined in
9 Section 25120.2 [proposed Section 60310].” Proposed Section 60075 (Section 25110) provides that
10 the definitions in this chapter govern “the construction of this division [existing Chapter 6.5].”

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

12 **§ 60270. “Notice to comply”**

13 60270. “Notice to comply” means a written method of alleging a minor violation that is
14 in compliance with all of the following requirements:

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

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

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

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

26 **Comment.** Section 60270 continues former Section 25117.9.1 without substantive change.

27 See Sections 60160 (“department”), 60245 (“local officer”), 60255 (“minor violation”), 60295
28 (“person”).

29 **§ 60275. “Offsite facility”**

30 60275. “Offsite facility” means a hazardous waste facility that is not an onsite facility.

31 **Comment.** Section 60275 continues former Section 25117.11 without substantive change.

32 See Sections 60220 (“hazardous waste facility”), 60280 (“onsite facility”).

33 **§ 60280. “Onsite facility”**

34 60280. “Onsite facility” means a hazardous waste facility at which a hazardous waste is
35 produced and that is owned by, leased to, or under the control of, the producer of the waste.

36 **Comment.** Section 60280 continues former Section 25117.12 without substantive change.

37 See Sections 60215 (“hazardous waste”), 60220 (“hazardous waste facility”), 60305
38 (“producer”), 60390 (“waste”).

39 **§ 60285. “Participating Agency” or “PA”**

40 60285. “Participating Agency” or “PA” means an agency that has a written agreement
41 with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the

1 secretary, to implement or enforce one or more of the unified program elements specified
2 in paragraph (1) of subdivision (c) of Section 25404, in accordance with the provisions of
3 Sections 25404.1 and 25404.2.

4 **Comment.** Section 60285 continues subdivision (c) of former Section 25123.7 without
5 substantive change.

6 See Section 60105 (“certified unified program agency” or “CUPA”), 60345 (“secretary”).

7 **§ 60290. “Permit-by-rule”**

8 60290. “Permit-by-rule” means a provision of the regulations adopted pursuant to this
9 division stating that a facility or activity is deemed to have a hazardous waste facilities
10 permit if it meets the requirements of that provision.

11 **Comment.** Section 60290 continues former Section 25117.14 without substantive change.

12 See Section 60215 (“hazardous waste”).

13 **§ 60295. “Person”**

14 60295. “Person” means an individual, trust, firm, joint stock company, business concern,
15 partnership, limited liability company, association, and corporation, including, but not
16 limited to, a government corporation. “Person” also includes any city, county, district,
17 commission, the state or any department, agency, or political subdivision thereof, any
18 interstate body, and the federal government or any department or agency thereof to the
19 extent permitted by law.

20 **Comment.** Section 60295 continues former Section 25118 without substantive change.

21 See Sections 60100 (“business concern”), 60160 (“department”).

22 **§ 60300. “Processing”**

23 60300. “Processing” means treatment.

24 **Comment.** Section 60300 restates former Section 25119 without substantive change.

25 See Section 60365 (“treatment”).

26 **Staff Note.** Section 25119 was restated delete redundant language at the end of the sentence
27 specifying that treatment is “as defined in Section 25123.5 [proposed Section 60365].” Proposed
28 Section 60075 (Section 25110) provides that the definitions in this chapter govern “the construction
29 of this division [existing Chapter 6.5].”

30 **§ 60305. “Producer”**

31 60305. “Producer” means any person who generates a waste material.

32 **Comment.** Section 60305 continues former Section 25120 without substantive change.

33 See Sections 60295 (“person”), 60390 (“waste”).

34 **§ 60310. “RCRA hazardous waste”**

35 60310. “RCRA hazardous waste” means all waste identified as a hazardous waste in Part
36 261 (commencing with Section 261.1) of Subchapter I of Chapter I of Title 40 of the Code
37 of Federal Regulations and appendixes thereto.

38 **Comment.** Section 60310 continues former Section 25120.2 without substantive change. The
39 reference to the Code of Federal Regulations was revised to use roman numerals for the chapter
40 designation, consistent with the numbering practice used in the federal regulations.

1 See Sections 60215 (“hazardous waste”), 60390 (“waste”).

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

6 **§ 60315. “Recyclable material”**

7 60315. “Recyclable material” means a hazardous waste that is capable of being recycled,
8 including, but not limited to, any of the following:

9 (a) A residue.

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

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

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

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

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

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

21 **Comment.** Section 60315 continues former Section 25120.5 without substantive change.

22 See Sections 60160 (“department”), 60215 (“hazardous waste”), 60335 (“retrograde material”),
23 60365 (“treatment”).

24 **§ 60320. “Recycled material”**

25 60320. (a) “Recycled material” means a recyclable material that has been used or reused,
26 or reclaimed.

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

28 **Comment.** Section 60320 continues former Section 25121 without substantive change.

29 See Sections 60210 (“intermediate manufacturing process stream”), 60315 (“recyclable
30 material”).

31 **§ 60325. “Recycling”**

32 60325. (a) “Recycling” means using, reusing, or reclaiming a recyclable material.

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

37 **Comment.** Section 60325 continues former Section 25121.1 without substantive change.

38 See Sections 60205 (“handling”), 60300 (“processing”), 60315 (“recyclable material”), 60320
39 (“recycled material”).

40 **Staff Note.** Section 25121.1(b) refers to fees, taxes, and charges imposed “pursuant to Article 7
41 (commencing with Section 25170).” The provisions of Article 7 of Chapter 6.5 will be recodified

1 in multiple locations (some of which are in proposed Chapter 4 in this draft). The provisions of
2 Article 7 that impose fees, taxes, and charges are proposed to be located in a later piece of the
3 recodified law. The cross-reference in this provision will be updated when the relevant provisions
4 are proposed for recodification.

5 **The staff welcomes comment on whether the rule in subdivision (b) should be recodified**
6 **with the provisions of Article 7 (commencing with Section 25170) related to fees, taxes, and**
7 **charges.**

8 **§ 60330. “Remote site”**

9 60330. (a) “Remote site” means a site operated by the generator that meets all of the
10 following conditions:

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

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

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

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

18 **Comment.** Section 60330 restates subdivision (a) of former Section 25121.3 without substantive
19 change.

20 See Section 60215 (“hazardous waste”).

21 **Staff Note.** Section 25121.3(a) is restated for clarity. Currently, Section 25121.3(a) provides:

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

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

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

31 **§ 60335. “Retrograde material”**

32 60335. (a) “Retrograde material” means any hazardous material that is not to be used,
33 sold, or distributed for use in an originally intended or prescribed manner or for an
34 originally intended or prescribed purpose and that meets any one or more of the following
35 criteria:

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

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

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

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

41 (b) “Retrograde material” does not include material designated in regulations adopted by
42 the department as included in a category that the department shall title “Discarded

1 commercial chemical products, off-specification species, container residues, and spill
 2 residues thereof”, if either of the following conditions is met:

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

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

7 **Comment.** Section 60335 continues former Section 25121.5 without substantive change.
 8 See Sections 60160 (“department”), 60175 (“disposal”).

9 **§ 60340. “Restricted hazardous waste”**

10 60340. “Restricted hazardous waste” includes both of the following:

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

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

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

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

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

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

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

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

26 **Comment.** Section 60340 continues former Section 25122.7 without substantive change.
 27 See Sections 60160 (“department”), 60175 (“disposal”), 60215 (“hazardous waste”).

28 **§ 60345. “Secretary”**

29 60345. “Secretary” means the Secretary for Environmental Protection.

30 **Comment.** Section 60345 continues former Section 25122.9 without substantive change.

1 § 60350. “Storage”

2 60350. “Storage” means the holding of hazardous wastes, for a temporary period.

3 **Comment.** Section 60350 continues former Section 25123 without substantive change.

4 See Section 60215 (“hazardous waste”).

5 § 60355. “Storage facility”

6 60355. “Storage facility” means a hazardous waste facility that is identified as a storage
7 facility pursuant to **Article ZZZ of Chapter ZZZ**.

8 **Comment.** Section 60355 continues the initial clause of subdivision (b) of former Section
9 25123.3 without substantive change.

10 See Section 60220 (“hazardous waste facility”).

11 **Staff Note.** Proposed Section 60355 continues only the initial clause of Section 25123.3(b). The
12 remainder of this section contains substantive requirements for hazardous waste storage, as well as
13 supporting definitions (that only apply for the purposes of the section). The remainder of Section
14 25123.3 will be recodified later in this proposed division, with substantive provisions regarding
15 hazardous waste facilities.

16 § 60360. “Transportable hazardous waste treatment unit” or “transportable treatment
17 unit”

18 60360. “Transportable hazardous waste treatment unit” or “transportable treatment unit”
19 means mobile equipment that performs treatment, is transported onto a facility to perform
20 treatment, and is not permanently stationed at a single facility.

21 **Comment.** Section 60360 continues former Section 25123.4 without substantive change.

22 See Section 60365 (“treatment”).

23 § 60365. “Treatment”

24 60365. (a) Except as provided in subdivisions (b) and (c), “treatment” means any
25 method, technique, or process that is not otherwise excluded from the definition of
26 treatment by this division and that is designed to change the physical, chemical, or
27 biological character or composition of any hazardous waste or any material contained
28 therein, or that removes or reduces its harmful properties or characteristics for any purpose.

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

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

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

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

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

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

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

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

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

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

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

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

22 **Comment.** Section 60365 continues former Section 25123.5 without substantive change.

23 See Sections 60160 (“department”), 60200 (“federal act”), 60215 (“hazardous waste”), 60350
24 (“storage”), 60390 (“waste”).

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

29 **The staff recommends that the Commission add this provision to the list of issues for**
30 **possible future study.**

31 **§ 60370. “Unified Program Agency” or “UPA”**

32 60370. (a) “Unified Program Agency” or “UPA” means the CUPA, or its participating
33 agencies to the extent each PA has been designated by the CUPA, pursuant to a written
34 agreement, to implement or enforce a particular unified program element specified in
35 paragraph (1) of subdivision (c) of Section 25404.

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

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

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

7 **Comment.** Section 60370 continues subdivision (d) of former Section 25123.7 without
8 substantive change.

9 See Sections 60105 (“certified unified program agency or “CUPA”), 60160 (“department”),
10 60285 (“participating agency” or “PA”), 60345 (“secretary”).

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

13 The language in proposed subdivision (d) references “this section” (Section 25123.7). It appears
14 that all of the material relevant to this reference is contained in this proposed section. The other
15 proposed provisions continuing the language of Section 25123.7 simply define terms and do not
16 appear to place any limits or restrictions on the authority to implement and enforce Chapter 6.5.
17 For this reason, the proposed language only refers to “this section,” which continues Section
18 25123.7(d).

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

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

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

34 **It is unclear whether this issue is causing problems in practice, or whether the references**
35 **to “unified program agencies” or “UPAs” are sufficiently clear in context. The staff welcomes**
36 **comment this issue.**

37 The staff noticed that the disjunctive is also used in the definition of “UPA” in Section 25404,
38 which is in the law establishing the unified program. “UPA” is also similarly defined in other
39 sections. See Sections 25270.2(c)(3), 25281(d)(3), 25501(e)(3). There seems to be value in
40 preserving consistency across these definitions of “UPA.” **For this reason, the staff would not**
41 **recommend making adjustments to this definition in this study, but requests comment on**
42 **whether a broader look at the definitions of “UPA” should be considered for possible future**
43 **work.**

44 **§ 60375. “Unified Program Facility”**

45 60375. “Unified Program Facility” means all contiguous land and structures, other
46 appurtenances, and improvements on the land that are subject to the requirements of
47 paragraph (1) of subdivision (c) of Section 25404.

1 **Comment.** Section 60375 continues subdivision (a) of former Section 25123.7 without
2 substantive change.

3 **§ 60380. “Universal waste”**

4 60380. “Universal waste” means a hazardous waste identified as a universal waste in
5 Section 66273.9 of Title 22 of the California Code of Regulations, or as that regulation
6 may be further amended pursuant to this division, or a hazardous waste designated as a
7 universal waste pursuant to this division.

8 **Comment.** Section 60380 continues former Section 25123.8 without substantive change.
9 See Section 60215 (“hazardous waste”).

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

16 It is unclear why the cross-reference in this section does not simply refer to the regulatory
17 provision that actually lists universal wastes. **The staff welcomes comment on whether the cross-
18 reference to the regulations should instead refer to Section 66261.9, which actually lists
19 universal wastes.**

20 **§ 60385. “Volatile organic compound”**

21 60385. “Volatile organic compound” means a compound that is a volatile organic
22 compound according to Method No. 8240 in the United States Environmental Protection
23 Agency Document No. Solid Waste 846 (1982) or any equivalent, alternative method
24 acceptable to the department.

25 **Comment.** Section 60385 continues former Section 25123.6 without substantive change.
26 See Section 60160 (“department”).

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

30 In proposed Section 60385, “United States” was added to indicate that this section is referring to
31 the federal agency, as opposed to the state Environmental Protection Agency.

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

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

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

1 § 60390. “Waste”

2 60390. (a) Except as provided in subdivision (c), “waste” means any discarded material,
3 including solid, liquid, semisolid, or contained gaseous material, that is not excluded by
4 this division or by regulations adopted pursuant to this division.

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

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

8 (A) Disposed of.

9 (B) Burned or incinerated.

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

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

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

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

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

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

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

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

27 (1) An intermediate manufacturing process stream.

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

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

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

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

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

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

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

4 **Comment.** Section 60390 restates former Section 25124 without substantive change.

5 See Sections 60155 (“contained gaseous material”), 60160 (“department”), 60175 (“disposal”),
6 60200 (“federal act”), 60210 (“intermediate manufacturing process stream”), 60215 (“hazardous
7 waste”), 60325 (“recycling”), 60350 (“storage”), 60365 (“treatment”).

8 **Staff Note.** Section 25124 is restated for clarity and to make a grammatical correction.

9 Subdivision (a) is restated to make clear that the provision is using the defined terms “contained
10 gaseous material” and “discarded material.” See proposed subdivisions (b), (c) of this section
11 (specifying materials that are and are not “discarded materials”) and Staff Note to proposed Section
12 60155 (the definition for “contained gaseous material” specifically provides that it applies to this
13 provision).

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

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

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

19 This subparagraph has been proposed for restatement as two clauses.

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

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

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

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

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

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

32 CHAPTER 4. FINANCIAL PROVISIONS

33 **Staff Note.** This proposed chapter contains a number of provisions that relate to laws other than
34 Chapter 6.5. In particular, proposed Article 2, related to The Toxic Substance Control Account,
35 governs funds related to laws other than Chapter 6.5. In some cases, these provisions use
36 terminology from and appear to be discussing legal concepts contained in provisions outside of
37 Chapter 6.5, without cross-referencing the relevant provisions. In particular, several provisions in
38 this proposed article use defined terms from Chapter 6.8 without citing to those definitions. See,
39 e.g., Staff Note to proposed Section 60490 (Note #2).

40 It may be helpful to include a provision in this chapter that makes clear certain terms used in the
41 chapter have the meaning provided in Chapter 6.8, including, for example, “responsible party,”
42 “remedial action,” “removal,” and “hazardous substance.”

43 **The staff recommends that this issue be added to the list of issues for possible future work.**

Article 1. Hazardous Waste Control Account

§ 60450. Funds to be deposited in account

60450. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director.

(b) In addition to any other money that may be deposited in the Hazardous Waste Control Account, pursuant to statute, all of the following amounts shall be deposited in the account:

(1) The fees collected pursuant to Sections **25174.1, 25205.2, 25205.5, 25205.15, and 25205.16.**

(2) The funds collected pursuant to Section **25187.2**, to the extent that those funds are payments for the costs incurred by the department in overseeing corrective action taken under this division.

(3) Any interest earned upon the money deposited in the Hazardous Waste Control Account.

(4) Any money received from the federal government pursuant to the federal act.

(5) Any reimbursements for funds expended from the Hazardous Waste Control Account for services provided by the department pursuant to this division, including, but not limited to, the reimbursements required pursuant to Sections **25201.9 and 25205.7.**

Comment. Section 60450 restates subdivision (a) of former Section 25174 without substantive change.

See Sections 60160 (“department”), 60165 (“director”), 60200 (“federal act”).

Staff Note. Section 25174(a)(2) has been restated to improve consistency with the referenced provision. Section 25174(a)(2) refers to “fees collected pursuant to Section 25187.2, to the extent that those fees are for the oversight of corrective action taken under this chapter.” Section 25187.2 provides for the payment of “the department’s *costs* incurred in overseeing or carrying out the corrective action.”

To improve consistency with Section 25187.2, proposed Section 60450 restates this paragraph to refer to “funds” collected pursuant to Section 25187.2, where those funds are payments for the costs incurred in overseeing corrective action.

Absent comment, this proposed restatement will be presumed correct.

§ 60455. Appropriations from account

60455. The funds deposited in the Hazardous Waste Control Account may be appropriated by the Legislature, for expenditure as follows:

(a) To the department for the administration and implementation of this division.

(b) To the department for allocation to the State Board of Equalization to pay refunds of fees collected pursuant to Sections 43051 and 43053 of the Revenue and Taxation Code and for the administration and collection of the fees imposed pursuant to **Article 9.1 (commencing with Section 25205.1)** that are deposited into the Hazardous Waste Control Account.

(c) To the department for the costs of performance or review of analyses of past, present, or potential environmental public health effects related to toxic substances, including extremely hazardous waste and hazardous waste.

1 (d)(1) To the department for allocation to the office of the Attorney General for the
2 support of the Toxic Substance Enforcement Program in the office of the Attorney General,
3 in carrying out the purposes of this division.

4 (2) On or before October 1 of each year, the Attorney General shall report to the
5 Legislature on the expenditure of any funds allocated to the office of the Attorney General
6 for the preceding fiscal year pursuant to this subdivision and paragraph (14) of subdivision
7 (a) of Section 60495. The report shall include all of the following:

8 (A) A description of cases resolved by the office of the Attorney General through
9 settlement or court order, including the monetary benefit to the department and the state.

10 (B) A description of injunctions or other court orders benefiting the people of the state.

11 (C) A description of any cases in which the Attorney General’s Toxic Substance
12 Enforcement Program is representing the department or the state against claims by
13 defendants or responsible parties.

14 (D) A description of other pending litigation handled by the Attorney General’s Toxic
15 Substance Enforcement Program.

16 (3) Nothing in paragraph (2) shall require the Attorney General to report on any
17 confidential or investigatory matter.

18 (e) To the department for administration and implementation of Chapter 6.11
19 (commencing with Section 25404) of Division 20.

20 **Comment.** Section 60455 restates subdivision (b) of former Section 25174 without substantive
21 change.

22 See Sections 60160 (“department”), 60195 (“extremely hazardous waste”), 60215 (“hazardous
23 waste”).

24 **Staff Notes. (1)** Section 25174(b)(3) refers to “toxic substances, including extremely hazardous
25 waste, as defined in Section 25115, and hazardous waste, as defined in Section 25117.” “Extremely
26 hazardous waste” and “hazardous waste” are defined terms for Chapter 6.5 and those definitions
27 apply to this section. This proposed section was restated to eliminate the unnecessary references to
28 the applicable definitions.

29 Although the definition for “hazardous waste” expressly includes “extremely hazardous waste”
30 (and, thus, “extremely hazardous waste” appears to be redundant here), both terms were continued
31 in this proposed section.

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

33 **(2)** Section 25174(b)(4)(C) specifies that “[n]othing in subparagraph (C) shall require the Attorney
34 General to report on any confidential or investigatory matter.” This reference appears to be
35 erroneous, as the subparagraph is pointing to itself (and the subparagraph contains nothing more
36 than the quoted language). It appears that this reference should point instead to subparagraph (B),
37 which specifies the contents of the Attorney General’s report to the Legislature. In this proposed
38 section, the reference has been updated to refer to paragraph (2) of subdivision (d), which continues
39 the substance of subparagraph (B).

40 **Absent comment, this proposed reference correction will be presumed correct.**

41 **§ 60460. Expenditures from account for support of other state agencies**

42 60460. Expenditures from the Hazardous Waste Control Account for support of state
43 agencies other than the department shall, upon appropriation by the Legislature to the
44 department, be subject to an interagency agreement or similar mechanism between the
45 department and the state agency receiving the support.

1 (2) The funds collected pursuant to **Section 25187.2**, to the extent that those funds are
2 payments for the costs incurred overseeing a removal or remedial action taken under
3 Chapter 6.86 (commencing with Section 25396) of Division 20 or *Part 2 (commencing*
4 *with Section 78000) of Division 45*.

5 (3) Except as directed otherwise by **Section 25192**, fines or penalties collected pursuant
6 to this division, including, but not limited to, fines or penalties recovered pursuant to
7 **Section 25214.3, 25214.22.1, and 25215.82**.

8 (4) Interest earned upon money deposited in the Toxic Substances Control Account.

9 (5) All money recovered pursuant to Section 79650, except any amount recovered on or
10 before June 30, 2006, that was paid from the Hazardous Substance Cleanup Fund.

11 (6) All money recovered pursuant to *Article 7 (commencing with Section 81030) of*
12 *Chapter 12 of Part 2 of Division 45*.

13 (7) Fines or penalties collected pursuant to Chapter 6.86 (commencing with Section
14 25396) of Division 20, or *Part 2 (commencing with Section 78000) of Division 45*.

15 (8) Reimbursements for funds expended from the Toxic Substances Control Account for
16 services provided by the department, including, but not limited to, reimbursements required
17 pursuant to **Sections 25201.9 and 69105**.

18 (9) Money received from the federal government pursuant to the federal Comprehensive
19 Environmental Response, Compensation, and Liability Act of 1980, as amended (42
20 U.S.C. Sec. 9601 et seq.).

21 (10) Money received from responsible parties for remedial action or removal at a specific
22 site, except as otherwise provided by law.

23 **Comment.** Section 60490 restates subdivision (a) of former Section 25173.6 without substantive
24 change.

25 See Sections 60160 (“department”), 60165 (“director”).

26 **Staff Notes. (1)** Section 25173.6(a) was restated to eliminate redundancy, group similar types of
27 funds, and improve consistency and clarity. **The staff welcomes comment on the proposed**
28 **restatement of this provision. Absent comment, the proposed restatement of this provision**
29 **will be presumed correct.** When restating this provision, the following changes were made:

30 (A) Section 25173.6(a)(2) refers to “fees collected pursuant to Section 25187.2, to the extent that
31 those fees are for oversight of a removal or remedial action taken under Chapter 6.8 (commencing
32 with Section 25300) or Chapter 6.86 (commencing with Section 25396).” As described in the Staff
33 Note to proposed Section 60450, Section 25187.2 provides for the payment of “the department’s
34 costs incurred in overseeing or carrying out the corrective action.” To improve consistency with
35 Section 25187.2, this provision has been restated to refer to “funds” collected pursuant to Section
36 25187.2, where those funds are payments for oversight costs.

37 This provision refers to oversight of a “removal or remedial action,” whereas Section 25187.2
38 refers to oversight of “corrective action.” While making this terminology consistent would be
39 preferable, it is not clear whether the terms “corrective action” and “removal or remedial action”
40 are equivalent (i.e., does this provision only apply to a subset of funds collected under Section
41 25187.2 for oversight of actions under Chapter 6.8?) **The staff welcomes comment on this issue**

42 (B) Section 25173.6 contains several redundant provisions. Section 25173.6(a) provides, in part:

43 [The following funds shall be deposited into the Toxic Substances Control Account]:

44 (3) Fines or penalties collected pursuant to this chapter, Chapter 6.8 (commencing with Section
45 25300) or Chapter 6.86 (commencing with Section 25396), except as directed otherwise by Section
46 25192.

- 1 ...
2 (7) All penalties recovered pursuant to Section 25214.3, except as provided by Section 25192.
3 (8) All penalties recovered pursuant to Section 25214.22.1, except as provided by Section 25192.
4 (9) All penalties recovered pursuant to Section 25215.82, except as provided by Section 25192.
- 5 The penalties referred to in paragraphs (7)-(9) are all penalties provided for in sections found in
6 Chapter 6.5. Given that, these penalties would also be required to be deposited into the account
7 pursuant to paragraph (3). Section 25192 contains a rule for apportioning all “penalties collected
8 pursuant to [Chapter 6.5].” For this reason, Section 25192 does not appear to be relevant to the
9 penalties collected pursuant to Chapter 6.8 or Chapter 6.86. These quoted fine and penalty
10 provisions have been consolidated and restated in proposed paragraphs (b)(3) and (b)(7).
- 11 (2) Section 25173.6(a)(12) refers to “[m]oney received from responsible parties for remedial action
12 or removal at a specific site.” This provision appears to be referring to remedial or removal actions
13 conducted pursuant to Chapter 6.8. Assuming that is the case, it would be helpful to specify that
14 the definitions of the relevant terms (“responsible party,” “remedial action,” “removal”) in Chapter
15 6.8 apply to this provision. See Staff Note to Heading for this proposed chapter.

16 **§ 60495. Appropriations from account**

17 60495. (a) The funds deposited in the Toxic Substances Control Account may be
18 appropriated to the department for the following purposes:

19 (1) The administration and implementation of the following:

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

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

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

27 (D) Activities of the department related to pollution prevention and technology
28 development, authorized pursuant to this division.

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

32 (A) The Human and Ecological Risk Office.

33 (B) The Environmental Chemistry Laboratory.

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

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

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

40 (5) For the state share mandated pursuant to paragraph (3) of subsection (c) of Section
41 104 of the federal Comprehensive Environmental Response, Compensation, and Liability
42 Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

43 (6) For the purchase by the state, or by a local agency with the prior approval of the
44 director, of hazardous substance response equipment and other preparations for response

1 to a release of hazardous substances. However, all equipment shall be purchased in a cost-
2 effective manner after consideration of the adequacy of existing equipment owned by the
3 state or the local agency, and the availability of equipment owned by private contractors.

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

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

12 (9) For all costs incurred by the department in cooperation with the Agency for Toxic
13 Substances and Disease Registry established pursuant to subsection (i) of Section 104 of
14 the federal Comprehensive Environmental Response, Compensation, and Liability Act of
15 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of health effects studies undertaken
16 regarding specific sites or specific substances at specific sites. Funds appropriated for this
17 purpose shall not exceed five hundred thousand dollars (\$500,000) in a single fiscal year.
18 However, these actions shall not duplicate reasonably available federal actions and studies.

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

21 (11) Direct site remediation costs.

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

24 (13) For the administration and collection of the fees imposed pursuant to **Section**
25 **25205.6**.

26 (14) For allocation to the office of the Attorney General, pursuant to an interagency
27 agreement or similar mechanism, for the support of the Toxic Substance Enforcement
28 Program in the office of the Attorney General, in carrying out the purposes of Chapter 6.86
29 (commencing with Section 25396) of Division 20 and *Part 2 (commencing with Section*
30 *78000) of Division 45*.

31 (15) For funding the California Environmental Contaminant Biomonitoring Program
32 established pursuant to Chapter 8 (commencing with Section 105440) of Part 5 of Division
33 103.

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

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

1 **Comment.** Section 60495 continues subdivisions (b) and (c) of former Section 25173.6 without
2 substantive change. An obsolete cross-reference to Section 25215.7 was corrected to refer to
3 Section 25215.82. See 2019 Cal. Stat. ch. 497, § 164.

4 See Sections 60160 (“department”), 60165 (“director”), 60345 (“secretary”).

5 **Staff Notes. (1)** Section 25173.6(b)(1)(C) refers to the “Secretary for Environmental Protection.”
6 Proposed Section 60495 replaces that reference with the defined term, “secretary.” See proposed
7 Section 60345 (“secretary”).

8 **(2)** Section 25173.6(b) and (c) use a number of terms that are defined in Chapter 6.8 without
9 reference to those definitions. In many cases, it seems very likely that the meaning provided in
10 Chapter 6.8 is intended.

11 For example, Section 25173.6(b)(11) allows appropriations for “direct site remediation costs.”
12 This is a defined term used in part of Chapter 6.8. It appears likely that the defined meaning was
13 intended here. See Section 25173.7(a)(2) (referring to direct site remediation costs “as defined in
14 Section 25337.”)

15 **The staff recommends that this issue be added to the list of items for possible future work.**
16 **See Staff Note to the heading for this proposed chapter.**

17 **(3)** Section 25173.6 cross-references Section 25215.7. Former Section 25215.7 was renumbered as
18 Section 25215.82. See 2019 Cal. Stat. ch. 497, § 164. The cross-reference has been updated
19 accordingly.

20 **(4)** Section 25173.6(b)(16) appears to allow appropriations to implement and enforce the Toxics in
21 Packaging Prevention Act (Article 10.4). However, this provision cross-refers to two sections that
22 are not located in that article (Sections 25214.3 and 25215.82). It appears that this provision is
23 erroneous and needs to be corrected. Both of the referenced sections provide penalties for violations
24 of their respective articles and specify that any penalties collected should be used to implement and
25 enforce only those respective articles. See Sections 25214.3(c) (from Article 10.1.1. Metal-
26 Containing Jewelry) and 25215.82 (from Article 10.5.1. Lead Wheel Weights). In the staff’s view,
27 it is most likely that this provision should specify that penalties collected by the cited provisions
28 should be used to implement and enforce the respective articles.

29 **The staff welcomes comment on this issue.**

30 **§ 60500. Expenditures**

31 60500. (a) The director shall expend federal funds in the Toxic Substances Control
32 Account consistent with the requirements specified in Section 104 of the federal
33 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as
34 amended (42 U.S.C. Sec. 9604), upon appropriation by the Legislature, for the purposes
35 for which they were provided to the state.

36 (b) Money in the Toxic Substances Control Account shall not be expended to conduct
37 removal or remedial actions if a significant portion of the hazardous substances to be
38 removed or remedied originated from a source outside the state.

39 **Comment.** Section 60500 continues subdivisions (d) and (e) former Section 25173.6 without
40 substantive change. An erroneous reference to “Section 114 of the federal Comprehensive
41 Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec.
42 9614)” was corrected to refer to “Section 104 of the federal Comprehensive Environmental
43 Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604).”

44 See Section 60165 (“director”).

45 **Staff Note.** Section 25173.6(d) refers requirements for expending federal funds in Section 114 of
46 the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

1 This reference appears to be erroneous, as CERCLA Section 114 does not appear to place
2 requirements on the expenditures of federal funds.

3 In proposed Section 60500, this reference was adjusted to refer instead to Section 104 of
4 CERCLA. CERCLA Section 104(c)(3) precludes federal cleanup actions, unless a state pays a
5 specified share of the cleanup costs.

6 In the course of the Commission's work on Chapter 6.8, the Commission encountered an
7 erroneous reference to Section 114(c) of CERCLA, which was corrected to refer to Section 104(c)
8 of CERCLA. Two other provisions in this draft also refer to Section 104 of CERCLA. See proposed
9 Sections 60495, 60580.

10 For these reasons, Section 104 of CERCLA appears to be the appropriate reference for this
11 provision. **Absent comment, this proposed cross-reference correction will be presumed**
12 **correct.**

13 § 60505. Loans to account

14 60505. The Director of Finance, upon request of the director, may make a loan from the
15 General Fund to the Toxic Substances Control Account to meet cash needs. The loan shall
16 be subject to the repayment provisions of Section 16351 of the Government Code and the
17 interest provisions of Section 16314 of the Government Code.

18 **Comment.** Section 60505 continues subdivision (f) of former Section 25173.6 without
19 substantive change.

20 See Section 60165 ("director").

21 § 60510. Account as successor fund

22 60510. (a) The Toxic Substances Control Account established pursuant to Section 60490
23 is the successor fund of all of the following:

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

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

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

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

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

37 **Comment.** Section 60510 continues subdivisions (g) and (h) of former Section 25173.6 without
38 substantive change.

39 § 60515. Report on expenditures

40 60515. Notwithstanding Section 10231.5 of the Government Code, the department, on
41 or before February 1 of each year, shall report to the Governor and the Legislature on the
42 prior fiscal year's expenditure of funds within the Toxic Substances Control Account for
43 the purposes specified in subdivision (a) of Section 60495.

1 **Comment.** Section 60515 continues subdivision (i) of former Section 25173.6 without
2 substantive change.

3 See Sections 60160 (“department”).

4 **§ 60520. Legislative intent regarding appropriations to account**

5 60520. It is the intent of the Legislature that funds deposited in the Toxic Substances
6 Control Account shall be appropriated in the annual Budget Act each year in the following
7 manner:

8 (a) An amount sufficient to pay for the estimated costs identified by the department in
9 the report submitted pursuant to Section 60580 to the Site Remediation Account in the
10 General Fund for direct site remediation costs, as defined in *Section 78260*.

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

14 (c) Not less than four hundred thousand dollars (\$400,000) to the Expedited Site
15 Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a) of former
16 Section 25399.1, as added by Section 2 of Chapter 435 of the Statutes of 1994, for purposes
17 of paying the orphan share of response costs pursuant to former Chapter 6.85 (commencing
18 with Section 25396) of Division 20.

19 (d) An amount that does not exceed the costs incurred by the State Board of Equalization,
20 a private party, or other public agency, to administer and collect the fees imposed pursuant
21 to **Article 9.1 (commencing with Section 25205.1)** and deposited into the Toxic
22 Substances Control Account, for the purpose of reimbursing the State Board of
23 Equalization, public agency, or private party, for those costs.

24 (e) Not less than one million fifty thousand dollars (\$1,050,000) for purposes of
25 establishing and implementing a program pursuant to **Sections 25244.15.1, 25244.17.1,**
26 **25244.17.2, and 25244.22** to encourage hazardous waste generators to implement
27 pollution prevention measures.

28 (f) Funds not appropriated as specified in subdivisions (a) to (e), inclusive, may be
29 appropriated for any of the purposes specified in subdivision (a) of Section 60495, except
30 the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (13) of,
31 subdivision (a) of Section 60495.

32 **Comment.** Section 60520 restates subdivision (a) of former Section 25173.7 without substantive
33 change.

34 See Sections 60160 (“department”), 60215 (“hazardous waste”).

35 **Staff Note.** Proposed Section 60520(c) is restated to provide a cite to the relevant statute for a
36 referenced former code provision. Subdivision (c) cites former Section 25399.1(a), as well as
37 former Chapter 6.85 (which contained former Section 25399.1). This former section and chapter
38 were both added by Section 2 of Chapter 435 of the Statutes of 1994 (and later repealed by Section
39 77 of Chapter 39 of the Statutes of 2012). **Absent comment, this proposed restatement will be**
40 **presumed correct.**

1 **§ 60525. Annual adjustments for cost of living**

2 60525. (a) The amounts specified in subdivisions (b) to (e), inclusive, of Section 60520
3 shall be adjusted annually to reflect increases or decreases in the cost of living during the
4 prior fiscal year, as measured by the Consumer Price Index issued by the Department of
5 Industrial Relations or by a successor agency.

6 (b) Notwithstanding subdivision (a), the department may, upon the approval of the
7 Legislature in a statute or the annual Budget Act, take either of the following actions:

8 (1) Reduce the amounts specified in subdivisions (a) to (e), inclusive, of Section 60520,
9 if there are insufficient funds in the Toxic Substances Control Account.

10 (2) Suspend the transfer specified in subdivision (c) of Section 60520, if there are no
11 orphan shares pending payment pursuant to former Chapter 6.85 (commencing with
12 Section 25396) of Division 20, as added by Section 2 of Chapter 435 of the Statutes of
13 1994.

14 **Comment.** Section 60525 restates subdivision (b) of former Section 25173.7 without substantive
15 change.

16 See Section 60160 (“department”).

17 **Staff Note.** Proposed Section 60525(b)(2) is restated to provide a cite to the relevant statute for a
18 referenced former Chapter 6.85. This former chapter was added by Section 2 of Chapter 435 of the
19 Statutes of 1994 (and later repealed by Section 77 of Chapter 39 of the Statutes of 2012). **Absent**
20 **comment, this proposed restatement will be presumed correct.**

21
22 **Article 3. Fees, Surcharges, Fines, Penalties, and Funds to be**
23 **Deposited**

24 **§ 60550. Fees, surcharges, fines, penalties, and funds deposited into accounts**

25 60550. (a) Notwithstanding this division, or Part 22 (commencing with Section 43001)
26 of Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines, penalties,
27 and funds that are required to be deposited into the Hazardous Waste Control Account or
28 the Toxic Substances Control Account, the department, with the approval of the secretary,
29 may take any of the following actions:

30 (1) Assume responsibility for, or enter into a contract with a private party or with another
31 public agency, other than the State Board of Equalization, for the collection of any fees,
32 surcharges, fines, penalties and funds described in Section 60450 or otherwise described
33 in this division or *Part 2 (commencing with Section 78000) of Division 45*, for deposit into
34 the Hazardous Waste Control Account or the Toxic Substances Control Account.

35 (2) Administer, or by mutual agreement, contract with a private party or another public
36 agency, for the making of those determinations and the performance of functions that
37 would otherwise be the responsibility of the State Board of Equalization pursuant to this
38 division, *Part 2 (commencing with Section 78000) of Division 45*, or Part 22 (commencing
39 with Section 43001) of Division 2 of the Revenue and Taxation Code, if those activities
40 and functions for which the State Board of Equalization would otherwise be responsible

1 become the responsibility of the department or, by mutual agreement, the contractor
2 selected by the department.

3 (b) If, pursuant to subdivision (a), the department, or a private party or another public
4 agency, pursuant to a contract with the department, performs the determinations and
5 functions that would otherwise be the responsibility of the State Board of Equalization, the
6 department shall be responsible for ensuring that persons who are subject to the fees
7 specified in subdivision (a) have equivalent rights to public notice and comment, and
8 procedural and substantive rights of appeal, as afforded by the procedures of the State
9 Board of Equalization pursuant to Part 22 (commencing with Section 43001) of Division
10 2 of the Revenue and Taxation Code. Final responsibility for the administrative adjustment
11 of fee rates and the administrative appeal of any fees or penalty assessments made pursuant
12 to this section may only be assigned by the department to a public agency.

13 (c) If, pursuant to subdivision (a), the department, or a private party or another public
14 agency, pursuant to a contract with the department, performs the determinations and
15 functions that would otherwise be the responsibility of the State Board of Equalization, the
16 department shall have equivalent authority to make collections and enforce judgments as
17 provided to the State Board of Equalization pursuant to Part 22 (commencing with Section
18 43001) of Division 2 of the Revenue and Taxation Code. Unpaid amounts, including
19 penalties and interest, shall be a perfected and enforceable state tax lien in accordance with
20 Section 43413 of the Revenue and Taxation Code.

21 (d) The department, with the concurrence of the secretary, shall determine which
22 administrative functions should be retained by the State Board of Equalization,
23 administered by the department, or assigned to another public agency or private party
24 pursuant to subdivisions (a), (b), and (c).

25 (e) The department may adopt regulations to implement subdivisions (a) to (d), inclusive.

26 **Comment.** Section 60550 continues subdivisions (e)-(i) of former Section 25174 without
27 substantive change.

28 See Sections 60160 (“department”), 60295 (“person”), 60345 (“secretary”).

29 **Staff Notes. (1)** Section 25174 refers to the “Secretary for Environmental Protection.” Proposed
30 Section 60550 replaces that reference with the defined term, “secretary.” See proposed Section
31 60345 (“secretary”).

32 **(2)** Section 25174(f) requires the department, if assigning certain functions pursuant to “this
33 section,” to assign the specified functions to a public agency, as opposed to a private party. Section
34 25174 has been proposed for recodification as multiple provisions (proposed Sections 60450-
35 60470, 60575 and this proposed section). The provisions continued in this proposed section appear
36 to be the only ones relevant to the reference, as they involve the department contracting with a
37 private party or public agency to administer and collect fee and penalty assessments. For this
38 reason, the reference will refer to “this [proposed] section,” which continues subdivisions (e)-(i) of
39 Section 25174.

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

Article 4. Reporting for Budget

§ 60575. Reporting on specified budget amounts

60575. (a)(1) The department shall, at the time of the release of the annual Governor’s Budget, describe the budgetary amounts proposed to be allocated to the State Board of Equalization, as specified in subdivision (b) of Section 60455, and the California Department of Tax and Fee Administration, as specified in paragraph (4) of subdivision (a) of Section 60495, for the upcoming fiscal year.

(2) It is the intent of the Legislature that moneys appropriated in the annual Budget Act each year for the purpose of reimbursing the State Board of Equalization, a private party, or other public agency, for the administration and collection of the fees imposed pursuant to **Article 9.1 (commencing with Section 25205.1)** and deposited in the Hazardous Waste Control Account, shall not exceed the costs incurred by the State Board of Equalization, the private party, or other public agency, for the administration and collection of those fees.

(b) With respect to expenditures for the purposes of subdivisions (a) and (c) of Section 60455 and paragraphs (1) and (2) of subdivision (a) of Section 60495, the department shall, at the time of the release of the annual Governor’s Budget, also make available the budgetary amounts and allocations of staff resources of the department proposed for the following activities:

(1) The department shall identify, by permit type, the projected allocations of budgets and staff resources for hazardous waste facilities permits, including standardized permits, closure plans, and postclosure permits.

(2) The department shall identify, with regard to surveillance and enforcement activities, the projected allocations of budgets and staff resources for the following types of regulated facilities and activities:

(A) Hazardous waste facilities operating under a permit or grant of interim status issued by the department, and generator activities conducted at those facilities. This information shall be reported by permit type.

(B) Transporters.

(C) Response to complaints.

(3) The department shall identify the projected allocations of budgets and staff resources for both of the following activities:

(A) The registration of hazardous waste transporters.

(B) The operation and maintenance of the hazardous waste manifest system.

(4) The department shall identify, with regard to site mitigation and corrective action, the projected allocations of budgets and staff resources for the oversight and implementation of the following activities:

(A) Investigations and removal and remedial actions at military bases.

(B) Voluntary investigations and removal and remedial actions.

(C) State match and operation and maintenance costs, by site, at joint state and federally funded National Priority List Sites.

(D) Investigation, removal and remedial actions, and operation and maintenance at the Stringfellow Hazardous Waste Site.

1 (E) Investigation, removal and remedial actions, and operation and maintenance at the
2 Casmalia Hazardous Waste Site.

3 (F) Investigations and removal and remedial actions at nonmilitary, responsible party
4 lead National Priority List Sites.

5 (G) Preremedial activities under the federal Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

7 (H) Investigations, removal and remedial actions, and operation and maintenance at
8 state-only orphan sites.

9 (I) Investigations and removal and remedial actions at nonmilitary, non-National Priority
10 List responsible party lead sites.

11 (J) Investigations, removal and remedial actions, and operation and maintenance at
12 Expedited Remedial Action Program sites pursuant to former Chapter 6.85 (commencing
13 with Section 25396) of Division 20, added by Section 2 of Chapter 435 of the Statutes of
14 1994.

15 (K) Corrective actions at hazardous waste facilities.

16 (5) The department shall identify, with regard to the regulation of hazardous waste, the
17 projected allocation of budgets and staff resources for the following activities:

18 (A) Determinations pertaining to the classification of hazardous wastes.

19 (B) Determinations for variances made pursuant to **Section 25143**.

20 (6) The department shall identify projected allocations of budgets and staff resources
21 needed to do all of the following:

22 (A) Identify, remove, store, and dispose of, suspected hazardous substances or hazardous
23 materials associated with the investigation of clandestine drug laboratories.

24 (B) Respond to emergencies pursuant to Section 78875.

25 (C) Create, support, maintain, and implement the railroad accident prevention and
26 immediate deployment plan developed pursuant to Section 7718 of the Public Utilities
27 Code.

28 (D) Determinations, other than those specified in paragraph (5), and responses to public
29 inquiries made by the department regarding the regulation of hazardous waste and
30 hazardous substances.

31 (7) The department shall identify projected allocations of budgets and staff resources for
32 the administration and implementation of the unified hazardous waste and hazardous
33 materials regulatory program established pursuant to Chapter 6.11 (commencing with
34 Section 25404) of Division 20.

35 (8) The department shall identify the total cumulative expenditures of the Regulatory
36 Structure Update and Site Mitigation Update projects since their inception, and shall
37 identify the total projected allocations of budgets and staff resources that are needed to
38 continue these projects.

39 (9) The department shall identify the total projected allocations of budgets and staff
40 resources that are necessary for all other activities proposed to be conducted by the
41 department.

42 **Comment.** Section 60575 restates paragraphs (2) and (3) of subdivision (c) and subdivision (d)
43 of former Section 25174 without substantive change. An obsolete reference to the “State Board of

1 Equalization” was updated to refer to the “California Department of Tax and Fee Administration.”
2 See 2019 Cal. Stat. ch. 497, § 161. A reference to the “federal Comprehensive Environmental
3 Response, Compensation, and Liability Act of 1980, (42 U.S.C. Sec. 9601 et seq.)” was revised to
4 include an “as amended” designation.

5 See Sections 60160 (“department”), 60215 (“hazardous waste”), 60250 (“manifest”).

6 **Staff Notes. (1)** Section 25174(c)(2) requires the department to describe budgetary amounts that
7 will be allocated to the State Board of Equalization pursuant to two specified provisions. One of
8 those provisions, Section 25173.6(b)(3), formerly involved allocations to the State Board of
9 Equalization, but has been revised to address allocations to the California Department of Tax and
10 Fee Administration. See 2019 Cal. Stat. ch. 497, § 161.

11 This section has been restated to conform to that change.

12 **(2)** Section 25174(d)(4)(J) refers to the “federal Comprehensive Environmental Response,
13 Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.)” Other references to this
14 federal law in Chapter 6.5 consistently include an “as amended” designation. See, e.g., proposed
15 Sections 60490(b)(9), 60500(a), and 60580(a). This reference is likely also intended to refer to the
16 current version of the federal law. Given that (and to avoid possible confusion), an “as amended”
17 designation was added to this cross-reference.

18 **(3)** Section 25174(d)(4)(J) refers to former Chapter 6.85 of Division 20. This provision is restated
19 to cite to the relevant statute for the former chapter. This former chapter was added by Section 2 of
20 Chapter 435 of the Statutes of 1994 (and later repealed by Section 77 of Chapter 39 of the Statutes
21 of 2012).

22 **(4)** Section 25174(d)(5)(C) requires the department to identify budget amounts and staff allocation
23 for “[o]ther determinations and responses to public inquiries made by the department regarding the
24 regulation of hazardous waste and hazardous substances.” Given that paragraph (5) specifically
25 relates to the regulation of hazardous wastes (but not hazardous substances), this subparagraph
26 appears to be misplaced. It has been proposed for recodification as subparagraph (D) of paragraph
27 (6) of this proposed section.

28 **Absent comment, these proposed changes will be presumed correct.**

29 **§ 60580. Report regarding estimated funding for direct site remediation costs**

30 60580. (a) The department shall submit to the Legislature with the Governor’s Budget
31 each year a report that includes an estimate of the funding needed to fund direct site
32 remediation costs at state orphan sites and meet the state’s obligation to pay for direct site
33 remediation costs at federal Superfund orphan sites pursuant to paragraph (3) of subsection
34 (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation,
35 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

36 (b) The estimate shall include projected costs for the current budget year and the two
37 following budget years, including, but not limited to, the state’s 10-percent funding
38 obligation for remedial actions at federal Superfund orphan sites, the state’s 100-percent
39 funding obligation for ongoing operation and maintenance at federal Superfund orphan
40 sites, and ongoing operation and maintenance costs at state orphan sites.

41 **Comment.** Section 60580 continues subdivision (c) of former Section 25173.7 without
42 substantive change.

43 See Section 60160 (“department”).

44 **Staff Note.** Section 25173.7(c) relates to funding used for activities that are governed by Chapter
45 6.8. This provision uses several terms, which are defined in Chapter 6.8, without citation to the

1 relevant definitions (e.g., “direct site remediation costs,” “operation and maintenance,” “orphan
2 site,” “remedial action”).

3 It appears that the definitions for these terms in Chapter 6.8 were intended to apply to their use
4 in this provision. See Staff Note to the heading of this proposed chapter.

5 CHAPTER 5. GENERAL POWERS AND DUTIES

6 Article 1. Contracting

7 **§ 60620. Contracts for specialized training programs**

8 60620. The department shall enter into contracts or agreements with educational,
9 professional, or trade associations, using a competitive bidding process, to establish
10 specialized training programs with a statewide focus to instruct businesses and other
11 entities on compliance with statutes and regulations governing the handling, disposal,
12 transportation, and storage of hazardous waste.

13 **Comment.** Section 60620 continues former Section 25172.6 without substantive change.

14 See Sections 60095 (“business”), 60160 (“department”), 60175 (“disposal”), 60205
15 (“handling”), 60215 (“hazardous waste”), 60350 (“storage”).

16 Article 2. Duties

17 **§ 60635. Department obligations**

18 60635. The department, in performing its duties under this division, shall do all of the
19 following:

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

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

26 (c) Establish and maintain a toll-free Toxic Substances Hotline, operating during the
27 regular working hours of the department, to provide information on hazardous waste or
28 appropriate referrals on other toxic substances to the regulated community and the public.
29 The department shall coordinate the Toxic Substances Hotline program with other
30 programs that provide information on hazardous wastes and other toxic substances,
31 including, but not limited to, the technical reference center established pursuant to
32 subdivision (b).

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

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

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

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

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

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

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

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

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

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

15 (l) Establish and maintain an information clearinghouse, which shall consist of a record
16 of wastes that may be recyclable. Every producer of hazardous waste shall supply the
17 department with information for the clearinghouse. Each producer shall not be required to
18 supply any more information than is required by the manifests provided for in **Section**
19 **25160**. The department shall make this information available to persons who desire to
20 recycle the wastes. The information shall be made available in such a way that the trade
21 secrets of the producer are protected.

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

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

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

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

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

32 (4) An annual California Hazardous Waste Management Symposium.

33 **Comment.** Section 60635 continues former Section 25170 without substantive change.

34 See Sections 60095 (“business”), 60160 (“department”), 60175 (“disposal”), 60205
35 (“handling”), 60215 (“hazardous waste”), 60220 (“hazardous waste facility”), 60225 (“hazardous
36 waste management” or “management”), 60250 (“manifest”), 60295 (“person”), 60300
37 (“processing”), 60305 (“producer”), 60325 (“recycling”), 60350 (“storage”), 60390 (“waste”).

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

Article 3. Information Distribution

§ 60650. Reporting and distribution of information

60650. (a) The department may report findings and results of an investigation that the department undertakes pertaining to subject matter governed by this division, except for trade secrets as provided in Section 60655.

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

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

Comment. Section 60650 continues former Section 25177 without substantive change. See Sections 60160 (“department”), 60165 (“director”), 60260 (“natural resources”).

§ 60655. Protection of trade secrets

60655. (a)(1) The department shall establish procedures to ensure that trade secrets used by a person regarding methods of hazardous waste handling and disposal are utilized by the director, the department, or any authorized representative of the department only in connection with the responsibilities of the department pursuant to this division.

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

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

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

(1) It is not patented.

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

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

Comment. Section 60655 restates former Section 25173 without substantive change.

See Sections 60095 (“business”), 60160 (“department”), 60165 (“director”), 60175 (“disposal”), 60205 (“handling”), 60215 (“hazardous waste”), 60295 (“person”).

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

Currently, Section 25173 provides:

The department shall establish procedures to ensure that trade secrets used by a person regarding methods of hazardous waste handling and disposal are utilized by the director, the department, or any authorized representative of the department only in connection with the responsibilities of the department pursuant to this chapter and that such trade secrets are not

1 otherwise disseminated by the director, the department, or any authorized representative of the
2 department without the consent of the person. However, any information shall be made available
3 to governmental agencies for use in making studies and for use in judicial review or enforcement
4 proceedings involving the person furnishing the information.

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

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

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

14 Article 4. Regulations and Standards

15 **§ 60670. Hazardous waste management to protect against hazards to public health, to** 16 **domestic livestock, to wildlife, or to the environment**

17 60670. (a) The department shall adopt, and revise when appropriate, standards and
18 regulations for the management of hazardous wastes to protect against hazards to the public
19 health, to domestic livestock, to wildlife, or to the environment.

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

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

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

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

37 (f) Before the adoption of regulations, the department shall notify all agencies of
38 interested local governments, including, but not limited to, certified unified program
39 agencies, local governing bodies, local planning agencies, local health authorities, local
40 building inspection departments, the Department of Pesticide Regulation, the Department
41 of the California Highway Patrol, the Department of Fish and Wildlife, the Department of
42 Industrial Relations, the Division of Occupational Safety and Health, the State Air
43 Resources Board, the State Water Resources Control Board, the Office of the State Fire

1 Marshal, regional water quality control boards, the California Building Standards
 2 Commission, the Office of Environmental Health Hazard Assessment, and the Department
 3 of Resources Recycling and Recovery.

4 **Comment.** Section 60670 continues former Section 25150 without substantive change. Several
 5 of the listed state agency names were outdated and have been corrected to refer to the current name
 6 of the relevant agency. See Fish & Game Code § 700; Health & Safety Code §§ 13100, 18920;
 7 Lab. Code § 56; Pub. Res. Code § 40400.

8 See Sections 60105 (“certified unified program agency” or “CUPA”), 60160 (“department”),
 9 60200 (“federal act”), 60215 (“hazardous waste”), 60220 (“hazardous waste facility”), 60225
 10 (“hazardous waste management” or “management”), 60245 (“local officer”), 60260 (“natural
 11 resources”), 60325 (“recycling”), 60390 (“waste”).

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

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

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

24 **(2)** Section 25150(f) refers to a number of local and state agencies. Several of the state agency
 25 names were outdated and have been corrected to refer to the current name of the relevant agency.
 26 See Fish & Game Code § 700; Health & Safety Code §§ 13100, 18920; Lab. Code § 56; Pub. Res.
 27 Code § 40400. **Absent comment, these proposed corrections will be presumed correct.**

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

32 **§ 60675. Authority to adopt varying regulations**

33 60675. (a) The department, when adopting regulations pursuant to Section 60670, may
 34 adopt varying regulations for different areas of the state depending on population density,
 35 climate, geology, types and volumes of hazardous waste generated in the area, types of
 36 waste treatment technology available in the area, and other factors relevant to hazardous
 37 waste handling, processing, storing, recycling, and disposal.

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

39 **Comment.** Section 60675 continues former Section 25151 without substantive change.

40 See Sections 60160 (“department”), 60175 (“disposal”), 60205 (“handling”), 60215 (“hazardous
 41 waste”), 60300 (“processing”), 60325 (“recycling”), 60365 (“treatment”), 60390 (“waste”).

42 **Staff Note.** Section 25151 was restated for clarity. Currently, Section 25151 provides:

43 The department may adopt varying regulations pursuant to Section 25150, other than
 44 building standards for different areas of the state depending on population density, climate,
 45 geology, types and volumes of hazardous waste generated in the area, types of waste treatment

1 technology available in the area, and other factors relevant to hazardous waste handling, processing,
2 storing, recycling, and disposal.

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

4 **§ 60680. Regulations adopted prior to January 1, 2008**

5 60680. Any regulation adopted prior to January 1, 2008, pursuant to former Section
6 25150.6, that exempts a hazardous waste management activity from one or more of the
7 requirements of this division shall remain valid unless repealed.

8 **Comment.** Section 60680 restates former Section 25150.65 without substantive change.
9 See Section 60225 (“hazardous waste management” or “management”).

10 **Staff Notes. (1)** Section 25150.65 was restated to improve readability. Currently, Section 25150.65
11 provides:

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

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

16 **(2)** Section 25150.65 refers to a regulation adopted prior to January 1, 2008 pursuant to former
17 Section 25150.6. Former Section 25150.6 was added in 1998 and amended twice prior to 2008. See
18 1998 Cal. Stat. ch. 676, § 1; 2001 Cal. Stat. ch. 605, § 4; 2004 Cal. Stat. ch. 175, § 1. For this
19 reference, no statutory citation was provided to avoid an implication that only certain regulations
20 are covered by this provision (i.e., those regulations adopted when a specified version of the section
21 was in effect).

22 **§ 60685. Public hearing on proposed regulations**

23 60685. (a) Before adopting building standards or adopting or revising other standards
24 and regulations for the handling, processing, storing, use, recycling, and disposal of
25 hazardous and extremely hazardous wastes, the department shall hold at least one public
26 hearing in Sacramento, or in a city within the area of the state to be affected by the proposed
27 regulations.

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

31 **Comment.** Section 60685 continues former Section 25152 without substantive change.

32 See Sections 60160 (“department”), 60175 (“disposal”), 60195 (“extremely hazardous waste”),
33 60205 (“handling”), 60215 (“hazardous waste”), 60300 (“processing”), 60325 (“recycling”).

34 **§ 60690. Permissible format for contingency plan**

35 60690. On or before July 1, 1995, the department shall revise any standard or regulation
36 it has adopted that requires the preparation of a contingency plan, as that term is defined in
37 Section 66260.10 of Title 22 of the California Code of Regulations, to allow the person
38 preparing the contingency plan to use the format adopted pursuant to former Section
39 25503.4, if that person elects to use that format.

40 **Comment.** Section 60690 continues former Section 25150.5 without substantive change.

41 See Sections 60160 (“department”), 60295 (“person”).

1 **Staff Notes. (1)** Section 25150.5 involves an obligation of the department that was supposed to
2 occur in 1995. It is unclear whether this provision has any continuing effect. **The staff welcomes**
3 **comment on this issue.**

4 **(2)** Assuming this section has continuing effect, it is unclear how the reference to Section 25503.4
5 should be updated. This section requires the department to permit use of a contingency plan format
6 adopted pursuant to “Section 25503.4.” Section 25503.4 has been repealed. 2013 Cal. Stat. ch. 419,
7 § 2.

8 In proposed Section 60690, the reference has been adjusted to refer to “former” Section 25503.4.
9 The staff considered whether to provide a statutory cite, but was unsure whether the relevant version
10 of Section 25503.4 should have been the one in effect on July 1, 1995 (the date specified in the
11 statute) or the last amended version. See 1993 Cal. Stat. ch. 630, § 6; 2013 Cal. Stat. ch. 352, § 359.

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

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

18 Article 5. Reporting

19 § 60700. Information to be posted online

20 60700. On or before January 1 of each odd-numbered year, the department shall post on
21 its internet website, at a minimum, all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

41 (h) Research activity initiated by the department.

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

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

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

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

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

10 **Comment.** Section 60700 continues former Section 25178 without substantive change. An
11 erroneous reference to “paragraph (4) of subdivision (a) of Section 25197.1” was corrected to refer
12 to Section [XXXXX], which continues Section 25197.1(b)(4).

13 See Sections 60160 (“department”), 60175 (“disposal”), 60200 (“federal act”), 60215
14 (“hazardous waste”), 60220 (“hazardous waste facility”), 60225 (“hazardous waste management”
15 or “management”), 60315 (“recyclable material”), 60390 (“waste”).

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

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

23 It is unclear whether these competing definitions cause problems in practice. **The staff welcomes**
24 **comment on this issue.**

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

30 **(3)** The Independent Review Panel (“IRP”) concluded that this section appears to be at least
31 partially obsolete. See DTSC Independent Review Panel Recommendations to the Governor and
32 the Legislature Pursuant to Health and Safety Code Section 57014(f) 31 (January 8, 2018),
33 *available at* [https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/04/IRP-Annual-Report-January-](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/04/IRP-Annual-Report-January-8-218.pdf)
34 [8-218.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/04/IRP-Annual-Report-January-8-218.pdf). Specifically, the IRP Report notes that this section “requires the posting of numerous
35 reports on the DTSC website that were considered important to post thirteen years ago and which,
36 in [subdivision (l)], refers to a non-existent code section.” **The staff recommends that this issue**
37 **be added to the list of substantive issues for possible future study (with attribution to the**
38 **IRP).**

DISPOSITION OF EXISTING LAW

Note. This table shows the proposed disposition, as reflected in this staff draft, of provisions in Chapter 6.5 of Division 20 of the Health and Safety Code (§§ 25100-25259), as the law existed on January 1, 2021. Unless otherwise indicated, all statutory references are to the Health and Safety Code.

Existing Provision	Corresponding New Provision
25100	60000
25101	60005
25103	60010
25105	60015
25106	60020
25110	60075
25110.02	60080
25110.1	60085
25110.10(a).....	60150
25110.10.1	60145
25110.11	60155
25110.2	Not con't
25110.3	60090
25110.5	60095
25110.8	60100
25110.8.5 (except 2nd sent. of subd. (b)).....	60110
25110.8.5, 2nd sent. of subd. (b)	60115
25110.9(b)	60135
25110.9(a).....	60130
25110.9.1(b)	60125
25110.9.1(a).....	60120
25110.9.3	60140
25111	60160
25111.1	Not con't
25112	60165
25112.5(a), pt. preceding numbered paragraphs	60170
25113	60175
25114	60180
25114.5	60190
25115	60195
25115.1	60200
25116	60205
25116.5	60210
25117(a)-(c).....	60215(a)
25117.1	60220
25117.10	60235
25117.11	60275
25117.12	60280
25117.13	60230
25117.14	60290

25117.2	60225
25117.4.1(b)	60245
25117.4.1(a).....	60240
25117.5	60215(b)
25117.6	60255
25117.8	60260
25117.9	60265
25117.9.1	60270
25118	60295
25119	60300
25120	60305
25120.2	60310
25120.5	60315
25121	60320
25121.1	60325
25121.3(a).....	60330
25121.5	60335
25122.7	60340
25122.8	Not con't
25122.9	60345
25123	60350
25123.3	60355
25123.4	60360
25123.5	60365
25123.6	60385
25123.7(a).....	60375
25123.7(b)	60105
25123.7(c).....	60285
25123.7(d)	60370
25123.8	60380
25124	60390
25150	60670
25150.5	60690
25150.65	60680
25151	60675
25152	60685
25160(a)(2)	60185
25160(a)(1), (3)	60250
25170	60635
25172.6	60620
25173	60655
25173.6(b), (c)	60495
25173.6(a).....	60490
25173.6(d), (e)	60500
25173.6(f)	60505
25173.6(g), (h).....	60510
25173.6(i)	60515
25173.7(c).....	60580
25173.7(b)	60525

25173.7(a).....	60520
25174(c)(2), (3), (d).....	60575
25174(e)-(i)	60550
25174(a).....	60450
25174(b)	60455
25174(c)(1).....	60460
25174(j)	60465
25174(k)	60470
25174.9	60475
25177	60650
25178.....	60700

DERIVATION OF NEW LAW

Note. This table shows the derivation of each provision in the proposed Hazardous Waste Control Recodification Act, 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
60000	25100
60005	25101
60010	25103
60015	25105
60020	25106
60035	new
60040	new
60045	new
60050	new
60055	new
60060	new
60075	25110
60080	25110.02
60085	25110.1
60090	25110.3
60095	25110.5
60100	25110.8
60105	25123.7(b)
60110	25110.8.5 (except 2nd sent. of subd. (b))
60115	25110.8.5, 2nd sent. of subd. (b)
60120	25110.9.1(a)
60125	25110.9.1(b)
60130	25110.9(a)
60135	25110.9(b)
60140	25110.9.3
60145	25110.10.1
60150	25110.10(a)
60155	25110.11
60160	25111
60165	25112
60170	25112.5(a), pt. preceding numbered paragraphs
60175	25113
60180	25114
60185	25160(a)(2)
60190	25114.5
60195	25115
60200	25115.1
60205	25116
60210	25116.5
60215(a)	25117(a)-(c)
60215(b)	25117.5

60220	25117.1
60225	25117.2
60230	25117.13
60235	25117.10
60240	25117.4.1(a)
60245	25117.4.1(b)
60250	25160(a)(1), (3)
60255	25117.6
60260	25117.8
60265	25117.9
60270	25117.9.1
60275	25117.11
60280	25117.12
60285	25123.7(c)
60290	25117.14
60295	25118
60300	25119
60305	25120
60310	25120.2
60315	25120.5
60320	25121
60325	25121.1
60330	25121.3(a)
60335	25121.5
60340	25122.7
60345	25122.9
60350	25123
60355	25123.3
60360	25123.4
60365	25123.5
60370	25123.7(d)
60375	25123.7(a)
60380	25123.8
60385	25123.6
60390	25124
60450	25174(a)
60455	25174(b)
60460	25174(c)(1)
60465	25174(j)
60470	25174(k)
60475	25174.9
60490	25173.6(a)
60495	25173.6(b), (c)
60500	25173.6(d), (e)
60505	25173.6(f)
60510	25173.6(g), (h)
60515	25173.6(i)
60520	25173.7(a)
60525	25173.7(b)

60550	25174(e)-(i)
60575	25174(c)(2), (3), (d)
60580	25173.7(c)
60620	25172.6
60635	25170
60650	25177
60655	25173
60670	25150
60675	25151
60680	25150.65
60685	25152
60690	25150.5
60700	25178

SUBSTANTIVE ISSUES FOR POSSIBLE FUTURE STUDY

When the Legislature authorized the Commission to study Chapters 6.5 and 6.8 of Division 20 of the Health and Safety Code, the Legislature also directed the Commission to “include a list of substantive issues that the commission identifies in the course of its work, for possible future study.” See 2018 Cal. Stat. res. ch. 158. The Legislature’s grant of authority for this project precludes the Commission from making “any substantive changes to the law.” See *id.*

In the course of the Commission’s study of Chapter 6.5, the Commission identified the issues listed below for possible future study.

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