

Memorandum 2019-10

Recodification of Toxic Substance Statutes (Discussion of Issues)

In this study, the Commission¹ is undertaking a nonsubstantive reorganization of Chapters 6.5 (commencing with Section 25100) and 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.²

After a brief note about the provisional nature of the staff recommendations contained in this memorandum, this memorandum discusses a proposed work plan for this study, offers more detail on the proposed location for the recodified law, discusses an organizational structure for the recodification of Chapter 6.8, and presents draft legislation for the first piece of the recodification.

Except as otherwise indicated, all statutory references in this memorandum are to the Health and Safety Code. Unless it is sufficiently clear from the context, any references to proposed new law (divisions, parts, sections, etc.) are designated as “proposed” or “new.” To explain where the substance of existing law can be found in the proposed new law, the contents of the proposed new law may be described as “recodified” existing law. Existing law is typically referred to without designation as “existing.”

PROVISIONAL NATURE OF STAFF PROPOSALS

Many of the proposals and staff recommendations contained in this memorandum are provisional. A recodification project typically requires that high-level organizational decisions be made before undertaking a thorough and detailed review of the content of the individual provisions. As the staff moves forward with the recodification and becomes more familiar with the details of

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

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

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

the law, some of the proposals and recommendations may prove to be unworkable or need significant refinement.

The stakeholders, who are more familiar with the details of the law, are in a good position to identify potential problems with the staff's proposals. **The staff welcomes any stakeholder input regarding the provisional proposals and staff recommendations contained in this memorandum.**

PROPOSED WORK PLAN

The staff has undertaken an initial, high-level review of the contents of Chapters 6.5 and 6.8. Based on this review, the staff's offers the following general work plan for this study.

Segmentation

Substantively, Chapters 6.5 and 6.8 appear to be largely separate and distinct.

Chapter 6.5 contains provisions addressing the sale and manufacture of hazardous or toxic products, as well as content focusing on hazardous waste management (rules for transportation, treatment, storage, and disposal).

Chapter 6.8, on the other hand, focuses primarily on the cleanup of a release (or response to a threatened release) of hazardous substances.

Although these chapters address related matters, there does not seem to be significant overlap or interconnection between the two chapters such that the chapters should be combined and integrated.

Therefore, the staff recommends that the Commission proceed with recodification of the chapters in series, completing the recodification of one chapter before proceeding to the next.

Order of Work

The staff recommends that the Commission work on Chapter 6.8 first, before working on Chapter 6.5.

In the staff's view, timing is a key consideration for deciding how to order this study. Completing the chapters in series would permit the recodification of the first chapter to proceed as legislation, while the Commission is still working on the remainder of the recodification. This would allow the Legislature to see the Commission's work at a relatively early stage of the process and provide additional direction or authority, as appropriate. This would also allow the

benefits of the recodification to be realized earlier. For these reasons, the staff suggests starting work on the chapter that could be completed more quickly.

Chapter 6.8 contains significantly less material than Chapter 6.5. Given the quantity of material in Chapter 6.8, it seems possible (depending on what challenges are encountered as this project proceeds) that the Commission could complete a final recommendation to recodify Chapter 6.8 in time for introduction in 2020. Based on the amount of material in Chapter 6.5, the staff believes it is unlikely that a recodification of that chapter could be completed by the end of this year.

In addition, Chapter 6.8 appears to have a narrower substantive focus than Chapter 6.5. Chapter 6.8 addresses only a single, general issue: cleanup of hazardous substance releases. By contrast, Chapter 6.5 addresses a wider range of issues, including green chemistry, listing of hazardous wastes, and rules for hazardous waste transportation and management.

Focusing first on Chapter 6.8 would allow the Commission and staff to become more familiar with the general topic (hazardous and toxic substances) before proceeding to the more complex body of law in Chapter 6.5.

Further Work on Chapter 6.8

During this meeting cycle, the staff had time available to proceed with the initial work on recodification. Consistent with the work plan proposed above, the staff began work on Chapter 6.8. The remainder of this memorandum discusses that work.

If the Commission decides to proceed with Chapter 6.5 first, the work on Chapter 6.8 can be set aside and revisited when the Commission undertakes work on that chapter.

PROPOSED LOCATION OF RECODIFIED CHAPTER 6.8

At the last meeting, the Commission decided to place the recodified law in a new division that would be located in the sizeable gap that exists between Divisions 39 and 101 of the Health and Safety Code.³ The Commission now needs to decide more specifically where to locate the proposed law.

3. Minutes (Dec. 2018), p. 3.

The staff recommends that Chapter 6.8 be recodified as proposed Division 45, beginning with Section 68000. The reasons for that recommendation are explained below.

Proximity to Divisions 38 and 39

Existing Divisions 38 and 39 are the location, specified in Governor Wilson's 1991 Governor's Reorganization Plan No. 1, for the authorizing statutes for the Department of Toxic Substances Control and the Office of Environmental Health Hazard Assessment, respectively.⁴

Much of Chapters 6.5 and 6.8 relates to the Department of Toxic Substances Control, specifically, and hazardous substances and waste, more generally. It therefore seems reasonable to locate the recodified law near Divisions 38 and 39.

Room for Chapter 6.5

Although the staff has recommended that the Commission's work begin with Chapter 6.8, it seems logical to locate the recodified Chapter 6.5 before the recodified Chapter 6.8 in the code. Chapter 6.5 governs the sale and manufacture of hazardous materials and the management of hazardous wastes. Those subjects seem to chronologically precede the subject of Chapter 6.8, the cleanup of hazardous substances released into the environment.

To permit the placement of recodified Chapter 6.5 before recodified Chapter 6.8, the staff would leave space between Division 39 and the proposed location of recodified Chapter 6.8 (proposed Division 45).

Room for Related Law

The most significant concern raised by stakeholders about moving Chapters 6.5 and 6.8 out of Division 20 is that Division 20 also contains a number of other chapters that govern similar subject matter. There may be an advantage in keeping all of those chapters in close proximity to one another.⁵

4. To the staff's knowledge, this reorganization plan has not been codified. However, the staff understands that the reorganization plan has become effective, according to Government Code Section 12080.5.

See https://www.dtsc.ca.gov/LawsRegsPolicies/upload/OEARA_REG_GRP1.pdf (Division 38 from Section 146 of Governor's Reorganization Plan No. 1 of 1991); <https://oehha.ca.gov/media/downloads/public-information/background/grp1-hscdiv39.pdf> (Division 39 from Governor's Reorganization Plan No. 1 of 1991).

5. See, e.g., First Supplement to Memorandum 2018-69 and associated Exhibit. The related provisions identified to date include Chapters 6.6-6.77 and 6.82-6.97 of Division 20 (or some subset thereof).

Placing the recodified Chapter 6.8 in proposed Division 45 would leave five unused divisions between recodified Chapter 6.8 and existing Divisions 38 and 39. As discussed above, some of that space could be used for recodified Chapter 6.5. The remainder would provide room for the possible future relocation of related law.

ORGANIZATIONAL STRUCTURE FOR NEW DIVISION 45

The staff has conducted a top-level review of the content of Chapter 6.8. Based on that review, it proposes the following general organization for the recodification of that chapter:

Division 45. Hazardous Substance Response and Remediation
Part 1. General Provisions [Reserved]
Part 2. Hazardous Substance Account⁶
 Chapter 1. General Provisions⁷
 Chapter 2. Administration⁸
 Chapter 3. Financial Provisions⁹
 Chapter 4. Response Actions¹⁰
 Chapter 5. Recovery Actions¹¹
 Chapter 6. Site-specific Rules for Response and Recovery Actions¹²
 Chapter 7. Compensation for Loss due to Hazardous Substance Release¹³
 Chapter 8. Reimbursement for Orphan Share of Insolvent or Defunct Party¹⁴

6. The proposed name of Part 2 is the current name of Chapter 6.8.

7. The staff anticipates that proposed Chapter 1 would contain the material from existing Articles 1 and 2 of Chapter 6.8.

This memorandum also includes, as an attachment, a draft of the proposed legislation for Chapter 1 (provisions in attached draft are identified with bold text).

8. The staff anticipates that proposed Chapter 2 would contain provisions granting general regulatory authority and the material from existing Article 6.3 (Technology Demonstration Program) of Chapter 6.8.

9. The staff anticipates that proposed Chapter 3 would contain material related to accounts, appropriations, budgets, and related issues from existing Articles 3, 4, 7.5, 8.6, and parts of existing Article 5 of Chapter 6.8.

10. The staff anticipates that proposed Chapter 4 would contain material related to the removal or remediation of releases of hazardous substances from existing Article 5 of Chapter 6.8.

11. The staff anticipates that proposed Chapter 5 would contain material related to the recovery of the costs of response actions from responsible parties from existing Article 6 of Chapter 6.8.

12. The staff anticipates that proposed Chapter 6 would contain provisions that apply only to specific, named sites, including the material from existing Article 5.5 of Chapter 6.8.

13. The staff anticipates that proposed Chapter 7 would contain the material from existing Article 7 of Chapter 6.8.

14. The staff anticipates that proposed Chapter 8 would contain the material from existing Article 7.8 of Chapter 6.8.

Chapter 9. Cleanup Loans and Environmental Assistance to Neighborhoods¹⁵

Chapter 10. California Financial Assurance and Insurance for Redevelopment¹⁶

The reasons for that proposal are discussed below.

Division Name

The staff has provisionally given Division 45 the name “Hazardous Substance Response and Remediation.” This provisional name would seem to capture the general substance of Chapter 6.8.

That name may need to be revised as the study proceeds and the staff gets more familiar with the scope of issues addressed by and the terminology used in Chapter 6.8. The name may also need to be changed if the Commission were to decide to include content other than Chapter 6.8 in proposed Division 45.

Part 1. General Provisions

In statute drafting, it is common to begin a body of law with “General Provisions” that law that governs the body of law as a whole (including short titles, legislative intent, definitions, rules of construction, and similar material).

Proposed Part 1 would serve as the location for general provisions for Division 45 as a whole. As the staff does not yet know whether content other than Chapter 6.8 might be located in Division 45, it is not yet known whether there would be any general provisions that span the entire content of the proposed division. For that reason, Part 1 is reserved and left empty.

As a consequence, the content of Chapter 6.8 would be codified in proposed Part 2 of Division 45. The first chapter of that part would contain the general provisions for Chapter 6.8 as a whole.

Part 2. Hazardous Substance Account

Proposed Part 2 would contain the recodified substance of Chapter 6.8. The part would retain the existing name of Chapter 6.8, “Hazardous Substance Account.”

The staff generally reviewed the content of Chapter 6.8 to determine how proposed Part 2 should be organized.

15. The staff anticipates that proposed Chapter 9 would contain the material from existing Article 8.5 of Chapter 6.8.

16. The staff anticipates that proposed Chapter 10 would contain the material from existing Article 8.7 of Chapter 6.8.

As noted above, proposed Part 2 would begin with a chapter of general provisions. **A draft of proposed legislation for this first chapter is attached and discussed further below.**

The next chapters would address general administrative matters and general financial matters. The administration chapter will provide a location for provisions granting general authority and programs that are ancillary to the processes for cleanup and cost recovery. The financial provisions chapter will contain material related to accounts, appropriations, and other state-focused financial provisions.

The remainder of the part would be made up of chapters setting out the substantive law on hazardous substance remediation. In deciding on the content of those chapters, the staff sought to identify the key concepts pertaining to the cleanup of hazardous substances and the associated costs and liability provisions. The staff identified the following list of concepts, each of which is proposed to be a chapter in the recodified law:

- **Response actions:** rules governing removal or remedial actions for hazardous substance release sites.
- **Recovery actions:** rules governing the recovery of costs for response actions from responsible parties.
- **Site-specific rules:** rules pertaining to response or recovery actions that apply only to a designated site.
- **Compensation:** rules governing the filing and processing of claims for compensation of losses caused by hazardous substance releases.
- **Orphan share reimbursement:** funding program to reimburse for the payment of cleanup costs attributable to defunct or insolvent parties.
- **Cleanup loan program:** loan program for persons to undertake cleanup of brownfields and underutilized properties.
- **Financial assurance for redevelopment:** rules for selecting and subsidizing environmental insurance products for cleanup sites.

The staff believes that organizing the recodification around those concepts would make the content of Chapter 6.8 much easier to navigate, use, and maintain. For comparison, existing Chapter 6.8 contains the following articles:

- Article 1. Short Title and Legislative Intent
- Article 2. Definitions
- Article 3. Hazardous Substance Account
- Article 4. Fees

Article 5. Uses of the State Account
Article 5.5. Cleanup of Santa Susana Field Laboratory
Article 6. Recovery Actions
Article 6.3. Technology Demonstration Program
Article 7. Compensation
Article 7.5. Hazardous Substance Cleanup Bond Act of 1984
Article 7.8. Orphan Share Reimbursement Trust Fund
Article 8.5. Cleanup Loans and Environmental Assistance to Neighborhoods
Article 8.6. Revolving Loans Fund
Article 8.7. California Financial Assurance and Insurance for Redevelopment Program

These existing article names do not consistently provide a clear picture of the content of the articles, nor do the existing articles consistently group provisions by function. The proposed organization for the recodified law, presented above, is intended to improve on these matters.

Conclusion

The Commission needs to decide whether to approve the organization recommended by the staff, with or without changes. As noted earlier, decisions like these are provisional and are subject to change as the study proceeds. But the staff needs direction in order to begin the work of preparing a recodification.

Public comment on the proposed reorganization is requested.

DRAFT OF GENERAL PROVISIONS

This memorandum includes, as an attachment, a draft of proposed legislation for Chapter 1 of Part 2 of the new Division 45.

General Approach

In preparing the attached draft, the staff has taken a fairly conservative approach. For the most part, the language used in the draft is drawn from existing law verbatim. Minor changes to conform to legislative drafting practices or correct technical errors have been made without notation.¹⁷

Any changes made for clarity are identified in a "Staff Note" in the attached draft.

17. Changes the staff made to conform to legislative drafting practice included eliminating the words "such" and "thereof." The only technical correction that the staff made without notation was to replace "data base" with "database."

The proposed legislation contains an introductory, explanatory Staff Note.¹⁸ 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.

The remainder of this memorandum discusses specific issues encountered in drafting the proposed legislation.

Proposed Section 68000. Short title

Proposed Section 68000(a) continues the short title for existing Chapter 6.8 (the Carpenter-Presley-Tanner Hazardous Substance Account Act). As the staff understands, existing practice disfavors the use of authors' names in the short titles for legislation. However, this short title has been in existence for some time and has been used in the case law.¹⁹ It may be disruptive or confusing to change the name of the act at this point. Previously, in similar situations, the Commission has declined to change the existing name for the legislation.²⁰ For these reasons, the staff recommends retaining the existing short title. **Is the Commission comfortable with this approach?**

Proposed Section 68000(b) is new. This provision would provide a short title for the *legislation* that implements the Commission's final recommendation on this topic. The legislation would be named the "Hazardous Substance Account Recodification Act of 2020." This proposed name assumes that the Commission's recommendation would be complete in 2019 and implementing legislation would be introduced in 2020. If those assumptions prove incorrect, the name would be adjusted accordingly.

A short title would provide a straightforward way to refer to the recodification legislation in the provisions that govern the recodification's effect. Creating a short title for recodification legislation is also the proposed approach in the Commission's work on the California Public Records Act and the Fish and

18. See page i of attached draft proposed legislation.

19. See 1981 Cal. Stat. ch. 756, § 2; see also, e.g., *Foster-Gardner, Inc. v. National Union Fire Ins. Co.*, 18 Cal. 4th 857, 959 P.2d 265, 77 Cal. Rptr. 2d 107 (1998); *Fireman's Fund Ins. Co. v. City of Lodi*, 302 F.3d 928 (9th Cir. 2002).

20. See, e.g., Memorandum 2010-29, p. 14; Minutes (Aug. 2010), p. 5; *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010) (related to the "Davis-Stirling Common Interest Development Act").

Wildlife Code.²¹ **Does the Commission have any concerns with the proposed short title for the recodification legislation?**

Proposed Article 3. Definitions

Proposed Article 3 contains the generally applicable definitions that are currently found in Article 2 of Chapter 6.8.

Chapter 6.8 also contains a number of definitions that are distributed throughout the chapter.²² These distributed definitions generally apply in a narrow context (e.g., “for the purposes of this section”).²³

The staff considered whether it would be appropriate to move those other definitions into proposed Article 3 of the recodified law.²⁴ In general, a single, aggregated set of definitions provides a complete, clear view of the defined terms used in a body of law, the application of those definitions. Aggregating definitions can also help to identify possible improvements to the law (i.e., by placing different definitions of a single term in close proximity to one another). In addition, codifying the definitions in a single location facilitates the future development of the law, by simplifying the task of determining which definitions would apply to any proposed new provisions.

The staff, however, recommends against aggregating all the definitions in Article 3. Instead, definitions with limited application would be left near the provisions that they govern. This approach would promote ease of use, by allowing those who are reading just part of the law to find key, relevant definitions nearby. This is particularly important in Chapter 6.8, where different articles and sections define the same term differently²⁵ or have a list of specialized terminology applicable only in a particular context.²⁶

21. See proposed Gov’t Code Section 7920.005 in proposed legislation attached to Memorandum 2019-12; proposed Fish & Wildlife Code Section 1(b) in Tentative Recommendation on *Fish and Wildlife Code* (December 2018).

22. See, e.g., Sections 25337(b) (“direct site remediation costs”), 25358.2(a) (“trade secrets”), 25359.6(a) (“abandoned site”), 25385.1 (defining various terms), 25395.40 (defining various terms).

23. See, e.g., Sections 25337 (term defined “[f]or purposes of this section”), 25395.40 (terms defined “[f]or the purposes of this article”).

24. Given the nonsubstantive nature of the Commission’s task, it is worth noting that aggregating definitions would not require broadening the scope of application of existing definitions. The limited scope of the definition could be preserved, even if the definition was codified in a different location. For instance, the definition of “direct site remediation costs” in Section 25337 applies to that section. If that definition were moved out of the section, the definition could provide that it applies “for the purposes of [the provision that continues Section 25337].”

25. See, e.g., Sections 25360.2(a)(1), (2) (defining “owner” and “property” for the purposes of the section), 25360.3(a)(3), (4) (defining “owner” and “property” for the purposes of the section).

Does the Commission approve of the staff recommendation not to, as a matter of practice, aggregate the distributed definitions contained in Chapter 6.8?

That said, the staff also recognizes that it may be helpful to move some definitions with limited application to proposed Article 3.²⁷ **The staff welcomes input on which, if any, distributed definitions should be considered for relocation to Article 3.**

Restated Provisions

Proposed Article 3 contains several provisions that the staff proposes to restate for clarity or to correct apparent errors.²⁸ In each case, a Staff Note describes the reason for the restatement, provides the existing language for ease of reference, and requests public comment if there are any concerns. **Does the Commission have any concerns with this approach or the proposed restated definitions?**

In two instances, the staff identified definitions that would benefit from restatement for clarity, but the staff was unsure how the definition should be restated. After analyzing those definitions, the staff concluded that any restatement posed a risk of substantive change.²⁹ Instead, the staff recommends adding the restatement of those provisions to the list of items for possible future work. **Does the Commission approve of this approach?**

Citations to Federal Law

Chapter 6.8 contains numerous cross-references to federal law. The staff has reviewed the cross-references contained in the attached draft. Overall, it appears that the cross-references point to the correct material.³⁰

More concretely, Section 25360.2(a)(2) defines “property” as “either (A) real property of five acres or less which is zoned for, and on which has been constructed, a single-family residence, or (B) common areas within a residential common interest development”, while Section 25360.3(a)(4) defines property as either “[r]eal property acquired by a special district by means of a gift or donation for which an environmental assessment was completed prior to the transfer or conveyance of the real property to the special district” or “[a]n easement for which an environmental assessment was completed prior to the transfer or conveyance of the easement to an entity or organization authorized to accept the easement pursuant to Section 815.3 of the Civil Code.”

26. See, e.g., 25385.1 (defining various terms), 25395.40 (defining various terms).

27. See *supra* note 24.

28. See proposed Sections 68055, 68075, 68085, 68105.

29. See Staff Notes associated with proposed Sections 68110, 68125.

30. The staff corrected one cross-reference to federal law in proposed Section 68140. See the accompanying Staff Note.

However, the staff had some questions about the format of certain cross-references to federal law. We will be checking with the attorneys at the Office of Legislative Counsel to determine whether any changes should be made to the format of these cross-references and will update the Commission accordingly.

NEXT STEPS

If the Commission approves of the staff's work to date and the proposed organization for the recodification of Chapter 6.8, the staff will proceed with building the proposed legislation for the remainder of Chapter 6.8.

The staff welcomes comment on any of the provisions contained in the proposed legislation. The staff will present any comments received to the Commission for consideration.

Respectfully submitted,

Kristin Burford
Staff Counsel

PROPOSED DIVISION 45 OF HEALTH & SAFETY CODE

1 **☒ Staff Note.** This is a work in progress. The material shown below may be changed. For a
2 tentative outline of new Part 2 of Division 45 of the Health & Safety Code, see Memorandum
3 2019-10. All of the proposed provisions would be located in the Health & Safety Code. All
4 references are to the Health & Safety Code unless otherwise indicated.

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

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

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

18 **Notes.** Some provisions in this draft are followed by a “Staff Note.” Staff Notes are typically
19 intended to be temporary and will not be part of the Commission’s final recommendation. Staff
20 Notes are drafted to reflect the state of the law today. Thus, the sections in the proposed
21 legislation are referred to as “proposed” sections. Staff Notes serve to flag issues requiring special
22 attention or treatment. The staff does not plan to discuss each of these matters at the upcoming
23 meeting. Rather, persons should review the draft, identify any issues of concern, and then raise
24 those issues for discussion at the meeting or express their concerns in writing before the meeting,
25 or both. Where a Staff Note serves as a prompt for public comment, these prompts for comment
26 will typically be continued in the Commission’s tentative recommendation as “Notes” calling for
27 comment. However, where the Commission decides against a staff-proposed restatement and
28 reverts to existing statutory language, the “Staff Note” calling for comment would not be
29 continued in future drafts.

30 **Cross-references.** In some places, the provisions proposed for recodification in this draft
31 cross-refer to provisions contained in Chapter 6.8. Where the cross-referenced provision has not
32 yet been included in the recodification draft, the cross-reference is unchanged and is shown in
33 bold text. As new Division 45 is drafted, these references will be updated to reflect the new
34 numbering scheme. Where this draft contains the cross-referenced material, the cross-reference
35 was updated to reflect the proposed recodification.

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

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1

DRAFT LEGISLATION

2 **Health & Safety Code §§ 68000-[6XXXX] (added). Hazardous substance response and**
3 **remediation**

4 SEC. ___. Division 45 (commencing with Section 68000) is added to the Health
5 and Safety Code, to read:

6 DIVISION 45. HAZARDOUS SUBSTANCE RESPONSE AND 7 REMEDIATION

8 PART 1. GENERAL PROVISIONS [RESERVED]

9 PART 2. HAZARDOUS SUBSTANCE ACCOUNT

10 **☒ Staff Note.** In drafting proposed legislation for Part 2, the staff assumed that the entirety of
11 Chapter 6.8 (commencing with Section 25300) of Division 20 would be recodified in this part.
12 The provisions contained in this draft, particularly those that cross-reference the part, will require
13 reconsideration and possible adjustment if provisions of Chapter 6.8 of Division 20 are recodified
14 in a different location.

15 CHAPTER 1. GENERAL PROVISIONS

16 Article 1. Preliminary Provisions

17 **§ 68000. Short title**

18 68000. (a) This part shall be known and may be cited as the Carpenter-Presley-
19 Tanner Hazardous Substance Account Act.

20 (b) This part recodifies the provisions of former Chapter 6.8 (commencing with
21 Section 25300) of Division 20. The act that added this part shall be known and
22 may be cited as the “Hazardous Substance Account Recodification Act of 2020.”

23 **Comment.** Subdivision (a) of section 68000 continues former Section 25300 without
24 substantive change. The Carpenter-Presley-Tanner Hazardous Substance Account Act was
25 formerly codified as Chapter 6.8 (commencing with Section 25300) of Division 20 of this code.

26 Subdivision (b) is new. It provides a convenient means of referring to the recodification of
27 former Chapter 6.8 (commencing with Section 25300) of Division 20. For background, see
28 *Recodification of Hazardous Substance Account Provisions*, __ Cal. L. Revision Comm'n
29 Reports __ (2019).

30 **☒ Staff Note.** In drafting proposed Section 68000(b), the staff assumed that the Commission
31 will approve a final recommendation in this study in 2019 and seek introduction of implementing
32 legislation in 2020. The dates in Section 68000(b) and the accompanying Comment will require
33 adjustment if those assumptions prove incorrect.

1 **§ 68005. Legislative intent**

2 68005. It is the intent of the Legislature to do all of the following:

3 (a) Establish a program to provide for response authority for releases of
4 hazardous substances, including spills and hazardous waste disposal sites that pose
5 a threat to the public health or the environment.

6 (b) Compensate persons, under certain circumstances, for out-of-pocket medical
7 expenses and lost wages or business income resulting from injuries proximately
8 caused by exposure to releases of hazardous substances.

9 (c) Make available adequate funds in order to permit the State of California to
10 assure payment of its 10-percent share of the costs mandated pursuant to Section
11 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

12 **Comment.** Section 68005 continues former Section 25301 without substantive change.

13 See Sections 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68085
14 (“person” defined), 68105 (“release” defined), 68140 (“response” defined).

15 Article 2. Effect of Recodification

16 **§ 68010. Nonsubstantive reform**

17 68010. Nothing in the Hazardous Substance Account Recodification Act of
18 2020 is intended to substantively change the law contained in former Chapter 6.8
19 (commencing with 25300) of Division 20. The act is intended to be entirely
20 nonsubstantive in effect. Every provision of this part and every other provision of
21 this act, including, without limitation, every cross-reference in every provision of
22 the act, shall be interpreted consistent with the nonsubstantive intent of the act.

23 **Comment.** Section 68010 is modeled on Penal Code Section 16005. It makes clear that the
24 Hazardous Substance Account Recodification Act of 2020 has no substantive effect. The act is
25 intended solely to make the Carpenter-Presley-Tanner Hazardous Substance Account Act more
26 user-friendly. For background, see *Recodification of Hazardous Substance Account Provisions*,
27 ____ Cal. L. Revision Comm'n Reports ____ (2019).

28 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
29 provision in this division, see Section 68020. For specific guidance on the impact of a judicial
30 decision assessing the constitutionality of a predecessor of a provision in this division, see
31 Section 68025.

32 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

33 **§ 68015. Continuation of existing law**

34 68015. (a) A provision of this part insofar as it is substantially the same as a
35 previously existing provision relating to the same subject matter, shall be
36 considered as a restatement and continuation of the previously existing provision
37 and not as a new enactment.

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

41 (c) A reference in a statute or regulation to a provision of this part that is
42 substantially the same as a previously existing provision, shall, unless a contrary

1 intent appears, be deemed to include a reference to the previously existing
2 provision.

3 (d) A reference in a regulation to a provision of former Chapter 6.8
4 (commencing with Section 25300) of Division 20, rather than to the provision of
5 this part that continues the former provision, has no effect on the validity of the
6 regulation.

7 **Comment.** Subdivision (a) of Section 68015 is similar to Section 2, which is a standard
8 provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2;
9 Penal Code §§ 5, 16010(a); Prob. Code § 2(a); Veh. Code § 2.

10 Subdivision (b) is drawn from Government Code Section 9604 and Penal Code Section
11 16010(b).

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

13 Subdivision (d) is new. It is added to make clear that any delay in updating regulations to
14 reflect the enactment of this part does not have any effect on the validity of the regulation. A
15 regulation continues to be valid even if it refers to a provision of former Chapter 6.8 of Division
16 20.

17 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

18 **§ 68020. Judicial decision interpreting former law**

19 68020. (a) A judicial decision interpreting a previously existing provision is
20 relevant in interpreting any provision of this part that restates and continues that
21 previously existing provision.

22 (b) However, in enacting the Hazardous Substance Account Recodification Act
23 of 2020, the Legislature has not evaluated the correctness of any judicial decision
24 interpreting a provision affected by the act.

25 (c) The Hazardous Substance Account Recodification Act of 2020 is not
26 intended to, and does not, reflect any assessment of any judicial decision
27 interpreting any provision affected by the act.

28 **Comment.** Section 68020 is modeled on Penal Code Section 16020.

29 Subdivision (a) makes clear that case law construing a predecessor provision is relevant in
30 construing its successor in the Hazardous Substance Account Recodification Act of 2020.

31 Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.8 (commencing with
32 Section 25300) of Division 20, the Legislature has not taken any position on any case interpreting
33 any of those provisions.

34 For specific guidance on the impact of a judicial decision assessing the constitutionality of a
35 predecessor of a provision in this division, see Section 68025. For general guidance on the
36 nonsubstantive impact of the Hazardous Substance Account Recodification Act of 2020, see
37 Section 68010.

38 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

39 **☒ Staff Note.** In another ongoing recodification project, the Commission is proposing to include
40 a section similar to proposed Section 68020 that addresses Attorney General opinions, rather than
41 judicial decisions. The staff considered whether such a provision should be included in this
42 project, as well. The staff searched for, but did not find, Attorney General opinions related to
43 Chapter 6.8. For this reason, this draft does not include a provision about the effect of the
44 recodification on Attorney General opinions. **The staff welcomes comment on whether a**
45 **provision regarding the effect of the recodification on Attorney General opinions should be**
46 **included in this proposed legislation.**

1 **§ 68025. Constitutionality**

2 68025. (a) A judicial decision on the constitutionality of a previously existing
3 provision is relevant in determining the constitutionality of any provision of this
4 division that restates and continues that previously existing provision.

5 (b) However, in enacting the Hazardous Substance Account Recodification Act
6 of 2020, the Legislature has not evaluated the constitutionality of any provision
7 affected by the act, or the correctness of any judicial decision on the
8 constitutionality of any provision affected by the act.

9 (c) The Hazardous Substance Account Recodification Act of 2020 is not
10 intended to, and does not, reflect any determination of the constitutionality of any
11 provision affected by the act.

12 **Comment.** Section 68025 is modeled on Penal Code Section 16025.

13 Subdivision (a) makes clear that case law on the constitutionality of a predecessor provision are
14 relevant in determining the constitutionality of its successor in the Hazardous Substance Account
15 Recodification Act of 2020.

16 Subdivisions (b) and (c) make clear that in recodifying former Chapter 6.8 (commencing with
17 Section 25300) of Division 20, the Legislature has not taken any position on the constitutionality
18 of any of those provisions.

19 For specific guidance on the impact of a judicial decision interpreting a predecessor of a
20 provision in this division, see Section 68020. For general guidance on the nonsubstantive effect of
21 the Hazardous Substance Account Recodification Act of 2020, see Section 68010.

22 See Section 68000(b) (“Hazardous Substance Account Recodification Act of 2020”).

23 **§ 68030. Conforming rule change**

24 68030. (a) The department or another state agency may make a conforming rule
25 change without complying with the rulemaking procedure specified in Article 5
26 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2
27 of the Government Code, if the rule change meets all of the requirements of this
28 section.

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

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

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

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

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

39 (d) For the purposes of this section, a “conforming rule change” means a rule
40 change that deletes a reference to a provision of former Chapter 6.8 (commencing
41 with Section 25300) of Division 20 and replaces it with a reference to the
42 provision of this part that continues or restates the former provision. A “rule
43 change” includes a change to the text of a regulation in the California Code of
44 Regulations, a regulation’s citation of authority, or a regulation’s reference.

Comment. Section 68030 is new.
See Section 68050 (“department” defined).

Article 3. Definitions

§ 68035. Applicable definitions

68035. The definitions set forth in this article shall govern the interpretation of this part. Unless the context requires otherwise and except as provided in this article, the definitions contained in Section 101 of the federal act (42 U.S.C. Sec. 9601) shall apply to the terms used in this part.

Comment. Section 68035 continues former Section 25310 without substantive change.

See Section 68065 (“federal act” defined).

☒ Staff Notes. (1) Provisions like the first sentence of Section 25310 commonly include an express exception to the application of definitions for situations where it is clear that a definition was not meant to apply (e.g., “unless otherwise provided or the context requires otherwise”). It might be beneficial to add such an exception to proposed Section 68035. However, that could result in substantive change, which would be beyond the scope of this nonsubstantive study. **The staff proposes adding this issue to the list of substantive issues for possible future study that will be included in the Commission’s recommendation.**

(2) The second sentence of Section 25310 provides for the application of definitions contained in Section 101 of the federal act. Section 101 defines over 40 terms. The defined terms in Section 101 include commonly understood words, including “claim,” “damages,” “environment,” “disposal,” “liability,” and “transport.” Section 101 also defines several terms that are also defined in this proposed article, including “hazardous substance,” “person,” “release”, “remove,” “remedy,” and “respond.” Assessing the applicability of the federal act’s definitions for each individual use of the defined terms in this law would be a significant undertaking. And, the benefits of doing such work in this nonsubstantive study are limited. For these reasons, the staff does not plan to exhaustively evaluate the application of federal definitions in this study.

In general, the staff is unsure whether this provision provides sufficient clarity as to when the federal definitions apply. **The staff welcomes comment on this issue.**

It seems possible that this would be a topic for which future study would be useful. Depending on the comment received, the Commission may want to consider adding this topic to the list of substantive issues for future study in the Commission's recommendation.

§ 68040. “Agency”

68040. "Agency" means the California Environmental Protection Agency.

Comment. Section 68040 continues former Section 25310.5 without substantive change.

§ 68045. “Contract competitor”

68045. "Contract competitor" means any person competing for a state contract pursuant to **subdivision (c) of Section 25358.3**.

Comment. Section 68045 continues former Section 25311 without substantive change.

See Section 68085 (“person” defined).

§ 68050. “Department”

68050. "Department" means the Department of Toxic Substances Control.

Comment. Section 68050 continues former Section 25312 without substantive change.

1 **§ 68055. “Director”**

2 68055. “Director” means the director of the department.

3 **Comment.** Section 68055 restates former Section 25313 without substantive change.

4 See Section 68050 (“department” defined).

5 **☒ Staff Note.** Section 25313 reads as follows:

6 25313. “Director” means the Director of Toxic Substances Control.

7 Proposed Section 68055 restates this definition to correct an apparent error. The staff believes
8 that this definition should refer to “Director of *the Department* of Toxic Substances Control.”
9 Proposed section 68055 uses the term “Department,” which is defined as the Department of Toxic
10 Substances Control in proposed Section 68050.

11 The changes reflected in proposed Section 68055 are intended to be nonsubstantive. **The staff**
12 **welcomes any comment on the proposed restatement of this section.**

13 **§ 68060. “Feasibility study”**

14 68060. “Feasibility study” means the identification and evaluation of technically
15 feasible and effective remedial action alternatives to protect public health and the
16 environment, at a hazardous substance release site, or other activities deemed
17 necessary by the department for the development of a remedial action plan.

18 **Comment.** Section 68060 continues former Section 25314 without substantive change.

19 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
20 (“release” defined), 68125 (“remedy” defined), 68155 (“site” defined).

21 **§ 68065. “Federal act”**

22 68065. “Federal act” means the Comprehensive Environmental Response,
23 Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et
24 seq.).

25 **Comment.** Section 68065 continues former Section 25315 without substantive change.

26 **§ 68070. “Federally permitted release”**

27 68070. “Federally permitted release” has the same meaning as defined in
28 Section 101(10) of the federal act (42 U.S.C. Sec. 9601(10)).

29 **Comment.** Section 68070 continues former Section 25325 without substantive change.

30 See Sections 68065 (“federal act” defined), 68105 (“release” defined).

31 **§ 68075. “Hazardous substance”**

32 68075. (a) “Hazardous substance” means:

33 (1) Any substance designated pursuant to Section 1321(b)(2)(A) of Title 33 of
34 the United States Code.

35 (2) Any element, compound, mixture, solution, or substance designated pursuant
36 to Section 102 of the federal act (42 U.S.C. Sec. 9602).

37 (3) Any hazardous waste having the characteristics identified under or listed
38 pursuant to Section 6921 of Title 42 of the United States Code, but not including
39 any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C.
40 Sec. 6901 et seq.) has been suspended by act of Congress.

1 (4) Any toxic pollutant listed under Section 1317 (a) of Title 33 of the United
2 States Code.

3 (5) Any hazardous air pollutant listed under Section 7412 of Title 42 of the
4 United States Code.

5 (6) Any imminently hazardous chemical substance or mixture with respect to
6 which the Administrator of the United States Environmental Protection Agency
7 has taken action pursuant to Section 2606 of Title 15 of the United States Code.

8 (7) Any hazardous waste or extremely hazardous waste as defined by Sections
9 25117 and 25115, respectively, unless expressly excluded.

10 (b) “Hazardous substance” does not include:

11 (1) Petroleum, including crude oil or any fraction of crude oil that is not
12 otherwise specifically listed or designated as a hazardous substance in paragraphs
13 (1) to (6), inclusive, of subdivision (a).

14 (2) Natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable
15 for fuel (or mixtures of natural gas and synthetic gas usable for fuel).

16 (3) Ash produced by a resource recovery facility utilizing a municipal solid
17 waste stream.

18 (4) Nontoxic, nonflammable, noncorrosive stormwater runoff drained from
19 underground vaults, chambers, or manholes into gutters or storm sewers.

20 **Comment.** Subdivision (a) of Section 68075 continues former Section 25316 without
21 substantive change.

22 Subdivision (b) restates former Section 25317 without substantive change.

23 See Section 68065 (“federal act” defined).

24 **Staff Note.** Subdivision (a) of Section 25317 was restated for clarity and to conform to
25 legislative drafting practices. Subdivision (a) has been broken into paragraphs (1), (2), and (3) of
26 subdivision (b) in proposed Section 68075.

27 Section 25317(a) currently reads as follows:

28 (a) Petroleum, including crude oil or any fraction thereof which is not otherwise specifically
29 listed or designated as a hazardous substance in subdivisions (a) to (f), inclusive, of Section
30 25316, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel
31 (or mixtures of natural gas and such synthetic gas), or the ash produced by a resource recovery
32 facility utilizing a municipal solid waste stream.

33 The changes reflected in proposed Section 68075 are intended to be nonsubstantive. **The staff**
34 welcomes any comment on the proposed restatement of this subdivision.

35 **§ 68080. “Operation and maintenance”**

36 68080. “Operation and maintenance” means those activities initiated or
37 continued at a hazardous substance release site following completion of a response
38 action that are deemed necessary by the department or regional board in order to
39 protect public health or safety or the environment, to maintain the effectiveness of
40 the response action at the site, or to achieve or maintain the response action
41 standards and objectives established by the final remedial action plan or final
42 removal action work plan applicable to the site.

43 **Comment.** Section 68080 continues former Section 25318.5 without substantive change.

1 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68100
2 (“regional board” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68130
3 (“removal action work plan” defined), 68140 (“response” defined), 68155 (“site” defined).

4 **§ 68085. “Person”**

5 68085. “Person” means an individual, trust, firm, joint stock company, business
6 concern, partnership, limited liability company, association, and corporation,
7 including, but not limited to, a government corporation. “Person” also includes
8 any city, county, city and county, district, commission, the state or any
9 department, agency, or political subdivision thereof, any interstate body, and the
10 United States and its agencies and instrumentalities, to the extent permitted by
11 law.

12 **Comment.** Section 68085 restates former Section 25319 without substantive change.

13 **☒ Staff Notes.** (1) In proposed Section 68085, the order of the phrases in the first sentence in
14 the definition of “person” from Section 25319 were changed to improve clarity. Minor changes to
15 the text were made to conform to legislative drafting practices. The text of Section 25319 is as
16 follows:

17 25319. “Person” means an individual, trust, firm, joint stock company, business concern,
18 corporation, including, but not limited to, a government corporation, partnership, limited liability
19 company, and association. “Person” also includes any city, county, city and county, district,
20 commission, the state or any department, agency, or political subdivision thereof, any interstate
21 body, and the United States and its agencies and instrumentalities, to the extent permitted by law.

22 The changes reflected in proposed Section 68085 are intended to be nonsubstantive. **The staff
23 welcomes any comment on the proposed restatement of this definition.**

24 (2) The staff had difficulty determining the intended application of the final phrase in the
25 second sentence of the definition of “person.” In particular, it was unclear whether “to the extent
26 permitted by law” was intended to serve as a limitation to all of the listed entities in the second
27 sentence or whether that phrase was only intended to modify the last set of listed entities (“the
28 United States and its agencies and instrumentalities”). If the former application is intended, the
29 staff would propose moving the phrase “to the extent permitted by law” to the front of the
30 sentence (to read “‘Person’ also includes, to the extent permitted by law, ...”). If the latter
31 application is intended, it would seem to be more clear to move “to the extent permitted by law”
32 to precede “the United States ...”. (to read “any interstate body, and, to the extent permitted by
33 law, the United States and its agencies and instrumentalities”) **The staff welcomes comment on
34 this issue.**

35 **§ 68090. “Phase I environmental assessment”**

36 68090. “Phase I environmental assessment” means a preliminary assessment of
37 a property to determine whether there has been, or may have been, a release of a
38 hazardous substance based on reasonably available information about the property
39 and general vicinity. A phase I environmental assessment may include, but is not
40 limited to, a review of public and private records, current and historical land uses,
41 prior releases of a hazardous material, database searches, reviews of relevant files
42 of federal, state, and local agencies, visual and other surveys of the property and
43 general vicinity, interviews with current and previous owners and operators, and

1 review of regulatory correspondence and environmental reports. Sampling or
2 testing is not required as part of a phase I environmental assessment.

3 **Comment.** Section 68090 continues former Section 25319.1 without substantive change.
4 See 68075 (“hazardous substance” defined), 68105 (“release” defined).

5 **§ 68095. “Preliminary endangerment assessment”**

6 68095. “Preliminary endangerment assessment” means an activity that is
7 performed to determine whether current or past hazardous substance management
8 practices have resulted in a release or threatened release of a hazardous substance
9 that poses a threat to the public health or the environment and is conducted in a
10 manner that complies with the guidelines published by the department entitled
11 “Preliminary Endangerment Assessment: Guidance Manual,” or as those
12 guidelines may be amended by the department. A preliminary endangerment
13 assessment includes all of the following activities:

14 (a) Sampling and analysis of a site.

15 (b) A preliminary determination of the type and extent of hazardous material
16 contamination of a site.

17 (c) A preliminary evaluation of the risks the hazardous materials contamination
18 of a site may pose to public health or the environment.

19 **Comment.** Section 68095 continues former Section 25319.5 without substantive change.
20 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
21 (“release” defined), 68155 (“site” defined).

22 **§ 68100. “Regional board”**

23 68100. “Regional board” means a California regional water quality control
24 board.

25 **Comment.** Section 68100 continues former Section 25319.6 without substantive change.

26 **§ 68105. “Release”**

27 68105. (a) “Release” means any spilling, leaking, pumping, pouring, emitting,
28 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
29 the environment.

30 (b) “Release” does not include any of the following:

31 (1) Any release that results in exposure to persons solely within a workplace,
32 with respect to a claim those exposed persons may assert against their employer.

33 (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft,
34 vessel, or pipeline pumping station engine.

35 (3) Release of source, byproduct, or special nuclear material from a nuclear
36 incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C.
37 Sec. 2011, et seq.), if the release is subject to requirements with respect to
38 financial protection established by the Nuclear Regulatory Commission under
39 Section 2210 of Title 42 of the United States Code.

1 (4) For the purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or
2 any other response action, any release of source, byproduct, or special nuclear
3 material, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C.
4 Sec. 2011, et seq.), from any processing site designated under Section 7912(a)(1)
5 or 7942(a) of Title 42 of the United States Code, which sections are a part of the
6 Uranium Mill Tailings Radiation Control Act of 1978.

7 (5) The normal application of fertilizer, plant growth regulants, and pesticides.

8 **Comment.** Subdivision (a) of Section 68105 continues former Section 25320 without
9 substantive change.

10 Subdivision (b) restates former Section 25321 without substantive change.

11 See Sections 68065 (“federal act” defined), 68085 (“person” defined), 68140 (“response”
12 defined).

13 **☒ Staff Note.** Proposed Section 68105(b) separates the text of Section 25321(c) into two
14 paragraphs ((3) and (4)) for clarity. The proposed language also includes changes to conform to
15 legislative drafting practices and to correct an apparent error (i.e., an omitted comma).
16 Subdivision (c) of Section 25321 reads as follows:

17 (c) Release of source, byproduct, or special nuclear material from a nuclear incident, as those
18 terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011, et seq.), if such release
19 is subject to requirements with respect to financial protection established by the Nuclear
20 Regulatory Commission under Section 2210 of Title 42 of the United States Code or, for the
21 purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or any other response action, any
22 release of source byproduct, or special nuclear material from any processing site designated under
23 Section 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a part of the
24 Uranium Mill Tailings Radiation Control Act of 1978.

25 The changes reflected in proposed Section 68105 are intended to be nonsubstantive. **The staff**
26 **welcomes any comment on the proposed restatement of this subdivision.**

27 **§ 68110. “Release authorized or permitted pursuant to state law”**

28 68110. “A release authorized or permitted pursuant to state law” means any
29 release into the environment that is authorized by statute, ordinance, regulation, or
30 rule of any state, regional, or local agency or government or by any specific
31 permit, license, or similar authorization from such an agency, including one of the
32 foregoing, that recognizes a standard industry practice, including variances
33 obtained from the agency that allow operations for facilities during a period of
34 time when releases from the facilities do not conform with relevant statutes,
35 ordinances, regulations, or rules. The term includes a federally permitted release,
36 as defined by Section 68070, and releases that are in accordance with any court
37 order or consent decree.

38 **Comment.** Section 68110 continues former Section 25326 without substantive change.

39 See Sections 68040 (“agency” defined), 68070 (“federally permitted release” defined), 68105
40 (“release” defined).

41 **☒ Staff Note.** The staff sees value in restating the definition in proposed Section 68110 for
42 clarity. However, the staff is concerned that restating this section could raise the possibility of a
43 substantive change. The phrases in this section are difficult to parse, making it difficult to clearly
44 identify the classes of rules or authorizations that are within the scope of this provision. For
45 example, the staff is unsure how to interpret the following phrases in the definition: “including

1 one of the foregoing” (i.e., one of the listed agencies vs. one of the listed types of authorizations
2 and/or rules) and “that recognizes a standard industry practice” (i.e., what must recognize a
3 standard industry practice?).

4 Given these issues, the staff is unsure how to restate this definition without making any
5 substantive change. **The staff proposes adding clarification of this definition to the list of**
6 **substantive issues for possible future study that will be included in the Commission’s**
7 **recommendation.**

8 **§ 68115. “Remedial design”**

9 68115. “Remedial design” means the detailed engineering plan to implement the
10 remedial action alternative or initial remedial measure approved by the
11 department.

12 **Comment.** Section 68115 continues former Section 25322.1 without substantive change.
13 See Sections 68050 (“department” defined), 68125 (“remedy” defined).

14 **§ 68120. “Remedial investigation”**

15 68120. “Remedial investigation” means those actions deemed necessary by the
16 department to determine the full extent of a hazardous substance release at a site,
17 identify the public health and environment threat posed by the release, collect data
18 on possible remedies, and otherwise evaluate the site for purposes of developing a
19 remedial action plan.

20 **Comment.** Section 68120 continues former Section 25322.2 without substantive change.
21 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
22 (“release” defined), 68125 (“remedy” defined), 68155 (“site” defined).

23 **§ 68125. “Remedy” or “remedial action”**

24 68125. “Remedy” or “remedial action” includes all of the following:

25 (a) Those actions that are consistent with a permanent remedy, that are taken
26 instead of, or in addition to, removal actions in the event of a release or threatened
27 release of a hazardous substance into the environment, as further defined by
28 Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)), except that any
29 reference in Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)) to the
30 President, relating to determinations regarding the relocation of residents,
31 businesses, and community facilities shall, for the purposes of this part, be deemed
32 to be a reference to the Governor and any other reference in that section to the
33 President shall, for the purposes of this part, be deemed a reference to the
34 Governor, or the director, if designated by the Governor.

35 (b) Those actions that are necessary to monitor, assess, and evaluate a release or
36 a threatened release of a hazardous substance.

37 (c) Site operation and maintenance.

38 **Comment.** Section 68125 continues former Section 25322 without substantive change.

39 See Sections 68055 (“director” defined), 68065 (“federal act” defined), 68075 (“hazardous
40 substance” defined), 68080 (“operation and maintenance” defined), 68105 (“release” defined),
41 68135 (“remove” defined), 68155 (“site” defined).

1 **☒ Staff Note.** The staff sees value in restating subdivision (a) of Section 68125 for clarity.
2 However, the staff is concerned that restating this subdivision could raise a possibility of a
3 substantive change. In particular, it is unclear whether the second half of subdivision (a) (starting
4 with “except that any reference in Section 101(24)...” is stating a general rule for the purposes of
5 the part as whole or is instead a rule simply for understanding the term “remedy” as it is used in
6 this part. If this is a general rule for the part as a whole, the staff would propose moving the rule
7 out of the definition of “remedy.” If this rule is interpretive guidance for the definition of
8 “remedy,” the staff would not recommend moving it, but would recommend restating this rule so
9 the scope of application is clear. Given the staff’s uncertainty about the intended scope of this
10 rule, the staff is concerned that any restatement poses a risk of substantive change.

11 The staff proposes adding this issue to the list of substantive issues for possible future study
12 that will be included in the Commission’s recommendation.

13 **§ 68130. “Removal action work plan”**

14 68130. “Removal action work plan” means a work plan prepared or approved by
15 the department or a regional board that is developed to carry out a removal action,
16 in an effective manner, that is protective of the public health and safety and the
17 environment. The removal action work plan shall include a detailed engineering
18 plan for conducting the removal action, a description of the onsite contamination,
19 the goals to be achieved by the removal action, and any alternative removal
20 options that were considered and rejected and the basis for that rejection.

21 **Comment.** Section 68130 continues former Section 25323.1 without substantive change.

22 See Sections 68050 (“department” defined), 68100 (“regional board” defined), 68135
23 (“remove” defined).

24 **☒ Staff Note.** Proposed section 68130 replaces the phrase “a California regional water quality
25 control board” used in Section 25323.1 with “a regional board.” The term “regional board” is
26 defined in proposed Section 68100, which continues Section 25319.6.

27 **§ 68135. “Remove” or “removal”**

28 68135. “Remove” or “removal” includes the cleanup or removal of released
29 hazardous substances from the environment or the taking of other actions as may
30 be necessary to prevent, minimize, or mitigate damage that may otherwise result
31 from a release or threatened release, as further defined by Section 101(23) of the
32 federal act (42 U.S.C. Sec. 9601(23)).

33 **Comment.** Section 68135 continues former Section 25323 without substantive change.

34 See Sections 68065 (“federal act” defined), 68075 (“hazardous substance” defined), 68105
35 (“release” defined).

36 **§ 68140. “Response,” “respond,” or “response action”**

37 68140. “Response,” “respond,” or “response action” have the same meanings as
38 defined in Section 101(25) of the federal act (42 U.S.C. Sec. 9601(25)). The
39 enforcement and oversight activities of the department and regional board are
40 included within the meaning of “response,” “respond,” or “response action.”

41 **Comment.** Section 68140 continues former Section 25323.3 without substantive change.

42 See Sections 68050 (“department” defined), 68065 (“federal act” defined), 68100 (“regional
43 board” defined).

1 **☒ Staff Note.** Proposed section 68140 replaces the reference to “Section 9601(25) of the federal
2 act” used in Section 25323.3 with “Section 101(25) of the federal act.” Section 9601 of the U.S.
3 Code corresponds to Section 101 of the federal act. See, e.g., proposed Section 68135. The
4 original reference to Section 9601 of the federal act appears to have been an error.

5 **§ 68145. “Responsible party” or “liable person”**

6 68145. (a)(1) “Responsible party” or “liable person,” for the purposes of this
7 part, means those persons described in Section 107(a) of the federal act (42 U.S.C.
8 Sec. 9607(a)).

9 (2)(A) Notwithstanding paragraph (1), but except as provided in subparagraph
10 (B), a person is not a responsible party or liable person, for purposes of this part,
11 for the reason that the person has developed or implemented innovative
12 investigative or innovative remedial technology with regard to a release site, if the
13 use of the technology has been approved by the department for the release site and
14 the person would not otherwise be a responsible party or liable person. Upon
15 approval of the use of the technology, the director shall acknowledge, in writing,
16 that, upon proper completion of the innovative investigative or innovative
17 remedial action at the release site, the immunity provided by this subparagraph
18 shall apply to the person.

19 (B) Subparagraph (A) does not apply in any of the following cases:

20 (i) Conditions at the release site have deteriorated as a result of the negligence of
21 the person who developed or implemented the innovative investigative or
22 innovative remedial technology.

23 (ii) The person who developed or implemented the innovative investigative or
24 innovative remedial technology withheld or misrepresented information that was
25 relevant to the potential risks or harms of the technology.

26 (iii) The person who implemented the innovative investigative or innovative
27 remedial technology did not follow the implementation process approved by the
28 department.

29 (b) For the purposes of this part, the defenses available to a responsible party or
30 liable person shall be those defenses specified in Sections 101(35) and 107(b) of
31 the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

32 (c) Any person who unknowingly transports hazardous waste to a solid waste
33 facility pursuant to the exemption provided in subdivision (e) of Section 25163
34 shall not be considered a responsible party for purposes of this part solely because
35 of the act of transporting the waste. Nothing in this subdivision shall affect the
36 liability of this person for his or her negligent acts.

37 **Comment.** Section 68145 continues former Section 25323.5 without substantive change.

38 See Sections 68050 (“department” defined), 68055 (“director” defined), 68065 (“federal act”
39 defined), 68085 (“person” defined), 68105 (“release” defined), 68125 (“remedy” defined), 68155
40 (“site” defined).

41 **§ 68150. “Secretary”**

42 68150. “Secretary” means the Secretary for Environmental Protection.

1 **Comment.** Section 68150 continues former Section 25326.3 without substantive change.

2 **§ 68155. “Site”**

3 68155. “Site” has the same meaning as the term “facility” is defined by Section
4 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

5 **Comment.** Section 68155 continues former Section 25323.9 without substantive change.
6 See Section 68065 (“federal act” defined).

7 **§ 68160. “Site cleanup evaluation”**

8 68160. “Site cleanup evaluation” means an evaluation by the department of the
9 effectiveness of a removal or remedial action conducted by a responsible party, to
10 reduce or eliminate actual or potential public health and environmental threats
11 posed by a hazardous substance release site if the action itself is not the subject of
12 oversight by the department.

13 **Comment.** Section 68160 continues former Section 25326.5 without substantive change.
14 See Sections 68050 (“department” defined), 68075 (“hazardous substance” defined), 68105
15 (“release” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68145 (“responsible
16 party” defined), 68155 (“site” defined).

17 **§ 68165. “State account”**

18 68165. “State account” means the Toxic Substances Control Account
19 established pursuant to Section 25173.6.

20 **Comment.** Section 68165 continues subdivision (a) of former Section 25324 without
21 substantive change.

22 **Staff Note.** Subdivision (b) of Section 25324 states a substantive rule, rather than a definition:
23 (b) Notwithstanding any other provision of this section, any costs incurred and payable
24 from the Hazardous Substance Account, the Hazardous Waste Control Account, or the Site
25 Remediation Account prior to July 1, 2006, to implement this chapter, shall be recoverable from
26 the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable
27 from the state account.

28 This subdivision will be recodified with other related provisions in a future draft.

29 **§ 68170. “Tier”**

30 68170. “Tier” means a grouping of hazardous substance release sites that require
31 removal and remedial actions, that are listed alphabetically, and that are of a
32 roughly equivalent priority for removal and remedial action.

33 **Comment.** Section 68170 continues former Section 25327 without substantive change.
34 See Sections 68075 (“hazardous substance” defined), 68105 (“release” defined), 68125
35 (“remedy” defined), 68135 (“remove” defined), 68155 (“site” defined).

DISPOSITION OF EXISTING LAW

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

Existing Provision	Corresponding New Provision
25300	68000(a)
25301	68005
25310	68035
25310.5	68040
25311	68045
25312	68050
25313	68055
25314	68060
25315	68065
25316	68075(a)
25317	68075(b)
25318.5	68080
25319	68085
25319.1	68090
25319.5	68095
25319.6	68100
25320	68105(a)
25321	68105(b)
25322	68125
25322.1	68115
25322.2	68120
25323	68135
25323.1	68130
25323.3	68140
25323.5	68145
25323.9	68155
25324(a)	68165
25325	68070
25326	68110
25326.3	68150
25326.5	68160
25327	68170

DERIVATION OF NEW LAW

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

Proposed New Provision	Corresponding Existing Provision
68000(a)	25300
68000(b)	new
68005	25301
68010	new
68015	new
68020	new
68025	new
68030	new
68035	25310
68040	25310.5
68045	25311
68050	25312
68055	25313
68060	25314
68065	25315
68070	25325
68075(a)	25316
68075(b)	25317
68080	25318.5
68085	25319
68090	25319.1
68095	25319.5
68100	25319.6
68105(a)	25320
68105(b)	25321
68110	25326
68115	25322.1
68120	25322.2
68125	25322
68130	25323.1
68135	25323
68140	25323.3
68145	25323.5
68150	25326.3
68155	25323.9
68160	25326.5
68165	25324(a)
68170	25327