

## First Supplement to Memorandum 2019-22

**Recodification of Toxic Substance Statutes  
(Cumulative Draft of Material Previously Reviewed)**

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Memorandum 2019-22 presents a cumulative draft of the material that the Commission<sup>1</sup> has considered and preliminarily approved for inclusion in a tentative recommendation for the recodification of Chapter 6.8. This supplement discusses comments on and proposed changes to the material contained in the cumulative draft.

## NAME OF DIVISION

The staff received informal input from Department of Toxic Substances Control (“DTSC”) staff about the provisional name of Division 45: Hazardous Substance Response and Remediation.

In Chapter 6.8, “remediation” has a narrower meaning and is a subset of “response.” For this reason, DTSC staff recommends striking “and Remediation” from the provisional division name. The staff recommends making this change.

**Does the Commission have any concerns with changing the provisional name of Division 45 to “Hazardous Substance Response”?**

## DEFINITION OF “HAZARDOUS SUBSTANCE”

DTSC staff also raised concerns about the proposed restatement of the definition of the term “hazardous substance.” In particular, subdivision (a) of Section 25317 was proposed to be restated in three paragraphs in the recodification (see proposed Section 68075(b)(1)-(3)).

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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](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

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

DTSC staff raised concerns that the proposed restatement may result in an inadvertent substantive change. In particular, DTSC staff suggested that a clause near the end of the second restated paragraph (i.e., “usable for fuel”) might have been intended to modify the first restated paragraph as well. Separating these provisions into different paragraphs, as in proposed Section 68075, seems to foreclose such a reading.

In light of these concerns, the staff proposes to recombine paragraphs (1) and (2) of proposed Section 68075(b). Those paragraphs would be replaced with the following language:

(b) “Hazardous substance” does not include:

(1) Petroleum, including crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance in paragraphs (1) to (6), inclusive, of subdivision (a), and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and synthetic gas usable for fuel).

### **Does the Commission have any concerns with this proposed change?**

#### PROPOSED ADDITIONAL MATERIAL FOR CHAPTER 1

In the course of the staff’s work on the remaining provisions in Chapter 6.8, the staff came across a section that pertains to the construction of the chapter as a whole. That section, Section 25366, provides:

25366. (a) This chapter shall not be construed as imposing any new liability associated with acts that occurred on or before January 1, 1982, if the acts were not in violation of existing state or federal laws at the time they occurred.

(b) Nothing in this chapter shall be construed as authorizing recovery for response costs or damages resulting from any release authorized or permitted pursuant to state law or a federally permitted release.

(c) Except as provided in Sections 25360, 25361, 25362, and 25363, nothing in this chapter shall affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of the hazardous substance.

Given that this provision governs the construction of Chapter 6.8 as a whole, the staff proposes including this provision with the general provisions in

Chapter 1. In particular, the staff proposes creating a new Article 4 entitled, Construction of Part, that would contain this section.

Below, the staff offers language for the proposed legislation to implement this change.

#### Article 4. Construction of Part

##### § 68185. Construction as to liability

68185. (a) This part shall not be construed as imposing any new liability associated with acts that occurred on or before January 1, 1982, if the acts were not in violation of existing state or federal laws at the time they occurred.

(b) Nothing in this part shall be construed as authorizing recovery for response costs or damages resulting from any release authorized or permitted pursuant to state law.

(c) Except as provided in Sections 25360, 25361, 25362, and 25363, nothing in this part shall affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of the hazardous substance.

**Comment.** Section 68185 restates former Section 25366 without substantive change.

See Sections 68075 (“hazardous substance” defined), 68085 (“person” defined), 68105 (“release” defined), 68110 (“release authorized or permitted pursuant to state law” defined), 68125 (“remedy” defined), 68135 (“remove” defined), 68140 (“response” defined).

**Staff Note.** Section 25366(b) specifies that this part does not authorize recovery for costs or damages resulting from “any release authorized or permitted pursuant to state law or a federally permitted release.” In proposed Section 68110, “release authorized or permitted pursuant to state law” is defined to include “a federally permitted release,” which term is separately defined in proposed Section 68070. The use of both of these terms in subdivision (b) appears to be redundant. **For this reason, the staff proposes to delete the phrase “or a federally permitted release.”**

This change to subdivision (b) is intended to be nonsubstantive. **The staff welcomes any comment on the proposed restatement of this subdivision.**

**Does the Commission approve of the addition of this material to the cumulative draft as proposed?**

## FEDERAL LAW CITATIONS

As indicated in Memorandum 2019-23, the staff contacted the Office of Legislative Counsel regarding statutory drafting practices for federal law citations. The staff proposes to standardize federal law citations contained in this cumulative draft. In particular, the staff proposes to add “federal” before the names of federal acts in the provisions contained in this cumulative draft.<sup>2</sup>

## NEXT STEPS

Any changes approved by the Commission will be incorporated into the next cumulative draft prepared in this study. The staff will make required conforming or implementing changes to reflect the Commission’s decisions.

Respectfully submitted,

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Staff Counsel

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2. See proposed Sections 68065, 68075(a)(3), 68105(b)(3), and 68105(b)(4).