#E-200

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Pre-Print RECOMMENDATION

Hazardous Substance Account Recodification Act: Conforming Revisions

Note: This is a pre-print report. The Law Revision Commission has approved the substance of this report, but minor editorial changes may be made prior to final publication.

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California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
530-752-3620
<commission@clrc.ca.gov>

SUMMARY OF RECOMMENDATION

At the request of the Legislature, the Law Revision Commission prepared a recommendation that proposes to recodify Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

The proposed recodification would relocate the substance of Chapter 6.8 to Part 2 of a new division (Division 45) of the Health and Safety Code. This change requires renumbering the provisions of Chapter 6.8.

Many provisions throughout the codes cross-refer to Chapter 6.8 or its contents. If the recodification is enacted, these cross-references will need to be revised to reflect to the recodified numbering scheme.

This recommendation proposes the necessary conforming revisions.

This recommendation was prepared pursuant to Resolution Chapter 46 of the Statutes of 2020.

HAZARDOUS SUBSTANCE ACCOUNT RECODIFICATION ACT: CONFORMING REVISIONS

In 2018, the Legislature directed the Law Revision Commission to conduct a strictly nonsubstantive clean-up of "Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and related provisions, to improve the organization and expression of the law."[1]

The Commission decided to proceed with this work in phases, first undertaking work on Chapter 6.8. The Commission has prepared a separate recommendation presenting a complete draft of a proposed recodification of the provisions of Chapter 6.8.

The proposed recodification would relocate the substance of Chapter 6.8 to Part 2 of a new division (Division 45) of the Health and Safety Code. This change requires renumbering the provisions of Chapter 6.8. The numbers for all of the sections within Chapter 6.8 will change,[2] some of the sections (particularly the long ones) would be split into two or more sections (in some cases, a section would be recodified as multiple sections within a single article), and substantively similar provisions would be placed together in a logical order.

Many provisions throughout the codes cross-refer to Chapter 6.8 or its contents. If the recodification is enacted, these cross-references will need to be revised to reflect to the recodified numbering scheme.

This recommendation proposes the necessary conforming revisions. In general, they are quite straightforward. A few key points are explained below.

Nonsubstantive Reform

In directing the Commission to study Chapter 6.8, the Legislature specified that the Commission's recommended legislation "shall not make any substantive changes to the law."[3] The Commission took care to adhere to that limitation in preparing its proposed recodification of Chapter 6.8.[4]

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1. 2018 Cal. Stat. res. ch. 158 (SCR 91 (Roth)); see also 2020 Cal. Stat. res. ch. 46 (ACR 173 (Gallagher)).

2. Chapter 6.8 would be recodified as Health and Safety Code Sections 78000-81050.

3. 2020 Cal. Stat. res. ch. 46.

4. For a description of specific measures the Commission took to prevent any substantive change, see *Hazardous Substance Account Recodification Act*, __ Cal. L. Revision Comm'n Reports __ (2021), pp. 2-6 (hereafter, "Recodification Recommendation.").

Any California Law Revision Commission document referred to in this recommendation 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 took similar care in preparing the conforming revisions presented in this recommendation. In particular, the proposed legislation would only update the cross-references to Chapter 6.8 and its contents and make other minor technical revisions, such as:

- Elimination of gendered pronouns.[5]
- Insertion of subdivision or paragraph labels (where this would not create any ambiguity or necessitate additional conforming revisions).[6]
- Other revisions to conform to legislative drafting conventions.[7]
- Correction of obsolete or erroneous cross-references. Each such correction is explained in the accompanying Comment or Note.[8]
- A few miscellaneous technical revisions.[9]

Consistent with the limited scope of its legislative mandate, the Commission did not consider, and is not proposing, any other kinds of changes to the provisions affected by this recommendation.[10]

Due to their bulk, the conforming revisions in this recommendation might be introduced as a separate bill, instead of being included in the same bill as the recodification of Chapter 6.8. For this reason, the conforming revisions are proposed to be statutorily defined as part of the "Hazardous Substance Account Recodification Act."[11] Including these revisions in that term is important, because the proposed recodification includes the following provision:

> 78010. Nothing in the Hazardous Substance Account Recodification Act is intended to substantively change the law contained in former Chapter 6.8 (commencing with 25300) of Division 20. The act is intended to be entirely nonsubstantive in effect. Every provision of this part and every other provision of

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5. See, e.g., proposed amendment of Health & Safety Code § 25198.3 *infra* and proposed amendment of Penal Code § 803 *infra*.

6. See, e.g., proposed amendment of Educ. Code § 17213.1 *infra*. For an example of a situation where the Commission deliberately refrained from inserting labels, see proposed amendment of Gov't Code § 53313 *infra*.

7. See, e.g., proposed amendments of Civ. Code §§ 851, 853 (eliminating uses of the word "such," which is disfavored in legislative drafting except in certain phrases); proposed amendments of Health & Safety Code §§ 25220, 25250.54, 57010 *infra* (replacing "Internet Web site" with "internet website").

8. See proposed amendment of Civil Code § 853 *infra*; proposed amendments of Health & Safety Code §§ 25178, 25404.1 *infra*.

9. See, e.g., proposed amendment of Educ. Code § 17213.1 *infra*; proposed amendment of Health & Safety Code § 25262 *infra*.

10. Accordingly, readers of this recommendation should not infer that the Commission has evaluated and approved language that would not be changed by this recommendation.

11. See proposed Health & Safety Code § 78000(b) (defining "Hazardous Substance Account Recodification Act") in the Recodification Recommendation, *supra* note 4.

> this act, *including, without limitation, every cross-reference in every provision of the act*, shall be interpreted consistent with the nonsubstantive intent of the act.[12]

This provision underscores the nonsubstantive nature of the recodification as a whole and the updated cross-references in particular. It will help to ensure that the courts and others interpret the recodification accordingly.

Contingent and Deferred Operation

On the assumption that the conforming revisions will be introduced as a separate bill, this recommendation includes an uncodified provision that would make the conforming revisions operative only if the recodification bill is enacted and becomes operative.[13] The operation of this legislation is also deferred to match the deferred operation date proposed for the recodification legislation.[14]

The Commission will insert the appropriate bill number in this uncodified provision after the recodification bill is introduced.

Subordination Clause

This recommendation also includes a subordination clause, in case one or more of the code provisions in this recommendation is also amended in a substantive manner by another bill.[15] The subordination clause would ensure that the substantive reform overrides the conforming revision, regardless of which bill is chaptered first. Although the conforming revision would be nullified by the substantive reform, it could be reintroduced the following year. With the deferred operative date, the conforming revision could still be enacted prior to the recodification taking effect. Even if a conforming revision is not enacted prior to the recodification taking effect, the proposed recodification includes a provision that ensures that the outdated cross-reference would be understood as a cross-reference to the recodified provision until the relevant conforming revision could be enacted.[16]

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12. See proposed Health & Safety Code § 78010 in the Recodification Recommendation, *supra* note 4 (emphasis added).

13. See proposed uncodified provision on contingent operation (at the end of the proposed legislation) *infra*.

14. See proposed uncodified provision on operative date *infra* and proposed uncodified provision on operative date in the Recodification Recommendation, *supra* note 4.

15. See proposed uncodified subordination clause (at the end of the proposed legislation) *infra*.

16. See proposed Health & Safety Code § 78015(b) in the Recodification Recommendation, *supra* note 4 ("A reference in a statute or regulation to a previously existing provision that is restated and continued in this part shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.").

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TECHNICAL AND CONFORMING REVISIONS

BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 7058.7 (amended). Hazardous substance certification examination

SEC. __. Section 7058.7 of the Business and Professions Code is amended to read:

7058.7. (a) No contractor may engage in a removal or remedial action, as defined in subdivision (d), unless the qualifier for the license has passed an approved hazardous substance certification examination.

(b)(1) The Contractors State License Board, the Division of Occupational Safety and Health of the Department of Industrial Relations, and the Department of Toxic Substances Control shall jointly select an advisory committee, which shall be composed of two representatives of hazardous substance removal workers in California, two general engineering contractors in California, and two representatives of insurance companies in California who shall be selected by the Insurance Commissioner.

(2) The Contractors State License Board shall develop a written test for the certification of contractors engaged in hazardous substance removal or remedial action, in consultation with the Division of Occupational Safety and Health, the State Water Resources Control Board, the Department of Toxic Substances Control, and the advisory committee.

(c) The Contractors State License Board may require additional updated approved hazardous substance certification examinations of licensees currently certified based on new public or occupational health and safety information. The Contractors State License Board, in consultation with the Department of Toxic Substances Control and the State Water Resources Control Board, shall approve other initial and updated hazardous substance certification examinations and determine whether to require an updated certification examination of all current certificate holders.

(d) For purposes of this section "removal or remedial action" has the same meaning as found in ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ <u>Part 2 (commencing with Section 78000) of Division 45</u> of the Health and Safety Code, if the action requires the contractor to dig into the surface of the earth and remove the dug material and the action is at a site listed pursuant to ~~Section 25356~~ <u>Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45</u> of the Health and Safety Code or any other site listed as a hazardous substance release site by the Department of Toxic Substances Control or a site listed on the National Priorities List compiled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.). "Removal or remedial action" does not include asbestos-related work, as defined in Section 6501.8 of the Labor Code, or work related to a hazardous substance spill on a highway.

(e)(1) A contractor may not install or remove an underground storage tank, unless the contractor has passed the hazardous substance certification examination developed pursuant to this section.

(2) A contractor who is not certified may bid on or contract for the installation or removal of an underground tank, if the work is performed by a contractor who is certified pursuant to this section.

(3) For purposes of this subdivision, "underground storage tank" has the same meaning as defined in subdivision (y) of Section 25281 of the Health and Safety Code.

Comment. Section 7058.7 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

CIVIL CODE

Civ. Code § 850 (amended). Definitions

SEC. __. Section 850 of the Civil Code is amended to read:

850. The definitions set forth in Section 25260 of the Health and Safety Code govern the construction of this chapter. In addition, the following definitions apply for purposes of this chapter only:

(a) "Actual awareness" means actual knowledge of a fact pertaining to an obligation under this chapter, including actual knowledge of a release exceeding the notification threshold. Only actual awareness possessed by those employees or representatives of an owner of a site who are responsible for monitoring, responding to or otherwise addressing the release shall be attributable to the owner. Only actual awareness possessed by those employees or representatives of a potentially responsible party who are responsible for monitoring, responding to, or otherwise addressing, the release shall be attributable to the potentially responsible party.

(b) "Commitment statement" means a written statement executed by the notice recipient which recites expressly the language specified in Section 854.

(c) "Mediation" means an informal process in which the disputing parties select a neutral third party to assist them in reaching a negotiated settlement in which the neutral third party has no power to impose a solution on the parties, but rather has the power only to assist the parties in shaping solutions to meet their interests and objectives.

(d) "Negative response" means a written response by the recipient of a notice of potential liability indicating that the recipient will not undertake any response action, or a deemed negative response pursuant to subdivision (c) of Section 851 in the event of the recipient's failure to respond.

(e) "Neutral third party" means an experienced professional, such as an attorney, engineer, environmentalist, hydrologist, or retired judge, who has served as a mediator.

(f) "Notice of potential liability" means a notice, sent by the owner of the site, stating that a release that exceeds the notification threshold has occurred at the site and that the owner believes that the recipient of the notice is a responsible party with respect to the release. The notice of potential liability shall describe the location of the site and the nature of the release.

(g) "Notice recipient" means any one of the following:

(1) A person who receives a notice of potential liability pursuant to subdivision (a) of Section 851.

(2) A person who provides a release report pursuant to subdivision (b) of Section 851.

(3) A person who offers a commitment statement to the owner of a site pursuant to subdivision (c) of Section 851.

(h) "Notification threshold" means any release of such a magnitude that:

(1) The release is the subject of a response action which has been ordered by, or is being performed by, an oversight agency; or

(2) The release is impeding the ability of the owner of the site to sell, lease, or otherwise use the site.

(i) "Operation and maintenance" means any activity as defined in ~~subdivision (a) of Section 25318.5~~ Section 78080 of the Health and Safety Code.

(j) "Oversight agency" means any agency, as defined in subdivision (c) of Section 25260 of the Health and Safety Code, that has jurisdiction over a response action performed in connection with a release that is the subject of a notice of potential liability. Subject to any other limitation imposed by law, an oversight agency retains full discretion as to when it exercises jurisdiction over a site.

(k) "Reasonable steps," as used in subdivision (a) of Section 851, means the least expensive means available to ascertain the potentially responsible parties. If the owner cannot otherwise identify any apparent, potentially responsible parties, then "reasonable steps" includes:

(1) Conducting a title search; and

(2) Reviewing all environmental reports in the owner's possession of which the owner has actual awareness pertaining to the site.

(*l*) "Release" means the release, as defined in ~~Sections 25320 and 25321~~ Section 78105 of the Health and Safety Code, of a hazardous material or hazardous materials.

(m) "Release report" means a notice sent by a responsible party to the owner of the site stating that a release has occurred on the site which is likely to exceed the notification threshold. The release report shall describe the location of the site and the nature of the release.

(n) "Remedial action" means any action as defined in Section ~~25322~~ 78125 of the Health and Safety Code.

(*o*) "Removal action" means any action as defined in ~~subdivision (a) of Section 25323~~ Section 78135 of the Health and Safety Code.

(p) "Response action" means any removal actions, including, but not limited to, site investigations and remedial actions, including, but not limited to, operation and maintenance measures.

(q) "Responsible party" means any person who is liable under state or local law for taking action in response to a release.

(r) "Site" means any parcel of commercial, industrial, or agricultural real property where a hazardous materials release has occurred.

(s) "Written action" means any official action by any oversight agency where the oversight agency has expressly exercised its cleanup authority in writing, pursuant to the oversight agency's procedures, directing a response action at the site.

Comment. Subdivisions (i), (*l*), (n), and (*o*) of Section 850 are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Civ. Code § 851 (amended). Obligations and notices for release

SEC. __. Section 851 of the Civil Code is amended to read:

851. (a) An owner of a site who has actual awareness of a release exceeding the notification threshold shall take all reasonable steps as defined in subdivision (j) of Section 850 to expeditiously identify the potentially responsible parties. The owner shall, as soon as reasonably possible after obtaining actual awareness of the potentially responsible parties, send a notice of potential liability to the identified potentially responsible parties and the agency, as defined in subdivision (c) of Section 25260 of the Health and Safety Code, that the owner believes to be the appropriate oversight agency. For any release exceeding the notification threshold of which the owner has actual awareness that occurred prior to, but within three years of, the effective date of this section, the notice shall be given on or before December 31, 1998.

(b) A potentially responsible party who has actual awareness of a release which is likely to exceed the notification threshold shall as soon as reasonably possible after obtaining actual awareness of the release provide the owner of the site where the release occurred with a release report. For any release exceeding the notification threshold of which the potentially responsible party has actual awareness that occurred prior to, but within three years of, the effective date of this section, the release report shall be given on or before December 31, 1998. A potentially responsible party may issue, at the potentially responsible party's option, a commitment statement to the owner of the site within 120 days of the potentially responsible party's issuance of a release report. The fact that a release report is issued shall not constitute an admission of liability and may not be admitted as evidence against a potentially responsible party in any litigation.

(c) When a notice of potential liability is issued, a notice recipient shall respond to the owner, in writing, and by certified mail, return receipt requested, within 120 days from the date that the notice of potential liability was mailed. The notice recipient's response shall be either a commitment statement or a negative response.

The notice recipient's failure to submit the written response within the 120-day period, or failure to strictly comply with the form of the written response, as provided in Section 854, shall be deemed a negative response. The owner may agree in writing to extend the period during which the notice recipient may respond to the notice of potential liability. An extension of up to 120 days shall be provided if the notice recipient commits to do a site investigation, the results of which shall be provided to the owner and the oversight agency.

(d)(1) The common law duty to mitigate damages shall apply to any failure of the owner of a site to give a timely notice of potential liability when the owner is required to give this notice pursuant to this chapter. Where an owner fails to mitigate damages by not giving a timely notice of potential liability, the owner's damage claim shall be reduced in accordance with common law principles by the amount that the potentially responsible party proves would have likely been mitigated had a timely notice of potential liability been given.

(2) Common law principles shall apply to the failure of the potentially responsible party to issue a timely release report. Where a potentially responsible party fails to give a timely release report, the potentially responsible party, in accordance with common law principles, shall be responsible to the owner of the site, for damages that the owner proves are likely caused by ~~such~~ the failure to provide a release report.

(3) Any party who argues the applicability of this subdivision carries the burden of proof in that regard.

(4) Nothing in this section is intended to create a new cause of action or defense beyond that which already exists under common law.

(5) Subdivisions (a) and (b), and paragraphs (1) and (2) of this subdivision, shall not apply when the party to whom a notice of potential liability or release report is owed already possesses actual awareness of the information required to be transmitted in ~~such~~ the notice of potential liability or release report.

(e)(1) Except as provided in paragraph (2), the requirements of this chapter shall not apply to a site listed pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code for response action pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code or to a site where an oversight agency has issued an order or entered into an enforceable agreement pursuant to any authority, including, but not limited to, an order or enforceable agreement entered into by a local agency, the Department of Toxic Substance Control, the State Water Resources Control Board, or a regional water quality control board pursuant to Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), ~~Chapter 6.8 (commencing with Section 25300),~~ Chapter 6.85 (commencing with Section 25396), or Chapter 6.11 (commencing with Section 25404) of Division 20 of, or Part 2 (commencing with Section 78000) of Division

45 of, the Health and Safety Code, or pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(2) The requirements of this chapter shall apply if either of the following applies:

(A) The order or enforceable agreement is issued or entered into after the owner accepts a commitment statement.

(B) The Department of Toxic Substance Control, State Water Resources Control Board, or regional water quality control board that issued the order or entered into an enforceable agreement consents in writing to the applicability of this chapter to the site.

(f) It is the intent of the Legislature for this chapter to resolve disputes between, and affect the rights of, private parties only. Nothing in this chapter shall affect the authority of the Department of Toxic Substance Control, the State Water Resources Control Board, a regional water quality control board, or any other oversight agency.

(g) Notwithstanding any other provision of this chapter, any time prior to accepting a commitment statement, the owner may provide the notice to the notice recipient that the provisions of subdivision (c), paragraph (2) of subdivision (e), and Sections 852 and 854, shall not apply to the site, in which case the provisions of subdivision (c), paragraph (2) of subdivision (e), and Sections 852 and 854 shall not apply to the site and the owner and notice recipient shall be entitled to pursue all other legal remedies and defenses authorized by law.

Comment. Section 851(e) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to make technical changes.

Civ. Code § 853 (amended). Construction of chapter

SEC. __. Section 853 of the Civil Code is amended to read:

853. (a) Neither the failure to issue a commitment statement nor its issuance shall be construed as an admission that the recipient of the notice of potential liability is liable under any federal, state, or local law, including common law, for the release that the party agrees to investigate or respond. Neither the failure to issue a commitment statement nor the contents of the commitment statement shall be admissible evidence in any proceeding, as defined in Section 901 of the Evidence Code, except that the contents of the commitment statement shall be admissible evidence in an action to enforce the commitment statement to the extent that ~~such~~ the contents would be admissible under other applicable law.

(b) Nothing in this chapter shall subject a notice recipient to any damages, fines, or penalties for a failure to make a written response, either positive or negative, to a notice of potential liability.

(c) Nothing in this chapter shall subject the owner of a site to any damages, fines, or penalties for a failure to send a notice of potential liability pursuant to Section 851. Failure by the owner of a site to send a notice of potential liability of a release

in a timely fashion shall not be deemed to create any liability for the owner under a theory of negligence per se.

(d) Nothing in this chapter imposes an affirmative duty on the owner of a site, or any potentially responsible party, to discover, or determine the nature or extent of, a hazardous materials release at the site. This chapter does not affect ~~such~~ an affirmative duty described in this subdivision to the extent ~~it~~ that duty is imposed by any other law.

(e) Subject to the defenses specified in ~~Section~~ Sections 101(35) and 107(b) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Secs. 9601(35) and 9607(b)), a cause of action is hereby established whereby a notice recipient may recover from any responsible party any reasonable response costs for conducting a response action as may be approved or overseen by an oversight agency or as incurred pursuant to a commitment statement. Liability among responsible parties shall be allocated based upon the equitable factors specified in former subdivision (c) of former Section 25356.3 of the Health and Safety Code, as it existed prior to its repeal by Chapter 39 of the Statutes of 2012. No third-party beneficiary rights are created by a commitment statement, except as provided in subdivision (b) of Section 854. This cause of action applies to costs incurred prior to enactment of this subdivision. However, no recovery may be obtained under this subdivision for costs incurred more than three years prior to the filing of litigation to recover those costs. The cause of action established pursuant to this subdivision shall not apply against a current or former owner of a site unless that owner operated a business that caused a release being addressed by a response action at the site and the costs incurred by the notice recipient were in response to a release caused by the owner.

(f) Nothing in this chapter shall affect or limit the rights of an owner under preexisting contract. Nothing in this chapter shall affect or limit the right of a notice recipient and owner to agree to an allocation of liability or to an assignment of rights and obligations that is different from or inconsistent with this chapter. ~~Such agreements~~ Agreements allocating liability or assigning rights and obligations shall supersede the terms of this chapter.

(g) Nothing in this chapter shall make a notice recipient a responsible party, beyond the obligations the notice recipient undertakes pursuant to this chapter.

(h) Nothing in this chapter shall apply to causes of action for wrongful death or personal injury. However, the pleading of a cause of action for wrongful death or personal injury shall not affect the applicability of this chapter to other causes of action in the same civil action.

Comment. Section 853(e) is amended to update cross-references in accordance with the repeal of Health and Safety Code Section 25356.3 in 2012. See 2012 Cal. Stat. ch. 39, § 63.

This section is also amended to make technical changes.

Civ. Code § 2079.7 (amended). Disclosure obligation of seller or broker

SEC. __. Section 2079.7 of the Civil Code is amended to read:

2079.7. (a) If a consumer information booklet described in Section 10084.1 of the Business and Professions Code is delivered to a buyer in connection with the sale of real property, including property specified in Section 1102 of the Civil Code, or manufactured housing, as defined in Section 18007 of the Health and Safety Code, a seller or broker is not required to provide additional information concerning, and the information shall be deemed to be adequate to inform the buyer regarding, common environmental hazards, as described in the booklet, that can affect real property.

(b) Notwithstanding subdivision (a), nothing in this section either increases or decreases the duties, if any, of sellers or brokers, including, but not limited to, the duties of a seller or broker under this article, Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2, or ~~Section 25359.7~~ Section 78700 of the Health and Safety Code, or alters the duty of a seller or broker to disclose the existence of known environmental hazards on or affecting the real property.

Comment. Section 2079.7 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Civ. Code § 2782.6 (amended). Indemnification for hazardous materials services

SEC. __. Section 2782.6 of the Civil Code is amended to read:

2782.6. (a) Nothing in subdivision (a) of Section 2782 prevents an agreement to indemnify a professional engineer or geologist or the agents, servants, independent contractors, subsidiaries, or employees of that engineer or geologist from liability as described in Section 2782 in providing hazardous materials identification, evaluation, preliminary assessment, design, remediation services, or other services of the types described in Sections ~~25322 and 25323~~ 78125 and 78135 of the Health and Safety Code or the federal National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.1 et seq.), if all of the following criteria are satisfied:

(1) The services in whole or in part address subterranean contamination or other concealed conditions caused by the hazardous materials.

(2) The promisor is responsible, or potentially responsible, for all or part of the contamination.

(b) The indemnification described in this section is valid only for damages arising from, or related to, subterranean contamination or concealed conditions, and is not applicable to the first two hundred fifty thousand dollars ($250,000) of liability or a greater amount as is agreed to by the parties.

(c) This section does not authorize contracts for indemnification, by promisors specified in paragraph (2) of subdivision (a), of any liability of a promisee arising from the gross negligence or willful misconduct of the promisee.

(d) "Hazardous materials," as used in this section, means any hazardous or toxic substance, material, or waste that is or becomes subject to regulation by any agency

of the state, any municipality or political subdivision of the state, or the United States. "Hazardous materials" includes, but is not limited to, any material or substance that is any of the following:

(1) A hazardous substance, as defined in ~~Section 25316~~ subdivision (a) of Section 78075 of the Health and Safety Code.

(2) Hazardous material, as defined in subdivision (j) of Section 25501 of the Health and Safety Code.

(3) A regulated substance, as defined in subdivision (j) of Section 25532 of the Health and Safety Code.

(4) Hazardous waste, as defined in Section 25117 of the Health and Safety Code.

(5) Extremely hazardous waste, as defined in Section 25115 of the Health and Safety Code.

(6) Petroleum.

(7) Asbestos.

(8) Designated as a hazardous substance for purposes of Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1321).

(9) Hazardous waste, as defined by subsection (5) of Section 1004 of the federal Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6903).

(10) A hazardous substance, as defined by subsection (14) of Section 101 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601).

(11) A regulated substance, as defined by subsection (2) of Section 9001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Sec. 6991).

(e) Nothing in this section shall be construed to alter, modify, or otherwise affect the liability of the promisor or promisee, under an indemnity agreement meeting the criteria of this section, to third parties for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense.

(f) This section does not apply to public entities, as defined by Section 811.2 of the Government Code.

Comment. Subdivisions (a) and (d) of Section 2782.6 are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 338.1 (amended). Statute of limitations

SEC. __. Section 338.1 of the Code of Civil Procedure is amended to read:

338.1. An action for civil penalties or punitive damages authorized under Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), ~~Chapter 6.8 (commencing with Section 25300),~~ or Chapter 6.95 (commencing with Section 25500) of Division 20 of, or Part 2 (commencing with Section 78000) of Division 45 of, the Health and

Safety Code shall be commenced within five years after the discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

Comment. Section 338.1 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Code Civ. Proc. § 726.5 (amended). Election of secured lender regarding environmentally impaired real property security

SEC. __. Section 726.5 of the Code of Civil Procedure is amended to read:

726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision of law, except subdivision (d) of this section, a secured lender may elect between the following where the real property security is environmentally impaired and the borrower's obligations to the secured lender are in default:

(1)(A) Waiver of its lien against (i) any parcel of real property security that is environmentally impaired or is an affected parcel, and (ii) all or any portion of the fixtures and personal property attached to the parcels; and

(B) Exercise of (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law.

(2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security, and (ii) any other rights and remedies permitted by law.

(b) Before the secured lender may waive its lien against any parcel of real property security pursuant to paragraph (1) of subdivision (a) on the basis of the environmental impairment contemplated by paragraph (3) of subdivision (e), (i) the secured lender shall provide written notice of the default to the borrower, and (ii) the value of the subject real property security shall be established and its environmentally impaired status shall be confirmed by an order of a court of competent jurisdiction in an action brought by the secured lender against the borrower. The complaint for a valuation and confirmation action may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under paragraph (1) of subdivision (a) shall result only if and when a final money judgment is obtained against the borrower.

(c) If a secured lender elects the rights and remedies permitted by paragraph (1) of subdivision (a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law in which case the amount of the judgment of the secured lender pursuant to paragraph (1) of subdivision (a) shall be limited to the extent Section 580a or 580d, or subdivision (b) of Section 726 apply to the foreclosures of additional real property security. The borrower may waive or modify the foreclosure requirements of this

subdivision provided that the waiver or modification is in writing and signed by the borrower after default.

(d) Subdivision (a) shall be inapplicable if all of the following are true:

(1) The release or threatened release was not knowingly or negligently caused or contributed to, or knowingly or willfully permitted or acquiesced to, by any of the following:

(A) The borrower or any related party.

(B) Any affiliate or agent of the borrower or any related party.

(2) In conjunction with the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, neither the borrower, any related party, nor any affiliate or agent of either the borrower or any related party had actual knowledge or notice of the release or threatened release, or if a person had knowledge or notice of the release or threatened release, the borrower made written disclosure thereof to the secured lender after the secured lender's written request for information concerning the environmental condition of the real property security, or the secured lender otherwise obtained actual knowledge thereof, prior to the making, renewal, or modification of the obligation.

(e) For purposes of this section:

(1) "Affected parcel" means any portion of a parcel of real property security that is (A) contiguous to the environmentally impaired parcel, even if separated by roads, streets, utility easements, or railroad rights-of-way, (B) part of an approved or proposed subdivision within the meaning of Section 66424 of the Government Code, of which the environmentally impaired parcel is also a part, or (C) within 2,000 feet of the environmentally impaired parcel.

(2) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(3) "Environmentally impaired" means that the estimated costs to clean up and remediate a past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security, not disclosed in writing to, or otherwise actually known by, the secured lender prior to the making of the loan or extension of credit secured by the real property security, exceeds 25 percent of the higher of the aggregate fair market value of all security for the loan or extension of credit (A) at the time of the making of the loan or extension of credit, or (B) at the time of the discovery of the release or threatened release by the secured lender. For the purposes of this definition, the estimated cost to clean up and remediate the contamination caused by the release or threatened release shall include only those costs that would be incurred reasonably and in good faith, and fair market value shall be determined without giving consideration to the release or threatened release,

and shall be exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender. Notwithstanding the foregoing, the real property security for any loan or extension of credit secured by a single parcel of real property which is included in the National Priorities List pursuant to Section 9605 of Title 42 of the United States Code, or in any list published by the Department of Toxic Substances Control pursuant to ~~subdivision (b) of Section 25356~~ Section 78760 of the Health and Safety Code, shall be deemed to be environmentally impaired.

(4) "Hazardous substance" means any of the following:

(A) Any "hazardous substance" as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(5) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in Sections 4095, 4100, and 4185 of the Civil Code, or real property which contains only 1 to 15 dwelling units, which in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, for residential purposes as well as limited agricultural or commercial purposes incidental thereto, and (B) is the subject of an issued certificate of occupancy unless the dwelling is to be owned and occupied by the borrower.

(6) "Related party" means any person who shares an ownership interest with the borrower in the real property security, or is a partner or joint venturer with the borrower in a partnership or joint venture, the business of which includes the acquisition, development, use, lease, or sale of the real property security.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater. The term does not include actions directly relating to the incorporation in a lawful manner of building materials into a permanent improvement to the real property security.

(8) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

(f) This section shall not be construed to invalidate or otherwise affect in any manner any rights or obligations arising under contract in connection with a loan or extension of credit, including, without limitation, provisions limiting recourse.

(g) This section shall only apply to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after January 1, 1992.

Comment. Section 726.5(e)(3) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Code Civ. Proc. § 917.15 (amended). Exceptions to stay of enforcement for appeals

SEC. __. Section 917.15 of the Code of Civil Procedure is amended to read:

917.15. The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment or order appealed from, or the administrative order which is the subject of the trial court proceeding, was issued pursuant to either of the following:

(a) ~~Subdivision (a) of Section 25358.3~~ Section 78870 of the Health and Safety Code and ordered a responsible party to take appropriate removal or remedial actions in response to a release or a threatened release of a hazardous substance.

(b) Section 25181 of the Health and Safety Code and ordered the party to comply with Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code or any rule, regulation, permit, covenant, standard, requirement, or order issued, adopted or executed pursuant to that Chapter 6.5.

Comment. Section 917.15 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Code Civ. Proc. § 1263.710 (amended). Definitions

SEC. __. Section 1263.710 of the Code of Civil Procedure is amended to read:

1263.710. (a) As used in this article, "remedial action" and "removal" shall have the meanings accorded to those terms in Sections ~~25322 and 25323,~~ 78125 and 78135, respectively, of the Health and Safety Code.

(b) As used in this article, "required action" means any removal or other remedial action with regard to hazardous materials that is necessary to comply with any requirement of federal, state, or local law.

Comment. Section 1263.710 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

EDUCATION CODE

Educ. Code § 17210 (amended). Definitions

SEC. __. Section 17210 of the Education Code is amended to read:

17210. As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means an environmental professional as defined in Section 312.10 of Title 40 of the Code of Federal Regulations.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action," and "site" have the meanings those terms are given in ~~Article 2 (commencing with Section 25310) of the state act.~~ Article 3 (commencing with Section 78035) of Chapter 1 of Part 2 of Division 45 of the Health and Safety Code.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment shall meet the most current requirements adopted by the American Society for Testing and Materials (ASTM) for Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process or meet the requirements of Part 312 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations. That ASTM Standard Practice for Environmental Site Assessments or the requirements of Part 312 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations shall satisfy the requirements of this article for conducting a phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a phase I environmental assessment for purposes of schoolsites that impose different requirements.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with

the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in ~~Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20~~ Article 3 (commencing with Section 78035) of Chapter 1 of Part 2 of Division 45 of the Health and Safety Code, and includes a release described in ~~subdivision (d) of Section 25321~~ paragraph (5) of subdivision (b) of Section 78105 of the Health and Safety Code.

(*l*) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to ~~Section 25356.1~~ Article 12 (commencing with Section 79190) of Chapter 5 of Part 2 of Division 45 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act ~~(Chapter 6.8 (commencing with Section 25300) of Division 20~~ (Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code).

Comment. Subdivisions (f), (k), (*l*), and (m) of Section 17210 are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Educ. Code § 17213 (amended). Schoolsite acquisition

SEC. __. Section 17213 of the Education Code is amended to read:

17213. The governing board of a school district may not approve a project involving the acquisition of a schoolsite by a school district, unless all of the following occur:

(a) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site, unless if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code for removal or remedial action pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code.

(3) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances,

or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.

(b) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, in preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or extremely hazardous materials, substances, or waste. The school district, as the lead agency, shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities or significant pollution sources specified in subdivision (b).

(2) The facilities or other pollution sources specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(C) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(D) The governing board finds that neither of the conditions set forth in subparagraph (B) or (C) can be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213. If the governing board makes this

finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in ~~Section 25316~~ subdivision (a) of Section 78075 of the Health and Safety Code.

(3) "Extremely hazardous substances" means any material defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the State Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

Comment. Section 17213(a)(2) and (d)(2) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Educ. Code § 17213.1 (amended). Requirement for schoolsite acquisition for receipt of state funding

SEC. __. Section 17213.1 of the Education Code is amended to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the signed assessment, proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210, and the renewal fee shall be submitted to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall conduct its review and approval, within 30 calendar days of its receipt of that assessment, proof of qualifications, and the renewal fee. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 calendar days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify, in writing, the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4)(A) If the Department of Toxic Substances Control concludes after its review of a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the Department of Toxic Substances Control

shall notify, in writing, the State Department of Education and the governing board of the school district of that decision and the basis for that decision. The school district shall submit to the State Department of Education the Phase I environmental assessment and requested additional information, if any, that was reviewed by the Department of Toxic Substances Control pursuant to that subparagraph. Submittal of the Phase I assessment and additional information, if any, to the State Department of Education shall be prior to the State Department of Education issuance of final site or plan approvals ~~affect~~ affected by that Phase I assessment.

(B) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director ~~of the Department~~ of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to ~~Section 25358.1~~ Article 4 (commencing with Section 78435) of Chapter 3 of Part 2 of Division 45 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(i) A further investigation of the site is not required.

(ii) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed schoolsite that is the subject of that notice. The notice shall state the school district's determination to make the preliminary endangerment assessment available for public review and comment pursuant to subparagraph (A) or ~~(B):~~ (C):

(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment.

(ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment.

(B) For the purposes of ~~this~~ subparagraph (A), the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive, of subparagraph (A). If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

~~(B)~~ (C) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return the assessment to the school district with comments and requested modifications or requested further assessment or concur with the adequacy of the assessment pending review of public comment. If the Department of Toxic

Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections ~~25358.7 and 25358.7.1~~ 78930, 78935, and 78950 to 78970, inclusive, of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any

combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(11) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001–02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001–02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing.

Comment. Section 17213.1(a)(4)(B) and (a)(7) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to correct a reference to the "Director of the Department of Toxic Substances Control" to refer instead to the "Director of Toxic Substances Control." See 1991 Governor's Reorganization Plan No. 1 of 1991 § 146 (proposed Health & Safety Code § 58002).

This section is also amended to label an undesignated subparagraph and make a technical change.

Educ. Code § 51881.5 (amended). Findings and declarations

SEC. __. Section 51881.5 of the Education Code is amended to read:

51881.5. (a) The Legislature finds and declares that hazardous substances, as defined in ~~Section 25316~~ subdivision (a) of Section 78075 of the Health and Safety Code, are an integral part of daily life, and that some substances, which are routinely found in and around homes, present potential hazards to the public and to the environment because of the lack of public awareness and education on the hazards of these substances and because of the lack of safe disposal options for hazardous substances from households.

(b) The Legislature, therefore, finds that hazardous substances education programs in the public schools would serve a beneficial purpose by fostering in students an understanding of their role in protecting the environment, and in safeguarding themselves from other health and safety dangers which may be posed by hazardous substances.

(c) It is the intent of the Legislature that the department provide school districts with information concerning the availability of educational materials and curricula on hazardous substances.

Comment. Section 51881.5 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

FISH AND GAME CODE

Fish & Game Code § 12015 (amended). Responsible party obligations

SEC. __. Section 12015 of the Fish and Game Code is amended to read:

12015. (a) It is the intent of the Legislature that expeditious cleanup is the primary interest of the people of the State of California in order to protect the people and the environment of the state.

(b) In addition to any other penalty, anyone responsible for polluting, contaminating, or obstructing waters of this state, or depositing or discharging materials threatening to pollute, contaminate, or obstruct waters of this state, to the detriment of fish, plant, bird, or animal life in those waters, shall be required to remove any substance placed in the waters, or to remove any material threatening to pollute, contaminate, or obstruct waters of this state, which can be removed, that caused the prohibited condition, or to pay the costs of the removal by the department.

(c) Prior to taking any action committing the use of state funds pursuant to this section or Section 5655, the department shall first make a reasonable effort to have the person responsible, when that person is known and readily available, remove, or agree to pay for the removal of, the substance causing the prohibited condition, if the responsible person acts expeditiously and does not cause the prohibited

condition to be prolonged to the detriment of fish, plant, animal, or bird life in the affected waters. When the responsible party is unknown or is not providing adequate and timely cleanup, the emergency reserve account of the Toxic Substances Control Account in the General Fund shall be used to provide funding for the cleanup pursuant to Section ~~25354~~ 78875 of the Health and Safety Code. When those or other funds are not available, moneys in the Fish and Wildlife Pollution Account shall be available, in accordance with subdivision (b) of Section 12017, for funding the cleanup expenses.

Comment. Section 12015 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Fish & Game Code § 12017 (amended). Fish and Wildlife Pollution Account

SEC. __. Section 12017 of the Fish and Game Code is amended to read:

12017. (a) Notwithstanding Section 13001, any recovery or settlement of money received pursuant to the following sections shall be deposited in the Fish and Wildlife Pollution Account:

(1) Section 2014.

(2) Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6.

(3) Section 12015 or 12016.

(4) Chapter 4 (commencing with Section 151) of Division 1.5 of the Harbors and Navigation Code.

(5) Section 13442 of the Water Code.

(6) Proceeds or recoveries from pollution and abatement actions.

(b) Moneys in the account are continuously appropriated to the department, except as provided in Section 13230.

(c) Funds in the account shall be expended for the following purposes:

(1) Abatement, cleanup, and removal of pollutants from the environment.

(2) Response coordination, planning, and program management.

(3) Resource injury determination.

(4) Resource damage assessment.

(5) Economic valuation of resources.

(6) Restoration or rehabilitation at sites damaged by pollution.

(d) Notwithstanding subdivision (c), funds in the account in excess of one million dollars ($1,000,000) as of July 1 of each year may also be expended for the preservation of California plants, wildlife, and fisheries.

(e) Funds in the account may be expended for cleanup and abatement if a reasonable effort has been made to have the responsible party pay cleanup and abatement costs and funds are not available for disbursement from the emergency reserve account of the Toxic Substances Control Account in the General Fund pursuant to Section ~~25354~~ 78875 of the Health and Safety Code.

(f) The department may use funds in the account to pay the costs of consultant contracts for resource injury determination or damage assessment during hazardous material or oil spill emergencies. These contracts are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

Comment. Section 12017 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

GOVERNMENT CODE

Gov't Code § 6103.10 (amended). Application of Section 6103

SEC. __. Section 6103.10 of the Government Code is amended to read:

6103.10. Section 6103 does not apply to any fee or charges required to be paid to the State Director of Health Services or to the State Board of Equalization pursuant to Chapter 6.5 (commencing with Section 25100) of~~, and Chapter 6.8 (commencing with Section 25300) of,~~ Division 20 of, and Part 2 (commencing with Section 78000) of Division 45 of, the Health and Safety Code, except as otherwise provided in paragraph (1) of subdivision (a) of Section 25174.7, subdivision (b) of Section 25205.1, subdivision (n) of Section 25205.7, subdivision (d) of Section 25205.8, and subdivision (e) of Section 25205.9.

Comment. Section 6103.10 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 6276.24 (amended). Exemptions from disclosure, Hazardous substance tax information to housing authority tenant application

SEC. __. Section 6276.24 of the Government Code is amended to read:

6276.42. Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25506, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25511 and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, ~~Section 25358.2,~~ Article 5 (commencing with Section 78480) of Chapter 2 of Part 2 of Division 45 of the Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste recycling, information clearing house, confidentiality of trade secrets, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health authorities, special county, confidentiality of records, Sections 14087.35, 14087.36, and 14087.38, Welfare and Institutions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

Health commissions, special county, confidentiality of peer review proceedings, rates of payment, and trade secrets, Section 14087.31, Welfare and Institutions Code.

Health facilities, patient's rights of confidentiality, subdivision (c) of Section 128745 and Sections 128735, 128736, 128737, 128755, and 128765, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Section 127780, Health and Safety Code.

Health plan governed by a county board of supervisors, exemption from disclosure for records relating to provider rates or payments for a three-year period after execution of the provider contract, Sections 6254.22 and 54956.87.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, subdivision (t), Section 6254.

Hospital final accreditation report, subdivision (s), Section 6254.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

Comment. Section 6276.24 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 6276.44 (amended). Exemptions from disclosure, Taxpayer information to trust company disclosure of confidential information of private trust

SEC. __. Section 6276.44 of the Government Code is amended to read:

6276.44. Taxpayer information, confidentiality, local taxes, subdivision (i), Section 6254.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tobacco products, exemption from disclosure for distribution information provided to the State Department of Public Health, Section 22954, Business and Professions Code.

Tow truck driver, information in records of California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic substances, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of the Department of Pesticide Regulation, Section 6254.2.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, ~~Sections 25358.2 and 25358.7,~~ Section 78930 of, and Article 5 (commencing with Section 78480) of Chapter 2 of Part 2 of Division 45 of, the Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Tribal-state gaming contracts, exemption from disclosure for records of an Indian tribe relating to securitization of annual payments, Section 63048.63.

Trust companies, disclosure of private trust confidential information, Section 1582, Financial Code.

Comment. Section 6276.44 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 53313 (amended). Services financed by community facilities district

SEC. __. Section 53313 of the Government Code is amended to read:

53313. A community facilities district may be established under this chapter to finance any one or more of the following types of services within an area:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Recreation program services, library services, maintenance services for elementary and secondary schoolsites and structures, and the operation and maintenance of museums and cultural facilities. A special tax may be levied for any of the services specified in this subdivision only upon approval of the registered voters as specified in subdivision (b) of Section 53326. An election to enact a special tax for recreation program services, library services, and the operation and maintenance of museums and cultural facilities may be conducted pursuant to subdivision (c) of Section 53326.

(d) Maintenance and lighting of parks, parkways, streets, roads, and open space.

(e) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems, plowing and removal of snow, and sandstorm protection systems.

(f) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms "remedial action" and "removal" shall have the meanings set forth in Sections ~~25322 and 25323,~~ 78125 and 78135, respectively, of the Health and Safety Code, and the term "hazardous substance" shall have the

meaning set forth in Section 25281 of the Health and Safety Code. Community facilities districts shall provide the State Department of Health Care Services and local health and building departments with notification of any cleanup activity pursuant to this subdivision at least 30 days prior to commencement of the activity.

(g) Maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the local agency or by another local agency pursuant to an agreement entered into under Section 53316.2.

A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created. The additional services shall not supplant services already available within that territory when the district was created.

Bonds shall not be issued pursuant to this chapter to fund any of the services specified in this section, although bonds may be issued to fund capital facilities to be used in providing these services.

Comment. Section 53313 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 53313.5, as amended by Section 4 of Chapter 837 of the Statutes of 2018 (amended). Purchase of property by community facilities district (effective until January 1, 2029)

SEC. __. Section 53313.5 of the Government Code, as amended by Section 4 of Chapter 837 of the Statutes of 2018, is amended to read:

53313.5. A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may not lease out facilities that it has financed except pursuant to a lease agreement or annexation agreement entered into prior to January 1, 1988. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency that will own or operate the facility. For example, a community facilities district may finance facilities, including, but not limited to, the following:

(a) Local park, recreation, parkway, and open-space facilities.

(b) Elementary and secondary schoolsites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.

(c) Libraries.

(d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other operational costs. However, the proceeds of bonds issued pursuant to this chapter shall not be used to pay these insurance costs.

(e) The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. "Public utility" shall include all utilities, whether public and regulated by the Public Utilities Commission, or municipal. If the facilities are conveyed to the public utility, the agreement shall provide that the cost or a portion of the cost of the facilities that are the responsibility of the utility shall be refunded by the public utility to the district or improvement area thereof, to the extent that refunds are applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities Commission, as to utilities regulated by the commission, or (2) other laws regulating public utilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.

(f) The district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for flood and storm protection services, including, but not limited to, storm drainage and treatment systems and sandstorm protection systems.

(g) The district may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a community facilities district or may pay debt service on that indebtedness. When the amount financed by the district is to pay a tax, fee, charge, or assessment imposed by a public agency other than the one conducting the proceedings, and if the amount provided to the other public agency will not be entirely used to pay off or prepay an assessment lien or special tax obligation pursuant to the property owner's legal right to do so, the written consent of the other public agency is required. In addition, tax revenues of a district may be used to make lease or debt service payments on any lease, lease-purchase contract, or certificate of participation used to finance facilities authorized to be financed by the district.

(h) Any other governmental facilities that the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own, or operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivisions (e) and (k), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.

(i)(1) A district may also pay for the following:

(A) Work deemed necessary to bring buildings or real property, including privately owned buildings or real property, into compliance with seismic safety standards or regulations. Only work certified as necessary to comply with seismic safety standards or regulations by local building officials may be financed. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed pursuant to this subparagraph. Work on qualified historical buildings or structures shall be done in accordance with the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code).

(B) In addition, within any county or area designated by the President of the United States or by the Governor as a disaster area or for which the Governor has proclaimed the existence of a state of emergency because of earthquake damage, a district may also pay for any work deemed necessary to repair any damage to real property directly or indirectly caused by the occurrence of an earthquake cited in the President's or the Governor's designation or proclamation, or by aftershocks associated with that earthquake, including work to reconstruct, repair, shore up, or replace any building damaged or destroyed by the earthquake, and specifically including, but not limited to, work on any building damaged or destroyed in the Loma Prieta earthquake that occurred on October 17, 1989, or by its aftershocks. Work may be financed pursuant to this subparagraph only on property or buildings identified in a resolution of intention to establish a community facilities district adopted within seven years of the date on which the county or area is designated as a disaster area by the President or by the Governor or on which the Governor proclaims for the area the existence of a state of emergency.

(2) Work on privately owned property, including reconstruction or replacement of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may only be financed by a tax levy if all of the votes cast on the question of levying the tax, vote in favor of levying the tax, or with the prior written consent to the tax of the owners of all property that may be subject to the tax, in that case the prior written consent shall be deemed to constitute a vote in favor of the tax and any associated bond issue. Any district created to finance seismic safety work on privately owned buildings, including repair, reconstruction, or replacement of privately owned buildings pursuant to this subdivision, shall consist only of lots or parcels that the legislative body finds have buildings that were damaged or destroyed by the

earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks of that earthquake.

(j) A district may also pay for the following:

(1) Work deemed necessary to repair and abate damage caused to privately owned buildings and structures by soil deterioration. "Soil deterioration" means a chemical reaction by soils that causes structural damage or defects in construction materials including concrete, steel, and ductile or cast iron. Only work certified as necessary by local building officials may be financed. No project involving the dismantling of an existing building or structure and its replacement by a new building or structure, nor the construction of a new or substantially new building or structure may be financed pursuant to this paragraph.

(2) Work on privately owned buildings and structures pursuant to this subdivision, including reconstruction, repair, and abatement of damage caused by soil deterioration, may only be financed by a tax levy if all of the votes cast on the question of levying the tax vote in favor of levying the tax. Any district created to finance the work on privately owned buildings or structures, including reconstruction, repair, and abatement of damage caused by soil deterioration, shall consist only of lots or parcels on which the legislative body finds that the buildings or structures to be worked on pursuant to this subdivision suffer from soil deterioration.

(k) A district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes of removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, "remedial action" and "removal" shall have the meaning set forth in Sections ~~25322 and 25323,~~ 78125 and 78135, respectively, of the Health and Safety Code, and "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code.

(*l*) A district may also finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, wildfire safety improvements as defined in Section 5899.4 of the Streets and Highways Code, and renewable energy improvements that are affixed, as specified in Section 660 of the Civil Code, to or on real property and in buildings, whether the real property or buildings are privately or publicly owned. Energy efficiency, water conservation, wildfire safety improvements as defined in Section 5899.4 of the Streets and Highways Code, and renewable energy improvements financed by a district may only be installed on a privately owned building and on privately owned real property with the prior written consent of the owner or owners of the building or real property. This chapter shall not be used to finance installation of energy efficiency, water conservation, wildfire safety improvements as defined in Section 5899.4 of the Streets and Highways Code, and renewable energy improvements on a privately owned building or on privately owned real property in connection with the initial

construction of a residential building unless the initial construction is undertaken by the intended owner or occupant.

(m) Any improvement on private property authorized to be financed by this section shall constitute a "public facility" for purposes of this chapter and a "public improvement" for purposes of Part 1 (commencing with Section 3100) and Part 2 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code, whether the improvement is owned by a private entity, if the legislative body has determined that the improvement provides a public benefit, or the improvement is owned by a public agency.

(n) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

Comment. Section 53313.5(k) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 53313.5, as repealed and added by Section 5 of Chapter 837 of the Statutes of 2018 (amended). Purchase of property by community facilities district (operative on January 1, 2029)

SEC. __. Section 53313.5 of the Government Code, as repealed and added by Section 5 of Chapter 837 of the Statutes of 2018, is amended to read:

53313.5. A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may not lease out facilities that it has financed except pursuant to a lease agreement or annexation agreement entered into prior to January 1, 1988. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency that will own or operate the facility. For example, a community facilities district may finance facilities, including, but not limited to, the following:

(a) Local park, recreation, parkway, and open-space facilities.

(b) Elementary and secondary schoolsites and structures provided that the facilities meet the building area and cost standards established by the State Allocation Board.

(c) Libraries.

(d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other

operational costs. However, the proceeds of bonds issued pursuant to this chapter shall not be used to pay these insurance costs.

(e) The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. "Public utility" shall include all utilities, whether public and regulated by the Public Utilities Commission, or municipal. If the facilities are conveyed to the public utility, the agreement shall provide that the cost or a portion of the cost of the facilities that are the responsibility of the utility shall be refunded by the public utility to the district or improvement area thereof, to the extent that refunds are applicable pursuant to (1) the Public Utilities Code or rules of the Public Utilities Commission, as to utilities regulated by the commission, or (2) other laws regulating public utilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.

(f) The district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for flood and storm protection services, including, but not limited to, storm drainage and treatment systems and sandstorm protection systems.

(g) The district may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a community facilities district or may pay debt service on that indebtedness. When the amount financed by the district is to pay a tax, fee, charge, or assessment imposed by a public agency other than the one conducting the proceedings, and if the amount provided to the other public agency will not be entirely used to pay off or prepay an assessment lien or special tax obligation pursuant to the property owner's legal right to do so, the written consent of the other public agency is required. In addition, tax revenues of a district may be used to make lease or debt service payments on any lease, lease-purchase contract, or certificate of participation used to finance facilities authorized to be financed by the district.

(h) Any other governmental facilities that the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own, or operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivisions (e) and (k), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.

(i)(1) A district may also pay for the following:

(A) Work deemed necessary to bring buildings or real property, including privately owned buildings or real property, into compliance with seismic safety standards or regulations. Only work certified as necessary to comply with seismic safety standards or regulations by local building officials may be financed. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed pursuant to this subparagraph. Work on qualified historical buildings or structures shall be done in accordance with the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code).

(B) In addition, within any county or area designated by the President of the United States or by the Governor as a disaster area or for which the Governor has proclaimed the existence of a state of emergency because of earthquake damage, a district may also pay for any work deemed necessary to repair any damage to real property directly or indirectly caused by the occurrence of an earthquake cited in the President's or the Governor's designation or proclamation, or by aftershocks associated with that earthquake, including work to reconstruct, repair, shore up, or replace any building damaged or destroyed by the earthquake, and specifically including, but not limited to, work on any building damaged or destroyed in the Loma Prieta earthquake that occurred on October 17, 1989, or by its aftershocks. Work may be financed pursuant to this subparagraph only on property or buildings identified in a resolution of intention to establish a community facilities district adopted within seven years of the date on which the county or area is designated as a disaster area by the President or by the Governor or on which the Governor proclaims for the area the existence of a state of emergency.

(2) Work on privately owned property, including reconstruction or replacement of privately owned buildings pursuant to subparagraph (B) of paragraph (1), may only be financed by a tax levy if all of the votes cast on the question of levying the tax, vote in favor of levying the tax, or with the prior written consent to the tax of the owners of all property that may be subject to the tax, in that case the prior written consent shall be deemed to constitute a vote in favor of the tax and any associated bond issue. Any district created to finance seismic safety work on privately owned buildings, including repair, reconstruction, or replacement of privately owned buildings pursuant to this subdivision, shall consist only of lots or parcels that the legislative body finds have buildings that were damaged or destroyed by the earthquake cited pursuant to subparagraph (B) of paragraph (1) or by the aftershocks of that earthquake.

(j) A district may also pay for the following:

(1) Work deemed necessary to repair and abate damage caused to privately owned buildings and structures by soil deterioration. "Soil deterioration" means a chemical reaction by soils that causes structural damage or defects in construction materials including concrete, steel, and ductile or cast iron. Only work certified as necessary by local building officials may be financed. No project involving the dismantling of

an existing building or structure and its replacement by a new building or structure, nor the construction of a new or substantially new building or structure may be financed pursuant to this paragraph.

(2) Work on privately owned buildings and structures pursuant to this subdivision, including reconstruction, repair, and abatement of damage caused by soil deterioration, may only be financed by a tax levy if all of the votes cast on the question of levying the tax vote in favor of levying the tax. Any district created to finance the work on privately owned buildings or structures, including reconstruction, repair, and abatement of damage caused by soil deterioration, shall consist only of lots or parcels on which the legislative body finds that the buildings or structures to be worked on pursuant to this subdivision suffer from soil deterioration.

(k) A district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real or other tangible property, whether privately or publicly owned, for the purposes of removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, "remedial action" and "removal" shall have the meaning set forth in Sections ~~25322 and 25323,~~ 78125 and 78135, respectively, of the Health and Safety Code, and "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code.

(*l*) A district may also finance and refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable energy improvements that are affixed, as specified in Section 660 of the Civil Code, to or on real property and in buildings, whether the real property or buildings are privately or publicly owned. Energy efficiency, water conservation, and renewable energy improvements financed by a district may only be installed on a privately owned building and on privately owned real property with the prior written consent of the owner or owners of the building or real property. This chapter shall not be used to finance installation of energy efficiency, water conservation, and renewable energy improvements on a privately owned building or on privately owned real property in connection with the initial construction of a residential building unless the initial construction is undertaken by the intended owner or occupant.

(m) Any improvement on private property authorized to be financed by this section shall constitute a "public facility" for purposes of this chapter and a "public improvement" for purposes of Part 1 (commencing with Section 3100) and Part 2 (commencing with Section 3110) of Division 4.5 of the Streets and Highways Code, whether the improvement is owned by a private entity, if the legislative body has determined that the improvement provides a public benefit, or the improvement is owned by a public agency.

(n) This section shall become operative on January 1, 2029.

Comment. Section 53313.5(k) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 53314.7 (amended). Cost recovery and expenditures for hazardous substance cleanup by community facilities district

SEC. __. Section 53314.7 of the Government Code is amended to read:

53314.7. (a) Any responsible party as defined by subdivision (a) of Section ~~25323.5~~ 78145 of the Health and Safety Code shall be liable to the district for the costs incurred in the removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. The amount of the costs shall include interest on the costs accrued from the date of expenditure. The interest shall be calculated based on the average annual rate of return on the district's investment of surplus funds for the fiscal year in which the district incurred the costs. Recovery of costs by a community facilities district under this section shall be commenced before or immediately upon completion of the removal or remedial action, and payments received hereunder by the district shall be deposited in the revolving fund in accordance with Section 53314.6.

(b) To expedite cleanup, this section is intended to provide local jurisdictions an alternative method of financing the cost of removal or remedial action for the cleanup of any hazardous substance through the issuance of voter-approved limited obligation bonds. The provisions of this section shall not affect or limit the provisions of any other law establishing the liability of any person for, or otherwise regulating, the generation, transportation, storage, treatment, or disposal of hazardous substances. The scope and standard of liability for any costs recoverable pursuant to Section 53314.7 shall be the scope and standard of liability set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 6901 et seq.), or any other provision of state or federal law establishing responsibility for cleanup of hazardous waste sites.

Comment. Section 53314.7 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 53321.5 (amended). Required reports

SEC. __. Section 53321.5 of the Government Code is amended to read:

53321.5. At the time of the adoption of the resolution of intention to establish a community facilities district, the legislative body shall direct each of its officers who is or will be responsible for providing one or more of the proposed types of public facilities or services to be financed by the district, if it is established, to study the proposed district and, at or before the time of the hearing, file a report with the legislative body containing a brief description of the public facilities and services by type that will in ~~his or her~~ the officer's opinion be required to adequately meet the needs of the district and ~~his or her~~ the officer's estimate of the cost of providing those public facilities and services. If the purchase of completed public facilities or the payment of incidental expenses is proposed, the legislative body shall direct its appropriate officer to estimate the fair and reasonable cost of those facilities or incidental expenses. If removal or remedial action for the cleanup of any hazardous

substance is proposed, the legislative body shall (a) direct its responsible officer to prepare or cause to be prepared, a remedial action plan based upon factors comparable to those described in ~~subdivision (d) of Section 25356.1~~ Section 79205 of the Health and Safety Code or (b) determine, on the basis of the particular facts and circumstances, that shall be comparable to those described in ~~subdivision (h) of Section 25356.1~~ Section 79225 of the Health and Safety Code, that the remedial action plan is not required or (c) condition financing of the removal or remedial action upon approval of a remedial action plan pursuant to ~~Section 25356.1~~ Article 12 (commencing with Section 79190) of Chapter 5 of Part 2 of Division 45 of the Health and Safety Code. All of those reports shall be made a part of the record of the hearing on the resolution of intention to establish the district.

Comment. Section 53321.5 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to eliminate gendered pronouns.

Gov't Code § 65913.4 (amended). Streamlined approval process for multifamily housing development

SEC. __. Section 65913.4 of the Government Code is amended to read:

65913.4. (a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (c) and is not subject to a conditional use permit if the development complies with subdivision (b) and satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development and the site on which it is located satisfy all of the following:

(A) It is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) It is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, and at least two-thirds of the square footage of the development is designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. The square footage of the development shall not include underground space, such as basements or underground parking garages.

(3)(A) The development proponent has committed to record, prior to the issuance of the first building permit, a land use restriction or covenant providing that any lower or moderate income housing units required pursuant to subparagraph (B) of paragraph (4) shall remain available at affordable housing costs or rent to persons and families of lower or moderate income for no less than the following periods of time:

(i) Fifty-five years for units that are rented.

(ii) Forty-five years for units that are owned.

(B) The city or county shall require the recording of covenants or restrictions implementing this paragraph for each parcel or unit of real property included in the development.

(4) The development satisfies subparagraphs (A) and (B) below:

(A) Is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits, as shown on the most recent production report received by the department, is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(i) The locality did not submit its latest production report to the department by the time period required by Section 65400, or that production report reflects that there were fewer units of above moderate-income housing issued building permits than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project does either of the following:

(I) The project dedicates a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.

(II)(ia) If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause (I), dedicates 20 percent of the total number of units to housing affordable to households making below 120 percent of the area median income with the average income of the units at or below 100 percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the area median income, or requires that any of the units be dedicated at a level deeper than 120 percent. In order to comply with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the area median income shall not exceed 30 percent of the gross income of the household.

(ib) For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.

(ii) The locality's latest production report reflects that there were fewer units of housing issued building permits affordable to either very low income or low-income households by income category than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the area median income, that local ordinance applies.

(iii) The locality did not submit its latest production report to the department by the time period required by Section 65400, or if the production report reflects that there were fewer units of housing affordable to both income levels described in clauses (i) and (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(C)(i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Section 65915, provided that the development proponent complies with the applicable requirements in the state or local law.

(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).

(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section, or at the time a notice of intent is submitted pursuant to subdivision (b), whichever occurs earlier. For purposes of this paragraph, "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be

embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) It is the intent of the Legislature that the objective zoning standards, objective subdivision standards, and objective design review standards described in this paragraph be adopted or amended in compliance with the requirements of Chapter 905 of the Statutes of 2004.

(D) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department

of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief

of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B)(i) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent

subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and

provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(b)(1)(A)(i) Before submitting an application for a development subject to the streamlined, ministerial approval process described in subdivision (c), the development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent shall be in the form of a preliminary application that includes all of the information described in Section 65941.1, as that section read on January 1, 2020.

(ii) Upon receipt of a notice of intent to submit an application described in clause (i), the local government shall engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, of the proposed development. In order to expedite compliance with this subdivision, the local government shall contact the Native American Heritage Commission for assistance in identifying any

California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development.

(iii) The timeline for noticing and commencing a scoping consultation in accordance with this subdivision shall be as follows:

(I) The local government shall provide a formal notice of a development proponent's notice of intent to submit an application described in clause (i) to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent. The formal notice provided pursuant to this subclause shall include all of the following:

(ia) A description of the proposed development.

(ib) The location of the proposed development.

(ic) An invitation to engage in a scoping consultation in accordance with this subdivision.

(II) Each California Native American tribe that receives a formal notice pursuant to this clause shall have 30 days from the receipt of that notice to accept the invitation to engage in a scoping consultation.

(III) If the local government receives a response accepting an invitation to engage in a scoping consultation pursuant to this subdivision, the local government shall commence the scoping consultation within 30 days of receiving that response.

(B) The scoping consultation shall recognize that California Native American tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue and shall take into account the cultural significance of the resource to the culturally affiliated California Native American tribe.

(C) The parties to a scoping consultation conducted pursuant to this subdivision shall be the local government and any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development. More than one California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development may participate in the scoping consultation. However, the local government, upon the request of any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development, shall engage in a separate scoping consultation with that California Native American tribe. The development proponent and its consultants may participate in a scoping consultation process conducted pursuant to this subdivision if all of the following conditions are met:

(i) The development proponent and its consultants agree to respect the principles set forth in this subdivision.

(ii) The development proponent and its consultants engage in the scoping consultation in good faith.

(iii) The California Native American tribe participating in the scoping consultation approves the participation of the development proponent and its consultants. The California Native American tribe may rescind its approval at any

time during the scoping consultation, either for the duration of the scoping consultation or with respect to any particular meeting or discussion held as part of the scoping consultation.

(D) The participants to a scoping consultation pursuant to this subdivision shall comply with all of the following confidentiality requirements:

(i) Subdivision (r) of Section 6254.

(ii) Section 6254.10.

(iii) Subdivision (c) of Section 21082.3 of the Public Resources Code.

(iv) Subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations.

(v) Any additional confidentiality standards adopted by the California Native American tribe participating in the scoping consultation.

(E) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a scoping consultation conducted pursuant to this subdivision.

(2)(A) If, after concluding the scoping consultation, the parties find that no potential tribal cultural resource would be affected by the proposed development, the development proponent may submit an application for the proposed development that is subject to the streamlined, ministerial approval process described in subdivision (c).

(B) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is documented between the California Native American tribe and the local government on methods, measures, and conditions for tribal cultural resource treatment, the development proponent may submit the application for a development subject to the streamlined, ministerial approval process described in subdivision (c). The local government shall ensure that the enforceable agreement is included in the requirements and conditions for the proposed development.

(C) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is not documented between the California Native American tribe and the local government regarding methods, measures, and conditions for tribal cultural resource treatment, the development shall not be eligible for the streamlined, ministerial approval process described in subdivision (c).

(D) For purposes of this paragraph, a scoping consultation shall be deemed to be concluded if either of the following occur:

(i) The parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.

(ii) One or more parties to the scoping consultation, acting in good faith and after reasonable effort, conclude that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present cannot be reached.

(E) If the development or environmental setting substantially changes after the completion of the scoping consultation, the local government shall notify the California Native American tribe of the changes and engage in a subsequent scoping consultation if requested by the California Native American tribe.

(3) A local government may only accept an application for streamlined, ministerial approval pursuant to this section if one of the following applies:

(A) A California Native American tribe that received a formal notice of the development proponent's notice of intent to submit an application pursuant to subclause (I) of clause (iii) of subparagraph (A) of paragraph (1) did not accept the invitation to engage in a scoping consultation.

(B) The California Native American tribe accepted an invitation to engage in a scoping consultation pursuant to subclause (II) of clause (iii) of subparagraph (A) of paragraph (1) but substantially failed to engage in the scoping consultation after repeated documented attempts by the local government to engage the California Native American tribe.

(C) The parties to a scoping consultation pursuant to this subdivision find that no potential tribal cultural resource will be affected by the proposed development pursuant to subparagraph (A) of paragraph (2).

(D) A scoping consultation between a California Native American tribe and the local government has occurred in accordance with this subdivision and resulted in agreement pursuant to subparagraph (B) of paragraph (2).

(4) A project shall not be eligible for the streamlined, ministerial process described in subdivision (c) if any of the following apply:

(A) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.

(B) There is a potential tribal cultural resource that could be affected by the proposed development and the parties to a scoping consultation conducted pursuant to this subdivision do not document an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2).

(C) The parties to a scoping consultation conducted pursuant to this subdivision do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

(5)(A) If, after a scoping consultation conducted pursuant to this subdivision, a project is not eligible for the streamlined, ministerial process described in subdivision (c) for any or all of the following reasons, the local government shall provide written documentation of that fact, and an explanation of the reason for which the project is not eligible, to the development proponent and to any California Native American tribe that is a party to that scoping consultation:

(i) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project, as described in subparagraph (A) of paragraph (4).

(ii) The parties to the scoping consultation have not documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in subparagraph (C) of paragraph (2) and subparagraph (B) of paragraph (4).

(iii) The parties to the scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development, as described in subparagraph (C) of paragraph (4).

(B) The written documentation provided to a development proponent pursuant to this paragraph shall include information on how the development proponent may seek a conditional use permit or other discretionary approval of the development from the local government.

(6) This section is not intended, and shall not be construed, to limit consultation and discussion between a local government and a California Native American tribe pursuant to other applicable law, confidentiality provisions under other applicable law, the protection of religious exercise to the fullest extent permitted under state and federal law, or the ability of a California Native American tribe to submit information to the local government or participate in any process of the local government.

(7) For purposes of this subdivision:

(A) "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" prepared by the Office of Planning and Research.

(B) "Scoping" means the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code.

(8) This subdivision shall not apply to any project that has been approved under the streamlined, ministerial approval process provided under this section before the effective date of the act adding this subdivision.

(c)(1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation

for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(d)(1) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(e)(1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f)(1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the area median income.

(2)(A) If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making at or below 80 percent of the area median income, that approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. For purposes of this subdivision, "in progress" means one of the following:

(i) The construction has begun and has not ceased for more than 180 days.

(ii) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.

(B) Notwithstanding subparagraph (A), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and processes set forth in this section.

(g)(1)(A) A development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval process provided

in subdivision (b) if that request is submitted to the local government before the issuance of the final building permit required for construction of the development.

(B) Except as provided in paragraph (3), the local government shall approve a modification if it determines that the modification is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted.

(C) The local government shall evaluate any modifications requested pursuant to this subdivision for consistency with the objective planning standards using the same assumptions and analytical methodology that the local government originally used to assess consistency for the development that was approved for streamlined, ministerial approval pursuant to subdivision (b).

(D) A guideline that was adopted or amended by the department pursuant to subdivision (j) after a development was approved through the streamlined ministerial approval process described in subdivision (b) shall not be used as a basis to deny proposed modifications.

(2) Upon receipt of the developmental proponent's application requesting a modification, the local government shall determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification request within 60 days after submission of the modification, or within 90 days if design review is required.

(3) Notwithstanding paragraph (1), the local government may apply objective planning standards adopted after the development application was first submitted to the requested modification in any of the following instances:

(A) The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more.

(B) The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Section 65589.5, upon the public health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

(C) Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical, fire, and grading codes, may be applied to all modifications.

(4) The local government's review of a modification request pursuant to this subdivision shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification.

(h)(1) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(2) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (c). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (c), and includes, but is not limited to, demolition, grading, encroachment, and building permits and final maps, if necessary.

(3)(A) If a public improvement is necessary to implement a development that is subject to the streamlined, ministerial approval pursuant to this section, including, but not limited to, a bicycle lane, sidewalk or walkway, public transit stop, driveway, street paving or overlay, a curb or gutter, a modified intersection, a street sign or street light, landscape or hardscape, an above-ground or underground utility connection, a water line, fire hydrant, storm or sanitary sewer connection, retaining wall, and any related work, and that public improvement is located on land owned by the local government, to the extent that the public improvement requires approval from the local government, the local government shall not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development.

(B) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall do all of the following:

(i) Consider the application based upon any objective standards specified in any state or local laws that were in effect when the original development application was submitted.

(ii) Conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive ministerial or streamlined approval pursuant to this section.

(C) If an application for a public improvement described in subparagraph (A) is submitted to a local government, the local government shall not do either of the following:

(i) Adopt or impose any requirement that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(ii) Unreasonably delay in its consideration, review, or approval of the application.

(i)(1) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.

(j) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:

(1) Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(k) For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing cost" has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.

(2) "Affordable rent" has the same meaning as set forth in Section 50053 of the Health and Safety Code.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development that has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(8) "Production report" means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(9) "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

(10) "Subsidized" means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

(11) "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

(12) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(*l*) The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(m) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (c) is not a "project" as defined in Section 21065 of the Public Resources Code.

(n) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.

(*o*) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Comment. Section 65913.4(a)(6)(E) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 65913.15 (amended). Streamlined approval process for residential or mixed-use development

SEC. __. Section 65913.15 of the Government Code is amended to read:

65913.15. (a) Notwithstanding Section 65913.4, a development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and is not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is located within the territorial boundaries or a specialized residential planning area identified in the general plan of, and adjacent to existing urban development within, any of the following:

(A) The City of Biggs.

(B) The City of Corning.
(C) The City of Gridley.
(D) The City of Live Oak.
(E) The City of Orland.
(F) The City of Oroville.
(G) The City of Willows.
(H) The City of Yuba City.

(2) The development is either a residential development or a mixed-use development that includes residential units with at least two-thirds of the square footage of the development designated for residential use, not including any land that may be devoted to open-space or mitigation requirements.

(3) The development proponent has held at least one public meeting on the proposed development before submitting an application pursuant to this subdivision.

(4) The development has a minimum density of at least four units per acre.

(5) The development is located on a site that meets both of the following requirements:

(A) The site is no more than 50 acres.

(B) The site is zoned for residential use or residential mixed-use development.

(6) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section.

(7) The development will achieve sustainability standards sufficient to receive a gold certification under the United States Green Building Council's Leadership in Energy and Environmental Design for Homes rating system or, in the case of a mixed-use development, the Neighborhood Development or the New Construction rating system, or the comparable rating under the GreenPoint rating system or voluntary tier under the California Green Building Code (Part 11 (commencing with Section 101) of Title 24 of the California Code of Regulations).

(8) The development is not located on a site that is any of the following:

(A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation that is protected pursuant to the California Land Conservation Act of 1965 (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5), or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local government.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.

(H) Lands identified for conservation in an adopted natural community conservation plan adopted on or before January 1, 2019, pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant

to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(I) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by any of the following:

(i) The federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).

(ii) The California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code).

(iii) The Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(J) Lands under conservation easement.

(9) The development does not require the demolition of a historic structure that was placed on a national, state, or local historic register.

(10) The development shall not be upon an existing parcel of land or site that is governed under any of the following:

(A) The Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code).

(B) The Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code).

(C) The Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code).

(D) The Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(11)(A) If the development would require the demolition of any affordable housing units, the development shall replace those units by providing at least the same number of units of equivalent size to be made available at affordable housing cost to, and occupied by, persons and families in the same income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income households occupied the units in the same proportion of lower income households to all households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded to the next whole number.

(B) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(b)(1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(c) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent commission responsible for review and approval of development projects or the city council, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local government before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(1) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(2) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(d) Notwithstanding any other law, a city, whether or not it has adopted an ordinance governing automobile parking requirements for multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section if the development is located within one-half mile from a high-quality bus corridor or major transit stop.

(e)(1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability and 50 percent of the units are affordable to households making below 80 percent of the area median income. For purposes of this paragraph, "public investment in housing affordability" does not include tax credits.

(2) If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making below 80 percent of the area median income, that approval shall automatically expire after three years, except that a project may receive a one-time, one-year extension if the project proponent provides documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(3) If a local government approves a development pursuant to this section, that approval shall remain valid for three years from the date of the final action establishing that approval and shall remain valid thereafter for a project so long as

vertical construction of the development has begun and is in progress. Additionally, the development proponent may request, and the local government shall have discretion to grant, an additional one-year extension to the original three-year period. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and process set forth in this section.

(4) If a local government approves a development pursuant to this section, the local government shall file a notice of that approval with the Office of Planning and Research.

(f)(1) A local government shall not adopt any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(2) Notwithstanding paragraph (1), if the local government has adopted a local ordinance that requires that a specified percentage of the units of a housing development project be dedicated to households making below 80 percent of the area median income, that local ordinance applies.

(g) This section does not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Affordable housing" means housing available at affordable housing cost, and occupied by, persons and families of low or moderate income as defined by Section 50093 of the Health and Safety Code, lower income households as defined by Section 50079.5 of the Health and Safety Code, very low income households as defined by Section 50105 of the Health and Safety Code, and extremely low income households as defined by Section 50106 of the Health and Safety Code, for a period of 55 years for rental housing and 45 years for owner-occupied housing.

(2) "Affordable housing cost" has the same meaning as "affordable housing cost" described in Section 50052.5 of the Health and Safety Code.

(3) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "High-quality bus corridor" means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

(6) "Local government" means a city or a county, including a charter city or a charter county, that has jurisdiction over a development for which a development proponent submits an application pursuant to this section.

(7) "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less

during the morning and afternoon peak commute periods. "Major transit stop" shall also include major transit stops included in a regional transportation plan adopted pursuant to Chapter 2.5 (commencing with Section 65080).

(8)(A) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a local government, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to subparagraph (B).

(B) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is consistent with the allowable residential density within that land use designation, notwithstanding any specified unit allocation.

(i) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

Comment. Section 65913.15(a)(8)(D) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 65941.1 (amended). Submission of preliminary application for housing development project

SEC. __. Section 65941.1 of the Government Code is amended to read:

65941.1. (a) An applicant for a housing development project, as defined in paragraph (2) of subdivision (h) of Section 65589.5, shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee:

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.

(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.

(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

(5) The proposed number of parking spaces.

(6) Any proposed point sources of air or water pollutants.

(7) Any species of special concern known to occur on the property.

(8) Whether a portion of the property is located within any of the following:

(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code.

(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.

(E) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

(9) Any historic or cultural resources known to exist on the property.

(10) The number of proposed below market rate units and their affordability levels.

(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.

(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.

(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

(14) For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:

(A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

(B) Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.

(C) A tsunami run-up zone.

(D) Use of the site for public access to or along the coast.

(15) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.

(16) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

(17) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

(b)(1) Each local agency shall compile a checklist and application form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application.

(2) The Department of Housing and Community Development shall adopt a standardized form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application if a local agency has not developed its own application form pursuant to paragraph (1). Adoption of the standardized form shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) A checklist or form shall not require or request any information beyond that expressly identified in subdivision (a).

(c) After submittal of all of the information required by subdivision (a), if the development proponent revises the project such that the number of residential units or square footage of construction changes by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, the housing development project shall not be deemed to have submitted a preliminary application that satisfies this section until the development proponent resubmits the information required by subdivision (a) so that it reflects the revisions. For purposes of this subdivision, "square footage of construction" means the building area, as defined by the California Building Standards Code (Title 24 of the California Code of Regulations).

(d)(1) Within 180 calendar days after submitting a preliminary application with all of the information required by subdivision (a) to a city, county, or city and county, the development proponent shall submit an application for a development project that includes all of the information required to process the development application consistent with Sections 65940, 65941, and 65941.5.

(2) If the public agency determines that the application for the development project is not complete pursuant to Section 65943, the development proponent shall submit the specific information needed to complete the application within 90 days of receiving the agency's written identification of the necessary information. If the development proponent does not submit this information within the 90-day period, then the preliminary application shall expire and have no further force or effect.

(3) This section shall not require an affirmative determination by a city, county, or city and county regarding the completeness of a preliminary application or a development application for purposes of compliance with this section.

(e) Notwithstanding any other law, submission of a preliminary application in accordance with this section shall not preclude the listing of a tribal cultural resource on a national, state, tribal, or local historic register list on or after the date that the preliminary application is submitted. For purposes of Section 65589.5 or any other law, the listing of a tribal cultural site on a national, state, tribal, or local historic register on or after the date the preliminary application was submitted shall not be deemed to be a change to the ordinances, policies, and standards adopted and in effect at the time that the preliminary application was submitted.

(f) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

Comment. Section 65941.1(a)(8)(C) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Gov't Code § 65962.5 (amended). Information related to hazardous waste and substances

SEC. __. Section 65962.5 of the Government Code is amended to read:

65962.5. (a) The Department of Toxic Substances Control shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.

(2) All land designated as hazardous waste property or border zone property pursuant to former Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(3) All information received by the Department of Toxic Substances Control pursuant to Section 25242 of the Health and Safety Code on hazardous waste disposals on public land.

(4) All sites listed pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code.

(b) The State Department of Health Services shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis pursuant to Section 116395 of the Health and Safety Code.

(c) The State Water Resources Control Board shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code.

(2) All solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of Section 13273 of the Water Code.

(3) All cease and desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge of wastes that are hazardous materials.

(d) The local enforcement agency, as designated pursuant to Section 18051 of Title 14 of the California Code of Regulations, shall compile as appropriate, but at least annually, and shall submit to the Department of Resources Recycling and Recovery, a list of all solid waste disposal facilities from which there is a known migration of hazardous waste. The Department of Resources Recycling and Recovery shall compile the local lists into a statewide list, which shall be submitted to the Secretary for Environmental Protection and shall be available to any person who requests the information.

(e) The Secretary for Environmental Protection shall consolidate the information submitted pursuant to this section and distribute it in a timely fashion to each city and county in which sites on the lists are located. The secretary shall distribute the information to any other person upon request. The secretary may charge a reasonable fee to persons requesting the information, other than cities, counties, or cities and counties, to cover the cost of developing, maintaining, and reproducing and distributing the information.

(f) Before a lead agency accepts as complete an application for any development project which will be used by any person, the applicant shall consult the lists sent to the appropriate city or county and shall submit a signed statement to the local agency indicating whether the project and any alternatives are located on a site that is included on any of the lists compiled pursuant to this section and shall specify any list. If the site is included on a list, and the list is not specified on the statement, the lead agency shall notify the applicant pursuant to Section 65943. The statement shall read as follows:

HAZARDOUS WASTE AND SUBSTANCES STATEMENT

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section 65962.5 of the Government Code. Accordingly, the project applicant is required to submit a signed statement that contains the following information:

Name of applicant:
Address:
Phone number:
Address of site (street name and number if available, and ZIP Code):
Local agency (city/county):
Assessor's book, page, and parcel number:
Specify any list pursuant to Section 65962.5 of the Government Code:
Regulatory identification number:
Date of list:

_____ Applicant, Date _____	_____

(g) The changes made to this section by the act amending this section, that takes effect January 1, 1992, apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943.

Comment. Section 65962.5(a)(4) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

HEALTH AND SAFETY CODE

Health & Safety Code § 11374.5 (amended). Penalties for disposal of hazardous substance related to manufacture of controlled substance

SEC. __. Section 11374.5 of the Health and Safety Code is amended to read:

11374.5. (a) Any manufacturer of a controlled substance who disposes of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law regulating the disposal of hazardous substances or hazardous waste is guilty of a public offense punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years or in the county jail not exceeding one year.

(b)(1) In addition to any other penalty or liability imposed by law, a person who is convicted of violating subdivision (a), or any person who is convicted of the manufacture, sale, possession for sale, possession, transportation, or disposal of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law, shall pay a penalty equal to the amount of the actual cost incurred by the state or local agency to remove and dispose of the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance and to take removal action with respect to any release of the hazardous substance or any items or materials contaminated by that release, if the state or local agency requests the prosecuting authority to seek recovery of that cost. The court shall transmit all penalties collected pursuant to this subdivision to the county treasurer of the county in which the court is located for deposit in a special account in the county treasury. The county treasurer shall pay that money at least once a month to the agency that requested recovery of the cost for the removal action. The county may retain up to 5 percent of any assessed penalty for appropriate and reasonable administrative costs attributable to the collection and disbursement of the penalty.

(2) If the Department of Toxic Substances Control has requested recovery of the cost of removing the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance or taking removal action with respect to any release of the hazardous substance, the

county treasurer shall transfer funds in the amount of the penalty collected to the Treasurer, who shall deposit the money in the Illegal Drug Lab Cleanup Account, which is hereby created in the General Fund in the State Treasury. The Department of Toxic Substances Control may expend the money in the Illegal Drug Lab Cleanup Account, upon appropriation by the Legislature, to cover the cost of taking removal actions pursuant to ~~Section 25354.5.~~ Article 16 (commencing with Section 79350) of Chapter 5 of Part 2 of Division 45.

(3) If a local agency and the Department of Toxic Substances Control have both requested recovery of removal costs with respect to a hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance, the county treasurer shall apportion any penalty collected among the agencies involved in proportion to the costs incurred.

(c) As used in this section the following terms have the following meaning:

(1) "Dispose" means to abandon, deposit, intern, or otherwise discard as a final action after use has been achieved or a use is no longer intended.

(2) "Hazardous substance" has the same meaning as defined in ~~Section 25316.~~ subdivision (a) of Section 78075.

(3) "Hazardous waste" has the same meaning as defined in Section 25117.

(4) For purposes of this section, "remove" or "removal" has the same meaning as set forth in Section ~~25323.~~ 78135.

Comment. Section 11374.5(b)(2), (c)(2), and (c)(4) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 11470.1 (amended). Cost recovery for controlled substance remedial action

SEC. __. Section 11470.1 of the Health and Safety Code is amended to read:

11470.1. (a) The expenses of seizing, eradicating, destroying, or taking remedial action with respect to, any controlled substance or its precursors shall be recoverable from:

(1) Any person who manufactures or cultivates a controlled substance or its precursors in violation of this division.

(2) Any person who aids and abets or who knowingly profits in any manner from the manufacture or cultivation of a controlled substance or its precursors on property owned, leased, or possessed by the defendant, in violation of this division.

(b) The expenses of taking remedial action with respect to any controlled substance or its precursors shall also be recoverable from any person liable for the costs of that remedial action under ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code.

(c) It shall be necessary to seek or obtain a criminal conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors prior to the entry of judgment for the recovery of expenses. If criminal charges are pending

against the defendant for the unlawful manufacture or cultivation of any controlled substance or its precursors, an action brought pursuant to this section shall, upon a defendant's request, be continued while the criminal charges are pending.

(d) The action may be brought by the district attorney, county counsel, city attorney, the State Department of Health Care Services, or Attorney General. All expenses recovered pursuant to this section shall be remitted to the law enforcement agency which incurred them.

(e)(1) The burden of proof as to liability shall be on the plaintiff and shall be by a preponderance of the evidence in an action alleging that the defendant is liable for expenses pursuant to paragraph (1) of subdivision (a). The burden of proof as to liability shall be on the plaintiff and shall be by clear and convincing evidence in an action alleging that the defendant is liable for expenses pursuant to paragraph (2) of subdivision (a). The burden of proof as to the amount of expenses recoverable shall be on the plaintiff and shall be by a preponderance of the evidence in any action brought pursuant to subdivision (a).

(2) Notwithstanding paragraph (1), for any person convicted of a criminal charge of the manufacture or cultivation of a controlled substance or its precursors there shall be a presumption affecting the burden of proof that the person is liable.

(f) Only expenses which meet the following requirements shall be recoverable under this section:

(1) The expenses were incurred in seizing, eradicating, or destroying the controlled substance or its precursors or in taking remedial action with respect to a hazardous substance. These expenses may not include any costs incurred in use of the herbicide paraquat.

(2) The expenses were incurred as a proximate result of the defendant's manufacture or cultivation of a controlled substance in violation of this division.

(3) The expenses were reasonably incurred.

(g) For purposes of this section, "remedial action" shall have the meaning set forth in Section ~~25322.~~ 78125.

(h) For the purpose of discharge in bankruptcy, a judgment for recovery of expenses under this section shall be deemed to be a debt for willful and malicious injury by the defendant to another entity or to the property of another entity.

(i) Notwithstanding Section 526 of the Code of Civil Procedure, the plaintiff may be granted a temporary restraining order or a preliminary injunction, pending or during trial, to restrain the defendant from transferring, encumbering, hypothecating, or otherwise disposing of any assets specified by the court, if it appears by the complaint that the plaintiff is entitled to the relief demanded and it appears that the defendant may dispose of those assets to thwart enforcement of the judgment.

(j) The Legislature finds and declares that civil penalties for the recovery of expenses incurred in enforcing the provisions of this division shall not supplant criminal prosecution for violation of those provisions, but shall be a supplemental remedy to criminal enforcement.

(k) Any testimony, admission, or any other statement made by the defendant in any proceeding brought pursuant to this section, or any evidence derived from the testimony, admission, or other statement, shall not be admitted or otherwise used in any criminal proceeding arising out of the same conduct.

(*l*) No action shall be brought or maintained pursuant to this section against a person who has been acquitted of criminal charges for conduct that is the basis for an action under this section.

Comment. Section 11470.1(b) and (g) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 13009.6 (amended). Emergency response expenses

SEC. __. Section 13009.6 of the Health and Safety Code is amended to read:

13009.6. (a)(1) Those expenses of an emergency response necessary to protect the public from a real and imminent threat to health and safety by a public agency to confine, prevent, or mitigate the release, escape, or burning of hazardous substances described in subdivision (c) are a charge against any person whose negligence causes the incident, if either of the following occurs:

(A) Evacuation from the building, structure, property, or public right-of-way where the incident originates is necessary to prevent loss of life or injury.

(B) The incident results in the spread of hazardous substances or fire posing a real and imminent threat to public health and safety beyond the building, structure, property, or public right-of-way where the incident originates.

(2) Expenses reimbursable to a public agency under this section are a debt of the person liable therefor, and shall be collectible in the same manner as in the case of an obligation under contract, express or implied.

(3) The charge created against the person by this subdivision is also a charge against the person's employer if the negligence causing the incident occurs in the course of the person's employment.

(4) The public agencies participating in an emergency response meeting the requirements of paragraph (1) of this subdivision may designate one or more of the participating agencies to bring an action to recover the expenses incurred by all of the designating agencies which are reimbursable under this section.

(5) An action to recover expenses under this section may be joined with any civil action for penalties, fines, injunctive, or other relief brought against the responsible person or employer, or both, arising out of the same incident.

(b) There shall be deducted from any amount otherwise recoverable under this section, the amount of any reimbursement for eligible costs received by a public agency pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20.~~ Part 2 (commencing with Section 78000) of Division 45. The amount so reimbursed may be recovered as provided in Section ~~25360.~~ 79650.

(c) As used in this section, "hazardous substance" means any hazardous substance listed in ~~Section 25316~~ subdivision (a) of Section 78075 or subdivision (q) of Section 25501 of this code, or in Section 6382 of the Labor Code.

(d) As used in this section, "mitigate" includes actions by a public agency to monitor or model ambient levels of airborne hazardous substances for the purpose of determining or assisting in the determination of whether or not to evacuate areas around the property where the incident originates, or to determine or assist in the determination of which areas around the property where the incident originates should be evacuated.

Comment. Section 13009.6 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 17021.8 (amended). Streamlined approval process for eligible agricultural employee housing development

SEC. __. Section 17021.8 of the Health and Safety Code is amended to read:

17021.8. (a) A development proponent may submit an application for a development that is subject to a streamlined, ministerial approval process, provided in subdivision (b), and is not subject to a conditional use permit if all of the following requirements are met:

(1) The development is located on land designated as agricultural in the applicable city or county general plan.

(2) The development is not located on a site that is any of the following:

(A) Within the coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 of the Government Code or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to ~~Section 25356,~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901)), and by any

local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

(F) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency.

(H) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(I) Lands under conservation easement. For purposes of this section, "conservation easement" shall not include a contract executed pursuant to the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code).

(J) Lands with groundwater levels within five feet of the soil surface and for which the development would be served by an onsite wastewater disposal system serving more than six family housing units.

(3) The development is an eligible agricultural employee housing development that satisfies the requirements specified in subdivision (i).

(b)(1) If a local government determines that a development submitted pursuant to this section does not meet the requirements specified in subdivision (a), the local government shall provide the development proponent written documentation of which requirement or requirements the development does not satisfy and an explanation for the reason or reasons the development does not satisfy the requirement or requirements, as follows:

(A) Within 30 days of submission of the development to the local government pursuant to this section if the development contains 50 or fewer housing units.

(B) Within 60 days of submission of the development to the local government pursuant to this section if the development contains more than 50 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the requirements specified in paragraph (2) of subdivision (a).

(c) The local government's planning commission or an equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate, may conduct a development review or public oversight of the development. The development review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective

development standards described in this section. For purposes of this subdivision, "objective development standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submission. The development review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(1) Within 90 days of submission of the development to the local government pursuant to this section if the development contains 50 or fewer housing units.

(2) Within 180 days of submission of the development to the local government pursuant to this section if the development contains more than 50 housing units.

(d) An agricultural employee housing development that is approved pursuant to this section shall not be subject to the density limits specified in Section 17021.6 in order to constitute an agricultural land use for purposes of that section.

(e) Notwithstanding Section 17021.6, a local government may subject an agricultural employee housing development that is approved pursuant to this section to the following written, objective development standards:

(1)(A) A requirement that the development have adequate water and wastewater facilities and dry utilities to serve the project.

(B) A requirement that the development be connected to an existing public water system that has not been identified as failing or being at risk of failing to provide an adequate supply of safe drinking water.

(C) If the development proposes to include 10 or more units, a requirement that the development connect to an existing municipal sewer system that has adequate capacity to serve the project. If the local agency has adopted an approved local agency management program for onsite wastewater treatment systems, those requirements shall apply to the development.

(2) A requirement that the property on which the development is located be either:

(A) Within one-half mile of a duly designated collector road with an Average Daily Trips (ADT) of 6,000 or greater.

(B) Adjacent to a duly designated collector road with an ADT of 2,000 or greater.

(3) A requirement that the development include off-street parking based upon demonstrated need, provided that the standards do not require more parking for eligible agricultural employee housing developments than for other residential uses of similar size within the jurisdiction.

(4) Notwithstanding Section 17020 or any other law, health, safety, and welfare standards for agricultural employee housing, including, but not limited to, density, minimum living space per occupant, minimum sanitation facilities, minimum sanitation requirements, and similar standards.

(5) Standards requiring that if a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential

exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(f) Neither the approval of a development pursuant to this section, including the permit processing, nor the application of development standards pursuant to this section shall be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(g) Notwithstanding Section 17021.6, a local agency may impose fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the eligible agricultural employee housing development.

(h) This section shall not be construed to:

(1) Prohibit a local agency from requiring an eligible agricultural employee housing development to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with subdivision (e) and appropriate to, and consistent with, meeting the jurisdiction's need for farmworker housing, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583 of the Government Code.

(2) Prohibit a local agency from disapproving an eligible agricultural employee housing development if the eligible agricultural employee housing development as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to lower income households, as defined in Section 50079.5, or rendering the development financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) Prohibit a local agency from disapproving an eligible agricultural employee housing development if that project would be in violation of any applicable state or federal law.

(4) Change any obligations to comply with any other existing laws, including, but not limited to, Section 116527, Section 106.4 of the Water Code, Division 7 (commencing with Section 13000) of the Water Code, and Part 12 (commencing with Section 116270) of Division 104.

(i) For the purposes of this section, "eligible agricultural employee housing development" means an agricultural employee housing development that satisfies all of the following:

(1) The agricultural employee housing does not contain dormitory-style housing.

(2) The development consists of no more than 36 units or spaces designed for use by a single family or household.

(3)(A) Except as otherwise provided in subparagraph (B), the agricultural employee housing will be maintained and operated by a qualified affordable housing organization that has been certified pursuant to Section 17030.10. The development

proponent shall submit proof of issuance of the qualified affordable housing organization's certification by the enforcement agency. The qualified affordable housing organization shall provide for onsite management of the development.

(B) In the case of agricultural employee housing that is maintained and operated by a local public housing agency or a multicounty, state, or multistate agency that has been certified as a qualified affordable housing organization as required by this paragraph, that agency either directly maintains and operates the agricultural employee housing or contracts with another qualified affordable housing organization that has been certified pursuant to Section 17030.10.

(C) The local government ensures an affordability covenant is recorded on the property to ensure the affordability of the proposed agricultural employee housing for agricultural employees for not less than 55 years. For purposes of this paragraph, "affordability" means the agricultural housing is made available at an affordable rent, as defined in Section 50053, to lower income households, as defined in Section 50079.5.

(4) The agricultural employee housing is not ineligible for state funding pursuant to paragraph (1) of subdivision (b) of Section 50205.

(j) For purposes of this section, "agricultural employee housing" means employee housing for agricultural employees as both terms are defined in Sections 17008 and 17021 respectively.

(k) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of agricultural employee housing as are commensurate with local need. The Legislature further finds and declares that this section addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

Comment. Section 17021.8(a)(2)(D) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25117.13 (amended). "Land use restriction"

SEC. __. Section 25117.13 of the Health and Safety Code is amended to read:

25117.13. "Land use restriction" means any limitation regarding the uses of property which may be provided by, but is not limited to, a written instrument which imposes an easement, covenant, restriction, or servitude, or a combination thereof, as appropriate, upon the present and future uses of all, or part of, the land, pursuant to Section 25202.5, 25222.1, 25230, or ~~25355.5.~~ 79055.

Comment. Section 25117.13 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25122.8 (amended). "State operational costs"

SEC. __. Section 25122.8 of the Health and Safety Code is amended to read:

25122.8. "State operational costs" means the costs to the state of overseeing removal and remedial action, as defined in Sections ~~25322 and 25323,~~ 78125 and 78135, to releases of hazardous substances, as defined in ~~Sections 25316 and 25320,~~ subdivision (a) of Section 78075 and subdivision (a) of Section 78105, if the responsible party is in compliance with an order issued, or with an enforceable agreement entered into, pursuant to paragraph (1) of subdivision (a) of Section ~~25355.5.~~ 79055. "State operational costs" include, but are not limited to, the expenditure of funds pursuant to ~~subdivision (c) or (d) of Section 25355.5.~~ Section 79065.

Comment. Section 25122.8 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25123.3 (amended). "Storage facility"

SEC. __. Section 25123.3 of the Health and Safety Code is amended to read:

25123.3. (a) For purposes of this section, the following terms have the following meanings:

(1) "Liquid hazardous waste" means a hazardous waste that meets the definition of free liquids, as specified in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1994.

(2) "Remediation waste staging" means the temporary accumulation of non-RCRA contaminated soil that is generated and held onsite, and that is accumulated for the purpose of onsite treatment pursuant to a certified, authorized, or permitted treatment method, such as a transportable treatment unit, if all of the following requirements are met:

(A) The hazardous waste being accumulated does not contain free liquids.

(B) The hazardous waste is accumulated on an impermeable surface, such as high density polyethylene (HDPE) of at least 20 mils that is supported by a foundation, or high density polyethylene of at least 60 mils that is not supported by a foundation.

(C) The generator provides controls for windblown dispersion and precipitation runoff and run-on and complies with any stormwater permit requirements issued by a regional water quality control board.

(D) The generator has the accumulation site inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.

(E) The staging area is certified by a registered engineer for compliance with the standards specified in subparagraphs (A) to (D), inclusive.

(3) "Transfer facility" means any offsite facility that is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(b) "Storage facility" means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is held for greater than 90 days at an onsite facility. The department may establish criteria and procedures to extend that 90-day period, consistent with the federal act, and to prescribe the manner in which the hazardous waste may be held if not otherwise prescribed by statute.

(2) The hazardous waste is held for any period of time at an offsite facility that is not a transfer facility.

(3)(A) Except as provided in subparagraph (B), the waste is held at a transfer facility and any one of the following apply:

(i) The transfer facility is located in an area zoned residential by the local planning authority.

(ii) The transfer facility commences initial operations on or after January 1, 2005, at a site located within 500 feet of a structure identified in paragraphs (1) to (5), inclusive, of subdivision (c) of Section 25227.

(iii) The hazardous waste is held for a period greater than six days at a transfer facility located in an area that is not zoned industrial or agricultural by the local planning authority.

(iv) The hazardous waste is held for a period greater than 10 days at a transfer facility located in an area zoned industrial or agricultural by the local planning authority.

(v) The hazardous waste is held for a period greater than six days at a transfer facility that commenced initial operations before January 1, 2005, is located in an area zoned agricultural by the local planning authority, and is located within 500 feet of a structure identified in paragraphs (1) to (5), inclusive, of subdivision (c) of Section 25227.

(B)(i) Notwithstanding subparagraph (A), a transfer facility located in an area that is not zoned residential by the local planning authority is not a storage facility, if the only hazardous waste held at the transfer facility is hazardous waste that is generated as a result of an emergency release and that hazardous waste is collected and temporarily stored by emergency rescue personnel, as defined in Section 25501, or by a response action contractor upon the request of emergency rescue personnel or the response action contractor, and the holding of that hazardous waste is approved by the department.

(ii) For purposes of this subparagraph, "response action contractor" means any person who enters into a contract with the department to take removal or remedial action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 in response to a release or threatened release, including any subcontractors of the response action contractor.

(4)(A) Except as provided in subparagraph (B), the hazardous waste is held onsite for any period of time, unless the hazardous waste is held in a container, tank, drip pad, or containment building pursuant to regulations adopted by the department.

(B) Notwithstanding subparagraph (A), a generator that accumulates hazardous waste generated and held onsite for 90 days or less for offsite transportation is not a storage facility if all of the following requirements are met:

(i) The waste is non-RCRA contaminated soil.

(ii) The hazardous waste being accumulated does not contain free liquids.

(iii) The hazardous waste is accumulated on an impermeable surface, such as high density polyethylene (HDPE) of at least 20 mils that is supported by a foundation, or high density polyethylene of at least 60 mils that is not supported by a foundation.

(iv) The generator provides controls for windblown dispersion and precipitation runoff and run-on and complies with any stormwater permit requirements issued by a regional water quality control board.

(v) The generator has the accumulation site inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.

(vi) The generator, after final offsite transportation, inspects the accumulation site for contamination and remediates as necessary.

(vii) The site is certified by a registered engineer for compliance with the standards specified in clauses (i) to (vi), inclusive.

(5) The hazardous waste is held at a transfer facility at any location for any period of time in a manner other than in a container.

(6) The hazardous waste is held at a transfer facility at any location for any period of time and handling occurs. For purposes of this paragraph, "handling" does not include the transfer of packaged or containerized hazardous waste from one vehicle to another.

(c) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (b), or the 180-day or 270-day period for purposes of subdivision (h), begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point that is at or near the area where the waste is generated and that is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than tanks.

(3) The generator does not hold the hazardous waste onsite without a hazardous waste facilities permit or other grant of authorization for a period of time longer than the shorter of the following time periods:

(A) One year from the initial date of accumulation.

(B) Ninety days, or if subdivision (h) is applicable, 180 or 270 days, from the date that the quantity limitation specified in paragraph (1) is reached.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words "hazardous waste" or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with either the regulations adopted by the department establishing requirements for generators subject to the time limit specified in paragraph (1) of subdivision (b) or the requirements specified in paragraph (1) of subdivision (h), whichever requirements are applicable.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(e)(1) Notwithstanding paragraphs (1) and (4) of subdivision (b), hazardous waste held for remediation waste staging shall not be considered to be held at a hazardous waste storage facility if the total accumulation period is one year or less from the date of the initial placing of hazardous waste by the generator at the staging site for onsite remediation, except that the department may grant one six-month extension, upon a showing of reasonable cause by the generator.

(2)(A) The generator shall submit a notification of plans to store and treat hazardous waste onsite pursuant to paragraph (2) of subdivision (a), in person or by certified mail, with return receipt requested, to the department and to one of the following:

(i) The CUPA, if the generator is under the jurisdiction of a CUPA.

(ii) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) If, after the notification pursuant to subparagraph (A), or during the initial year or the six-month extension granted by the department, the generator determines that treatment cannot be accomplished for all, or part of, the hazardous waste accumulated in a remediation waste staging area, the generator shall immediately notify the department and the appropriate local agency, pursuant to subparagraph (A), that the treatment has been discontinued. The generator shall then handle and dispose of the hazardous waste in accordance with paragraph (4) of subdivision (b).

(C) A generator shall not hold hazardous waste for remediation waste staging unless the generator can show, through laboratory testing, bench scale testing, or other documentation, that soil held for remediation waste staging is potentially treatable. Any fines and penalties imposed for a violation of this subparagraph may be imposed beginning with the 91st day that the hazardous waste was initially accumulated.

(3) Once an onsite treatment operation is completed on hazardous waste held pursuant to paragraph (1), the generator shall inspect the staging area for contamination and remediate as necessary.

(f) Notwithstanding any other provision of this chapter, remediation waste staging and the holding of non-RCRA contaminated soil for offsite transportation in accordance with paragraph (4) of subdivision (b) shall not be considered to be disposal or land disposal of hazardous waste.

(g) A generator who holds hazardous waste for remediation waste staging pursuant to paragraph (2) of subdivision (a) or who holds hazardous waste onsite for offsite transportation pursuant to paragraph (4) of subdivision (b) shall maintain records onsite that demonstrate compliance with this section related to storing hazardous waste for remediation waste staging or related to holding hazardous waste onsite for offsite transportation, as applicable. The records maintained pursuant to this subdivision shall be available for review by a public agency authorized pursuant to Section 25180 or 25185.

(h)(1) Notwithstanding paragraph (1) of subdivision (b), a generator of less than 1,000 kilograms of hazardous waste in any calendar month who accumulates hazardous waste onsite for 180 days or less, or 270 days or less if the generator transports the generator's own waste, or offers the generator's waste for transportation, over a distance of 200 miles or more, for offsite treatment, storage, or disposal, is not a storage facility if all of the following apply:

(A) The quantity of hazardous waste accumulated onsite never exceeds 6,000 kilograms.

(B) The generator complies with the requirements of subdivisions (d), (e), and (f) of former Section 262.34 of Title 40 of the Code of Federal Regulations, as that section existed on January 1, 2015.

(C) The generator does not hold acutely hazardous waste or extremely hazardous waste in an amount greater than one kilogram for a time period longer than that specified in paragraph (1) of subdivision (b).

(2) A generator meeting the requirements of paragraph (1) who does not receive a copy of the manifest with the signature of the owner or operator of the facility to which the generator's waste is submitted or is unable to verify through the e-Manifest system that the facility has received the waste and signed the manifest, within 60 days from the date that the hazardous waste was accepted by the initial transporter, shall submit a report to the department along with a legible copy of the manifest indicating that the generator cannot confirm the delivery or receipt of the generator's waste with the owner or operator of the facility.

(i) The department may adopt regulations that set forth additional restrictions and enforceable management standards that protect human health and the environment and that apply to persons holding hazardous waste at a transfer facility. A regulation adopted pursuant to this subdivision shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare, and may be adopted as an emergency

regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 25123.3(a)(3)(B)(ii) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25143.1 (amended). Exemption for specified wastes

SEC. __. Section 25143.1 of the Health and Safety Code is amended to read:

25143.1. (a) Geothermal waste resulting from drilling for geothermal resources is exempt from the requirements of this chapter because the disposal of these geothermal wastes is regulated by the California regional water quality control boards.

(b)(1) Wastes from the extraction, beneficiation, and processing of ores and minerals that are not subject to regulation under the federal act are exempt from the requirements of this chapter, except the requirements of Article 9.5 (commencing with Section 25208), as provided in paragraph (2).

(2) The wastes subject to this subdivision are subject to Article 9.5 (commencing with Section 25208) and ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 if the wastes would otherwise be classified as hazardous wastes pursuant to Section 25117 and the regulations adopted pursuant to Section 25141.

(3) For purposes of this subdivision, the following definitions shall apply:

(A) "Wastes from the extraction, beneficiation, and processing of ores and minerals" means any of the following:

(i) Soil, waste rock, overburden, and other solid, semisolid, or liquid natural materials that are removed, unearthed, or otherwise displaced as a result of excavating or recovering an ore or a mineral.

(ii) Residuals of ores or minerals after those ores or minerals have been removed, unearthed, or otherwise displaced from their natural sites and physically or chemically treated or otherwise managed in order to separate or concentrate the commercial product present in the ore or mineral, or processed to produce a final marketable product.

(iii) Spent brine solutions that are used to produce geothermal energy and that are transferred, via a closed piping system, to an adjacent facility for reclamation, beneficiation, or processing to recover minerals or other commercial substances, if the spent brine solutions, and any liquid residuals derived from the solutions, satisfy all of the following conditions:

(I) Are managed in accordance with the standards set forth in Section 261.4(a)(17)(i) to (iii), inclusive, of Title 40 of the Code of Federal Regulations.

(II) Are returned after processing, via closed piping, and subsequently managed in accordance with the exemption provided in subdivision (c).

(III) Are not a solid or semisolid hazardous residuals. This subclause applies to materials that include, but are not limited to, filter cakes that are not covered by the exemption provided in subdivision (c).

(B) "Minerals" has the same meaning as defined in Section 2005 of the Public Resources Code.

(c)(1) Except as provided in paragraphs (3) and (4), geothermal waste, excluding filter cake, that is generated from the exploration, development, or production of geothermal energy and that does not result from drilling for geothermal resources, is exempt from the requirements of this chapter, if the geothermal waste meets either of the following requirements:

(A) The geothermal waste is contained within a piping system, nonearthen trench, or descaling area, or within related equipment, that is associated with the geothermal plant where the waste was generated.

(B) The geothermal waste is within the physical boundaries of a lined surface impoundment associated with the geothermal plant where the waste was generated.

(2) If geothermal waste that is exempted pursuant to subparagraph (B) of paragraph (1) is relocated to an elevated location inside a lined surface impoundment for dewatering, that waste shall be removed from the surface impoundment within 30 days of the relocation and while the waste still contains sufficient moisture to prevent wind dispersion, except for residuals that are impractical to remove. The geothermal waste shall be deemed to be generated at the time of removal and shall be properly managed as hazardous waste pursuant to the requirements of this chapter.

(3) A geothermal waste that is exempt pursuant to this subdivision ceases to be exempt from the requirements of this chapter, and shall be deemed to have been generated, when any of the following occur:

(A) It is no longer contained in one or more of the following, as described in paragraph (1):

(i) A piping system.

(ii) Nonearthen trench.

(iii) Descaling area.

(iv) Related equipment.

(v) Lined surface impoundment.

(B) It is left in a geothermal piping system, a related piping system, a nonearthen trench, a descaling area, or another piece of related equipment 18 months after the date the geothermal power plant last produced power, unless prior to that date the operator submits a written notification, as described in paragraph (4) to the department, and the department acknowledges the notification in writing.

(C) It is left in a lined surface impoundment and at any time poses an imminent potential threat to areas outside the surface impoundment due to windblown fugitive dusts.

(D) It remains in a unit no longer actively regulated by the regional water quality control board.

(E) It is left in a lined surface impoundment 18 months after the date the surface impoundment has last received waste, unless prior to that date the operator submits a written notification as described in paragraph (4) to the department, and the department acknowledges the notification in writing.

(4) The notification that is required to be submitted by an operator pursuant to subparagraphs (B) and (E) of paragraph (3) shall contain all of the following information:

(A) The name and address of the operator, and the address and physical location of the plant or surface impoundment in which the waste will be stored.

(B) Estimated dates on which the units will resume operation.

(C) A description of how the waste will be stored and managed, demonstrating to the department that the waste will not pose a significant hazard to human health and safety or the environment.

(5) This subdivision does not exempt hazardous waste that is either not directly associated with geothermal energy exploration, development, and production, or that is not exempted from the federal act pursuant to paragraph (5) of subdivision (b) of Section 261.4 of Title 40 of the Code of Federal Regulations, or both. Hazardous waste that is not exempted pursuant to this subdivision includes, but is not limited to, used oil generated from vehicles or the lubrication of machinery.

Comment. Section 25143.1(b)(2) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25143.2 (amended). Application of chapter to recyclable materials

SEC. __. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to this chapter and the regulations adopted by the department to implement this chapter that apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable material that is managed in accordance with Section 25143.9 and is or will be recycled by any of the following methods shall be excluded from classification as a waste:

(1) Used or reused as an ingredient in an industrial process to make a product if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivision (e), any recyclable material may be recycled at a facility that is not authorized by the department pursuant to the

applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated unless the resulting coke product would be identified as a hazardous waste under this chapter.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within the applicable generator accumulation time limits specified in Section 25123.3 and the regulations adopted by the department pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable material that meets the definition of a non-RCRA hazardous waste in Section 25117.9, is managed in accordance with Section 25143.9, and meets or will meet any of the following requirements is excluded from classification as a waste:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product that has been processed from a hazardous waste, or has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent that is managed by the owner or operator of a refinery that is processing primarily crude oil and is not subject to permit requirements for the recycling of used oil, of a public utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler that is in compliance with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel or other refined petroleum product.

(ii) The material is managed at the site where it was generated; managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator; or, if the material is generated in the course of oil or gas exploration or production, managed by an unrelated refinery receiving the waste through a common pipeline.

(iii) The material does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing material or recovered oil that is managed in accordance with subdivisions (a) and (c) of Section 25144 or unless the material is used oil removed from equipment, vehicles, or engines used primarily at the refinery where it is to be used to produce fuels or other refined petroleum products and the used oil is managed in accordance with Section 279.22 of Title 40 of the Code of Federal Regulations prior to insertion into the refining process.

(D) The material is a fuel that is transferred to, and processed into, a fuel or other refined petroleum product at a petroleum refinery, as defined in paragraph (4) of subdivision (a) of Section 25144, and meets one of the following requirements:

(i) The fuel has been removed from a fuel tank and is contaminated with water or nonhazardous debris, of not more than 2 percent by weight, including, but not limited to, rust or sand.

(ii) The fuel has been unintentionally mixed with an unused petroleum product.

(3) The material is transported between locations operated by the same person who generated the material, if the material is recycled at the last location operated by that person and all of the conditions of clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (4) are met. If requested by the department or by any official authorized to enforce this section pursuant to subdivision (a) of Section 25180, a person handling material subject to this paragraph, within 15 days from the date of receipt of the request, shall supply documentation to show that the requirements of this paragraph have been satisfied.

(4)(A) The material is transferred between locations operated by the same person who generated the material, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(i) The material is transferred by employees of that person in vehicles under the control of that person or by a registered hazardous waste hauler under contract to that person.

(ii) The material is not handled at any interim location.

(iii) The material is not held at any publicly accessible interim location for more than four hours unless required by other provisions of law.

(iv) The material is managed in compliance with this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by that person. Upon

receipt of the material at the last location operated by that person, the material shall be deemed to have been generated at that location.

(v) All of the following information is maintained in an operating log at the last location operated by that person and kept for at least three years after receipt of the material at that location:

(I) The name and address of each generator location contributing material to each shipment received.

(II) The quantity and type of material contributed by each generator to each shipment of material.

(III) The destination and intended disposition of all material shipped offsite or received.

(IV) The date of each shipment received or sent offsite.

(vi) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph, within 15 days from the date of receipt of the request, shall supply documentation to show that the requirements of this paragraph have been satisfied.

(B) For purposes of paragraph (3) and subparagraph (A) of this paragraph, "person" also includes corporate subsidiary, corporate parent, or subsidiary of the same corporate parent.

(C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent, and that manage recyclable materials under paragraph (3) or subparagraph (A) of this paragraph, are jointly and severally liable for any activities excluded from regulation pursuant to this section.

(5) The material is used or reused as an ingredient in an industrial process to make a product if the material meets all of the following requirements:

(A) The material is not a wastewater that meets all of the following criteria:

(i) The wastewater is a non-RCRA hazardous waste.

(ii) The wastewater contains more than 75 parts per million of total petroleum hydrocarbons, as determined by use of United States Environmental Protection Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable Material.

(iii) The wastewater has been transported offsite to a facility, that is not a publicly owned treatment works, a facility owned by the generator, or a corporate subsidiary, corporate parent, or a subsidiary of the same corporate parent of the generator.

(B) Any discharges to air from the treatment of the material by the procedures specified in subparagraph (C) do not contain constituents that are hazardous wastes pursuant to the regulations of the department and are in compliance with applicable air pollution control laws.

(C) The material is not being treated except by one or more of the following procedures:

(i) Filtering.

(ii) Screening.

(iii) Sorting.

(iv) Sieving.
(v) Grinding.
(vi) Physical or gravity separation without the addition of external heat or any chemicals.
(vii) pH adjustment.
(viii) Viscosity adjustment.
(6) The material is used or reused as a safe and effective substitute for commercial products, if the material meets all of the following requirements:
(A) The material is not a wastewater that meets all of the following criteria:
(i) The wastewater is a non-RCRA hazardous waste.
(ii) The wastewater contains more than 75 parts per million of total petroleum hydrocarbons, as determined by use of United States Environmental Protection Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable Material.
(iii) The wastewater has been transported offsite to a facility that is not a publicly owned treatment works, or a facility owned by the generator, or a corporate subsidiary, corporate parent, or a subsidiary of the same corporate parent of the generator.
(B) Any discharges to air from the treatment of the material by the procedures specified in subparagraph (C) do not contain constituents that are hazardous wastes pursuant to the regulations of the department and the discharges are in compliance with applicable air pollution control laws.
(C) The material is not being treated, except by one or more of the following procedures:
(i) Filtering.
(ii) Screening.
(iii) Sorting.
(iv) Sieving.
(v) Grinding.
(vi) Physical or gravity separation without the addition of external heat or any chemicals.
(vii) pH adjustment.
(viii) Viscosity adjustment.
(7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is being reused or recycled, and is used in heat transfer equipment, including, but not limited to, mobile air-conditioning systems, mobile refrigeration, and commercial and industrial air-conditioning and refrigeration systems, used in fire extinguishing products, or contained within foam products.
(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in

subdivision (b), and even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land, including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance.

(2) Materials that are a non-RCRA hazardous waste, as defined in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions that are transported to an offsite facility operated by a person other than the generator and either of the following applies:

(A) The etchants or solutions are no longer fit for their originally purchased or manufactured purpose.

(B) If the etchants or solutions are reused, the generator and the user cannot document that they are used for their originally purchased or manufactured purpose without prior treatment.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d), paragraph (4) of subdivision (d), subdivision (b) of Section 25250.1, or Section 25250.3, and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) The used oil is used or reused on the site where it was generated or is excluded under paragraph (3) of subdivision (d), is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations, and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel unless the used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f)(1) Any person who manages a recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to this section shall provide, upon request, to the department, the California Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Section 25180, all of the following information:

(A) The name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material.

(B) Any other information related to the management by that person of the material requested by the department, the California Environmental Protection Agency, or the authorized local agency or official.

(2) Any person claiming an exclusion or an exemption pursuant to this section shall maintain adequate records to demonstrate to the satisfaction of the requesting agency or official that there is a known market or disposition for the material, and that the requirements of any exemption or exclusion pursuant to this section are met.

(3) For purposes of determining that the conditions for exclusion from classification as a waste pursuant to this section are met, any person, facility, site, or vehicle engaged in the management of a material under a claim that the material is excluded from classification as a waste pursuant to this section is subject to Section 25185.

(g) For purposes of ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, recyclable materials excluded from classification as a waste pursuant to this section are not excluded from the definition of hazardous substances in ~~subdivision (g) of Section 25316.~~ paragraph (7) of subdivision (a) of Section 78075.

(h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely because the used oil is a RCRA hazardous waste may be managed pursuant to subdivision (d) if the used oil is also managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

Comment. Section 25143.2(g) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25152.5 (amended). Public records

SEC. __. Section 25152.5 of the Health and Safety Code is amended to read:

25152.5. (a) For purposes of this section, the following definitions apply:

(1) "Unusual circumstances" means only the following:

(A) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(C) The need to consult with another agency having a substantial interest in the determination of whether to respond to the request.

(2) "Public records" means any public record, as defined in Section 6252 of the Government Code, of the department relating to this chapter, Chapter 6.7 (commencing with Section 25280), or ~~Chapter 6.8 (commencing with Section 25300).~~ Part 2 (commencing with Section 78000) of Division 45). "Public records" includes unprinted information relating to this chapter, Chapter 6.7 (commencing with Section 25280), or ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 which is stored in data or word processing equipment either owned by an employee and located on premises under control of the department or owned by the department.

(b) Notwithstanding any other provision of law, the department shall not limit the hours during the normal working day or limit the number of working days during which public records are open for inspection.

(c)(1) Notwithstanding any other provision of law, the department shall make public records which are not exempt from disclosure by law, including Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, promptly available to any person, within the time limits specified in Section 6256 of the Government Code, upon payment of a fee established by the department to cover the direct costs of duplication, as specified in subdivision (f). In addition, a person requesting copies by mail may be required to pay the mailing costs.

(2) If any portion of a record is exempt from disclosure, that part which is not exempt shall be provided as prescribed in this section.

(d) Any person may request access to, or copies of, public records of the department in person or by mail. A request shall reasonably describe an identifiable record or information to be produced therefrom.

(e) If the department determines that an unusual circumstance exists, the department shall comply with the notification procedures and the time limits specified in Section 6256.1 of the Government Code.

(f) The department shall, upon request, provide any person with the facts upon which it bases its determination of the direct costs of copying for each page which is requested. The department shall not impose a minimum fee for a copy of a public record which is greater than its direct per page copying costs and the department shall not impose limits on the types or amounts of public records which the department will provide to persons requesting these records, upon payment of any fees covering the direct costs of duplication by the department.

(g) This section does not authorize the department, or any employee of the department, to delay access for purposes of inspecting or obtaining copies of public records, unless there are unusual circumstances.

(h) Any denial of a request for records shall set forth in writing the reasons for the denial and the names and titles or positions of each person responsible for the denial. This written response shall be provided to the requester within five working days of the denial.

Comment. Section 25152.5(a)(2) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to add paragraph labels.

Health & Safety Code § 25159.22 (amended). Construction of article

SEC. __. Section 25159.22 of the Health and Safety Code is amended to read:

25159.22. This article shall not be construed to limit or abridge the powers and duties granted to the department pursuant to this chapter or pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 or to the state board or any regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code, to the Division of Oil and Gas pursuant to Division 3 (commencing with Section 3000) of the Public Resources Code, or the authority of any city, county, or district to act pursuant to the local agency's ordinances or regulations.

Comment. Section 25159.22 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25173.6 (amended). Toxic Substances Control Account

SEC. __. Section 25173.6 of the Health and Safety Code is amended to read:

25173.6. (a) There is in the General Fund the Toxic Substances Control Account, which shall be administered by the director. In addition to any other money that may be appropriated by the Legislature to the Toxic Substances Control Account, all of the following shall be deposited in the account:

(1) The fees collected pursuant to Section 25205.6.

(2) The fees collected pursuant to Section 25187.2, to the extent that those fees are for oversight of a removal or remedial action taken under ~~Chapter 6.8 (commencing with Section 25300) or~~ Chapter 6.86 (commencing with Section 25396)~~.~~ or Part 2 (commencing with Section 78000) of Division 45.

(3) Fines or penalties collected pursuant to this chapter, ~~Chapter 6.8 (commencing with Section 25300) or~~ Chapter 6.86 (commencing with Section 25396), or Part 2 (commencing with Section 78000) of Division 45, except as directed otherwise by Section 25192.

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

(5) All money recovered pursuant to Section ~~25360,~~ 79650, except any amount recovered on or before June 30, 2006, that was paid from the Hazardous Substance Cleanup Fund.

(6) All money recovered pursuant to ~~Section 25380.~~ Article 7 (commencing with Section 81030) of Chapter 12 of Part 2 of Division 45.

(7) All penalties recovered pursuant to Section 25214.3, except as provided by Section 25192.

(8) All penalties recovered pursuant to Section 25214.22.1, except as provided by Section 25192.

(9) All penalties recovered pursuant to Section 25215.82, except as provided by Section 25192.

(10) Reimbursements for funds expended from the Toxic Substances Control Account for services provided by the department, including, but not limited to, reimbursements required pursuant to Sections 25201.9 and ~~25343.~~ 79105.

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

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

(b) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

(A) ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, except that funds shall not be expended from the Toxic Substances Control Account for purposes of ~~Section 25354.5.~~ Article 16 (commencing with Section 79350) of Chapter 5 of Part 2 of Division 45.

(B) Chapter 6.86 (commencing with Section 25396).

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

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

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

(A) The Human and Ecological Risk Office.

(B) The Environmental Chemistry Laboratory.

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

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

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

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

(6) For the purchase by the state, or by a local agency with the prior approval of the director, of hazardous substance response equipment and other preparations for response to a release of hazardous substances. However, all equipment shall be purchased in a cost-effective manner after consideration of the adequacy of existing equipment owned by the state or the local agency, and the availability of equipment owned by private contractors.

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

(8) For payment of all costs of actions taken pursuant to ~~subdivision (b) of Section 25358.3,~~ Section 78650, to the extent that these costs are not paid by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

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

(10) For repayment of the principal of, and interest on, bonds sold pursuant to ~~Article 7.5 (commencing with Section 25385) of Chapter 6.8.~~ Article 5 (commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.

(11) Direct site remediation costs.

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

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

(14) For allocation to the office of the Attorney General, pursuant to an interagency agreement or similar mechanism, for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of ~~Chapter 6.8 (commencing with Section 25300) and~~ Chapter 6.86 (commencing with Section 25396)~~.~~ and Part 2 (commencing with Section 78000) of Division 45.

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

(16) As provided in Sections 25214.3 and 25215.7 and, with regard to penalties recovered pursuant to Section 25214.22.1, to implement and enforce Article 10.4 (commencing with Section 25214.11).

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

(d) The director shall expend federal funds in the Toxic Substances Control Account consistent with the requirements specified in Section 114 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9614), upon appropriation by the Legislature, for the purposes for which they were provided to the state.

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

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

(g) The Toxic Substances Control Account established pursuant to subdivision (a) is the successor fund of all of the following:

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

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

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

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

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

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

Comment. Section 25173.6 is amended throughout to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25173.7 (amended). Appropriation of funds in Toxic Substances Control Account

SEC. __. Section 25173.7 of the Health and Safety Code is amended to read:

25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic Substances Control Account shall be appropriated in the annual Budget Act each year in the following manner:

(1) An amount sufficient to pay for the estimated costs identified by the department in the report submitted pursuant to subdivision (c) to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in ~~Section 25337.~~ Section 78260.

(2) Not less than ten million seven hundred fifty thousand dollars ($10,750,000) to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in ~~Section 25337.~~ Section 78260.

(3) Not less than four hundred thousand dollars ($400,000) to the Expedited Site Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a) of former Section 25399.1, for purposes of paying the orphan share of response costs pursuant to former Chapter 6.85 (commencing with Section 25396).

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

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

(6) Funds not appropriated as specified in paragraphs (1) to (5), inclusive, may be appropriated for any of the purposes specified in subdivision (b) of Section 25173.6, except the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (13) of, subdivision (b) of Section 25173.6.

(b)(1) The amounts specified in paragraphs (2) to (5), inclusive, of subdivision (a) shall be adjusted annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(2) Notwithstanding paragraph (1), the department may, upon the approval of the Legislature in a statute or the annual Budget Act, take either of the following actions:

(A) Reduce the amounts specified in paragraphs (1) to (5), inclusive, of subdivision (a), if there are insufficient funds in the Toxic Substances Control Account.

(B) Suspend the transfer specified in paragraph (3) of subdivision (a), if there are no orphan shares pending payment pursuant to former Chapter 6.85 (commencing with Section 25396).

(c) The department shall submit to the Legislature with the Governor's Budget each year a report that includes an estimate of the funding needed to fund direct site remediation costs at state orphan sites and meet the state's obligation to pay for direct site remediation costs at federal Superfund orphan sites pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)). The estimate shall include projected costs for the current budget year and the two following budget years, including, but not limited to, the state's 10-percent funding obligation for remedial actions at federal Superfund orphan sites, the state's 100-percent funding obligation for ongoing operation and maintenance at federal Superfund orphan sites, and ongoing operation and maintenance costs at state orphan sites.

Comment. Section 25173.7 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25174 (amended). Hazardous Waste Control Account

SEC. __. Section 25174 of the Health and Safety Code is amended to read:

25174. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director. 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 fees collected pursuant to Section 25187.2, to the extent that those fees are for the oversight of corrective action taken under this chapter.

(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 chapter, including, but not limited to, the reimbursements required pursuant to Sections 25201.9 and 25205.7.

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

(1) To the department for the administration and implementation of this chapter.

(2) 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.

(3) 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, as defined in Section 25115, and hazardous waste, as defined in Section 25117.

(4)(A) To the department for allocation to the office of the Attorney General for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of this chapter.

(B) On or before October 1 of each year, the Attorney General shall report to the Legislature on the expenditure of any funds allocated to the office of the Attorney General for the preceding fiscal year pursuant to this paragraph and paragraph (14) of subdivision (b) of Section 25173.6. The report shall include all of the following:

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

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

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

(iv) A description of other pending litigation handled by the Attorney General's Toxic Substance Enforcement Program.

(C) Nothing in subparagraph (C) shall require the Attorney General to report on any confidential or investigatory matter.

(5) To the department for administration and implementation of Chapter 6.11 (commencing with Section 25404).

(c)(1) Expenditures from the Hazardous Waste Control Account for support of state agencies other than the department shall, upon appropriation by the Legislature to the department, be subject to an interagency agreement or similar mechanism between the department and the state agency receiving the support.

(2) 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 paragraph (2) of subdivision (b) and in paragraph (3) of subdivision (b) of Section 25173.6, for the upcoming fiscal year.

(3) 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.

(d) With respect to expenditures for the purposes of paragraphs (1) and (3) of subdivision (b) and paragraphs (1) and (2) of subdivision (b) of Section 25173.6, 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.

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

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

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

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

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

(J) Investigations, removal and remedial actions, and operation and maintenance at Expedited Remedial Action Program sites pursuant to former Chapter 6.85 (commencing with Section 25396).

(K) Corrective actions at hazardous waste facilities.

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

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

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

(C) Other determinations and responses to public inquiries made by the department regarding the regulation of hazardous waste and hazardous substances.

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

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

(B) Respond to emergencies pursuant to ~~Section 25354.~~ Section 78875.

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

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

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

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

(e) Notwithstanding this chapter, or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines, penalties, and funds that are required to be deposited into the Hazardous Waste Control Account or the Toxic Substances Control Account, the department, with the approval of the Secretary for Environmental Protection, may take any of the following actions:

(1) Assume responsibility for, or enter into a contract with a private party or with another public agency, other than the State Board of Equalization, for the collection of any fees, surcharges, fines, penalties and funds described in subdivision (a) or otherwise described in this chapter or ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, for deposit into the Hazardous Waste Control Account or the Toxic Substances Control Account.

(2) Administer, or by mutual agreement, contract with a private party or another public agency, for the making of those determinations and the performance of functions that would otherwise be the responsibility of the State Board of Equalization pursuant to this chapter, ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, if those activities and functions for which the State Board of Equalization would otherwise be responsible become the responsibility of the department or, by mutual agreement, the contractor selected by the department.

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

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

(h) The department, with the concurrence of the Secretary for Environmental Protection, shall determine which administrative functions should be retained by the State Board of Equalization, administered by the department, or assigned to another public agency or private party pursuant to subdivisions (e), (f), and (g).

(i) The department may adopt regulations to implement subdivisions (e) to (h), inclusive.

(j) The Director of Finance, upon request of the director, may make a loan from the General Fund to the Hazardous Waste Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

(k) The department shall establish, within the Hazardous Waste Control Account, a reserve of at least one million dollars ($1,000,000) each year to ensure that all

programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls.

Comment. Section 25174(d)(6)(B), (e)(1), and (e)(2) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25174.6 (amended). Determination of fee

SEC. __. Section 25174.6 of the Health and Safety Code is amended to read:

25174.6. (a) The fee provided pursuant to Section 25174.1 shall be determined as a percentage of the base rate, as adjusted by the State Board of Equalization, pursuant to Section 25174.2, or as otherwise provided by this section. The procedure for determining these fees is as follows:

(1) The following fees shall be paid for each ton, or fraction thereof for up to the first 5,000 tons of the following hazardous wastes disposed of, or submitted for disposal, in the state at each specific offsite facility by each producer, or at each specific onsite facility, per month, if the hazardous wastes are not otherwise subject to the fee specified in paragraph (3) or (4) and are not otherwise exempt from the fees imposed pursuant to this article:

(A) For non-RCRA hazardous waste, excluding asbestos, generated in a remedial action, a removal action, or a corrective action taken pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, or generated in any other required or voluntary cleanup, removal, or remediation of a hazardous substance or non-RCRA hazardous waste, a fee of five dollars and seventy-two cents ($5.72) per ton.

(B) For all other non-RCRA hazardous waste, a fee of 16.31 percent of the base rate for each ton.

(2) Thirteen percent of the base rate for each ton, or fraction thereof, shall be paid for up to the first 5,000 tons of hazardous waste disposed of, or submitted for disposal, in the state, at each specific offsite facility by each producer, or at each specific onsite facility, per month, which result from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and the overburden from the mining of uranium ore and which is not otherwise subject to the fee specified in paragraph (3) or (4).

(3) Two hundred percent of the base rate shall be paid for each ton, or fraction thereof, of extremely hazardous waste disposed of, or submitted for disposal, in the state.

(4) Two hundred percent of the base rate shall be paid for each ton, or fraction thereof, of restricted hazardous wastes listed in subdivision (b) of Section 25122.7 disposed of, or submitted for disposal, in the state.

(5) Forty and four-tenths percent of the base rate shall be paid for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the

state, which is not otherwise subject to the fees specified in paragraph (1), (2), (3), (4), or (6).

(6) Five percent of the base rate shall be paid for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state, that is a solid hazardous waste residue resulting from incineration or dechlorination. No fees shall be imposed pursuant to this paragraph on a solid hazardous waste residue resulting from incineration or dechlorination which is disposed of, or submitted for disposal, outside of the state.

(7) Fifty percent of the fee that would otherwise be paid for each ton, or fraction thereof, of hazardous waste disposed of in the state, that is a solid hazardous waste residue resulting from treatment of a treatable waste by means of a designated treatment technology, as defined in Section 25179.2. No fees shall be imposed pursuant to this paragraph on a solid hazardous waste residue resulting from treatment of a treatable waste by means of a designated treatment technology that is not a hazardous waste or which is disposed of, or submitted for disposal, outside of the state.

(b) The amount of fees payable to the State Board of Equalization pursuant to this section shall be calculated using the total wet weight, measured in tons or fractions thereof, of the hazardous waste in the form in which the hazardous waste existed at the time of disposal, submission for disposal, or application to land using a land disposal method, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if all of the following apply:

(1) The weight of any nonhazardous reagents or treatment additives added to the waste, after it has been submitted for disposal, for purposes of rendering the waste less hazardous, shall not be included in those calculations.

(2) Except as provided by paragraph (7) of subdivision (a), any RCRA hazardous waste received, treated, and disposed at the disposal facility shall be subject to a disposal fee pursuant to this section as if it were a non-RCRA hazardous waste, if the waste, due to treatment, is no longer a RCRA hazardous waste at the time of disposal.

(c) All fees imposed by this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(d) This section shall become operative on January 1, 2001.

Comment. Section 25174.6(a)(1)(A) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25174.7 (amended). Limitation on application of fees

SEC. __. Section 25174.7 of the Health and Safety Code is amended to read:

25174.7. (a) The fees provided for in Sections 25174.1 and 25205.5 do not apply to any of the following:

(1) Hazardous wastes which result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person.

(2) Hazardous wastes generated or disposed of by a public agency operating a household hazardous waste collection facility in the state pursuant to Article 10.8 (commencing with Section 25218), including, but not limited to, hazardous waste received from conditionally exempt small quantity commercial generators, authorized pursuant to Section 25218.3.

(3) Hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 116180 or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of this chapter and regulations adopted pursuant thereto.

(4) Hazardous waste disposed of, or submitted for disposal or treatment, by any person, which is discovered and separated from solid waste as part of a load checking program.

(b) Notwithstanding paragraph (1) of subdivision (a), any person responsible for a release of hazardous waste, which has been removed or remedied by a government agency, or its contractor, shall pay the fee pursuant to Section 25174.1.

(c) Any person who acquires land for the sole purpose of owner-occupied single-family residential use, and who acquires that land without actual or constructive notice or knowledge that there is a tank containing hazardous waste on or under that property, is exempt from the fees imposed pursuant to Sections ~~25174.1,~~ 25174.1 and 25205.5, ~~and 25345,~~ in connection with the removal of the tank.

Comment. Section 25174.7(c) is amended to delete an obsolete cross-reference to Section 25345. See 1997 Cal. Stat. ch. 870, § 42 (repealing Section 25345).

Health & Safety Code § 25178 (amended). Information to be posted on department's website

SEC. __. Section 25178 of the Health and Safety Code is amended to read:

25178. On or before January 1 of each odd-numbered year, the department shall post on its ~~Web site,~~ internet website, at a minimum, all of the following:

(a) The status of the regulatory and program developments required pursuant to legislative mandates.

(b)(1) The status of the hazardous waste facilities permit program that shall include all of the following information:

(A) A description of the final hazardous waste facilities permit applications received.

(B) The number of final hazardous waste facilities permits issued to date.

(C) The number of final hazardous waste facilities permits yet to be issued.

(D) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued.

(2) For purposes of paragraph (1), "hazardous waste facility" means a facility that uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes regulated as hazardous waste pursuant to the federal act.

(c) The status of the hazardous waste facilities siting program.

(d) The status of the hazardous waste abandoned sites program.

(e) A summary of enforcement actions taken by the department pursuant to this chapter and any other actions relating to hazardous waste management.

(f) Summary data on annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed.

(g) Summary data regarding onsite and offsite disposition of hazardous waste.

(h) Research activity initiated by the department.

(i) Regulatory action by other agencies relating to hazardous waste management.

(j) A revised listing of recyclable materials showing any additions or deletions to the list prepared pursuant to Section 25175 that have occurred since the last report.

(k) Any other data considered pertinent by the department to hazardous waste management.

(*l*) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision (a) of Section 25197.1, ~~subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.~~ and Article 9 (commencing with Section 78575) of Chapter 3 of Part 2 of Division 45.

(m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site in Orange County.

Comment. Section 25178 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to delete an obsolete cross-reference and make a technical change.

Health & Safety Code § 25184.1 (amended). Application to collect administrative penalty

SEC. __. Section 25184.1 of the Health and Safety Code is amended to read:

25184.1. If any administrative order or decision that imposes a penalty is issued pursuant to this chapter or ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, the administrative order or decision has become final, and, if applicable, a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code, the department may apply to the clerk of the appropriate court for a judgment to collect the administrative penalty. The department's application, which shall include a certified copy of the final administrative order or decision, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

Comment. Section 25184.1 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25186 (amended). Denial, suspension, or revocation of permit, registration, or certificate

SEC. __. Section 25186 of the Health and Safety Code is amended to read:

25186. The department may deny, suspend, or revoke any permit, registration, or certificate applied for, or issued, pursuant to this chapter in accordance with the procedures specified in Sections 25186.1 and 25186.2, where the applicant or holder of the permit, registration, or certificate, or in the case of a business concern, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in, or debt liability of, that business concern, has engaged in any of the following:

(a) Any violation of, or noncompliance with, this chapter, Chapter 6.7 (commencing with Section 25280), ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in ~~Section 25316,~~ subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(b) The aiding, abetting, or permitting of any violation of, or noncompliance with, this chapter, Chapter 6.7 (commencing with Section 25280), ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, the Porter-Cologne Water Quality Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in ~~Section 25316,~~ subdivision (a) of Section

78075, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(c) Any violation of, or noncompliance with, any order issued by a state or local agency or by a hearing officer or a court relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in ~~Section 25316,~~ subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code.

(d) Any misrepresentation or omission of a significant fact or other required information in the application for the permit, registration, or certificate, or in information subsequently reported to the department or to a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(e)(1) Activities resulting in any federal or state conviction that are significantly related to the fitness of the applicant or holder of the permit, registration, or certificate to perform the applicant's duties or activities under the permit, registration, or certificate.

(2) For the purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(3) An action that the department may take pursuant to this paragraph relating to the denial, suspension, or revocation of a permit, registration, or certificate may be based upon a conviction for which any of the following has occurred:

(A) The time for appeal has elapsed.

(B) The judgment of conviction has been affirmed on appeal.

(C) Any order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting that person to withdraw the person's plea of guilty, and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(f) Activities resulting in the revocation or suspension of a license, permit, registration, or certificate held by the applicant or holder of the permit, registration, or certificate or, if the applicant or holder of the permit, registration, or certificate is a business concern, by any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in, or debt liability of, that business concern relating to, the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in ~~Section 25316,~~ subdivision (a) of Section 78075, or a hazardous material, as defined in Section 353 of the Vehicle Code.

Comment. Section 25186 is amended throughout to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25187 (amended). Order requiring corrective action and imposing penalties for violation

SEC. __. Section 25187 of the Health and Safety Code is amended to read:

25187. (a)(1) The department or a unified program agency, in accordance with subdivision (*l*), may issue an order requiring that the violation be corrected and imposing an administrative penalty, for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, whenever the department or unified program agency determines that a person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code, to violate, this chapter or ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter or ~~Chapter 6.8 (commencing with Section 25300).~~ Part 2 (commencing with Section 78000) of Division 45.

(2) In an order proposing a penalty pursuant to this section, the department or unified program agency shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that the imposition of the proposed penalty would have on both the violator and the regulated community as a whole.

(b) The department or a unified program agency, in accordance with subdivision (*l*), may issue an order requiring corrective action whenever the department or unified program agency determines that there is or has been a release, as defined in ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, of hazardous waste or constituents into the environment from a hazardous waste facility.

(1) In the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit pursuant to Article 9 (commencing with Section 25200), the department shall pursue the remedies available under this chapter, including the issuance of an order for corrective action pursuant to this section, before using the legal remedies available pursuant to ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, except in any of the following circumstances:

(A) If the person who is responsible for the release voluntarily requests in writing that the department issue an order to that person to take corrective action pursuant to ~~Chapter 6.8 (commencing with Section 25300).~~ Part 2 (commencing with Section 78000) of Division 45.

(B) If the person who is responsible for the release is unable to pay for the cost of corrective action to address the release. For purposes of this subparagraph, the inability of a person to pay for the cost of corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(C) If the person responsible for the release is unwilling to perform corrective action to address the release. For purposes of this subparagraph, the unwillingness of a person to take corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(D) If the release is part of a regional or multisite groundwater contamination problem that cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and for which other releases that are part of the regional or multisite groundwater contamination problem are being addressed using the legal remedies available pursuant to ~~Chapter 6.8 (commencing with Section 25300).~~ Part 2 (commencing with Section 78000) of Division 45.

(E) If an order for corrective action has already been issued against the person responsible for the release, or the department and the person responsible for the release have, prior to January 1, 1996, entered into an agreement to address the required cleanup of the release pursuant to ~~Chapter 6.8 (commencing with Section 25300).~~ Part 2 (commencing with Section 78000) of Division 45.

(F) If the hazardous waste facility is owned or operated by the federal government.

(2) The order shall include a requirement that the person take corrective action with respect to the release of hazardous waste or constituents, abate the effects thereof, and take any other necessary remedial action.

(3) If the order requires corrective action at a hazardous waste facility, the order shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment.

(4) The order shall incorporate, as a condition of the order, any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department or unified program agency determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The order may include any more stringent requirement that the department or unified program agency determines is necessary or appropriate to protect water quality.

(5) Persons who are subject to an order pursuant to this subdivision include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(6) For purposes of this subdivision, "hazardous waste facility" includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing. If the unified program agency issues the order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (f) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation or deficiency on an informal basis with the department or unified program agency may, within 15 days after service of the order, request a hearing pursuant to subdivision (e) or (f) by filing with the department or unified program agency a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If a notice of defense is not filed within the time limits provided by this subdivision, the order shall become final.

(e) Any hearing requested on an order issued by the department shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the authority granted to an agency by those provisions.

(f) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by a unified program agency may select the hearing process specified in either paragraph (1) or (2) in the notice of defense filed with the unified program agency pursuant to subdivision (d). Within 90 days of receipt of the notice of defense by the unified program agency, the hearing shall be conducted using one of the following procedures:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(2)(A) A hearing officer designated by the unified program agency shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the unified program agency shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a unified program agency pursuant to this paragraph, the unified program agency shall, within 60 days of the hearing, issue a decision.

(B) A person requesting a hearing on an order issued by a unified program agency may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the unified program agency has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer

and established a program for conducting a hearing in accordance with this paragraph.

(g) The hearing decision issued pursuant to subdivision (f) is effective and final upon issuance. Copies of the decision shall be served by personal service or by certified mail upon the party served with the order and upon other persons who appeared at the hearing and requested a copy.

(h) Any provision of an order issued under this section, except the imposition of an administrative penalty, takes effect upon issuance by the department or unified program agency if the department or unified program agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the department or unified program agency determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole, except the imposition of an administrative penalty, takes effect upon issuance by the department or unified program agency. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(i) A decision issued pursuant to this section may be reviewed by the court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the department or unified program agency if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(j)(1) All administrative penalties collected from actions brought by the department pursuant to this section shall be placed in a separate subaccount in the Toxic Substances Control Account and shall be available only for transfer to the Site Remediation Account or the Expedited Site Remediation Trust Fund and for expenditure by the department upon appropriation by the Legislature.

(2) The administrative penalties collected from an action brought by the department pursuant to Sections 25214.3, 25214.22.1, and 25215.82, in accordance with this section, shall be deposited in the Toxic Substances Control Account, for expenditure by the department for implementation and enforcement activities, upon appropriation by the Legislature, pursuant to Section 25173.6.

(k) All administrative penalties collected from an action brought by a unified program agency pursuant to this section shall be paid to the unified program agency that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the unified program agency in enforcing this chapter pursuant to Section 25180.

(*l*) The authority granted under this section to a unified program agency is limited to both of the following:

(1) The issuance of orders to impose penalties and to correct violations of the requirements of this chapter and its implementing regulations, only when the violations are violations of requirements applicable to hazardous waste generators and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, when the violations occur at a unified program facility within the jurisdiction of the CUPA.

(2) The issuance of orders to require corrective action when there has been a release of hazardous waste or constituents only when the unified program agency is authorized to do so pursuant to Section 25404.1.

(m) The CUPA shall annually submit a summary report to the department on the status of orders issued by the unified program agencies under this section and Section 25187.1.

(n) The CUPA shall consult with the district attorney for the county on the development of policies to be followed in exercising the authority delegated pursuant to this section and Section 25187.1, as they relate to the authority of unified program agencies to issue orders.

(*o*) The CUPA shall arrange to have appropriate legal representation in administrative hearings that are conducted by an administrative law judge of the Office of Administrative Hearings of the Department of General Services, and when a decision issued pursuant to this section is appealed to the superior court.

(p) The department may adopt regulations to implement this section and paragraph (2) of subdivision (a) of Section 25187.1 as they relate to the authority of unified program agencies to issue orders. The regulations shall include, but not be limited to, all of the following requirements:

(1) Provisions to ensure coordinated and consistent application of this section and Section 25187.1 when both the department and the unified program agency have issued or will be issuing orders under one or both of these sections with regard to the same facility.

(2) Provisions to ensure that the enforcement authority granted to the unified program agencies will be exercised consistently throughout the state.

(3) Minimum training requirements for staff of the unified program agency relative to this section and Section 25187.1.

(4) Procedures to be followed by the department to rescind the authority granted to a unified program agency under this section and Section 25187.1, if the department finds that the unified program agency is not exercising that authority in a manner consistent with this chapter and Chapter 6.11 (commencing with Section 25404) and the regulations adopted pursuant thereto.

(q) Except for an enforcement action taken pursuant to this chapter or ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, this section does not otherwise affect the authority of a local agency to take any action under any other law.

Comment. Subdivisions (a), (b), and (q) of Section 25187 are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25189.1 (amended). Civil liability for costs or expenses incurred by state or local agency

SEC. __. Section 25189.1 of the Health and Safety Code is amended to read:

25189.1. (a) In addition to liability under any other provision of law, any person who is liable for a civil penalty pursuant to subdivision (c) or (d) of Section 25189 or subdivision (c) of Section 25189.2, or is convicted pursuant to subdivision (b) of Section 25189.5, is also civilly liable for all the costs or expenses which may be incurred by the state, or by a local agency, in doing any of the following:

(1) Assess short-term or long-term injury to, degradation or destruction of, or any loss of, any natural resource resulting from the disposal of the hazardous waste which is the subject of the civil penalty or conviction.

(2) Restore, rehabilitate, replace, or acquire the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of the disposal of the hazardous waste which is the subject of the civil penalty or conviction.

(b) The liability imposed by subdivision (a) is separate and in addition to any civil penalty imposed pursuant to subdivision (c) or (d) of Section 25189 or subdivision (c) of Section 25189.2 or any fine imposed pursuant to subdivision (e) of Section 25189.5.

(c) Any funds collected pursuant to this section are in addition to any other funds which may be collected pursuant to this chapter.

(d) A state or local agency may collect funds pursuant to this section prior to carrying out the actions specified in paragraph (1) or (2) of subdivision (a).

(e) An action brought pursuant to this section may be brought by the trustee of the natural resources specified in ~~subdivision (c) of Section 25352.~~ Section 79685. The action may be prosecuted by the Attorney General or the district attorney. The action may be prosecuted by the district attorney only after the trustee, in consultation with the Office of the Attorney General, approves that prosecution in writing. The trustee shall have 30 days to consider any requested action and approval shall be presumed to have been granted if a written denial is not issued within 30 days. The trustee may not unreasonably withhold approval.

(f) All funds collected pursuant to this section by the trustee of the natural resources shall be deposited, at the discretion of the trustee, in the Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund or in a special deposit trust fund.

Comment. Section 25189.1 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25198.3 (amended). Cooperative agreements

SEC. __. Section 25198.3 of the Health and Safety Code is amended to read:

25198.3. (a) The secretary may enter into any cooperative agreement which meets the requirements of this article.

(b) Each cooperative agreement shall include, but shall not be limited to, all requirements determined to be necessary to meet the requirements of subdivision (e) to do all of the following:

(1) Protect water quality, as determined by the State Water Resources Control Board or the appropriate California regional water quality control board.

(2) Protect air quality, as determined by the State Air Resources Board or the appropriate air pollution control officer.

(3) Provide for proper management of hazardous materials and hazardous wastes, as determined necessary by the Department of Toxic Substances Control.

(4) In making these determinations, the state agencies shall consider any applicable federal environmental and public health and safety laws.

(c) A decision by the secretary whether to enter into a cooperative agreement shall be based on a good faith determination concerning whether a proposed cooperative agreement meets the requirements of this article. The secretary shall take this action within 130 days of a written request by the tribe that the secretary approve a draft cooperative agreement. At least 60 days prior to determining whether to enter into a cooperative agreement, the secretary shall provide notice, and make available for public review and comment, drafts of ~~his or her~~ the secretary's proposed action and drafts of the findings and determinations that are required by this section. The secretary shall hold a public hearing in the affected area on the proposed action within the time period for taking that action, as specified in this section. Within 10 days after the close of the public review and comment period, the agencies shall complete the determinations required by this section and the secretary shall issue a final decision.

(d) The findings and determinations of the secretary and relevant agencies made pursuant to this section shall explain material differences between state laws and regulations and the proposed tribal or federal functionally equivalent provisions. The findings and determinations do not need to explain each difference between the state and tribal or federal requirements as long as they identify and evaluate whether the material differences meet the requirements of this article, including, but not limited to, providing at least as much protection for public health and safety and the environment as would the state requirements.

(e) Any cooperative agreement executed pursuant to this article shall provide for regulation of the hazardous waste facility through inclusion in the agreement of design, permitting, construction, siting, operation, monitoring, inspection, closure, postclosure, liability, enforcement, and other regulatory provisions applicable to a hazardous waste facility, or which relate to any environmental consequences that may be caused by facility construction or operation, that are functionally equivalent to all of the following:

(1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section 13370) of, Division 7 of the Water Code.

(2) Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of, and Part 6 (commencing with Section 44300) of, Division 26.

(3) This chapter, Chapter 6.6 (commencing with Section 25249.5), ~~Chapter 6.8 (commencing with Section 25300), and~~ Chapter 6.95 (commencing with Section 25500)~~.~~ , of this division, and Part 2 (commencing with Section 78000) of Division 45.

(4) All regulations adopted pursuant to the statutes specified in this section.

(5) Any other provision of state environmental, public health, and safety laws and regulations germane to the hazardous waste facility proposed by the tribe.

(f) The tribal organizational structures or other means of implementing the requirements specified in subdivision (e) are not required to be the same as the state organizational structures or means of implementing its system of regulation.

(g) Neither the approval of any cooperative agreement nor amendments to the agreement, nor any determination of sufficiency provided in Section 25198.5, shall constitute a "project" as defined in Section 21065 of the Public Resources Code and shall not be subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(h) Each cooperative agreement shall provide for the incorporation of the standards and requirements germane to the protection of the environment, public health, and safety listed in subdivision (e), as enacted, or as those provisions may be amended after January 1, 1992, or after the effective date of any cooperative agreement, if those standards and requirements meet both of the following requirements:

(1) The standards and requirements do not discriminate against a tribe which has executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or not more stringent than, other rules applicable to other similar or analogous facilities or operations outside Indian country.

(2) Adequate notice and opportunity for comment on the incorporation of new and amended standards or requirements are provided to the tribe, facility owner, and operator to facilitate any physical or operational changes in the facility in accordance with state law.

Comment. Section 25198.3(e)(3) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to eliminate gendered pronouns.

Health & Safety Code § 25201.9 (amended). Agreement for consultative services

SEC. __. Section 25201.9 of the Health and Safety Code is amended to read:

25201.9. (a) Upon the written request of any person, the department may enter into an agreement with that person pursuant to which the department will perform consultative services for the purpose of providing assistance to the person, or any facility owned or operated by the person, in complying with this chapter, ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, and any regulations adopted pursuant to those provisions. The agreement shall require the person to reimburse the department for its costs of performing the consultative services pursuant to Article 9.2 (commencing with Section 25206.1). The agreement may provide for some or all of the reimbursement to be made in advance of the performance of the consultative services.

(b) The consultative services performed pursuant to subdivision (a) shall be over and above the routine functions of the department, and may include, but need not be limited to, onsite inspections, regulation and compliance training, and technical consultation.

(c) Any reimbursement received for assistance in complying with this chapter pursuant to this section shall be placed in the Hazardous Waste Control Account for disbursement in accordance with Section 25174. Any reimbursement received for assistance in complying with ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 shall be deposited in the Toxic Substances Control Account for expenditure in accordance with Section 25173.6.

(d) The consultative services shall be provided subject to available staff and resources as determined by the department, and may include, but need not be limited to, onsite inspections, regulation and compliance training, and technical consultation.

(e) In scheduling limited onsite inspections, priority shall be given to businesses with fewer than 50 employees.

(f)(1) The staff of the department providing consultation pursuant to this section shall not initiate an administrative or civil enforcement action, except as specified in subdivision (g), for violations identified during a limited onsite inspection conducted pursuant to an agreement at a facility which does not require a permit pursuant to the federal act.

(2) The staff of the department shall require the owner or operator to correct any identified deficiencies and violations in accordance with a schedule for compliance or correction issued by the department.

(g) If class I violations, as defined in regulations adopted by the department, are identified during a limited onsite inspection, or an owner or operator refuses or fails to correct any deficiencies or violations within the timeframe specified in the schedule for compliance or correction issued by the department pursuant to subdivision (f), the department may undertake any further inspection, investigation, or enforcement action authorized by law.

(h) The failure of the department to discover any particular deficiencies or violations during a limited onsite inspection shall not preclude the department, or

any other agency, from undertaking a subsequent enforcement action to address any deficiencies or violations should they be discovered at a later time.

(i) Nothing in this section is intended to limit the authority of the department to refer criminal violations to the Attorney General, a district attorney, a county counsel, or a city attorney.

(j) Other than as expressly provided in this section, nothing in this section is intended to limit or restrict the authority of the department under any other provision of this division.

(k) This section shall become operative only if the department adopts regulations defining "class I violations."

Comment. Section 25201.9 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25205.23 (amended). Settlement of fee disputes

SEC. __. Section 25205.23 of the Health and Safety Code is amended to read:

25205.23. Notwithstanding Chapter 3 (commencing with Section 43151) of Part 22 of Division 2 of the Revenue and Taxation Code, at the request of any party contesting any fee imposed pursuant to this chapter or ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, the department may hold an informal conference to attempt to settle the dispute. Upon the payment of any sum agreed upon between the contesting party and the department in settlement of the disputed fee liability, the liable person shall be released from any further liability for payment of the disputed fee.

Comment. Section 25205.23 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25207.12 (amended). Collection of banned, unregistered, or outdated agricultural wastes

SEC. __. Section 25207.12 of the Health and Safety Code is amended to read:

25207.12. (a) Any eligible participant who submits banned, unregistered, or outdated agricultural wastes for collection in a program established pursuant to this article is exempt from the fees and reimbursements required by Sections 25174.1, 25205.2, 25205.5, and 25205.7, with regard to the wastes submitted for collection.

(b) An eligible participant who submits banned, unregistered, or outdated agricultural wastes for collection is exempt from the hazardous waste facilities permit requirements of Section 25201 with regard to the management of the wastes submitted for collection.

(c) A county operating a collection program in compliance with this article shall not be held liable in any cost recovery action brought pursuant to Section ~~25360~~ 79650 for any hazardous waste which has been properly handled and transported to an authorized hazardous waste treatment or disposal facility, in compliance with this chapter, at a location other than that of the collection program.

Comment. Section 25207.12 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25208.11 (amended). Construction of article

SEC. __. Section 25208.11 of the Health and Safety Code is amended to read:

25208.11. This article shall not be construed to limit or abridge the powers and duties granted to the department pursuant to this chapter or pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 or to the state board or any regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

Comment. Section 25208.11 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25215.1 (amended). Definitions

SEC. __. Section 25215.1 of the Health and Safety Code is amended to read:

25215.1. For purposes of this article, the following definitions shall apply:

(a) "Board" means the California Department of Tax and Fee Administration.

(b) "Business" means any person, as defined in subdivision (k), except a natural person or a city, county, city and county, district, commission, the state, or any department, agency, or political subdivision of any of those, or an interstate body or, to the extent permitted by law, the United States and its agencies and instrumentalities.

(c) "California battery fee" means the fee imposed pursuant to Section 25215.25.

(d) "Dealer" means a person who engages in the retail sale of replacement lead-acid batteries directly to persons in California. "Dealer" includes a manufacturer of a new lead-acid battery that sells at retail that lead-acid battery directly to a person through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or internet website or any other similar electronic means.

(e) "Importer" means a person described in paragraph (2) of subdivision (h).

(f) "Lead-acid battery" means a battery weighing over five kilograms that is primarily composed of both lead and sulfuric acid, whether sulfuric acid is in liquid, solid, or gel state, with a capacity of six volts or more that is used for any of the following purposes:

(1) As a starting battery that is designed to deliver a high burst of energy to an internal combustion engine until it starts.

(2) As a motive power battery that is designed to provide the source of power for propulsion or operation of a vehicle, including a watercraft.

(3) As a stationary storage or standby battery that is designed to be used in systems where the battery acts as either electrical storage for electricity generation equipment or a source of emergency power, or otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source.

(4) As a source of auxiliary power to support the electrical systems in a vehicle, as defined in Section 670 of the Vehicle Code, including an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or an aircraft.

(g)(1) "Lead-acid battery recycling facility" means a site at which lead-acid batteries are or have been disassembled for the purpose of making components available for reclamation to produce elemental lead or lead alloys or at which lead-acid batteries or their components, or both, are or have been reclaimed to produce elemental lead or lead alloys.

(2) "Lead-acid battery recycling facility" does not include a facility designed and operated for the primary purpose of recovering lead from materials other than used lead-acid batteries or a facility that incidentally processes lead-acid batteries. The processing of lead previously reclaimed from a lead-acid battery at a separate facility or the incidental processing of lead-acid batteries shall not be sufficient to establish that a facility is a lead-acid battery recycling facility.

(h) "Manufacturer" means either of the following:

(1) The person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state.

(2)(A) If there is no person described in paragraph (1) that is subject to the jurisdiction of the state, the manufacturer is the person who imports the lead-acid battery into the state for sale or distribution.

(B) For purposes of this article, a person is subject to the jurisdiction of the state with respect to a lead-acid battery if the person is engaged in business in this state. For purposes of this subparagraph, a person shall be considered to be engaged in business in this state if the person is a "retailer engaged in business in this state," as defined in subdivision (c) of Section 6203 of the Revenue and Taxation Code, with respect to that lead-acid battery, or if the person has a substantial nexus with this state for purposes of the commerce clause of the United States Constitution.

(i) "Manufacturer battery fee" means the fee imposed pursuant to Section 25215.35.

(j) "Owner or operator" has the same meaning given in Section 9601(20) of Title 42 of the United States Code and any person that previously met that definition or is the legal successor to a person that meets the definition or previously met the definition.

(k) "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, city and county, district, commission, the state, or any department, agency, or political subdivision of any of those, interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(*l*) "Remedial action" has the same meaning as in Section ~~25322.~~ 78125.

(m) "Removal" has the same meaning as in Section ~~25323.~~ 78135.

(n) "Replacement lead-acid battery" means a new lead-acid battery that is sold at retail subsequent to the original sale or lease of the equipment or vehicle in which

the lead-acid battery is intended to be used. "Replacement lead-acid battery" does not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-acid battery.

(*o*) "Response action" has the same meaning as in Section ~~25323.3.~~ 78140.

(p)(1) A "retail sale" or a "sale at retail" has the same meaning as defined in Section 6007 of the Revenue and Taxation Code.

(2) The following shall not be considered a "retail sale" or a "sale at retail" for purposes of this article:

(A) The sale of a battery for which a California battery fee has previously been paid.

(B) The sale of a replacement lead-acid battery that is temporarily stored or used in California for the sole purpose of preparing the replacement lead-acid battery for use thereafter solely outside of the state and that is subsequently transported outside the state and thereafter used solely outside of the state.

(C) The sale of a battery for incorporation into new equipment for subsequent resale.

(D) The replacement of a lead-acid battery pursuant to a warranty or a vehicle service contract described under Section 12800 of the Insurance Code.

(E) The sale of any battery intended for use with or contained within a medical device, as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 321(h)), as that definition may be amended.

(q) "Used lead-acid battery" means a lead-acid battery no longer fully capable of providing the power for which it was designed or that a person no longer wants for any other reason.

(r) "Wholesaler" means a person who purchases a lead-acid battery from a manufacturer for the purpose of selling the lead-acid battery to a dealer, high-volume customer, or person for incorporation into new equipment for resale.

Comment. Subdivisions (*l*), (m), and (*o*) of Section 25215.1 are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25215.56 (amended). Manufacturer battery fees

SEC. __. Section 25215.56 of the Health and Safety Code is amended to read:

25215.56. (a) Any manufacturer battery fees remitted pursuant to this article shall, subject to subdivision (b) of Section 25215.3, be credited to the account of the manufacturer remitting those fees to the California Department of Tax and Fee Administration and shall be credited against amounts owed by the manufacturer to the state pursuant to a judgment or determination of liability under ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 or any other law for removal, remediation, or other response costs relating to a release of a hazardous substance from a lead-acid battery recycling facility. A manufacturer shall not seek more than one credit for the same fee amount.

This subdivision does not apply to any manufacturer who is also an owner or operator of a lead-acid battery recycling facility in California.

(b) The amount paid by a manufacturer for a manufacturer battery fee shall be considered to reduce the manufacturer's share of liability in the allocation or apportionment of costs among potentially responsible parties in a contribution action brought by a private party related to a release of hazardous substances from a lead-acid battery recycling facility. This subdivision does not apply to any manufacturer who is also an owner or operator or a former owner or operator of a lead-acid battery recycling facility in California where a release occurred.

(c) This article does not create a private cause of action. Nothing in this article shall be construed to affect, expand, alter, or limit any requirements, duties, rights, or remedies under other law, or limit the state or any other party from bringing any cause of action that may exist under any law.

Comment. Section 25215.56 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25220 (amended). Recorded land use restriction

SEC. __. Section 25220 of the Health and Safety Code is amended to read:

25220. (a) The department shall notify the planning and building department of each city, county, or regional council of governments of any recorded land use restriction imposed within the jurisdiction of the local agency pursuant to the former Section 25229, 25230, or 25398.7, as those sections read prior to the effective date of this article, or Section 25202.5, 25221, or ~~25355.5.~~ 79055. Upon receiving this notification, the planning and building department shall do both of the following:

(1) File all recorded land use restrictions in the property files of the city, county, or regional council of government.

(2) Require that a person requesting a land use that differs from those filed land use restrictions on the property apply to the department for a variance or a removal of the land use restrictions pursuant to Section 25223 or 25224.

(b) A planning and building department of a city, county, or regional council of governments may assess a property owner a reasonable fee to cover the costs of taking the actions required by subdivision (a). For purposes of this subdivision, "property owner" does not include a person who holds evidence of ownership solely to protect a security interest in the property, unless the person participates, or has a legal right to participate, in the management of the property.

(c) The department shall maintain a list of all recorded land use restrictions, including deed restrictions, recorded pursuant to the former Sections 25229, 25230, and 25398.7, as those sections read prior to the effective date of this article, and Sections 25202.5, 25221, and ~~25355.5.~~ 69055. The list shall, at a minimum, provide the street address, or, if a street address is not available, an equivalent description of location for a rural location or the latitude and longitude of each property. The department shall update the list as new deed restrictions are recorded. The

department shall make the list available to the public, upon request, and shall make the list available on the department's ~~Internet Web site.~~ internet website. The list shall also be incorporated into the list of sites compiled pursuant to Section 65962.5 of the Government Code.

Comment. Section 25220 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to make a technical change.

Health & Safety Code § 25224 (amended). Application for removal of land use restriction

SEC. __. Section 25224 of the Health and Safety Code is amended to read:

25224. (a) A person may apply to the department to remove a land use restriction imposed by the department on the grounds that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. A person shall not make a subsequent application pursuant to this section within 12 months of a final decision on an application by the department. A person applying to the department pursuant to this section shall pay the department all costs incurred by the department relating to the application. An application shall contain sufficient evidence for the department to make a finding upon any or all of the following grounds:

(1) The hazardous waste that caused the land to be restricted or designated has since been removed or altered in a manner that precludes any significant existing or potential hazard to present or future public health.

(2) New scientific evidence is available since the restriction or designation of the land or the making of any previous application pursuant to this section, concerning either of the following:

(A) The nature of the hazardous waste that caused the land to be designated.

(B) The geology or other physical environmental characteristics of the designated land.

(b) An aggrieved person may appeal a determination of the department made pursuant to subdivision (a) by submitting a request for a hearing to the director. The request shall be mailed by certified mail not later than 30 days after the date of the mailing of the department's decision on the application.

(c) Upon receipt of a timely appeal, the director shall give notice of a hearing pursuant to the procedures set forth in this article.

(d) The department shall record within 10 days any new and final determination made by the department pursuant to this section as provided in Section 25225.

(e) A determination made by the department, after a hearing held pursuant to this section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

(f) Whenever there is a final determination pursuant to this section removing a land use restriction, the easement, covenant, restriction, or servitude imposed on the

land created by Section 25221 or ~~25355.5~~ 79055 or the former Section 25222.1 or 25230 shall automatically terminate. The department shall record or cause to be recorded within 10 days a termination of the easement, covenant, restriction, or servitude, which shall particularly describe the real property subject to the easement, covenant, restriction, or servitude and shall be indexed by the recorder in the grantee index in the name of the record title owner of the real property subject to the easement, covenant, restriction, or servitude and in the grantor index in the name of the department.

Comment. Section 25224(f) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25225 (amended). Recordation of final written instrument

SEC. __. Section 25225 of the Health and Safety Code is amended to read:

25225. The department shall record within 10 days any final written instrument made pursuant to Section 25221 or 25224 with the county recorder of the county in which the property is located. Any recordation made pursuant to this article or Section 25202.5 or ~~25355.5~~ 79055 shall include the street address, assessor's parcel number, or legal description of each parcel affected and the name of the owner thereof, and the recordation shall be recorded by the recorder in the grantor index in the name of the record title owner of the real property and in the grantee index in the name of the department.

Comment. Section 25225 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25226 (amended). Assessment of land subject to land use restriction

SEC. __. Section 25226 of the Health and Safety Code is amended to read:

25226. An assessor shall consider a restrictive easement, covenant, restriction, or servitude adopted pursuant to the former Section 25230, as that section read prior to the effective date of this article, or Section 25202.5, 25221, or ~~25355.5~~ 79055 as an enforceable easement, covenant, restriction, or servitude subject to Section 402.1 of the Revenue and Taxation Code and shall appropriately reassess the land, those of which has been restricted, at the lien date following the adoption or imposition of the easement, covenant, restriction, or servitude.

Comment. Section 25226 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25227 (amended). Prohibited activities on land subject to land use restriction

SEC. __. Section 25227 of the Health and Safety Code is amended to read:

25227. A person shall not engage in any of the following on land that is subject to a recorded land use restriction pursuant to former Section 25229, 25230, or

25398.7, as those sections read on January 1, 2012, or pursuant to Section 25202.5, 25221, or ~~25355.5,~~ 79055, unless the person obtains a specific approval in writing from the department for the land use on the land in question:

(a) A new use of the land, other than the use, modification, or expansion of an existing industrial or manufacturing facility or complex on land that is owned by, or held for the beneficial use of, the facility or complex on or before January 1, 1981.

(b) Subdivision of the land, as that term is used in Division 2 (commencing with Section 66410) of Title 7 of the Government Code, except that this subdivision does not prevent the division of a parcel of land so as to divide that portion of the parcel that contains hazardous materials, as defined in subdivision (d) of Section 25260, from other portions of that parcel.

(c) Construction or placement of a building or structure on the land that is intended for use as any of the following, or the new use of an existing structure for the purpose of serving as any of the following:

(1)(A) Except as provided in subparagraph (B), a residence, including a mobilehome or factory built housing constructed or installed for use as permanently occupied human habitation.

(B) The addition of rooms or living space to an existing single-family dwelling or other minor repairs or improvements to residential property that do not change the use of the property, increase the population density, or impair the effectiveness of a response action, shall not constitute construction or placement of a building or structure for the purposes of subparagraph (A).

(2) A hospital for humans.

(3) A school for persons under 21 years of age.

(4) A day care center for children.

(5) A permanently occupied human habitation, other than those used for industrial purposes.

Comment. Section 25227 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25242 (amended). Unauthorized disposal of hazardous waste

SEC. __. Section 25242 of the Health and Safety Code is amended to read:

25242. (a) Any city, county, or state agency which, as owner, lessor, or lessee, knows or has probable cause to believe that a disposal of hazardous waste which is not authorized pursuant to this chapter has occurred on, under, or into the land which the city, county, or state agency owns or leases shall notify the department. Upon receiving that notice, the department shall determine if there has been a disposal of hazardous waste which is not authorized pursuant to this chapter.

(b) If the department determines that there has been a disposal of hazardous waste which is not authorized pursuant to this chapter, the department shall do all of the following:

(1) Conduct, or arrange for the conducting of, tests to determine the general chemical and mineral composition of the hazardous waste.

(2) Require the city, county, or state agency which submitted the notice pursuant to subdivision (a) to prepare a hazardous waste management plan specifying those removal or remedial actions, as defined in Sections ~~25322 and 25323,~~ 78125 and 78135, which are needed to be taken concerning the hazardous waste. The hazardous waste management plan shall provide for the protection of human health and the environment and minimize or eliminate the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products into ground and surface waters and into the atmosphere.

(3) Send notice of the department's findings made pursuant to paragraph (1) to the county in which the land is located, the city, if any, in which the land is located, the owner of the property, and residents living within 2,000 feet of the property line of the land on which the hazardous wastes were disposed. The department shall also post signs in the vicinity of the land which contain this information and are visible to the public. The department may also provide this notice to other persons, or post these signs in any other area, to protect the public health and safety or to provide the maximum opportunity for comment from the potentially affected public.

(4) Conduct public hearings on the proposed hazardous waste management plan during those times and at those places which are convenient to the affected public. These hearings shall be conducted even if the hazardous waste management plan provides that no removal or remedial actions will be taken. The department shall publish notice of these hearings in newspapers of general circulation, as defined in Section 6000 of the Government Code, and shall use all other reasonable means to publicize these hearings.

(5) Take all actions required by Section ~~25358.7~~ 78930 concerning any proposed removal or remedial actions.

(6) Take any other actions authorized by this chapter or ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 to carry out the legislative intent specified in Section 25242.1.

(c) The city, county, or state agency which is required to prepare a hazardous waste management plan pursuant to paragraph (2) of subdivision (b) shall submit the proposed hazardous waste management plan for approval to the department or a California Regional Water Quality Control Board, whichever the department determines is appropriate. A city or state agency shall submit the plan to the county in which the land is located, and a county or state agency shall submit the plan to the city, if any, in which the land is located, for comments and recommendations. The city, county, or state agency shall also consider whether to incorporate any changes in the plan which are recommended by the county, city, and the public.

Comment. Section 25242(b)(2), (b)(5), and (b)(6) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25250.54 (amended). Extension of deadline

SEC. __. Section 25250.54 of the Health and Safety Code is amended to read:

25250.54. (a)(1) On and after January 1, 2019, a manufacturer may apply to the department for a one-year, two-year, or three-year extension of the January 1, 2025, deadline established in Section 25250.53, except as provided in subdivision (h).

(2) An extension application submitted pursuant to this section shall be submitted based on vehicle model, class, platform, or other vehicle-based category, and not on the basis of the brake friction material formulation.

(3) The application shall be accompanied by documentation that will allow the advisory committee to make a recommendation pursuant to subdivisions (e) and (f).

(4) The documentation shall include a scientifically sound quantitative estimate of the quantity of copper that would be emitted if the extension is granted, including a description of the assumptions used in arriving at that estimate.

(b) No more than 30 days after receipt of an application for an extension pursuant to subdivision (a), the department shall do all of the following:

(1) Post a notice of receipt on the department's ~~Internet Web site~~ internet website that includes the vehicle model, class, platform, or other vehicle-based category, whether the brake friction material is intended for use in original equipment or replacement parts, and the quantity of copper that would be emitted if the extension is granted.

(2) Consult with the board and the State Air Resources Board.

(3) Solicit comment from the public and from scientific and vehicle engineering experts on the availability of generally affordable compliant brake friction materials, their safety and performance characteristics, and the feasibility of brake pad copper emissions reduction through means other than friction material reformulation.

(c)(1) In consultation with the board, the department shall determine if sufficient documentation has been presented upon which to base a decision. If the department determines that further documentation is needed, it shall deliver a detailed request for further documentation to the applicant.

(2) Not later than 30 days after receipt of the application for an extension pursuant to subdivision (a), the department shall forward the application to the advisory committee for the purpose of the advisory committee making a recommendation pursuant to subdivisions (e) and (f).

(d)(1) In considering any application for an extension, the advisory committee shall consider all of the documentation supplied by the applicant pursuant to subdivision (a).

(2) The advisory committee may request, no later than 75 days after receipt of the application from the department pursuant to subdivision (c), further documentation from the applicant.

(3) The advisory committee shall hold at least one public hearing at which it shall accept and consider comments from the public on each category of application. The advisory committee meetings shall be open to the public and are subject to the

Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(e)(1) The advisory committee shall recommend to the secretary that the extension be approved if the advisory committee determines that there are no brake friction materials that are safe and available for individual or multiple vehicle models, classes, platforms, or other vehicle-based categories identified in the application.

(2) The advisory committee shall recommend to the secretary that the extension not be approved if the advisory committee determines that alternative brake friction materials are safe and available for individual or multiple vehicle models, classes, platforms, or other vehicle-based categories identified in the application.

(3) For purposes of this section, "safe and available" shall mean all of the following:

(A) The brake system for which the alternative brake friction material is manufactured meets applicable federal safety standards, or if no federal standard exists, a widely accepted safety standard.

(B) Acceptable alternative brake friction materials are commercially available for the individual or multiple vehicles, classes, platforms, or vehicle-based categories identified in the application.

(C) Adequate industry testing and production capacity exists to supply the alternative brake friction materials for use on the individual or multiple vehicles, classes, platforms, or vehicle-based categories identified in the application.

(D) The alternative brake friction material is technically feasible for use on the individual or multiple vehicles, classes, platforms, or vehicle-based categories identified in the application.

(E) The alternative brake friction materials meet customer performance expectations, including noise, wear, vibration, and durability for the individual or multiple vehicles, classes, platforms, or vehicle-based categories identified in the application.

(F) The alternative acceptable brake friction material is economically feasible with respect to the industry and the cost to the consumer for the individual or multiple vehicles, classes, platforms, or vehicle-based categories identified in the application.

(4) The advisory committee shall provide relevant data to the department and the board concerning the potential impacts of the extension on California watersheds for purposes of the report required pursuant to Section 25250.65.

(f)(1) No sooner than 60 days and no later than 120 days after the department solicits comments pursuant to paragraph (3) of subdivision (b), the advisory committee shall make a recommendation to the secretary in accordance with subdivisions (d) and (e) as to whether the application for extension should be approved or not approved.

(2) The recommendation of the advisory committee that the secretary approve or not approve the application for extension shall be accompanied by documentation of the basis for the recommendation.

(g)(1) The secretary shall make available the recommendation of the advisory committee and the accompanying documentation for public review and comment for 60 days following receipt of the recommendation from the advisory committee.

(2) The secretary shall consider public comments on the advisory committee's recommendation and issue a final decision on the application for extension no later than 45 days after the conclusion of the 60-day comment period.

(3) In making the determination whether to approve or disapprove the extension, the secretary shall rely upon the recommendations made by the advisory committee pursuant to subdivision (f).

(4) If the secretary does not follow the recommendation of the advisory committee made pursuant to subdivision (f), ~~he or she~~ the secretary shall explain in writing the basis of ~~his or her~~ the secretary's decision.

(h)(1) On or before December 31, 2029, a manufacturer with an approved extension of the January 1, 2025, deadline established in Section 25250.53, may reapply to the department for additional two-year extensions from the deadline in accordance with a schedule that may be established by the department.

(2) Except as provided in subdivision (i), a manufacturer may not apply on or after January 1, 2030, for an extension of the January 1, 2025, deadline established in Section 25250.53.

(3) The department shall comply with all of the requirements of this section when granting an additional extension of the January 1, 2025, deadline pursuant to this subdivision.

(i)(1) On and after January 1, 2030, a manufacturer of vehicle brake friction materials to be used on heavy-duty vehicles with an approved extension of the January 1, 2025, deadline established in Section 25250.53, may reapply to the department for additional two-year extensions from the deadline established in Section 25250.53, that results in an extension of that deadline to a date on and after January 1, 2032.

(2) The department shall comply with all of the requirements of this section when granting an additional extension of the January 1, 2025, deadline pursuant to this subdivision.

(j) The department shall assess a fee for each application for an extension sufficient to cover actual costs incurred in implementing this section. The department may expend the fees collected pursuant to this subdivision, upon appropriation by the Legislature, for reimbursement for the costs incurred in implementing this section.

(k) When granting an extension pursuant to this section, the department, board, advisory committee, and secretary shall comply with the requirements of ~~Section 25358.2,~~ Article 5 (commencing with Section 78480) of Chapter 3 of Part 2 of Division 45, to ensure the protection of trade secrets, as defined in Section ~~25358.2.~~ 78480.

Comment. Section 25250.54(k) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to eliminate gendered pronouns and make a technical change.

Health & Safety Code § 25260 (amended). Definitions

SEC. __. Section 25260 of the Health and Safety Code is amended to read:

25260. The definitions set forth in this section shall govern the interpretation of this chapter. Unless the context requires otherwise and except as provided in this chapter, the definitions contained in ~~Article 2 (commencing with Section 25310) of Chapter 6.8~~ Article 3 (commencing with Section 78035) of Chapter 1 of Part 2 of Division 45 shall apply to the terms used in this chapter.

(a) "Administering agency" means the agency designated by the committee pursuant to Section 25262.

(b) "Advisory team" means the team convened by the committee pursuant to Section 25263.

(c) "Agency" means any city, county, district, commission, the state, or any department, agency, or political subdivision thereof, that has jurisdiction under a state or local law, ordinance, or regulation to supervise, oversee, or approve a site investigation and a remedial action at a hazardous materials release site.

(d) "Hazardous material" means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. "Hazardous material" includes, but is not limited to, all of the following:

(1) A hazardous substance, as defined in Section 25281 or ~~25316.~~ subdivision (a) of Section 78075.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 470 or as defined in Section 13050 of the Water Code.

(e) "Hazardous materials release site" or "site" means any area, location, or facility where a hazardous material has been released or threatens to be released into the environment. "Hazardous materials release site" does not include a site subject to a response and cleanup operation under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code or a corrective action under Part 6 (commencing with Section 46000) of Division 30 of the Public Resources Code.

(f) "Committee" means the Site Designation Committee created by Section 25261.

(g) "Remedial action" means actions required by state or local laws, ordinances, or regulations that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release of a hazardous material, and that are consistent with a permanent remedy for a hazardous materials release. "Remedial action" includes, but is not limited to, the cleanup or removal of released hazardous materials from the environment, monitoring, testing and analysis of the

site, site operation and maintenance, and the placing of conditions, limitations, or restrictions on the uses of the site after remedial action has been completed.

(h) "Responsible party" means any person, except for an independent contractor, who agrees to carry out a site investigation and remedial action at a hazardous materials release site for one of the following reasons:

(1) The person is liable under a state or local law, ordinance, or regulation for the site investigation or remedial action.

(2) The site investigation or remedial action is required by a state or local law, ordinance, or regulation because of a hazardous materials release.

(i) "Site investigation" means those actions that are necessary to determine the full extent of a release or threatened release of a hazardous material at a hazardous materials release site, identify the public health and safety or environmental threat posed by the release or threatened release, collect data on possible remedies, and otherwise evaluate the hazardous materials release site for the purpose of implementing remedial action.

Comment. Section 25260 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25262 (amended). Designation of administering agency for site

SEC. __. Section 25262 of the Health and Safety Code is amended to read:

25262. (a) A responsible party for a hazardous materials release site may request the committee at any time to designate an administering agency to oversee a site investigation and remedial action at the site. The committee shall designate an administering agency as responsible for the site within 45 days of the date the request is received. A request to designate an administering agency may be denied only if the committee makes one of the following findings:

(1) No single agency in state or local government has the expertise needed to adequately oversee a site investigation and remedial action at the site.

(2) Designating an administering agency will have the effect of reversing a regulatory or enforcement action initiated by an agency that has jurisdiction over the site, a facility on the site, or an activity at the site.

(3) Designating an administering agency will prevent a regulatory or enforcement action required by federal law or regulations.

(4) The administering agency and the responsible party are local agencies formed, in whole or in part, by the same political subdivision.

(b) A responsible party who requests the designation of an administering agency for a hazardous materials release site shall provide the committee with a brief description of the site, an analysis of the known or suspected nature of the release or threatened release that is the subject of required site investigation or remedial action, a description of the type of facility from which the release occurred or the type of activity that caused the release, a specification of the regulatory or enforcement actions that have been taken, or are pending, with respect to the release,

and a statement of which agency the responsible party believes should be designated as administering agency for the site.

(c)(1) The committee shall take all of the following factors into account in determining which agency to designate as administering agency for a site:

(A) The type of release that is the subject of site investigation and remedial action.

(B) The nature of the threat that the release poses to human health and safety or to the environment.

(C) The source of the release, the type of facility or activity from which the release occurred, the regulatory programs that govern the facility or activity involved, and the agency or agencies that administer those regulatory programs.

(D) The regulatory history of the site, the types of regulatory actions or enforcement actions that have been taken with respect to the site or the facility or activity from which the release occurred, and the experience and involvement that various agencies have had with the site.

(E) The capabilities and expertise of the agencies that are candidates for designation as the administering agency for the site and the degree to which those capabilities and that expertise are applicable to the type of release at the site, the nature of the threat that the release poses to health and safety or the environment and the probable remedial measures that will be required.

(2) After weighing the factors described in paragraph (1) as they apply to the site, the committee shall use the criteria specified in subparagraphs (A), (B), (C), and (D) as guidelines for designating the administering agency. If more than one of the criteria apply to the site, the committee shall use its best judgment, taking into account the known facts concerning the hazardous materials release at the site and its regulatory history, in determining which agency may best serve as the administering agency. The criteria are as follows:

(A) The administering agency shall be the Department of Toxic Substances Control if one of the following applies:

(i) The department has issued an order, or otherwise initiated action, with respect to the release at the site pursuant to ~~Section 25355, 25355.5, or 25358.3.~~ Article 1 (commencing with Section 78650) of Chapter 4 of, or Article 10 (commencing with Section 79130) of Chapter 5 of, Part 2 of Division 45 or Section 78870, 79055, 79060, or 79065.

(ii) The department has issued an order for corrective action at the site pursuant to Section 25187.

(iii) The source of the release is a facility or hazardous waste management unit or an activity that is, or was, regulated by the department pursuant to Chapter 6.5 (commencing with Section 25100).

(iv) The department is conducting, or has conducted, oversight of the site investigation and remedial action at the site at the request of the responsible party.

(B) The administering agency shall be the California regional water quality control board for the region in which the site is located, if one of the following applies:

(i) The California regional water quality control board has issued a cease and desist order pursuant to Section 13301, or a cleanup and abatement order pursuant to Section 13304 of the Water Code in connection with the release at the site.

(ii) The source of the release is a facility or an activity that is subject to waste discharge requirements issued by the California regional water quality control board pursuant to Section 13263 of the Water Code or that is regulated by the California regional water quality control board pursuant to Article 5.6 (commencing with Section 25159.10) of, or Article 9.5 (commencing with Section 25208) of, Chapter 6.5, or pursuant to Chapter 6.67 (commencing with Section 25270).

(iii) The California regional water quality control board has jurisdiction over the site pursuant to Chapter 5.6 (commencing with Section 13390) of Division 7 of the Water Code.

(C) The administering agency shall be the Department of Fish and ~~Game~~ Wildlife if the release has polluted or contaminated the waters of the state and the department has taken action against the responsible party pursuant to Section 2014 or 12015 of, or Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6 of, the Fish and Game Code, subsection (f) of Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (42 U.S.C. Sec. 9607 (f)), or Section 311 of the Federal Water Pollution Act, as amended (33 U.S.C. Sec. 1321).

(D) The administering agency shall be a local agency if any one of the following circumstances is applicable:

(i) The source of the release at the site is an underground storage tank, as defined in subdivision (y) of Section 25281, the local agency is the agency described in subdivision (i) of Section 25281, and there is no evidence of any extensive groundwater contamination at the site.

(ii) The local agency has accepted responsibility for overseeing the site investigation or remedial action at the site and a state agency is not involved.

(iii) The local agency has agreed to oversee the site investigation or remedial action at the site and is certified, or has been approved, by a state agency to conduct that oversight.

(d) A responsible party for a hazardous materials release site may request the designation of an administering agency for the site pursuant to this section only once. The action of the committee on the request is a final action and is not subject to further administrative or judicial review.

Comment. Section 25262(c)(2)(A)(i) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to correct a reference to the "Department of Fish and Game" to refer instead to the "Department of Fish and Wildlife." See Fish and Game Code § 700.

Health & Safety Code § 25269.2 (amended). Recovery of oversight costs

SEC. __. Section 25269.2 of the Health and Safety Code is amended to read:

25269.2. (a) The department shall comply with this chapter when recovering oversight costs for corrective action pursuant to Chapter 6.5 (commencing with Section 25100), for removal or remedial action pursuant to ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, and for response actions pursuant to former Chapter 6.85 (commencing with Section 25396).

(b) The department shall develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and availability of program guidance and policies, and distribute the statement to all responsible parties.

Comment. Section 25269.2 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25281 (amended). Definitions

SEC. __. Section 25281 of the Health and Safety Code is amended to read:

25281. For purposes of this chapter and unless otherwise expressly provided, the following definitions apply:

(a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

(c) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

(d)(1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a

written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 to 25404.2, inclusive, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. Except as provided in Section 25296.09, after a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(g) "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), or as it may subsequently be amended or supplemented.

(h) "Hazardous substance" means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in ~~Section 25316.~~ <u>subdivision (a) of Section 78075.</u>

(C) Any substance or material that is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (7) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 2012, or as it may subsequently be amended or supplemented.

(i) "Local agency" means one of the following, as specified in subdivision (b) of Section 25283:

(1) The unified program agency.

(2) Before July 1, 2013, a city or county.

(3) On and after July 1, 2013, a city or county certified by the board to implement the local oversight program pursuant to Section 25297.01.

(j) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(k) "Owner" means the owner of an underground storage tank.

(*l*) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(m) "Pipe" means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(n) "Primary containment" means the first level of containment, such as the portion of a tank that comes into immediate contact on its inner surface with the hazardous substance being contained.

(*o*) "Product tight" means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(p) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(q) "Secondary containment" means the level of containment external to, and separate from, the primary containment.

(r) "Single walled" means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(s) "Special inspector" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(t)(1) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years.

(2) "Storage" or "store" does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or 25201.6 or granted interim status under Section 25200.5.

(3) "Storage" or "store" does not include the storage of hazardous wastes in an underground storage tank if all of the following apply:

(A) The facility has been issued a unified program facility permit pursuant to Section 25404.2 for generation, treatment, accumulation, or storage of hazardous waste in a tank.

(B) The tank is located in an underground area, as defined in Section 280.12 of Title 40 of the Code of Federal Regulations.

(C) The tank is subject to Chapter 6.67 (commencing with Section 25270).

(D) The tank complies with the hazardous waste tank standards pursuant to Article 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California Code of Regulations.

(4) "Storage" or "store" does not include the storage of hazardous wastes in an underground storage tank if all of the following apply:

(A) The facility has been issued a unified program facility permit pursuant to Section 25404.2 for generation, treatment, accumulation, or storage of hazardous waste in a tank.

(B) The tank is located in a structure that is at least 10 percent below the ground surface, including, but not limited to, a basement, cellar, shaft, pit, or vault.

(C) The structure in which the tank is located, at a minimum, provides for secondary containment of the contents of the tank, piping, and ancillary equipment, until cleanup occurs.

(D) The tank complies with the hazardous waste tank standards pursuant to Article 10 (commencing with Section 66265.190) of Chapter 15 of Title 22 of the California Code of Regulations.

(u) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

(v) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(w) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

(x) "Unauthorized release" means any release of any hazardous substance that does not conform to this chapter, including an unauthorized release specified in Section 25295.5.

(y)(1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, and lined and unlined pits, sumps, and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25290.2, 25291, or

25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(E) A tank in an underground area, as defined in Section 25270.2, and associated piping, that is subject to Chapter 6.67 (commencing with Section 25270).

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa)(1) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) "Unified program facility permit" means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) "Permit" means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

Comment. Section 25281(h)(1)(B) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25297 (amended). Request by local agency for agency action

SEC. __. Section 25297 of the Health and Safety Code is amended to read:

25297. The local agency may request the following agencies to utilize that agency's authority to remedy the effects of, and remove, any hazardous substance which has been released from an underground storage tank:

(a) The department which may take action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 and, for this purpose, any unauthorized release shall be deemed a release as defined in ~~Section 25320.~~ subdivision (a) of Section 78105.

(b) A regional water quality control board may take action pursuant to Division 7 (commencing with Section 13000) of the Water Code and, for this purpose, the discharged hazardous substance shall be deemed a waste as defined in subdivision (d) of Section 13050.

Comment. Section 25297 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25297.01 (amended). Local oversight program

SEC. __. Section 25297.01 of the Health and Safety Code is amended to read:

25297.01. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to ~~Chapter 6.8 (commencing with Section 25300),~~ Part 2 (commencing with Section 78000) of Division 45, the board, in cooperation with the department, shall develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by a local agency certified pursuant to this section.

(b) On and after July 1, 2013, only a city or county certified pursuant to subdivision (c) may implement a local oversight program. The board may enter into an agreement pursuant to Section 25297.1 with a certified city or county to implement the oversight program.

(c) The board may certify a city or county if the board determines that the city or county is qualified to oversee or perform the abatement of unauthorized releases of hazardous substances from underground storage tanks. The board shall consider, as criteria for determining whether a city or county is qualified, at a minimum, all of the following factors:

(1) Adequacy of the technical expertise possessed by the city or county.

(2) Adequacy of staff resources.

(3) Adequacy of budget resources and funding mechanisms.

(4) Training requirements.

(5) Past performance in implementing and enforcing corrective action requirements.

(6) Recordkeeping and accounting systems.

(d) The board shall adopt procedures and criteria for certifying and withdrawing certification from cities and counties pursuant to this section. The adoption of these procedures and criteria shall not be considered as regulations subject to, and shall be exempt from, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) If the board does not, by July 1, 2013, certify a city or county that has been implementing a local oversight program pursuant to an agreement entered into with the board on or before January 1, 2013, the board shall assign the cases from that city or county to the appropriate regional board or to a city or county that is certified by the board. An order or directive issued by that uncertified city or county on or before July 1, 2013, shall remain in effect and may be enforced by the regional board or certified city or county that receives the case.

(f) The board shall review, at least once every three years, the ability of the certified city or county to carry out the local oversight program. When conducting this review, the board shall consider the certification criteria contained in paragraphs (1) to (6), inclusive, of subdivision (c) and the criteria adopted pursuant to subdivision (d). The board may, after conducting the review, withdraw the certification of the city or county. Upon making this withdrawal, the cases of the former certified city or county shall be transferred from the city or county and the orders and directives issued by the former certified city or county shall remain

effective and enforceable in accordance with subdivision (e). The board shall not make the effective date for the withdrawal of a certification before the expiration date of the local oversight program agreement entered into between the board and the certified city or county pursuant to Section 25297.1, unless the certified city or county fails to comply with the agreement.

Comment. Section 25297.01(a) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25297.1 (amended). Agreement for implementation of local oversight program

SEC. __. Section 25297.1 of the Health and Safety Code is amended to read:

25297.1. (a)(1) For purposes of implementing, pursuant to Section 25297.01, the local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks, the board may enter into in an agreement specified in subdivision (b) with the local agency.

(2) A city or county that the board selected pursuant to this section, as it read on January 1, 2012, which entered into an agreement with the board before July 1, 2013, may apply to the board for certification pursuant to Section 25297.01. The city or county may continue to implement the oversight program until July 1, 2013, and after that date the city or county shall either be certified or be subject to subdivision (e) of Section 25297.01.

(3) On and after June 30, 2013, the board may enter into an agreement pursuant to this section only with a city or county certified pursuant to Section 25297.01.

(b) In implementing the local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks, the board may select a local agency to enter into an agreement with the board. When selecting a local agency, the board shall, from among those local agencies that apply to the board, give first priority to those local agencies that have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. The board shall enter into an agreement with only those local agencies that have implemented this chapter and that, except as provided in Section 25404.5, have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287. The agreement shall provide for the local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section. The board may not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of

the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

(c) The board shall provide funding to a local agency that enters into an agreement pursuant to subdivision (b) for the reasonable costs incurred by the local agency in overseeing any cleanup, abatement, or other action taken by a responsible party to remedy the effects of unauthorized releases from underground storage tanks.

(d) The board shall adopt administrative and technical procedures, as part of the state policy for water quality control adopted pursuant to Section 13140 of the Water Code, for cleanup and abatement actions taken by a local agency with which the board has entered into an agreement pursuant to this section. The procedures shall include, but not be limited to, all of the following:

(1) Guidelines as to which sites may be assigned to the local agency.

(2) The content of the agreements.

(3) Procedures by which a responsible party may petition the board or a regional board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing with Section 2250) of Division 3 of Title 23 of the California Code of Regulations, or any successor regulation, as applicable, of actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local agency in implementing this section, as specified in subdivision (i), unless the cleanup or abatement action is subject to subdivision (d) of Section 25296.10.

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the regional board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a database for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g)(1) ~~Sections 25355.5 and 25356~~ Sections 78780 and 79055 do not apply to expenditures from the Toxic Substances Control Account for oversight of abatement

of releases from underground storage tanks as part of the local oversight program conducted pursuant to an agreement entered into pursuant to this section.

(2) A local agency that enters into an agreement pursuant to subdivision (b) shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.

(h) Any aggrieved person may petition the board or regional board for review of the action or failure to act of a local agency that enters into an agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established pursuant to this section, in accordance with the procedures adopted by the board or regional board pursuant to subdivision (d).

(i)(1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by the staff of a local agency or the local agency's authorized representative, that are either technical program staff or their immediate supervisors:

(A) Responsible party identification and notification.

(B) Site visits.

(C) Sampling activities.

(D) Meetings with responsible parties or responsible party consultants.

(E) Meetings with the regional board or with other affected agencies regarding a specific site.

(F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.

(G) Development of enforcement actions against a responsible party.

(H) Issuance of a closure document.

(2) The responsible party is liable for the site-specific oversight costs, calculated pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any cleanup, abatement, or other action taken pursuant to an agreement entered into pursuant to this section to remedy an unauthorized release from an underground storage tank.

(3) Notwithstanding the requirements of any other law, the amount of liability of a responsible party for the oversight costs incurred by the local agency and by the board and regional boards in overseeing any action pursuant to an agreement entered into pursuant to this section shall be calculated as an amount not more than 150 percent of the total amount of the site-specific oversight costs actually incurred by the local agency and shall not include the direct or indirect costs incurred by the board or regional boards.

(4)(A) The total amount of oversight costs for which a local agency may be reimbursed shall not exceed one hundred fifteen dollars ($115) per hour, multiplied by the total number of site-specific hours performed by the local agency.

(B) The total amount of the costs per site for administration and technical assistance to local agencies by the board and the regional board entering into agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-five dollars ($35) for each hour of site-specific oversight. The board shall base its costs on the total hours of site-specific oversight work performed by all participating local agencies. The regional board shall base its costs on the total number of hours of site-specific oversight costs attributable to the local agency that received regional board assistance.

(C) The amounts specified in subparagraphs (A) and (B) are base rates for the 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter, the board shall adjust the base rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the implicit price deflator for state and local government purchases of goods and services, as published by the United States Department of Commerce or by a successor agency of the federal government.

(5) In recovering costs from responsible parties for costs incurred under this section, the local agency shall prorate any costs identifiable as startup costs over the expected number of cases that the local agency will oversee during a 10-year period. A responsible party who has been assessed startup costs for the cleanup of any unauthorized release that, as of January 1, 1991, is the subject of oversight by a local agency, shall receive an adjustment by the local agency in the form of a credit, for the purposes of cost recovery. Startup costs include all of the following expenses:

(A) Small tools, safety clothing, cameras, sampling equipment, and other similar articles necessary to investigate or document pollution.

(B) Office furniture.

(C) Staff assistance needed to develop computer tracking of financial and site-specific records.

(D) Training and setup costs for the first six months of the local agency program.

(6) This subdivision does not apply to costs that are required to be recovered pursuant to ~~Article 7.5 (commencing with Section 25385) of Chapter 6.8.~~ Article 5 (commencing with Section 78280) of Chapter 2 of Part 2 of Division 45.

(j) The inoperation of former paragraph (1) of this subdivision does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2005, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(k) Notwithstanding subdivisions (a) and (b), any agreement entered into before January 1, 2013, between a regional board and a water district to oversee, coordinate, or implement a cooperative oversight program will remain in effect in accordance with the terms of that agreement or the terms of that agreement as may be amended from time to time.

Comment. Section 25297.1(g)(1) and (i)(6) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25299.5 (amended). Construction of chapter

SEC. __. Section 25299.5 of the Health and Safety Code is amended to read:

25299.5. (a) This chapter shall be construed to assure consistency with the requirements for state programs implementing the federal act.

(b) This chapter shall not be construed to limit or abridge the powers and duties granted to the department by Chapter 6.5 (commencing with Section 25100) and ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 or to the board and each regional board by Division 7 (commencing with Section 13000) of the Water Code.

Comment. Section 25299.5 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25299.50.6 (amended). Site Cleanup Subaccount

SEC. __. Section 25299.50.6 of the Health and Safety Code is amended to read:

25299.50.6. (a) The Site Cleanup Subaccount is hereby established in the State Treasury. Moneys shall be deposited in the subaccount pursuant to subdivision (m) of Section 25299.51.

(b) The board may expend the funds in the Site Cleanup Subaccount, upon appropriation by the Legislature, for the following purposes:

(1) To pay for reasonable and necessary expenditures that the board, the department, a regional board, a local agency, or a water replenishment district incurs to identify the source of surface or groundwater contamination.

(2)(A) To pay for reasonable and necessary expenditures to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination incurred by any of the following:

(i) The board.

(ii) The department.

(iii) A regional board.

(iv) A local agency.

(v) A water replenishment district, under the direction of the board, a regional board, a local agency, or another appropriate regulatory agency with authority over surface or groundwater cleanup oversight.

(B) The board shall consider the following factors when approving expenditures for specific locations:

(i) The degree to which human health, safety, and the environment are threatened by contamination at the location.

(ii) Whether the location is located in a small or financially disadvantaged community.

(iii) The cost and potential environmental benefit of the investigation or cleanup.

(iv) Whether there are other potential sources of funding for the investigation or cleanup.

(v) Any other information the board identifies as necessary for consideration.

(3) To issue grants pursuant to this section for the reasonable and necessary costs of actions to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination at a location that meets both of the following conditions:

(A) The board, the department, a regional board, or a local agency requires the responsible parties to undertake or contract for investigation or cleanup, pursuant to an oral or written order, directive, notification, or approval issued pursuant to Section 25187, 25296.10, ~~25355.5, or 25358.3,~~ 78870 or 79055, or pursuant to a cleanup and abatement order issued under Section 13304 of the Water Code. The board may waive this requirement if the board finds that it is infeasible for an order to be issued before initiation of remediation.

(B) The responsible parties lack sufficient financial resources to pay for the required response actions.

(4) For payments to the Attorney General by the board pursuant to subdivision (g).

(c) At least annually, the board shall review grant applications and adopt a list of applicants to be awarded grants pursuant to paragraph (3) of subdivision (b). In addition to the conditions specified in paragraph (3) of subdivision (b), the board shall consider all of the following factors when awarding grants:

(1) The degree to which human health, safety, and the environment are threatened by surface water or groundwater contamination at the location.

(2) Whether the location is located in a small or financially disadvantaged community.

(3) The cost and potential environmental benefit of the investigation or cleanup.

(4) Whether there are other potential sources of funding for the investigation or cleanup.

(5) Any other information the board identifies as necessary for consideration.

(d)(1) The board shall specify the information that shall be included in a grant application, consistent with this section, including, but not limited to, a provision requiring the applicant to make a sworn verification of the information in the application to the best of the applicant's knowledge.

(2) The board may adopt procedures to implement this section.

(3) The board shall post any procedures or information requirements adopted pursuant to this section on its internet website.

(e)(1) The recipient of grant moneys shall expend those funds only for the reasonable costs necessary to protect human health, safety, and the environment, incurred on or after September 25, 2014.

(2) The board shall not issue a grant for any costs for which the applicant has been, or will be, paid by another source.

(3) The board may terminate a grant and may bar the applicant from receiving any future grants from the Site Cleanup Subaccount if the board finds that the applicant has made a misrepresentation or false claim.

(f)(1) Any funds in the Site Cleanup Subaccount that are not expended in a fiscal year shall remain in the subaccount until they are encumbered.

(2) Notwithstanding Section 16304.1 of the Government Code, the board shall encumber the funds appropriated pursuant to this section within three years of the appropriation and the board may make a disbursement in liquidation of an encumbrance before or during the three years following the last day the appropriation is available for encumbrance.

(3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the money in the Site Cleanup Subaccount shall be deposited in the Site Cleanup Subaccount.

(g) The Attorney General may recover the actual, reasonable costs of investigation or cleanup undertaken pursuant to this section in a civil action, upon request from the board, from any responsible party. All money recovered by the Attorney General pursuant to this section shall be deposited in the Site Cleanup Subaccount.

(h) For purposes of this section, "water replenishment district" has the meaning provided for in Division 18 (commencing with Section 60000) of the Water Code.

Comment. Section 25299.50.6(b)(3)(A) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.63 (amended). Application of definitions

SEC. __. Section 25395.63 of the Health and Safety Code is amended to read:

25395.63. The definitions set forth in this article and in Article 6 (commencing with Section 25395.90) shall govern the interpretation of this chapter. If a term is not otherwise defined in this chapter, the definition contained in ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 shall apply to that term.

Comment. Section 25395.63 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.66 (amended). "Applicable law"

SEC. __. Section 25395.66 of the Health and Safety Code is amended to read:

25395.66. "Applicable law" means all of the provisions of the following state statutory and common laws that impose liability on an owner or occupant of property for pollution conditions caused by a release or threatened release of hazardous material on, under, or adjacent to the property:

(a) Title 1 (commencing with Section 3479) of, Title 2 (commencing with Section 3490) of, and Title 3 (commencing with Section 3501) of, Part 3 of Division 4 of the Civil Code.

(b) Chapter 2 (commencing with Section 731) of Title 10 of Part 2 of the Code of Civil Procedure, but not including Section 736 of the Code of Civil Procedure.

(c) Section 5650 of the Fish and Game Code.

(d) Chapter 6.7 (commencing with Section 25280)~~,~~ and Chapter 6.75 (commencing with Section 25299.10)~~, and Chapter 6.8 (commencing with Section 25300), of this division.~~ of this division, and Part 2 (commencing with Section 78000) of Division 45.

(e) Chapter 1 (commencing with Section 13000) to Chapter 5 (commencing with Section 13300), inclusive, of Division 7 of the Water Code.

(f) State common law regarding contribution, nuisance, trespass, and equitable indemnity.

Comment. Section 25395.66 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.79 (amended). "Release"

SEC. __. Section 25395.79 of the Health and Safety Code is amended to read:

25395.79. "Release" has the same meaning as defined in ~~Section 25320.~~ subdivision (a) of Section 78105.

Comment. Section 25395.79 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.79.2 (amended). "Site"

SEC. __. Section 25395.79.2 of the Health and Safety Code is amended to read:

25395.79.2. (a) "Site" means real property located in an urban infill area for which the expansion, redevelopment, or reuse may be complicated by the presence or perceived presence of hazardous materials.

(b) "Site" does not include any of the following:

(1) A facility that is listed or proposed for listing on the National Priorities List established under Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9605).

(2) A site on the list maintained by the department pursuant to ~~Section 25356.~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45.

(3) A site that is solely impacted by a petroleum release from an underground storage tank eligible for reimbursement from the California Underground Storage Tank Cleanup Fund.

(c) For purposes of this section, the following definitions shall apply:

(1) "Infill area" means a vacant or underutilized lot of land within an urban area that has been previously developed or that is surrounded by parcels that are or have been previously developed.

(2) "Urban area" means either of the following:

(A) An incorporated city.

(B) An unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:

(i) The population of the unincorporated area and the population of the surrounding incorporated cities is equal to a population of 100,000 or more.

(ii) The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

Comment. Section 25395.79.2 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.90 (amended). Definitions

SEC. __. Section 25395.90 of the Health and Safety Code is amended to read:

25395.90. (a) Except as otherwise expressly provided in this article, the definitions in Article 2 (commencing with Section 25395.63) apply to the terms used in this article.

(b) "Action level" has the same meaning as defined in paragraph (1) of subdivision (c) of Section 116455.

(c) "Host jurisdiction" means the city or county in which the site is located and which has the authority to take action regarding the site pursuant to Title 7 (commencing with Section 65000) of the Government Code.

(d) "Unreasonable risk" at a site means that a condition at a site requires a response action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 of this code or Division 7 (commencing with Section 13000) of the Water Code.

Comment. Section 25395.90 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.92 (amended). Agreement for immunity

SEC. __. Section 25395.92 of the Health and Safety Code is amended to read:

25395.92. (a) A bona fide purchaser, innocent landowner, or contiguous property owner who seeks to qualify for the immunity provided by this chapter shall enter into an agreement with an agency pursuant to this article that includes the performance of a site assessment, and, if the agency determines that a response plan is necessary pursuant to Section 25395.96, the preparation and implementation of a response plan.

(b) Before finalizing the agreement, the requested agency shall notify other appropriate agencies, including the host jurisdiction.

(c) A person who enters into an agreement with an agency pursuant to this section shall submit sufficient information to the agency for the agency to determine whether the site is an eligible site, whether the person meets the conditions to qualify as a bona fide purchaser, innocent landowner, or contiguous property owner pursuant to this chapter, and to prepare an agreement pursuant to this section.

(d)(1) A person who enters into an agreement pursuant to this section shall agree to take all actions required for a response action pursuant to ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 and Division 7 (commencing with Section 13000) of the Water Code.

These actions may include actions necessary to prevent an unreasonable risk before the approval of a response plan.

(2) In determining whether there is unreasonable risk at a site for purposes of this subdivision, the agency shall take into account the intended use of the property, in accordance with any changed use of the property, as specified in subdivision (d) of Section 25395.96.

Comment. Section 25395.92 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.93 (amended). Withdrawal from agreement

SEC. __. Section 25395.93 of the Health and Safety Code is amended to read:

25395.93. (a) A person may withdraw from an agreement entered into pursuant to this article by providing a 30-day written notice to the agency and doing both of the following:

(1) Reimbursing the agency for all costs incurred by the agency pursuant to the agreement.

(2) Demonstrating to the satisfaction of the agency that conditions at the site to which the agreement applies do not pose an endangerment to public health and safety or the environment. If the agency determines that conditions at the site pose an endangerment to public health, safety, or the environment, this article does not prevent the agency from exercising its authority to take appropriate response actions or to cause the person or persons responsible for the endangerment to take appropriate response actions.

(b) A person who enters into an agreement with an agency pursuant to this article shall reimburse the agency for all agency costs, including, but not limited to, costs incurred while reviewing a site assessment plan or a response plan or overseeing the implementation of a site assessment or response plan by the person pursuant to this article, except that the department's costs shall be reimbursed pursuant to Chapter 6.66 (commencing with Section 25269) and shall be recoverable pursuant to Section ~~25360.~~ 79650.

(c) The entry into an agreement pursuant to this article shall not constitute an admission of fact or liability or conclusion of law for any purpose or proceeding and a person who enters into an agreement under this article shall not be deemed liable under any other provision of law solely by reason of entering into that agreement.

(d) If the conditions described in paragraph (1) of subdivision (c) of Section 25395.81 or in subdivision (d) of Section 25395.81 occur, an agency may withdraw from an agreement entered into pursuant to this chapter by providing a 30-day written notice to the other party.

Comment. Section 25395.93 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.94 (amended). Site assessment plan

SEC. __. Section 25395.94 of the Health and Safety Code is amended to read:

25395.94. (a)(1) A person who enters into an agreement pursuant to this article with an agency for the oversight of a site assessment shall submit a site assessment plan to the agency to conduct a site assessment of the site in accordance with the requirements of this section.

(2) If the agency requires a health risk assessment as part of that agreement, the health assessment shall be prepared in accordance with ~~subdivisions (b), (c), and (d) of Section 25356.1.5.~~ Sections 79265, 79270, and subdivision (a) of Section 79275.

(b) The site assessment plan shall provide for the evaluation of all of the following:

(1) Whether a release of hazardous materials has occurred at the site, a threat of a release of hazardous materials exists at the site, or there is a threat of a release of hazardous materials from the site.

(2) If a release or threatened release of hazardous materials exists at the site or there is a release or a threatened release from the site, whether the release or threatened release poses an unreasonable risk to public health and safety or the environment.

(c) The site assessment plan shall also include all of the following:

(1) Adequate characterization of the hazardous materials released or threatened to be released at, or from, the site and documentation of the findings.

(2) Reasonably available information about the site, including, where appropriate, a risk assessment that evaluates the risk posed by any hazardous materials released or threatened to be released at, or from, the site, and information regarding reasonably anticipated foreseeable uses of the site based on current and projected land use and zoning designations.

(3) If the release has impacted groundwater, reasonable characterization of underlying groundwater, including present and anticipated beneficial uses of that water.

(d) A person shall submit the site assessment plan to the agency for review and approval.

(e) The agency shall evaluate the adequacy of the site assessment plan to ensure that it contains all necessary information.

(f) After evaluating the site assessment plan, if the agency finds that the site assessment plan is adequate, the agency shall approve the site assessment plan and provide notification to appropriate persons, including notification of any public water system that relies on impacted groundwater for public drinking water purposes.

Comment. Section 25395.94(a)(2) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.101 (amended). Effect of article

SEC. __. Section 25395.101 of the Health and Safety Code is amended to read:

25395.101. (a) Except as expressly provided in this article, this article does not affect the authority of an agency to issue an order or take any other action under any provision of law to protect public health and safety or the environment.

(b) Except as otherwise expressly provided in this article, this article does not affect the authority of the agency or any other public agency to pursue any existing legal, equitable, or administrative remedies pursuant to state or federal law.

(c) Except as otherwise expressly provided in this article, ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 does not apply to this article.

(d) If a local agency determines that, due to an emergency, it is necessary to gain access to a site that is the subject of a finding of no further action or a certificate of completion, the person who has obtained immunity pursuant to this chapter with regard to that site shall allow the local agency access to the site to take any action necessary to mitigate that emergency, or take any other necessary response action. However, that person shall not be required to pay for, or undertake, any of those actions taken by or required by the local agency, unless the person caused or contributed to the release at the site that constituted the emergency.

Comment. Section 25395.101 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.104 (amended). Immunities for bona fide ground tenant

SEC. __. Section 25395.104 of the Health and Safety Code is amended to read:

25395.104. (a) Except as otherwise provided in this section, a bona fide ground tenant shall qualify for the following immunities:

(1) The bona fide ground tenant shall not be liable under any applicable statute for a claim made by a person, other than an agency, for response costs or other relief associated with a release or threatened release of a hazardous material at the site once the bona fide ground tenant obtains a certification pursuant to subdivision (b) or (c) that the immunity provided by this section has attached.

(2)(A) Except as provided in subparagraph (B), an agency shall not, subsequent to the date of the agreement, take any action under any applicable statute to require a bona fide ground tenant to take a response action on account of a release or threatened release of a hazardous material at a site.

(B) The agency that entered into the agreement pursuant to this article may take action under any applicable statute to enforce the conditions imposed on the bona fide ground tenant pursuant to the agreement.

(b) Except as provided in subparagraph (B) of paragraph (2) of subdivision (a), the immunity provided in this section shall attach to a bona fide ground tenant once the agency certifies in writing that all of the following have occurred:

(1) A site assessment has been completed sufficient for the agency to determine the remedial measures necessary to allow the site to be used for its intended purposes without unreasonable risk to the human health and safety of the intended site occupants.

(2) Except for site monitoring, reporting, institutional controls, operation and maintenance activities, and other ongoing obligations of the bona fide ground tenant, if any, the portion of the site investigation and the response plan necessary to allow the site to be used for its intended purposes without unreasonable risk to the human health and safety of the intended site occupants, including any confirmation sampling required by the agency to confirm that this standard has been met, has been implemented to the agency's satisfaction.

(3) To the extent required in the agreement entered into pursuant to this article, all wells, piping, extraction systems, or similar materials or equipment required for the conduct of remediation efforts to be performed by a person other than the bona fide ground tenant have either been installed to the agency's satisfaction or have been accounted for to the agency's satisfaction in site development plans and specifications.

(4) If applicable, an instrument that restricts or imposes obligations on the present of future uses or activities on the site has been executed and recorded pursuant to Section 1471 of the Civil Code.

(c) A party to an agreement pursuant to this article may request the agency to issue a written certification confirming that the conditions stated in subdivision (b) have been met and that the immunity provided for in this section is in effect. The agency shall provide this certification within 60 days of the date it finds that the conditions stated in subdivision (b) have been met.

(d) The agency that issued a certification pursuant to subdivision (c) may withdraw that certification if it first provides reasonable notice and opportunity for the bona fide ground tenant to take action to prevent the withdrawal, and subsequent to the notice and cure opportunity makes any of the following findings:

(1) A material deviation from those requirements applicable to the bona fide ground tenant under the agreement entered into pursuant to this article that has not been approved by the agency exists and continues to exist subsequent to the notice and cure period.

(2) The bona fide ground tenant induced the agency to issue the certification by fraud, or intentional nondisclosure or misrepresentation.

(e) Upon the agency's certification pursuant to subdivision (c), the immunity provided in this section extends to all of the following:

(1) The bona fide ground tenant and any successor who demonstrates to the agency that the person meets the qualifying conditions of subdivision (b) of Section 25395.102 and subdivisions (c), (d), (e), and (f) of Section 25395.80 and who assumes the bona fide ground tenant's obligations of any agreement entered into pursuant to this article.

(2) A person who provides financing to a person specified in paragraph (1).

(f) The immunity provided in this section does not extend to, and may not be transferred to, a person who was a responsible party, as that term is defined in Section ~~25323.5~~ 78145 for the release at the site prior to acquiring an interest in the site from the bona fide ground tenant or providing financing as specified in paragraph (3) of subdivision (e).

(g) The immunity provided in this section shall be in addition to any other immunity provided by law.

(h) This section shall not modify or limit the existing authority of a state or local agency to impose a condition on the issuance of a discretionary permit relating to the development, use, or occupancy of a site.

(i) This section shall not relieve a bona fide ground tenant from reporting, disclosure, and notification requirements under any applicable statute.

(j) The entry into an agreement pursuant to this article shall not constitute an admission of any fact or liability or conclusion of law for any purpose or proceeding and a person who enters into an agreement under this article shall not be deemed liable under any other provision of law solely by reason of entering into the agreement.

(k) If the use of the property changes, after a response plan is approved, to a use that requires a higher level of protection, the agency may require the preparation and implementation of a new response plan pursuant to this article.

(*l*) A bona fide ground tenant that purchases a site subsequent to leasing, or taking an easement in the site, may convert its status to that of a bona fide purchaser pursuant to Article 6 (commencing with Section 25395.90) if the bona fide ground tenant otherwise meets the requirements of Section 25395.69 and Article 6 (commencing with Section 25395.90). Upon the conversion, the bona fide ground tenant shall qualify for any and all immunities available to a bona fide purchaser under this chapter.

(m) If the response plan relies on the use of institutional or engineering controls to make the site suitable for its intended purposes without unreasonable risk to the human health and safety of the intended occupants of the site, the bona fide ground tenant seeking immunity shall provide any applicable financial assurances, using financial assurance guidelines and mechanisms approved by a board, department, or organization of the California Environmental Protection Agency; periodic reports as required by the agency to demonstrate that there remains no unreasonable risk to the human health and safety of the intended occupants. The bona fide ground tenant shall not make any change in use of the site that is inconsistent with any land use control recorded for the site unless the change is approved by the agency pursuant to Sections 25233 and 25234 or, in the case of the board or a regional board, substantially similar procedures.

Comment. Section 25395.104(f) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25395.117 (amended). Database and website requirements

SEC. __. Section 25395.117 of the Health and Safety Code is amended to read:

25395.117. (a) On or before January 1, 2006, the agency and the California Environmental Protection Agency shall implement the requirements imposed by this section.

(b) The department shall revise and upgrade the department's database systems, including the list of hazardous substances release sites adopted pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78000) of Chapter 4 of Part 2 of Division 45 and the information sent to the agency pursuant to Section 65962.5 of the Government Code, to enable compatibility with existing databases of the board, including the GIS mapping system established pursuant to Section 25299.97. The department shall also install improvements to the database systems to maintain and display information that includes the number of brownfield sites, each brownfield site's location, acreage, response action, site assessments, and the number of orphan sites where the department is overseeing the response action.

(c) The California Environmental Protection Agency, the department, the regional boards, and the board shall expand their respective Web sites to allow access to information about brownfield sites and other response action sites through a single Web site portal.

Comment. Section 25395.117 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25400.12 (amended). Definitions for terms not defined by this article

SEC. __. Section 25400.12 of the Health and Safety Code is amended to read:

25400.12. Any term not defined expressly by this article shall have the same meaning as defined in ~~Chapter 6.8 (commencing with Section 25300).~~ Part 2 (commencing with Section 78000) of Division 45.

Comment. Section 25400.12 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25403 (amended). Definitions

SEC. __. Section 25403 of the Health and Safety Code is amended to read:

25403. For purposes of this chapter, the following terms shall have the following meanings:

(a) "Blighted area" means an area in which the local agency determines there are vacancies, abandonment of property, or a reduction or lack of proper utilization of property, and the presence or perceived presence of a release or releases of hazardous material contributes to the vacancies, abandonment of property, or reduction or lack of proper utilization of property.

(b) "Blighted property" means property with the presence or perceived presence of a release or releases of hazardous material that contributes to the vacancies, abandonment of property, or reduction or lack of proper utilization of property.

(c) "Clean up" or "cleanup" means an action taken to remove, as defined in Section ~~25323,~~ 78135, remediate, as described in subdivision (a) or (b) of Section ~~25322,~~ 78125, or otherwise abate the effects of a release of hazardous material.

(d) "Cleanup plan" means a document that details the actions to be taken to clean up a release of a hazardous material.

(e) "CUPA" means the Certified Unified Program Agency certified to implement the unified program pursuant to Chapter 6.11 (commencing with Section 25404).

(f) "Department" means the Department of Toxic Substances Control.

(g) "Designated agency" means an agency designated by the local agency pursuant to paragraph (1) or (2) of subdivision (e) of Section 25403.1.

(h) "Director" means the Director of Toxic Substances Control.

(i) "Hazardous material" has the same meaning as defined in subdivision (d) of Section 25260.

(j) "Investigation" means an action taken to determine the source, nature, and extent of a release of hazardous material with sufficient detail to provide a reasonable basis for decisions regarding the cleanup of the hazardous material. An investigation does not include a Phase I or Phase II environmental site assessment.

(k) "Investigation plan" means a document that specifies actions to be taken to investigate a suspected release of hazardous material. An investigation plan does not include a Phase I or Phase II environmental site assessment.

(*l*) "Local agency" means both of the following:

(1) A county, a city, or a city and county.

(2) A "housing authority," as provided in Section 34240, if the housing authority is an entity assuming the housing functions of a former redevelopment agency pursuant to paragraph (2) of subdivision (a) of Section 34176 and the property subject to this chapter was transferred from that successor agency to the housing authority.

(m) "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. "Person" also includes any local agency, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

(n) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been, or may have been, a release of hazardous material based on reasonable available information about the property and general vicinity. A Phase I environmental assessment shall meet the most current requirements adopted by the American Society for Testing and Materials (ASTM) for Standard Practice for Environmental Site Assessment: Phase I

Environmental Site Assessment Process or meet the requirements of Part 312 (commencing with Section 312.1) of Title 40 of the Code of Federal Regulations.

(*o*) "Phase II environmental assessment" means an intrusive study where actual physical environmental samples are collected and analyzed to characterize the type and distribution of hazardous material in the environment. A phase II environmental assessment shall meet the most current requirements adopted by the American Society for Testing and Materials (ASTM) for Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process.

(p) "Qualified independent contractor" means an independent contractor who is any of the following:

(1) An engineering geologist who is certified pursuant to Section 7842 of the Business and Professions Code.

(2) A geologist who is registered pursuant to Section 7850 of the Business and Professions Code.

(3) A civil engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(q) "Regional board" means a California regional water quality control board.

(r) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment on blighted property.

(s) "Responsible party" means a person described in subdivision (a) of Section ~~25323.5~~ 78145 of this code or subdivision (a) of Section 13304 of the Water Code.

(t) "Site designation committee" means the committee established pursuant to Section 25261.

(u) "State board" means the State Water Resources Control Board.

Comment. Subdivisions (c) and (s) of Section 25403 are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25403.1 (amended). Local agency action to address release affecting blighted property

SEC. __. Section 25403.1 of the Health and Safety Code is amended to read:

25403.1. (a)(1)(A) A local agency may, in accordance with this chapter, take any action that the local agency determines is necessary and that is consistent with other state and federal laws to investigate or clean up a release on, under, or from blighted property that the local agency has found to be within a blighted area within the local agency's boundaries due to the presence of hazardous materials following a Phase I or Phase II environmental assessment pursuant to subdivision (f), whether the local agency owns that property or not. When taking action pursuant to this chapter, if the local agency does not own property that is the subject of the investigation and cleanup activities, the local agency has the right to enter that property, if, upon providing notice to the owner of that property in accordance with subparagraph (A)

of paragraph (2) of subdivision (b), the owner of the property does not respond to the notice or the local agency reasonably deems the response inadequate.

(B) The local agency shall contact the department or the appropriate regional board prior to issuing a notice pursuant to paragraph (2) of subdivision (b) in connection with a property on the National Priority List or a property or release subject to any of the following:

(i) Chapter 6.5 (commencing with Section 25100).

(ii) A Cease and Desist Order issued under Section 13301 of the Water Code.

(iii) A Cleanup and Abatement Order issued under Section 13304 of the Water Code.

(iv) An existing voluntary cleanup agreement between the regional board or the department and a responsible party that requires a cleanup by a specified date.

(v) An order issued by a regional board pursuant to Section 13267 of the Water Code, or an agreement entered into by the department pursuant to Article 1 (commencing with Section 78650) of Chapter 4 of Part 2 of Division 45 or Section 25187, ~~25355.5, or 25358.3,~~ 78870, or 79055, for the investigation or cleanup at a site.

(vi) A remedial action order, an imminent or substantial endangerment order or agreement, a prospective purchase agreement, or an order on consent issued pursuant to Section ~~25355.5, 25356.1.3, or 25358.3,~~ 78660, 78870, 79020, or 79055, as applicable.

(vii) An expedited remediation order issued pursuant to the former Chapter 6.86 (commencing with Section 25396), as that chapter read on January 1, 2012.

(viii) An agreement entered into pursuant to the California Land Reuse and Revitalization Act (Chapter 6.82 (commencing with Section 25395.60)), as specified in Section 25395.92.

(ix) An agreement for the environmental oversight of schools entered into pursuant to Section 17213.1 of the Education Code and in accordance with Sections 17201 and 17210.1 of the Education Code.

(C)(i) If the department or the regional board objects within 30 days to the local agency issuing the notice, the local agency and the department or regional board shall promptly meet and confer to resolve the department's or regional board's concerns. If the local agency and the department or the regional board cannot reach a mutually acceptable resolution on sites identified in clause (iv) of subparagraph (B) of paragraph (1), the matter shall be submitted to the site designation committee created pursuant to Section 25261.

(ii) Notwithstanding subdivision (a) of Section 25261, the designee of the department or the regional board on the site designation committee shall not participate in the review of a dispute involving the department or a regional board, respectively. The decision of the site designation committee shall resolve the matter impartially, by majority vote, and within 45 days of the date on which the matter is presented. Either party to the dispute may present the matter to the site designation committee, and each party shall be given a reasonable opportunity to be heard.

(2) A local agency shall, before taking action to clean up the release, do all of the following:

(A) If the investigation has not been completed or additional investigation is necessary, have an investigation plan prepared by an independent qualified contractor.

(B) Submit an investigation plan and cost recovery agreement to the regional board or the department for review and approval.

(C) After completion of the investigation plan, have a cleanup plan prepared by an independent qualified contractor.

(D) Submit a cleanup plan and existing applicable documents required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) to the regional board or to the department for approval.

(E) Comply with the public participation requirements specified in Section 25403.7.

(3) The regional board or the department shall act on the investigation plan within 30 days of receipt of the investigation plan.

(4) The regional board or the department shall respond to the local agency's request for approval of a cleanup plan within 60 days of the receipt of the plan.

(5) Within 60 days after approval of the cleanup plan, pursuant to applicable statutes and regulations, the director or the regional board, as appropriate, shall acknowledge, in writing, that upon proper completion of the cleanup in accordance with the cleanup plan, the immunity provided by Section 25403.2 shall apply.

(6) The local agency shall notify the department and local health and building departments and the regional board of any cleanup activity pursuant to this section at least 30 days before the commencement of the activity.

(7) If an action taken by a local agency or a responsible party to clean up a release of a hazardous material does not meet, or is not consistent with, a cleanup plan approved by the regional board or the department, the department or the regional board that approved the cleanup plan may require the responsible party or local agency to take, or cause the taking of, additional action to clean up the release, as provided by applicable law.

(8) If an administering agency for the site has been designated pursuant to Section 25262, the department or the regional board may impose any requirements for additional action pursuant to paragraph (7) only as provided in Sections 26263 and 25265.

(9) If methane or landfill gas is present, the local agency shall obtain written approval from the Department of Resources Recycling and Recovery prior to taking action authorized under this subdivision.

(b) Except as provided in subdivision (c), a local agency may take the actions specified in subdivision (a) only under one of the following conditions:

(1) There is no responsible party for the release identified by the local agency.

(2) Both of the following apply:

(A) A party determined by the local agency to be a responsible party for the release has been notified by the local agency, or has received adequate notice from the department, a regional board, the California Environmental Protection Agency, or other governmental agency with relevant authority, and has been given 60 days to respond and to propose an investigation plan and schedule if in the opinion of the responsible party's qualified independent contractor there is not enough site-specific data to prepare a cleanup plan, and 60 days to propose a cleanup plan and schedule following completion of the investigation plan in accordance with the investigation plan schedule approved by the local agency.

(B) The responsible party specified in subparagraph (A) has not agreed within an additional 60 days to implement an investigation plan and schedule to investigate or clean up the release that meets both of the following requirements:

(i) The investigation plan and schedule and the cleanup plan and schedule are acceptable to the local agency.

(ii) The local agency makes a finding that the investigation plan and schedule and the cleanup plan and schedule are consistent with the intended development schedule and use of the property.

(3)(A) The party determined by the local agency to be the responsible party for the hazardous material release entered into an agreement with the local agency to prepare an investigation plan or cleanup plan for approval by the department, the regional board, or the appropriate local agency, and to implement the investigation plan or cleanup plan in accordance with an agreed schedule, but failed to do any of the following:

(i) Prepare the investigation plan or cleanup plan.

(ii) Implement the investigation plan or cleanup plan in accordance with the agreed schedule.

(iii) Otherwise failed to carry out the investigation in an appropriate and timely manner.

(B) An action taken by the local agency pursuant to this paragraph shall be consistent with any agreement between the local agency and the responsible party and with the requirements of the state agency or the designated agency that approved or will approve the cleanup plan and is overseeing or will oversee the preparation and implementation of the cleanup plan.

(c) The responsible party specified in subparagraph (A) of paragraph (2) of subdivision (b) may appeal a 60-day notice issued pursuant to this section to the local agency's governing body by filing a written request to appeal the notice with the clerk of the local agency within 30 days of receipt of the notice. Filing an appeal to the local agency's governing body tolls the 60-day notice period until the appeal is heard and decided by the local agency's governing body. Any challenge to the decision reached by the local agency's governing body shall be presented only as part of a cost recovery or injunctive proceeding initiated by the local agency under Section 25403.5. The local agency's decision shall be upheld if supported by substantial evidence presented in the action commenced under Section 25403.5, and

shall not be invalidated on the grounds that the local agency failed to include all responsible parties in a 60-day notice issued pursuant to this section. A claim of failure to include all responsible parties in a 60-day notice issued pursuant to this section shall not be a defense to the liability provided for in Section 25403.5.

(d) Subdivision (b) does not apply to either of the following:

(1) A local agency taking actions to conduct a Phase I or Phase II environmental assessment in accordance with standard real estate practices.

(2) A local agency taking the actions specified in subdivision (a) if the local agency determines that conditions require immediate action due to an imminent threat to human health or the environment.

(e)(1) A local agency may designate another agency, in lieu of the department or the regional board, to review and approve a cleanup plan and to oversee the cleanup of hazardous materials from a specific hazardous material release site if the agency is designated as the administering agency under Section 25262. In that event, the designated agency shall conduct the oversight of the cleanup in accordance with Chapter 6.65 (commencing with Section 25260), and all provisions of that chapter shall apply to the cleanup.

(2) A local agency may designate another agency to review and approve a cleanup plan for a site and oversee the cleanup at the site if all of the following conditions exist:

(A) The designated agency is certified as a CUPA.

(B) The site is an underground storage tank site subject to Chapter 6.7 (commencing with Section 25280).

(C) The designated agency is certified pursuant to Section 25297.01 and the state board has entered into an agreement with the designated agency pursuant to Section 25297.1.

(D) The designated agency determines that the site is within the guidelines and protocols established in, and pursuant to, the agreement specified in subparagraph (C).

(E) The designated agency consents to the designation.

(3) Within 60 days after approving a cleanup plan pursuant to paragraph (1) or (2), the designated agency shall issue a notice that, upon proper completion of the cleanup plan, the immunity specified in Section 25403.2 shall apply. If the designated agency was formed by the local agency, the cleanup plan shall also be subject to the approval of the department or regional board.

(4)(A) An agency may not consent to the designation pursuant to paragraph (1) or (2) unless the designated agency determines that it has adequate staff resources and the requisite technical expertise and capabilities available to adequately supervise the cleanup.

(B) If an agency has been designated pursuant to paragraph (2), the department or a regional board may require the designated agency to withdraw from the designation or stop taking action pursuant to that designation, after providing the designated agency with adequate notice, if both of the following conditions are met:

(i) The department or a regional board determines that the agency's designation was not consistent with paragraph (2), or makes one of the findings specified in subdivision (d) of Section 101480.

(ii) The department or a regional board determines that it has adequate staff resources and capabilities available to adequately supervise the cleanup, and assumes that responsibility.

(C) This paragraph does not prevent a regional board from taking an action pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(5) If an agency has been designated pursuant to paragraph (1) or (2), the designated agency may, after providing the local agency with adequate notice, withdraw from its designation or stop taking action pursuant to that designation after making one of the findings specified in subdivision (d) of Section 101480.

(f)(1) To facilitate remedial planning, the local agency may require the owner or operator of a site within the local agency's jurisdictional boundaries to provide the local agency with all existing environmental information pertaining to the site, including the results of any phase I or subsequent environmental assessment, any assessment conducted pursuant to an order from, or agreement with, any federal, state, or local agency, and any other environmental assessment information, except that which is determined to be privileged.

(2) A person requested to furnish the information pursuant to paragraph (1) shall be required only to furnish that information that may be within that person's possession or control, including actual knowledge of information within the possession or control of any other party. If environmental assessment information is not available, the local agency may require the owner of the property to conduct, and to pay the expenses of conducting, an assessment in accordance with standard real estate practices for conducting phase I or phase II environmental assessments. If the local agency conducts the phase I or phase II environmental assessment because the owner or operator failed to provide this information, the local agency shall have a right of entry, upon reasonable notice, to enter the property and conduct the phase I or phase II environmental assessment. The local agency may recover the costs of the phase I or phase II environmental assessment in accordance with Section 25403.5.

Comment. Section 25403.1(a)(1)(B)(v) and (vi) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25403.2 (amended). Liability of local agency for release addressed by completed action

SEC. __. Section 25403.2 of the Health and Safety Code is amended to read:

25403.2. (a)(1) Notwithstanding any other law, except as otherwise provided in this chapter, a local agency that undertakes and completes an action, or causes another person to undertake and complete an action pursuant to Section 25403.1 for which a finding of completion is made pursuant to subdivision (b), to clean up a

hazardous material release on, under, or from property within the local agency's boundaries, in accordance with a cleanup plan prepared by a qualified independent contractor and approved by the department, a regional board, or the designated agency, in accordance with Section 25403.1, is not liable, with respect to that release only, pursuant to any of the following:

(A) Division 7 (commencing with Section 13000) of the Water Code.

(B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), or Chapter 6.75 (commencing with Section 25299.10), ~~or Chapter 6.8 (commencing with Section 25300),~~ of Division ~~20.~~ 20, or Part 2 (commencing with Section 78000) of Division 45.

(C) Any other state or local law imposing liability for cleanup of releases of hazardous materials.

(2) If the cleanup was also performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and a certificate of completion is issued pursuant to subdivision (b) of Section 25264, the immunity from local agency action provided by the certificate of completion, as specified in subdivision (c) of Section 25264, shall apply to the local agency, in addition to the immunity conferred by this section.

(3) In the case of a cleanup performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and for which the administering agency is a local agency, the limitations on the certificate of completion set forth in paragraphs (1) to (6), inclusive, of subdivision (c) of Section 25264 are limits on any immunity provided for by this section and subdivision (c) of Section 25264.

(b) Notwithstanding any provision of law or policy providing for certification by a person conducting a cleanup that the action has been properly completed, a determination that a cleanup has been properly completed pursuant to this section shall be made only upon the affirmative approval of the director, the regional board, or the designated agency, as appropriate. The department or regional board, as appropriate, shall, within 60 days of the date it finds that a cleanup has been completed, notify the local agency in writing that the immunity provided by this section is in effect. If another agency is designated to oversee the cleanup pursuant to paragraph (1) or (2) of subdivision (d) of Section 25403.1, the designated agency shall issue a notice within 60 days of the date it finds that a cleanup has been completed.

(c) Upon proper completion of a cleanup, as specified in subdivision (b), the immunity from action provided by the certificate of completion provided pursuant to subdivision (c) of Section 25264 and the immunity provided by this section extends to all of the following, but only for the release or releases specifically identified in the approved cleanup plan and not for any subsequent release or any release not specifically identified in the approved cleanup plan:

(1) An employee or agent of the local agency, including an instrumentality of the local agency authorized to exercise some, or all, of the powers of a local agency within, or for the benefit of, a local agency and an employee or agent of the instrumentality.

(2) A person that enters into an agreement with a local agency for the development of property, if the agreement requires the person to acquire property affected by a hazardous material release or to clean up a hazardous material release with respect to that property.

(3) A person that acquires the property after a person has entered into an agreement with a local agency for development of the property, as described in paragraph (2).

(4) A person that provides financing to a person specified in paragraph (2) or (3).

(d) Notwithstanding any other law, the immunity provided by this section does not extend to any of the following:

(1) A person that was a responsible party for the release before entering into an agreement, acquiring property, or providing financing, as specified in subdivision (c).

(2) A person specified in subdivision (a) or (c) for any subsequent release of a hazardous material or any release of a hazardous material not specifically identified in the approved cleanup plan.

(3) A contractor who prepares the cleanup plan or conducts the cleanup.

(4) A person that obtains an approval of a cleanup plan pursuant to Section 25403.1, or pursuant to a finding, as specified in subdivision (b), by fraud, negligent or intentional nondisclosure, or misrepresentation, and a person that knows before the approval or determination is obtained or before the person enters into an agreement, acquires the property, or provides financing, as specified in subdivision (c), that the approval or determination was obtained by these means.

(e) The immunity provided by this section is in addition to any other immunity provided by law to a local agency.

(f) This section does not impair any cause of action by a local agency or any other party against the person responsible for the hazardous material release that is the subject of the cleanup taken by the local agency or other person immune from liability pursuant to this section.

(g) This section does not apply to, or limit, alter, or restrict, an action for personal injury or wrongful death.

(h) This section does not limit liability of a person described in paragraph (3) or (4) of subdivision (d) for damages under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(i) This section does not establish, limit, or affect the liability of a local agency for a release of a hazardous material that is not investigated or cleaned up pursuant to this section or Chapter 6.65 (commencing with Section 25260).

Comment. Section 25403.2(a)(1)(B) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25403.5 (amended). Local agency cost recovery

SEC. __. Section 25403.5 of the Health and Safety Code is amended to read:

25403.5. (a) Except as otherwise provided in this chapter, if a local agency undertakes action to investigate property or clean up, or to require others to investigate or clean up, including compelling a responsible party through a civil injunctive action, a release of hazardous material, the responsible party shall be liable to the local agency for the costs incurred in the action. A local agency may not recover the costs of goods and services that were not procured in accordance with procurement procedures, where applicable. The amount of the costs shall include the interest on the costs accrued from the date of expenditure and reasonable attorney's fees and shall be recoverable in a civil action. Interest shall be calculated based on the average annual rate of return on a local agency's investment of surplus funds for the fiscal year in which costs were incurred.

(b) The only defenses available to a responsible party shall be the defenses specified in subdivision (b) of Section ~~25323.5.~~ 78145.

(c) A local agency may recover any costs incurred to develop and to implement a cleanup plan approved pursuant to this chapter, to the same extent the department is authorized to recover those costs. The scope and standard of liability for cost recovery pursuant to this section shall be the scope and standard of liability under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to the department. However, any reference to hazardous substance in that act shall be deemed to refer to hazardous material as defined in Section 25403. It is the intent of the Legislature that local agencies diligently pursue reimbursement for investigation and cleanup costs incurred pursuant to this chapter, but each local agency is authorized to assess whether and to what extent cost recovery is practicable.

(d) An action for recovery of the costs of a cleanup undertaken by a local agency under this section shall be commenced within three years after completion of the cleanup.

(e) The action to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a local agency.

Comment. Section 25403.5(b) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25404 (amended). Unified program general provisions

SEC. __. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1)(A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 to 25404.2, inclusive. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with a requirement or condition of an applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation, as provided in Section 25110.8.5.

(G) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) "Secretary" means the Secretary for Environmental Protection.

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and permit or authorization requirements under a local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the California Fire Code or the California Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements and, to the maximum extent feasible within statutory constraints, shall ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1)(A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant to that chapter, that are applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(iv) Persons operating a collection location that has been established under an architectural paint stewardship plan approved by the Department of Resources Recycling and Recovery pursuant to the architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code.

(v) A transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, that is operated by a door-to-door household hazardous waste collection program or household hazardous waste residential pickup service, as defined in subdivision (c) of Section 25218.1.

(vi) Persons who receive used oil from consumers pursuant to Section 25250.11.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1,

with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to ~~Chapter 6.8 (commencing with Section 25300) or~~ former Chapter 6.85 (commencing with Section 25396)~~.~~ of this division or Part 2 (commencing with Section 78000) of Division 45.

(iii) A remedial action plan approved pursuant to ~~Chapter 6.8 (commencing with Section 25300) or~~ former Chapter 6.85 (commencing with Section 25396)~~.~~ of this division or Part 2 (commencing with Section 78000) of Division 45.

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant to that chapter, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(3)(A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program shall not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program shall not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements for the hazardous materials plan and hazardous materials inventory statement of the California Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified

program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e)(1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c).

(2)(A) The secretary shall establish a statewide information management system capable of receiving all data collected by the unified program agencies and reported by regulated businesses pursuant to this subdivision, in a manner that is most cost efficient and effective for both the regulated businesses and state and local agencies. The secretary shall prescribe an XML or other compatible web-based format for the transfer of data from CUPAs and regulated businesses and make all nonconfidential data available on the internet.

(B) The secretary shall establish milestones to measure the implementation of the statewide information management system and shall provide periodic status updates to interested parties.

(3)(A)(i) Except as provided in subparagraph (B), in addition to any other funding that becomes available, the secretary shall increase the oversight surcharge provided for in subdivision (b) of Section 25404.5 by an amount necessary to meet the requirements of this subdivision for a period of three years, to establish the statewide information management system, consistent with paragraph (2). The increase in the oversight surcharge shall not exceed twenty-five dollars ($25) in any one year of the three-year period. The secretary shall thereafter maintain the statewide information management system, funded by the assessment the secretary is authorized to impose pursuant to Section 25404.5.

(ii) No less than 75 percent of the additional funding raised pursuant to clause (i) shall be provided to CUPAs and PAs through grant funds or statewide contract services, in the amounts determined by the secretary to assist these local agencies in meeting these information management system requirements.

(B) A facility that is owned or operated by the federal government and that is subject to the unified program shall pay the surcharge required by this paragraph to the extent authorized by federal law.

(C) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) No later than three years after the statewide information management system is established, each CUPA, PA, and regulated business shall report program data electronically. The secretary shall work with the CUPAs to develop a phase-in schedule for the electronic collection and submittal of information to be included in the statewide information management system, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the

California Emergency Management Agency, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency.

(5) The secretary, in collaboration with the CUPAs, shall provide technical assistance to regulated businesses to comply with the electronic reporting requirements and may expend funds identified in clause (i) of subparagraph (A) of paragraph (3) for that purpose.

Comment. Section 25404(c)(1)(B)(ii) and (iii) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25404.1 (amended). Agency responsibilities and certification for unified program

SEC. __. Section 25404.1 of the Health and Safety Code is amended to read:

25404.1. (a)(1) All aspects of the unified program related to the adoption and interpretation of statewide standards and requirements shall be the responsibility of the state agency which is charged with that responsibility under existing law. For underground storage tanks, that agency shall be the State Water Resources Control Board. The California regional water quality control boards shall have responsibility for the issuance of variances pursuant to subdivision (b) of Section 25299.4. The Department of Toxic Substances Control shall have the sole responsibility for the issuances of variances from the requirements of Chapter 6.5 (commencing with Section 25100) and the regulations adopted pursuant thereto, for the determination of whether or not a waste is hazardous or nonhazardous, for the determination of whether or not a person is eligible to be deemed to be operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, and for the suspension and revocation of permits-by-rule, conditional authorizations, and conditional exemptions.

(2) Except as provided in paragraphs (1) and (3), those aspects of the unified program related to the application of statewide standards to particular facilities, including the issuance of unified program facility permits, the review of reports and plans, environmental assessment, compliance and correction, and the enforcement of those standards and requirements against particular facilities, shall be the responsibility of the unified program agencies.

(3)(A) Except in those jurisdictions for which the UPA has been determined by the department, in accordance with regulations adopted pursuant to subparagraph (C), to be qualified to implement the environmental assessment and removal and remediation corrective action aspects of the unified program, the department shall have sole responsibility and authority under the unified program for all of the following:

(i) Implementing and enforcing the requirements of paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25200.10 and 25200.14, and the regulations adopted by the department to implement those sections. As a pilot program in up to

10 counties, pending the adoption and implementation of regulations pursuant to subparagraph (C), the department may delegate to the CUPA, through a delegation agreement, responsibility and authority for implementing and enforcing the requirements of Section 25200.14.

(ii) The issuance of orders under Section 25187 requiring removal or remedial action.

(iii) The issuance of orders under Section 25187.1.

(B) Notwithstanding subparagraph (A), a UPA may issue an order under Section 25187 specifying a schedule for compliance or correction and imposing an administrative penalty for any violation of the requirements of Chapter 6.5 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of Section 25404, or the requirements of any permit, rule, regulation, standard or requirement issued or adopted pursuant to the requirements of Chapter 6.5 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of Section 25404, if one of the following applies:

(i) The order does not require removal or remedial action.

(ii) The only removal or remedial actions required by the order are those actions determined to be necessary to address an imminent and substantial endangerment based upon a finding by the UPA pursuant to subdivision (f) of Section 25187.

(C) The department shall adopt emergency regulations specifying the criteria and procedures for implementing paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25200.10 and 25200.14, including criteria and procedures for determining whether or not a unified program agency is qualified to implement the environmental assessment and removal and remediation corrective action portions of the unified program under paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and 25200.14. The criteria for determining whether a unified program agency is qualified shall, at a minimum, include consideration of the following factors:

(i) Adequacy of the technical expertise possessed by the unified program agency.

(ii) Adequacy of staff resources.

(iii) Adequacy of budget resources and funding mechanisms.

(iv) Training requirements.

(v) Past performance in implementing and enforcing requirements related to environmental assessments, and removal and remediation corrective actions.

(vi) Recordkeeping and accounting systems.

(D) The regulations adopted by the department pursuant to subparagraph (C) shall include provisions to ensure coordinated and consistent application of paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and 25200.14, when both the department and the unified program agency are, or will be, implementing and enforcing the requirements of one or more of these sections at the same facility.

(E) For purposes of subparagraph (D), "facility" means the entire site that is under the control of the owner or operator.

(F) If the department is designated as a unified program agency, the department is deemed qualified to implement all of the following:

(i) The environmental assessment, removal and remedial action, and corrective action aspects of the unified program.

(ii) Paragraph (3) of subdivision (c) of Section ~~25300.3,~~ 25200.3, Sections 25200.10, 25200.14, 25187, and 25287.1, and the regulations adopted by the department to implement those provisions.

(b)(1) On or before January 1, 1996, each county shall apply to the secretary to be certified as a unified program agency to implement the unified program within the unincorporated area of the county and within each city in the county, in which area or city, as of January 1, 1996, the city or other local agency has not applied to be the certified unified program agency.

(2)(A) Any city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to Section 25502, or which has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, may apply to the secretary to become the certified unified program agency to implement the unified program within the jurisdictional boundaries of the city or local agency.

(B) A city or other local agency which, as of December 31, 1995, has not been designated as an administering agency pursuant to Section 25502, or which has not assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, may apply to the secretary to become the certified unified program agency within the jurisdictional boundaries of the city or local agency if it enters into an agreement with the county to become the certified unified program agency within those boundaries. A county shall not refuse to enter into an agreement unless it specifies in writing its reasons for failing to enter into the agreement. However, if the city does not enter into the agreement with the county, within 30 days of receiving a county's reasons for failing to enter into agreement, a city may request that the secretary allow it to apply to be a certified unified program agency and the secretary may, in ~~his or her~~ the secretary's discretion, approve the request.

(3) A city, county, or other local agency may propose, in its application for certification to the secretary, to allow other public agencies to implement certain elements of the unified program, but the secretary shall accept that proposal only if the secretary makes the findings specified in subdivision (d) of Section 25404.3.

(4) If a city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to Section 25502, or has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, requests that the county propose in its application for certification to the secretary that the city or local agency implement, within the jurisdictional boundaries of the city or local agency, those elements of the unified program which, as of December 31, 1995, the city or local agency has authority to administer, the county shall grant that request. If ~~such~~ an agency described in this

paragraph is subsequently removed or withdraws from the unified program, the agency shall not act as an administering agency under Section 25502 or act as a local agency pursuant to Chapter 6.7 (commencing with Section 25280), except as provided in subdivision (c) of Section 25283.

Comment. Section 25404.1(a)(3)(F)(ii) is amended to correct an erroneous cross-reference to "Section 25300.3." This cross-reference was corrected to refer to "Section 25200.3."

This section is also amended to eliminate gendered pronouns and to make technical changes.

Health & Safety Code § 25411 (amended). Definitions

SEC. __. Section 25411 of the Health and Safety Code is amended to read:

25411. As used in this chapter:

(a) ~~"Agency" means the Environmental Affairs Agency.~~

~~(b)~~ "Handle" means to use, generate, process, produce, package, treat, store, or dispose of a hazardous material in any fashion.

~~(c)~~ (b) "Hazardous material" means any of the following materials:

(1) A material listed in subdivision (b) of Section 6382 of the Labor Code.

(2) A material defined in Section 25115, 25117, or ~~25316.~~ subdivision (a) of Section 78075.

(3) Any other material which the director determines, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the community.

~~(d)~~ (c) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

~~(e) "Secretary" means the Secretary of the Environmental Affairs Agency.~~

Comment. Section 25411 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to delete obsolete definitions for terms that are not used in the chapter governed by the definitions.

Health & Safety Code § 25416 (amended). Conduct of studies and information programs

SEC. __. Section 25416 of the Health and Safety Code is amended to read:

25416. (a) All studies and community information programs conducted pursuant to this section shall be done only if either subdivision (b) applies or if funds are available without restructuring the department's funding priorities. The department shall conduct these studies and information programs in the following manner:

(1) The department shall, except as provided in subdivision (b), and in conjunction with the local health officer, the State Department of Health Services, and the Office of Environmental Health Hazard Assessment, conduct or contract for epidemiological studies to identify and monitor health effects related to exposure to hazardous materials, as defined in Section 66084 of Title 22 of the California Code of Regulations. A study may be conducted in any area of the state identified by the

department or the local health officer as a site of potential exposure to hazardous materials, including, but not limited to, any of the following areas:

(A) All communities located near hazardous waste disposal facilities.

(B) In all communities containing hazardous substance release sites listed pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 or listed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(C) In all areas around the location of major generators of hazardous waste.

(D) In all other areas identified by local health officers or the State Department of Health Services as possible locations of public exposure to hazardous materials.

(2) The department, in consultation with the State Department of Health Services and the Office of Environmental Health Hazard Assessment, shall determine which epidemiological studies are to be conducted pursuant to this section based on the potential for public exposure to hazardous materials. Studies in areas near Class I hazardous waste disposal facilities, as defined in Section 2531 of Title 23 of the California Code of Regulations, shall be given the highest priority for funding. If a hearing is conducted pursuant to Section 25149 and the hearing officer determines that there is a significant potential for endangerment to the public as a result of the suspected or actual release of a hazardous material, the department shall give priority to conducting an epidemiological study for that facility.

(3) If a local health officer determines that a study should be conducted pursuant to this section because of a potential public exposure to hazardous materials, the local health officer may request that the department initiate or contract for a study pursuant to this section by demonstrating to the department that there is sufficient evidence that justifies the need for a study. The department shall respond to the local health officer's request within 90 days.

(4) A local health officer may contract with qualified persons or firms to produce the epidemiological studies specified in paragraph (1).

(5) The design and methodology of any study conducted pursuant to this section shall be reviewed and approved by the department, the State Department of Health Services, and the Office of Environmental Health Hazard Assessment prior to the initiation of the study.

(6) In any county in which hazardous waste disposal facilities are located and in all other counties in which the State Department of Health Services identifies significant actual or potential public exposure to hazardous materials, the department shall, in conjunction with the local health officer, conduct or contract for a community information program with respect to sites of potential exposure to hazardous materials identified under paragraph (1) to do all of the following:

(A) Organize and conduct educational programs for local physicians and other health professionals on the effects of exposure to hazardous materials and reporting requirements.

(B) Disseminate information to high risk populations on the health effects of exposure to hazardous materials.

(C) Conduct public forums on the health effects of exposure to hazardous substances and methods of limiting exposure.

(7) Paragraph (6) does not apply to hazardous substance release sites listed on the National Priorities List for which the Environmental Protection Agency has assumed lead responsibility for community relations.

(b) If a county is authorized to impose a license tax pursuant to Section 25149.5 for revenue purposes, the department may require the county to provide funding for carrying out epidemiological studies or the community information program concerning the hazardous waste facility subject to the license tax. The department shall provide the county with technical assistance to conduct an epidemiological study pursuant to this subdivision. The department may exempt a county from the requirements of this subdivision if the county demonstrates to the department that the revenue potential from the facility would not be adequate to conduct an epidemiological study or community information program. When considering a county request for an exemption, the department shall consider the regulatory costs and responsibilities of the county related to that facility.

(c) The department shall expend funds from the Toxic Substances Control Account, upon appropriation by the Legislature, to conduct studies and community information programs in counties containing a hazardous substance release site listed pursuant to ~~Section 25356.~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45. The department shall expend funds from the Hazardous Waste Control Account, upon appropriation by the Legislature, to conduct all other studies and community information programs conducted pursuant to this section, except as provided in subdivision (b).

Comment. Section 25416(a)(1)(B) and (c) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25501 (amended). Definitions

SEC. __. Section 25501 of the Health and Safety Code is amended to read:

25501. Unless the context indicates otherwise, the following definitions govern the construction of this article:

(a) "Agricultural handler" means a business operating a farm that is subject to the exemption specified in Section 25507.1.

(b) "Area plan" means a plan established pursuant to Section 25503 by a unified program agency for emergency response to a release or threatened release of a hazardous material within a city or county.

(c) "Business" means all of the following:

(1) An employer, self-employed individual, trust, firm, joint stock company, corporation, partnership, limited liability partnership or company, or other business entity.

(2) A business organized for profit and a nonprofit business.

(3) The federal government, to the extent authorized by law.

(4) An agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

(5) An agency, department, office, board, commission, or bureau of a city, county, or district.

(6) A handler that operates or owns a unified program facility.

(d) "Business plan" means a separate plan for each unified program facility, site, or branch of a business that meets the requirements of Section 25505.

(e)(1) "Certified unified program agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in paragraphs (4) and (5) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) "Unified program agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this article and Article 2 (commencing with Section 25531), the UPAs have the responsibility and authority, to the extent provided by this article and Article 2 (commencing with Section 25531) and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this article and Article 2 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404.

(4) The UPAs also have the responsibility and authority, to the extent provided by this article and Article 2 (commencing with Section 25531) and Sections 25404.1 and 25404.2, to implement and enforce the regulations adopted to implement the requirements of this article and Article 2 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this article and Article 2 (commencing with Section 25531) listed in paragraphs (4) and (5) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA.

(f) "City" includes any city and county.

(g) "Chemical name" means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(h) "Common name" means any designation or identification, such as a code name, code number, trade name, or brand name, used to identify a substance by other than its chemical name.

(i) "Compressed gas" means a material, or mixture of materials, that meets either of the following:

(1) The definition of compressed gas or cryogenic fluid found in the California Fire Code.

(2) Compressed gas that is regulated pursuant to Part 1 (commencing with Section 6300) of Division 5 of the Labor Code.

(j) "Consumer product" means a commodity used for personal, family, or household purposes, or is present in the same form, concentration, and quantity as a product prepackaged for distribution to and use by the general public.

(k) "Emergency response personnel" means a public employee, including, but not limited to, a firefighter or emergency rescue personnel, as defined in Section 245.1 of the Penal Code, or personnel of a local emergency medical services (EMS) agency, as designated pursuant to Section 1797.200, who is responsible for response, mitigation, or recovery activities in a medical, fire, or hazardous material incident, or natural disaster where public health, public safety, or the environment may be impacted.

(*l*) "Handle" means all of the following:

(1)(A) To use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(B) For purposes of subparagraph (A), "store" does not include the storage of hazardous materials incidental to transportation, as defined in Title 49 of the Code of Federal Regulations, with regard to the inventory requirements of Section 25506.

(2)(A) The use or potential use of a quantity of hazardous material by the connection of a marine vessel, tank vehicle, tank car, or container to a system or process for any purpose.

(B) For purposes of subparagraph (A), the use or potential use does not include the immediate transfer to or from an approved atmospheric tank or approved portable tank that is regulated as loading or unloading incidental to transportation by Title 49 of the Code of Federal Regulations.

(m) "Handler" means a business that handles a hazardous material.

(n)(1) "Hazardous material" means a material listed in paragraph (2) that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment, or a material specified in an ordinance adopted pursuant to paragraph (3).

(2) Hazardous materials include all of the following:

(A) A substance or product for which the manufacturer or producer is required to prepare a material safety data sheet pursuant to the Hazardous Substances Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation.

(B) A substance listed as a radioactive material in Appendix B of Part 30 (commencing with Section 30.1) of Title 10 of the Code of Federal Regulations, as maintained and updated by the Nuclear Regulatory Commission.

(C) A substance listed pursuant to Title 49 of the Code of Federal Regulations.

(D) A substance listed in Section 339 of Title 8 of the California Code of Regulations.

(E) A material listed as a hazardous waste, as defined by Sections 25115, 25117, and ~~25316.~~ subdivision (a) of Section 78075.

(3) The governing body of a unified program agency may adopt an ordinance that provides that, within the jurisdiction of the unified program agency, a material not listed in paragraph (2) is a hazardous material for purposes of this article if a handler has a reasonable basis for believing that the material would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment, and requests the governing body of the unified program agency to adopt that ordinance, or if the governing body of the unified program agency has a reasonable basis for believing that the material would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. The handler or the unified program agency shall notify the secretary no later than 30 days after the date an ordinance is adopted pursuant to this paragraph.

(*o*) "Office" means the Office of Emergency Services.

(p) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, unless permitted or authorized by a regulatory agency.

(q) "Retail establishment" means a business that sells consumer products prepackaged for distribution to, and intended for use by, the general public. A retail establishment may include storage areas or storerooms in establishments that are separated from shelves for display areas but maintained within the physical confines of the retail establishments. A retail establishment does not include a pest control dealer, as defined in Section 11407 of the Food and Agricultural Code.

(r) "Secretary" means the Secretary for Environmental Protection.

(s) "Statewide information management system" means the statewide information management system established pursuant to subdivision (e) of Section 25404 that provides for the combination of state and local information management systems for the purposes of managing unified program data.

(t) "Threatened release" means a condition, circumstance, or incident making it necessary to take immediate action to prevent, reduce, or mitigate a release with the potential to cause damage or harm to persons, property, or the environment.

(u) "Trade secret" means trade secrets as defined in either subdivision (d) of Section 6254.7 of the Government Code or Section 1061 of the Evidence Code.

(v) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements

of paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this article, "facility" has the same meaning as unified program facility.

Comment. Section 25501(n)(2)(E) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25548 (amended). Findings and declarations

SEC. __. Section 25548 of the Health and Safety Code is amended to read:

25548. (a) The Legislature hereby finds and declares all of the following:

(1) There is uncertainty in the law of this state with regard to the liability of lenders for hazardous material contamination involving property that is owned or used by borrowers, whether or not the property is collateral for the loan or obligation.

(2) There is also uncertainty in the law of this state with regard to the liability of trustees, executors, and other fiduciaries for hazardous material contamination involving property that is part of the fiduciary estate. Fiduciaries understand that the fiduciary estate may have that liability, but are concerned that a fiduciary may have independent personal liability, despite the absence of personal culpability for the contamination.

(3) The uncertainty as to liability or potential liability is attributable to the failure of existing law, except for the security interest exemption incorporated by reference in Section ~~25323.5,~~ 78145, to recognize that usually the credit or fiduciary relationship is not sufficiently related to the hazardous material contamination to warrant, as a policy matter, the imposition of liability on lenders and fiduciaries.

(b) It is the intent of the Legislature, in enacting this chapter, to specify the type of lender and fiduciary conduct that will not incur liability for hazardous material contamination. However, the liability exemption has appropriate boundaries. For example, the exemption will not protect lenders or fiduciaries in transactions that are structured for the purpose of evading liability for hazardous material contamination if the lender or fiduciary is not acting within its respective capacity, or if the contamination is caused by the lender or fiduciary.

(c) This chapter does not apply to judicial actions filed, or administrative orders issued, before January 1, 1997, or to proceedings to enforce judicial or administrative orders issued before January 1, 1997.

Comment. Section 25548 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 25548.1 (amended). Definitions

SEC. __. Section 25548.1 of the Health and Safety Code is amended to read:

25548.1. As used in this chapter, the following terms have the following meaning:

(a) "Actual benefit" means the amount, if any, realized by the lender upon the disposition of property acquired through foreclosure or its equivalent as a direct result of a removal or remedial action undertaken by another person, not to exceed

the amount, if any, by which the disposition proceeds exceed the sum of the balance of all of the following:

(1) The loan or obligation or the amount of the lien, evidenced by the loan or obligation outstanding at foreclosure or its equivalent.

(2) The costs, including attorneys' fees, incurred by the lender in connection with the foreclosure or its equivalent, subsequent ownership, any removal or remedial action, and disposition of the property.

(b) "Borrower, debtor or obligor" means a person who is obligated to a lender under a loan or obligation, whether or not the lender maintains a security interest in that person's property.

(c) "Damages" includes compensatory damages, exemplary damages, punitive damages, and costs of every kind and nature, including, but not limited to, costs of a removal or remedial action.

(d) "Fiduciary" means a person who is acting in any of the following capacities:

(1) As trustee for a trust described in paragraph (1) or (2) of subdivision (a) of Section 82 of the Probate Code.

(2) As a fiduciary in any arrangement described in paragraphs (1) to (3), inclusive, or paragraphs (5) to (14), inclusive, of subdivision (b) of Section 82 of the Probate Code.

(3) A trustee appointed in proceedings under any state or federal bankruptcy law.

(4) An assignee or a trustee acting under an assignment made for the benefit of creditors.

(5) A court-appointed receiver.

(e) "Finance lease" means a transaction with respect to which both of the following apply:

(1) The lessor does not select or manufacture the goods or does not supply the goods, except in the case of a re-lease, whether it is created by a new transaction or substitution of the lessee.

(2) The lessor acquires the goods or right to possession and use of the goods in connection with the lease or a prior lease transaction.

(f) "Foreclosure or its equivalent" means the acquisition of property by a lender through any of the following:

(1) Judicial or nonjudicial foreclosure of the lender's security interest in the property or acceptance of a deed or other conveyance in satisfaction thereto.

(2) Acceptance of a deed in lieu or other conveyance in satisfaction of a loan or obligation previously contracted.

(3) Termination of a finance lease by consent or default.

(4) Any other formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations or promises from the borrower, by which the lender acquires, for subsequent disposition, actual possession of the property subject to a security interest.

(g) "Hazardous material" has the same meaning as defined in subdivision (d) of Section 25260.

(h)(1) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including, but not limited to, any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalent.

(2) "Evidence of an interest" includes, but is not limited to, all of the following:

(A) Mortgages.

(B) Deeds of trust.

(C) Liens.

(D) Surety bonds and guarantees of obligations.

(E) Title held pursuant to a finance lease in which the lessor does not select initially the leased property.

(F) Legal or equitable title obtained pursuant to foreclosure or its equivalent.

(G) Assignments, pledges, or other rights to, or other forms of, encumbrance against property that are held primarily to protect a security interest.

(3) A person is not required to hold title or a security interest to maintain indicia of ownership.

(i) "Lender" means a person to the extent of the capacity in which that person maintains indicia of ownership primarily to protect a security interest or makes, acquires, renews, modifies, or holds a loan or obligation from a borrower. "Lender" includes either of the following persons:

(1) Any person who acts as, or on behalf of, a lender in connection with any aspect of the solicitation, negotiation, consummation, disbursement, administration, servicing, collection, enforcement, or foreclosure or its equivalent of a loan or obligation or security interest in property such as a surety, escrow, or title company.

(2) Any person who makes, secures, acquires, or holds a loan or obligation or security interest by assignment, sale, pledge, subrogation, succession, or operation of law, or becomes the receiver for the holder of a loan or obligation or security interest.

(j) "Loan or obligation" means a loan, revolving or nonrevolving line of credit, finance lease, sale-leaseback that provides for a purchase option in favor of the lessee, installment sale contract, sale on account, or other credit sale, letter of credit, forbearance or guaranty, collateral pledge, or other suretyship obligation, and any extension, renewal, or modification thereof. A loan or obligation may or may not involve a security interest in property.

(k)(1) Except as provided in paragraphs (3) and (4), "participate (or participation) in the management of the property" means actual participation in the management or operational affairs of the property by the lender while the borrower, under the loan or obligation, is in possession of the property, and the lender exercises decisionmaking control over the environmental compliance by the borrower, so that the lender assumes responsibility for the hazardous material handling or disposal practices of the borrower, or exercises control at a level comparable to that of a manager of the enterprise of the borrower, so that the lender assumes or manifests

responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to either of the following:

(A) Environmental compliance.

(B) All, or substantially all, of the operational, as opposed to financial or administrative, aspects of the enterprise other than environmental compliance.

(2) For purposes of paragraph (1), the following terms have the following meaning:

(A) "Operational aspects of the enterprise" includes, but is not limited to, functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(B) "Financial or administrative aspects" includes, but is not limited to, functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, or chief financial officer.

(3) Notwithstanding paragraph (1), "participation in the management of the property" does not include an act or omission by a prospective lender prior to making, acquiring, or holding a loan or obligation. "Participation in the management of the property" also does not include the actions taken by a prospective lender who undertakes or requires an environmental inspection of property prior to making, acquiring, or holding a loan or obligation. A lender or prospective lender does not "participate in the management of the property" if the lender or prospective lender requires the borrower to clean up the property or requires the borrower to comply or come into compliance with any applicable law or regulation. This chapter does not require a lender to conduct or require an inspection prior to foreclosure or its equivalent to qualify for the exemption provided by this chapter, and the liability of a lender shall not be based on or affected by whether the lender conducts or requires an inspection prior to foreclosure or its equivalent.

(4) Loan policing and work out activities, as specified in paragraphs (5) and (6), that are consistent with holding ownership indicia primarily to protect a security interest and consistent with a loan or obligation made, acquired, or held primarily for purposes other than investment purposes, do not constitute participation in the management of the property. The authority for the lender to take those actions may, but are not required to, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations, or promises from the borrower. Loan policing and work out activities include all activities up to foreclosure or its equivalent.

(5) A lender who engages in loan policing activities prior to foreclosure or its equivalent is exempt from liability pursuant to this chapter if the lender does not, by those actions, participate in the management of the property. Those actions include, but are not limited to, all of the following:

(A) Requiring the borrower to conduct a removal or remedial action during the term of the security interest or loan or obligation.

(B) Requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws during the term of the security interest or loan or obligation.

(C) Securing or exercising authority to monitor or inspect the property, including onsite inspections, or the business or financial condition of the borrower during the term of the security interest or loan or obligation.

(D) Taking other actions to adequately police the loan, obligation, or security interest, such as requiring the borrower to comply with any warranties, covenants, conditions, representations, or promises in connection with the security interest or loan or obligation.

(6)(A) A lender who engages in work out activities prior to foreclosure or its equivalents is exempt from liability pursuant to this chapter if the lender does not, by those actions, participate in the management of the property.

(B) "Work out" means those actions by which a lender, at any time prior to foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the borrower, or to preserve or prevent the diminution of the value of the property, security interest, or loan or obligation.

(C) Work out activities include, but are not limited to, all of the following:

(i) Restructuring or renegotiating the terms of the loan, obligation, or security interest.

(ii) Requiring payment of additional rent or interest.

(iii) Exercising rights pursuant to an assignment of accounts or other amounts owing to a lender.

(iv) Requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to a lender.

(v) Exercising forbearance.

(vi) Providing specific or general financial or other advice, suggestions, counseling, or guidance.

(vii) Exercising any right or remedy the lender is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(7) A lender does not participate in the management of the property by taking any response action under Section 107(d)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)). However, the lender may be liable for damages, as defined by this chapter, that occur as a result of the gross negligence or willful misconduct of the lender in ~~his or her~~ <u>the lender's</u> performance of a response action under Section 107 (d)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)).

(*l*) "Person" means any entity, including, but not limited to, an individual, estate, trust, firm, business trust, joint stock company, corporation, partnership, joint venture, limited liability company, association, or government. "Person" includes, but is not limited to, any city, county, district, the state, or the federal government, or any department, subdivision, or agency thereof.

(m)(1) "Primarily to protect a security interest" means that the indicia of ownership of a lender are held primarily for the purpose of securing payment or performance of an obligation.

(2) "Primarily to protect a security interest" does not include indicia of ownership held primarily for investment purposes or indicia of ownership held primarily for purposes other than as protection for a security interest. A lender may have other, secondary reasons for maintaining indicia of ownership, but the primary reason that any indicia of ownership are held shall be as protection for a security interest.

(n) "Property" means any real or personal property where hazardous materials are or were generated, handled, managed, deposited, stored, disposed of, placed, released, or otherwise have come to be located. In the context of a loan or obligation, "property" includes any real or personal property in which the obligor has or had an ownership, leasehold, or possessory interest, whether or not it was the subject of a security interest for the loan or obligation.

(*o*) "Release" has the same meaning as defined in ~~Section 25320.~~ subdivision (a) of Section 78105.

(p) "Remedial action" has the same meaning as defined in subdivision (g) of Section 25260.

(q) "Removal" means the cleanup or removal of released hazardous materials from the environment or the taking of other actions that may be necessary to prevent, minimize, or mitigate damages that may otherwise result from a release or threatened release, as further defined in Section 101(23) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9601(23)).

(r) "Security interest" means an interest in a property created or established for the purpose of securing a loan or obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens, and title pursuant to a finance lease. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, and accounts receivable financing arrangements and consignments if the transaction creates or establishes an interest in a property for the purpose of securing a loan or other obligation.

Comment. Section 25548.1(*o*) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to eliminate gendered pronouns.

Health & Safety Code § 25548.4 (amended). Limitations of chapter

SEC. __. Section 25548.4 of the Health and Safety Code is amended to read:

25548.4. This chapter does not do any of the following:

(a) Affect any rights, defenses, or immunities that are available to any lender or fiduciary under any applicable law.

(b) Create any liability for any lender or fiduciary.

(c) Create any private right of action against any lender or fiduciary.

(d) Exempt or excuse a lender or fiduciary who operates or directs the operation, or maintains the operation, of the property from compliance with the operational requirements of applicable laws. Those operational requirements include, but are not limited to, permitting, reporting, monitoring, emission limitation, corrective action, financial responsibility and assurance requirements, requirements to take removal or remedial action to respond to a release or threatened release of hazardous materials caused by the lender or fiduciary and the requirements of Division 26 (commencing with Section 39000) of this code or of Division 7 (commencing with Section 13000) of the Water Code. Operational requirements include the payment of fees, fines, and penalties, and compliance with any other enforcement provisions that are applicable as a result of the operation, or the direction of the operation, or the maintenance of the operation, of the property by the lender or fiduciary.

(e) Affect any liability of a fiduciary to a beneficiary of a fiduciary estate for breach of trust under Chapter 4 (commencing with Section 16400) of Part 4 of Division 9 of the Probate Code.

(f) Affect any liabilities of a fiduciary estate.

(g) Exempt a lender from liability imposed by ~~Chapter 6.8 (commencing with Section 25300)~~ Part 2 (commencing with Section 78000) of Division 45 for a removal or remedial action or the recovery of damages relating to a release or threatened release of hazardous material, to the extent that the lender is a responsible party pursuant to Section 107(a)(3) or (4) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(a)(3) or (4)).

(h) Exempt a lender or fiduciary from any liability imposed by Chapter 6.5 (commencing with Section 25100).

(i) Exempt or excuse a lender from liability under any state or local statute, regulation, or ordinance for a known or suspected release or known or suspected threatened release of hazardous materials caused by events or conditions occurring prior to foreclosure or its equivalent, unless, after taking possession of the property, the lender promptly takes each of the following actions in accordance with applicable law:

(1) Suspends operations with respect to that portion of the property where the known or suspected release or known or suspected threatened release occurred or may occur.

(2) Removes from the suspended operations and affected areas on the property, all hazardous material not released into the environment and secures the suspended operations.

(3) Reports any known or suspected releases of hazardous material.

(j) Limit the application or enforcement of ~~Section 25359.4 or 25359.5~~ Article 2 (commencing with Section 78675) or Article 4 (commencing with Section 78720) of Chapter 4 of Part 2 of Division 45 or other state or local fencing, posting, securing, notification, or reporting laws with regard to property that is acquired by

a lender through foreclosure or its equivalent, to the extent that those requirements are otherwise applicable to the property.

(k) Exempt a lender from compliance with an administrative order requiring immediate and temporary measures to prevent, abate, or minimize an emergency caused by a release or threatened release of hazardous material at, from, or in connection with, any property that has been acquired by the lender through foreclosure or its equivalent, when all of the following circumstances exist:

(1) The release or threatened release presents an imminent and substantial endangerment to the public health or welfare or the environment.

(2) No other person who is viable and potentially responsible for the release or threatened release has been identified and located by the agency issuing the order, following a reasonable effort by the agency to identify and locate any ~~such person.~~ person who is viable and potentially responsible.

(3) The costs and expenses incurred by the lender to comply with the administrative order do not exceed twenty-five thousand dollars ($25,000).

(4) If the lender complies with the administrative order, the compliance would not, in and of itself, subject the lender to liability for a removal or remedial action or damages, fines, penalties, impositions, or assessments relating to the release or threatened release under any federal law.

(*l*)(1) Exempt a lender who has acquired title to property through foreclosure or its equivalent from operation and maintenance requirements that were established on the property as a result of a removal or remedial action conducted on the property.

(2) "Operation and maintenance requirements" include, but are not limited to, deed restrictions and requirements to maintain passive exposure controls and to perform monitoring. If there are requirements other than operation and maintenance requirements, which are applicable to the property to maintain the effectiveness of the removal or remediation action, the lender shall comply with those requirements unless the lender, upon foreclosure or its equivalent, notifies the appropriate agency that it does not intend to comply with the requirements and the agency concurs.

(m) Require a lender to conduct, or require a lender to direct the taking of, an inspection of the property after foreclosure or its equivalent to qualify for the exemption provided by this chapter, and the liability of a lender shall not be based on, or affected by, the lender not conducting, or not requiring, an inspection of the property after foreclosure or its equivalent.

(n) Require a fiduciary to conduct or require an inspection of the property in a fiduciary estate to qualify for the exemption provided by this chapter and the liability of the fiduciary shall not be based on, or affected by, the fiduciary not conducting or not requiring an inspection prior to holding the property as part of the fiduciary estate.

Comment. Subdivisions (g) and (j) of Section 25548.4 are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to make a technical change.

Health & Safety Code § 33459 (amended). Definitions

SEC. __. Section 33459 of the Health and Safety Code is amended to read:

33459. For purposes of this article, the following terms shall have the following meanings:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Director" means the Director of Toxic Substances Control.

(c) "Hazardous substance" means any hazardous substance as defined in subdivision (h) of Section 25281, and any reference to hazardous substance in the definitions referenced in this section shall be deemed to refer to hazardous substance, as defined in this subdivision.

(d) "Local agency" means a single local agency that is one of the following:

(1) A local agency authorized pursuant to Section 25283 to implement Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with Section 25299.10) of, Division 20.

(2) A local officer who is authorized pursuant to Section 101087 to supervise a remedial action.

(3) An infrastructure and revitalization financing district created pursuant to Chapter 2.6 (commencing with Section 53369) or Chapter 2.10 (commencing with Section 53399) of Part 1 of Division 2 of Title 5 of the Government Code.

(e) "Qualified independent contractor" means an independent contractor who is any of the following:

(1) An engineering geologist who is certified pursuant to Section 7842 of the Business and Professions Code.

(2) A geologist who is registered pursuant to Section 7850 of the Business and Professions Code.

(3) A civil engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(f) "Release" means any release, as defined in ~~Section 25320.~~ subdivision (a) of Section 78105.

(g) "Remedy" or "remove" means any action to assess, evaluate, investigate, monitor, remove, correct, clean up, or abate a release of a hazardous substance or to develop plans for those actions. "Remedy" includes any action set forth in Section ~~25322~~ 78125 and "remove" includes any action set forth in Section ~~25323.~~ 78135.

(h) "Responsible party" means any person described in subdivision (a) of Section ~~25323.5~~ 78145 of this code or subdivision (a) of Section 13304 of the Water Code.

Comment. Section 33459 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 33459.3 (amended). Liability of agency for release addressed by completed action on property within a redevelopment project

SEC. __. Section 33459.3 of the Health and Safety Code is amended to read:

33459.3. (a) Notwithstanding any other provision of law, except as provided in Section 33459.7, an agency that undertakes and completes an action, or causes another person to undertake and complete an action pursuant to Section 33459.1, as specified in subdivision (c), to remedy or remove a hazardous substance release on, under, or from property within a redevelopment project, in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the department or a California regional water quality control board or the local agency, as appropriate, pursuant to subdivision (b), is not liable, with respect to that release only, under Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), or Chapter 6.75 (commencing with Section 25299.10)~~, or Chapter 6.8 (commencing with Section 25300),~~ of Division 20 of, or Part 2 (commencing with Section 78000) of Division 45 of, this code, or any other state or local law providing liability for remedial or removal actions for releases of hazardous substances. If the remedial action was also performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and a certificate of completion is issued pursuant to subdivision (b) of Section 25264, the immunity from agency action provided by the certificate of completion, as specified in subdivision (c) of Section 25264, shall apply to the agency, in addition to the immunity conferred by this section. In the case of a remedial action performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and for which the administering agency is a local agency, the limitations on the certificate of completion set forth in paragraphs (1) to (6), inclusive, of subdivision (c) of Section 25264 are limits on any immunity provided for by this section and subdivision (c) of Section 25264.

(b) Upon approval of any cleanup or remedial action plan, pursuant to applicable statutes and regulations, the director or the California regional water quality control board or the local agency, as appropriate, shall acknowledge, in writing, within 60 days of the date of approval, that upon proper completion of the remedial or removal action in accordance with the plan, the immunity provided by this section shall apply to the agency.

(c) Notwithstanding any provision of law or policy providing for certification by a person conducting a remedial or removal action that the action has been properly completed, a determination that a remedial or removal action has been properly completed pursuant to this section shall be made only upon the affirmative approval of the director or the California regional water quality control board or the local agency, as appropriate. The department, California regional water quality control board, or local agency, as appropriate, shall, within 60 days of the date it finds that a remedial action has been completed, notify the agency in writing that the immunity provided by this section is in effect.

(d) The approval of a cleanup or remedial action plan under this section by a local agency shall also be subject to the concurrent approval of the department or a

California regional water quality control board when the agency receiving the approval was formed by the same entity of which the local agency is a part.

(e) Upon proper completion of a remedial or removal action, as specified in subdivision (c), the immunity from agency action provided by the certificate of completion provided pursuant to subdivision (c) of Section 25264 and the immunity provided by this section extends to all of the following, but only for the release or releases specifically identified in the approved cleanup or remedial action plan and not for any subsequent release or any release not specifically identified in the approved cleanup or remedial action plan:

(1) Any employee or agent of the agency, including an instrumentality of the agency authorized to exercise some, or all, of the powers of an agency within, or for the benefit of, a redevelopment project and any employee or agent of the instrumentality.

(2) Any person who enters into an agreement with an agency for the redevelopment of property, if the agreement requires the person to acquire property affected by a hazardous substance release or to remove or remedy a hazardous substance release with respect to that property.

(3) Any person who acquires the property after a person has entered into an agreement with an agency for redevelopment of the property as described in paragraph (2).

(4) Any person who provided financing to a person specified in paragraph (2) or (3).

(f) Notwithstanding any other provision of law, the immunity provided by this section does not extend to any of the following:

(1) Any person who was a responsible party for the release before entering into an agreement, acquiring property, or providing financing, as specified in subdivision (e).

(2) Any person specified in subdivision (a) or (e) for any subsequent release of a hazardous substance or any release of a hazardous substance not specifically identified in the approved cleanup or remedial action plan.

(3) Any contractor who prepares the cleanup or remedial action plan, or conducts the removal or remedial action.

(4) Any person who obtains an approval, as specified in subdivision (b), or a determination, as specified in subdivision (c), by fraud, negligent or intentional nondisclosure, or misrepresentation, and any person who knows before the approval or determination is obtained or before the person enters into an agreement, acquires the property or provides financing, as specified in subdivision (e), that the approval or determination was obtained by these means.

(g) The immunity provided by this section is in addition to any other immunity of an agency provided by law.

(h) This section does not impair any cause of action by an agency or any other party against the person, firm, or entity responsible for the hazardous substance

release which is the subject of the removal or remedial action taken by the agency or other person immune from liability pursuant to this section.

(i) This section does not apply to, or limit, alter, or restrict, any action for personal injury, property damage, or wrongful death.

(j) This section does not limit liability of a person described in paragraph (3) or (4) of subdivision (e) for damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(k) This section does not establish, limit, or affect the liability of an agency for any release of a hazardous substance that is not investigated or remediated pursuant to this section or Chapter 6.65 (commencing with Section 25260) of Division 20.

(*l*) The immunity provided for by this section is only conferred if both of the following apply:

(1) The action is in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the department or a California regional water quality control board or the local agency, as appropriate, pursuant to subdivision (b).

(2) The remedial or removal action is undertaken and properly completed, as specified in subdivision (c).

(m) The agency shall reimburse the department, the California regional water quality control board, and the local agency for costs incurred in reviewing or approving cleanup or remedial action plans pursuant to this section.

Comment. Section 33459.3(a) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 33459.4 (amended). Redevelopment agency cost recovery

SEC. __. Section 33459.4 of the Health and Safety Code is amended to read:

33459.4. (a) Except as provided in Section 33459.7, if a redevelopment agency undertakes action to remedy or remove, or to require others to remedy or remove, including compelling a responsible party through a civil action, to remedy or remove a release of hazardous substance, any responsible party or parties shall be liable to the redevelopment agency for the costs incurred in the action. An agency may not recover the costs of goods and services that were not procured in accordance with applicable procurement procedures. The amount of the costs shall include the interest on the costs accrued from the date of expenditure and reasonable attorney's fees and shall be recoverable in a civil action. Interest shall be calculated based on the average annual rate of return on an agency's investment of surplus funds for the fiscal year in which costs were incurred.

(b) The only defenses available to a responsible party shall be the defenses specified in subdivision (b) of Section ~~25323.5.~~ 78145.

(c) An agency may recover any costs incurred to develop and to implement a cleanup or remedial action plan approved pursuant to Sections 33459.1 and 33459.3,

to the same extent the department is authorized to recover those costs. The scope and standard of liability for cost recovery pursuant to this section shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to the department; provided, however, that any reference to hazardous substance therein shall be deemed to refer to hazardous substance as defined in subdivision (c) of Section 33459.

(d) An action for recovery of costs of a remedy or removal undertaken by a redevelopment agency under this section shall be commenced within three years after completion of the remedy or removal.

(e) The action to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a redevelopment agency.

(f) Except as provided in subdivision (m) of Section 33459.3, notwithstanding any other provision of state law or policy, an agency that undertakes and completes a remedial action, or otherwise causes a remedial action to be undertaken and completed pursuant to Sections 33459.1 and 33459.3, shall not be liable based on its ownership of property after a release occurred, for any costs that any responsible party for that release incurs to investigate or remediate the release or to compensate others for the effects of that release.

Comment. Section 33459.4 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 57008 (amended). Screening numbers

SEC. __. Section 57008 of the Health and Safety Code is amended to read:

57008. (a) For purposes of this section, the following definitions apply:

(1) "Agency" means the California Environmental Protection Agency.

(2) "Contaminant" means all of the following:

(A) A substance listed in Tables II and III of subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations.

(B) The five halogenated hydrocarbon industrial solvents that, in the experience of the State Water Resources Control Board and the Department of Toxic Substances Control are most commonly found as contaminants at sites subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances Account Act ~~(Chapter 6.8 (commencing with Section 25300) of Division 20)~~ <u>(Part 2 (commencing with Section 78000) of Division 45)</u> and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(C) Ten hazardous substances not included under subparagraphs (A) and (B) that, in the experience of the Department of Toxic Substances Control and the State Water Resources Control Board, are most commonly found as contaminants at sites

subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances Account Act ~~(Chapter 6.8 (commencing with Section 25300) of Division 20)~~ (Part 2 (commencing with Section 78000) of Division 45) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(3) "Screening number" means the concentration of a contaminant published by the agency as an advisory number pursuant to the process established in subdivisions (b) and (c). A screening number is solely an advisory number, and has no regulatory effect, and is published solely as a reference value that may be used by citizen groups, community organizations, property owners, developers, and local government officials to estimate the degree of effort that may be necessary to remediate a contaminated property. A screening number may not be construed as, and may not serve as, a level that can be used to require an agency to determine that no further action is required or a substitute for the cleanup level that is required to be achieved for a contaminant on a contaminated property. The public agency with jurisdiction over the remediation of a contaminated site shall establish the cleanup level for a contaminant pursuant to the requirements and the procedures of the applicable laws and regulations that govern the remediation of that contaminated property and the cleanup level may be higher or lower than a published screening number.

(b)(1) During the same period when the agency is carrying out the pilot study required by Section 57009 and preparing the informational document required by Section 57010, the agency shall initiate a scientific peer review of the screening levels published in Appendix 1 of Volume 2 of the technical report published by the San Francisco Regional Water Quality Control Board entitled "Application of Risk-Based Screening Levels and Decision-Making to Sites with Impacted Soil and Groundwater (Interim Final-August 2000)." The agency shall conduct the scientific peer review process in accordance with Section 57004, and shall limit the review to those substances specified in paragraph (2) of subdivision (a). The agency shall complete the peer review process on or before December 31, 2004.

(2) The agency, in cooperation with the Department of Toxic Substances Control, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment, shall publish a list of screening numbers for contaminants listed in paragraph (2) of subdivision (a) for the protection of human health and safety, and shall report on the feasibility of establishing screening numbers to protect water quality and ecological resources. The agency shall determine the screening numbers using the evaluation set forth in ~~Section 25356.1.5~~ Article 13 (commencing with Section 79260) of Chapter 5 of Part 2 of Division 45 and the results of the peer review, and shall use the most stringent hazard criterion established pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended. The agency shall set forth separate screening levels for unrestricted land uses and a restricted, nonresidential use of

land. In determining each screening number, the agency shall consider all of the following:

(A) The toxicology of the contaminant, its adverse effects on human health and safety, biota, and its potential for causing environmental damage to natural resources, including, but not limited to, beneficial uses of the water of the state, including sources of drinking water.

(B) Risk assessments that have been prepared for the contaminant by federal or state agencies pursuant to environmental or public health laws, evaluations of the contaminant that have been prepared by epidemiological studies and occupational health programs, and risk assessments or other evaluations of the contaminant that have been prepared by governmental agencies or responsible parties as part of a project to remediate a contaminated property.

(C) Cleanup levels that have been established for the contaminant at sites that have been, or are being, investigated or remediated under ~~Chapter 6.8 (commencing with Section 25300) of Division 20,~~ Part 2 (commencing with Section 78000) of Division 45, or cleaned up or abated under Division 7 (commencing with Section 13000) of the Water Code or under any other remediation program administered by a federal or local agency.

(D) Screening numbers that have been published by other agencies in the state, in other states, and by federal agencies.

(E) The results of external scientific peer review of the screening numbers made pursuant to Section 57004.

(c)(1) Before publishing the screening numbers pursuant to subdivision (b), the agency shall conduct two public workshops, one in the northern part of the state and the other in the southern part of the state, to brief interested parties on the scientific and policy bases for the development of the proposed screening numbers and to receive public comments.

(2) Following publication of the screening numbers pursuant to subdivision (b), the agency shall conduct three public workshops in various regions of the state to discuss the screening numbers and to receive public comments. The agency shall select an agency representative who shall serve as the chairperson for the workshops, and the agency shall ensure that ample opportunity is available for public involvement in the workshops. The deputy secretary for external affairs shall actively seek out participation in the workshops by citizen groups, environmental organizations, community-based organizations that restore and redevelop contaminated properties for park, school, residential, commercial, open-space or other community purposes, property owners, developers, and local government officials.

(d) Following the workshops required by subdivision (c), the agency shall revise the screening numbers as appropriate. The agency shall, from time to time, revise the screening numbers as necessary as experience is gained with their use and shall add screening numbers for contaminants to the list as information concerning remediation problems becomes available.

(e) The agency shall publish a guidance document for distribution to citizen groups, community-based organizations, property owners, developers, and local government officials that explains how screening numbers may be used to make judgments about the degree of effort that may be necessary to remediate contaminated properties, to facilitate the restoration and revitalization of contaminated property, to protect the waters of the state, and to make more efficient and effective decisions in local-level remediation programs.

(f) Nothing in this section affects the authority of the Department of Toxic Substances Control, the State Water Resources Control Board, or a regional water quality control board to take action under any applicable law or regulation regarding a release or threatened release of hazardous materials.

Comment. Section 57008(a)(2)(B), (a)(2)(C), (b)(2), and (b)(2)(C) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 57010 (amended). Informational document regarding site investigation and remediation decisions

SEC. __. Section 57010 of the Health and Safety Code is amended to read:

57010. (a) On or before January 1, 2003, the California Environmental Protection Agency shall publish an informational document to assist citizen groups, community-based organizations, interested laypersons, property owners, local government officials, developers, environmental organizations, and environmental consultants to understand the factors that are taken into account, and the procedures that are followed, in making site investigation and remediation decisions under the Carpenter-Presley-Tanner Hazardous Substances Account Act ~~(Chapter 6.8 (commencing with Section 25300) of Division 20)~~ (Part 2 (commencing with Section 78000) of Division 45) and under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(b) The agency shall make the informational document required by this section available to any person who requests it at no charge and shall also post the public information manual on the agency's ~~Internet Web site.~~ internet website. The agency shall update both the printed informational document and the Web site at appropriate intervals as new legislation or revised policies affect the administration of the Carpenter-Presley-Tanner Hazardous Substances Account Act ~~(Chapter 6.8 (commencing with Section 25300) of Division 20)~~ (Part 2 (commencing with Section 78000) of Division 45) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

Comment. Section 57010 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to make a technical change.

Health & Safety Code § 100885 (amended). Injunctive relief

SEC. __. Section 100885 of the Health and Safety Code is amended to read:

100885. (a) Any person who operates a laboratory that performs work that requires certification or TNI accreditation under Section 25198, 25298.5, ~~25358.4,~~ 78510, 110490, or 116390 of this code, or Section 13176 of the Water Code, who is not certified or TNI accredited to do so, may be enjoined from so doing by any court of competent jurisdiction upon suit by the state board.

(b) When the state board determines that any person has engaged in, or is engaged in, any act or practice that constitutes a violation of this article, or any regulation or order issued or adopted thereunder, the state board may bring an action in the superior court for an order enjoining these practices or for an order directing compliance and affording any further relief that may be required to ensure compliance with this article.

Comment. Section 100885 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 100886 (amended). Report by laboratory operator

SEC. __. Section 100886 of the Health and Safety Code is amended to read:

100886. Any person who operates a laboratory for the purposes specified in Section 25198, 25298.5, ~~25358.4,~~ 78510, or 116390 of this code, or Section 13176 of the Water Code, shall report the full and complete results of all detected contamination and pollutants to the person or entity that submitted the material for testing.

Comment. Section 100886 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 100890 (amended). Civil penalties

SEC. __. Section 100890 of the Health and Safety Code is amended to read:

100890. (a) Any person who knowingly makes any false statement or representation in any application, record, or other document submitted, maintained, or used for purposes of compliance with this article, may be liable, as determined by the court, for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation or, for continuing violations, for each day that violation continues.

(b) Any person who operates a laboratory for purposes specified pursuant to Section 25198, 25298.5, ~~25358.4,~~ 78510, 110490, or 116390 of this code, or Section 13176 of the Water Code that requires certification, who is not certified by the department pursuant to this article, may be liable, as determined by the court, for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation or, for continuing violations, for each day that violation continues.

(c) A laboratory that advertises or holds itself out to the public or its clients as having been certified for any field of testing without having a valid and current certificate in each field of testing identified by the advertisement or other representation may be liable, as determined by the court, for a civil penalty not to

exceed one thousand dollars ($1,000) or, for continuing violations, for each day that violation continues.

(d) Each civil penalty imposed for any separate violation pursuant to this section shall be separate and in addition to any other civil penalty imposed pursuant to this section or any other provision of law.

Comment. Section 100890 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 101480 (amended). Supervision of remedial action by local officer

SEC. __. Section 101480 of the Health and Safety Code is amended to read:

101480. (a) For purposes of this article, the following definitions apply:

(1) "Local officer" means a county health officer, city health officer, or county director of environmental health.

(2) "Person" has the same meaning as set forth in Section 25118.

(3) "Release" has the same meaning as set forth in ~~Section 25320.~~ subdivision (a) of Section 78105.

(4) "Remedial action" means any action taken by a responsible party to clean up a released waste, to abate the effects of a released waste, or to prevent, minimize, or mitigate damages that may result from the release of a waste. "Remedial action" includes the restoration, rehabilitation, or replacement of any natural resource damaged or lost as a result of the release of a waste.

(5) "Responsible party" means a person who, pursuant to this section, requests the local officer to supervise remedial action with respect to a released waste.

(6) "Waste" has the same meaning as set forth in subdivision (b) of Section 101075.

(b) Whenever a release of waste occurs and remedial action is required, the responsible party for the release may request the local officer to supervise the remedial action. The local officer may agree to supervise the remedial action if ~~he or she~~ the local officer determines, based on available information, that adequate staff resources and the requisite technical expertise and capabilities are available to adequately supervise the remedial action.

(c) Remedial action carried out under this section shall be carried out only pursuant to a remedial action agreement entered into by the local officer and the responsible party. The remedial action agreement shall specify the testing, monitoring, and analysis the responsible party will carry out to determine the type and extent of the contamination caused by the released waste that is the subject of the remedial action, the remedial actions that will be taken, and the cleanup goals that the local officer determines are necessary to protect human health or safety or the environment, and that, if met, constitute a permanent remedy to the release of the waste.

(d) A local officer who enters into a remedial action agreement, as described in subdivision (c), may, after giving the responsible party adequate notice, withdraw from the agreement at any time after making one of the following findings:

(1) The responsible party is not in compliance with the remedial action agreement.

(2) Appropriate staff resources, technical expertise, or technical capabilities are not available to adequately supervise the remedial action.

(3) The release of the waste that is the subject of the remedial action is of a sufficiently complex nature or may present such a significant potential hazard to human health or the environment that it should be referred to the Department of Toxic Substances Control or a California regional water quality control board.

(e) After determining that a responsible party has completed the actions required by the remedial action agreement and that a permanent remedy for the release of waste has been achieved, the local officer may provide the responsible party with a letter or other document that describes the release of waste that occurred and the remedial action taken, and certifies that the cleanup goals embodied in the remedial action agreement were accomplished.

Comment. Section 101480 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to eliminate gendered pronouns.

Health & Safety Code § 101483 (amended). Sites not subject to article

SEC. __. Section 101483 of the Health and Safety Code is amended to read:

101483. This article shall not apply to any of the following:

(a) A hazardous substance release site listed pursuant to ~~Section 25356,~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45, a site subject to an order or enforceable agreement issued pursuant to Article 1 (commencing with Section 78650) of Chapter 4 of Part 2 of Division 45 or Section ~~25355.5 or 25358.3,~~ 78870 or 79055, or a site where the Department of Toxic Substances Control has initiated action pursuant to Section ~~25355.~~ Article 10 (commencing with Section 79130) of Chapter 5 of Part 2 of Division 45.

(b) A site subject to a corrective action order issued pursuant to Section 25187 or 25187.7.

(c) A site subject to a cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) A facility that is subject to the requirements of Section 25200.10 or 25200.14.

Comment. Section 101483 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Health & Safety Code § 101485 (amended). Construction of article

SEC. __. Section 101485 of the Health and Safety Code is amended to read:

101485. Nothing in this article shall be construed as prohibiting the Department of Toxic Substances Control from assuming jurisdiction over a release pursuant to

~~Chapter 6.8 (commencing with Section 25300) of Division 20,~~ Part 2 (commencing with Section 78000) of Division 45, or a California regional water quality control board, or the State Water Resources Control Board from taking enforcement action against a release pursuant to Division 7 (commencing with Section 13000) of the Water Code.

Comment. Section 101485 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

LABOR CODE

Lab. Code § 142.7 (amended). Occupational standard concerning hazardous substance removal work

SEC. __. Section 142.7 of the Labor Code is amended to read:

142.7. (a) On or before October 1, 1987, the board shall adopt an occupational safety and health standard concerning hazardous substance removal work, so as to protect most effectively the health and safety of employees. The standard shall include, but not be limited to, requirements for all of the following:

(1) Specific work practices.

(2) Certification of all employees engaged in hazardous substance removal-related work, except that no certification shall be required for an employee whose only activity is the transportation of hazardous substances which are subject to the requirement for a certificate under Section 12804.1 of the Vehicle Code.

(3) Certification of supervisors with sufficient experience and authority to be responsible for hazardous substance removal work.

(4) Designation of a qualified person who shall be responsible for scheduling any air sampling, laboratory calibration of sampling equipment, evaluation of soil or other contaminated materials sampling results, and for conducting any equipment testing and evaluating the results of the tests.

(5) Requiring that a safety and health conference be held for all hazardous substance removal jobs before the start of actual work. The conference shall include representatives of the owner or contracting agency, the contractor, the employer, employees, and employee representatives, and shall include a discussion of the employer's safety and health program and the means, methods, devices, processes, practices, conditions, or operations which the employer intends to use in providing a safe and healthy place of employment.

(b) For purposes of this section, "hazardous substance removal work" means cleanup work at any of the following:

(1) A site where removal or remedial action is taken pursuant to either of the following:

(A) ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code, regardless of whether the site is listed pursuant to ~~Section 25356~~ Article 5

(commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code.

(B) The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(2) A site where corrective action is taken pursuant to Section 25187 or 25200.10 of the Health and Safety Code or the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.).

(3) A site where cleanup of a discharge of a hazardous substance is required pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(4) A site where removal or remedial action is taken because a hazardous substance has been discharged or released in an amount that is reportable pursuant to Section 13271 of the Water Code or the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.). "Hazardous substance removal work" does not include work related to a hazardous substance spill on a highway.

(c) Until the occupational safety and health standard required by subdivision (a) is adopted by the board and becomes effective, the occupational safety and health standard concerning hazardous substance removal work shall be the standard adopted by the federal government and codified in Section 1910.120 of Title 29 of the Code of Federal Regulations. In addition, before actual work is started on a hazardous substance removal job, a safety and health conference shall be held that shall include the participants and involve a discussion of the subjects described in paragraph (5) of subdivision (a).

Comment. Section 142.7(b)(1)(A) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

PENAL CODE

Penal Code § 803 (amended). Tolling or extension of limitation of time

SEC. __. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) The time during which prosecution of the same person for the same conduct is pending in a court of this state is not a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct

in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of, or asking, receiving, or agreeing to receive, a bribe, by a public official or a public employee, including, but not limited to, a violation of Section 68, 86, or 93.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 103800 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) ~~of,~~ <u>or</u> Chapter 6.7 (commencing with Section 25280) of~~, or Chapter 6.8 (commencing with Section 25300) of,~~ Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, <u>or Part 2 (commencing with Section 78000) of Division 45 of,</u> the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f)(1) Notwithstanding any other limitation of time described in this chapter, if subdivision (b) of Section 799 does not apply, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that the person, while under 18 years of age, was the victim of a crime described in Section 261, 286, 287, 288, 288.5, or 289, former Section 288a, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) Evidence may not be used to corroborate the victim's allegation if that evidence would otherwise be inadmissible during trial. Independent evidence excludes the opinions of mental health professionals.

(4)(A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) This subdivision does not affect the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply if a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subdivision (c) of Section 290.

(B) The offense was committed before January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in People v. Superior Court (Laff) (2001) 25 Cal.4th 703, People v. Superior Court (Bauman & Rose) (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. This section does not otherwise affect the definition or applicability of any evidentiary privilege or attorney work product.

(i) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which a hidden

recording is discovered related to a violation of paragraph (2) or (3) of subdivision (j) of Section 647.

(j) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident that caused death or permanent, serious injury, as defined in subdivision (d) of Section 20001 of the Vehicle Code, a criminal complaint brought pursuant to paragraph (2) of subdivision (b) of Section 20001 of the Vehicle Code may be filed within the applicable time period described in Section 801 or 802 or one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, whichever is later, but in no case later than six years after the commission of the offense.

(k) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident, a criminal complaint brought pursuant to paragraph (1) or (2) of subdivision (c) of Section 192 may be filed within the applicable time period described in Section 801 or 802, or one year after the person is initially identified by law enforcement as a suspect in the commission of that offense, whichever is later, but in no case later than six years after the commission of the offense.

(*l*) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense involving the offering or giving of a bribe to a public official or public employee, including, but not limited to, a violation of Section 67, 67.5, 85, 92, or 165, or Section 35230 or 72530 of the Education Code.

(m) Notwithstanding any other limitation of time prescribed in this chapter, if a person actively conceals or attempts to conceal an accidental death in violation of Section 152, a criminal complaint may be filed within one year after the person is initially identified by law enforcement as a suspect in the commission of that offense, provided, however, that in any case a complaint may not be filed more than four years after the commission of the offense.

(n)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint brought pursuant to a violation of Section 367g may be filed within one year of the discovery of the offense or within one year after the offense could have reasonably been discovered.

(2) This subdivision applies to crimes that were committed on or after January 1, 2021, and to crimes for which the statute of limitations that was in effect before January 1, 2021, has not run as of January 1, 2021.

Comment. Section 803(e) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

PUBLIC RESOURCES CODE

Pub. Res. Code § 21083.8.1 (amended). Environmental review of reuse plan for military base

SEC. __. Section 21083.8.1 of the Public Resources Code is amended to read:

21083.8.1. (a)(1) For purposes of this section, "reuse plan" for a military base means an initial plan for the reuse of a military base adopted by a local government or a redevelopment agency in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document, except that the reuse plan shall also consist of a statement of development policies, include a diagram or diagrams illustrating its provisions, and make the designation required in paragraph (2). "Military base" or "base" means a military base or reservation either closed or realigned by, or scheduled for closure or realignment by, the federal government.

(2) The reuse plan shall designate the proposed general distribution and general location of development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads and other transportation facilities, infrastructure, and other categories of public and private uses of land.

(b)(1) When preparing and certifying an environmental impact report for a reuse plan, including when utilizing an environmental impact statement pursuant to Section 21083.5, the determination of whether the reuse plan may have a significant effect on the environment may be made in the context of the physical conditions that were present at the time that the federal decision became final for the closure or realignment of the base. The no project alternative analyzed in the environmental impact report shall discuss the existing conditions on the base, as they exist at the time that the environmental impact report is prepared, as well as what could be reasonably expected to occur in the foreseeable future if the reuse plan were not approved, based on current plans and consistent with available infrastructure and services.

(2) For purposes of this division, all public and private activities taken pursuant to, or in furtherance of, a reuse plan shall be deemed to be a single project. However, further environmental review of any ~~such~~ public or private activity <u>taken pursuant to, or in furtherance of, a reuse plan</u> shall be conducted if any of the events specified in Section 21166 have occurred.

(c) Prior to preparing an environmental impact report for which a lead agency chooses to utilize the provisions of this section, the lead agency shall do all of the following:

(A) Hold a public hearing at which is discussed the federal environmental impact statement prepared for, or in the process of being prepared for, the closure of the military base. The discussion shall include the significant effects on the environment examined in the environmental impact statement, potential methods of mitigating those effects, including feasible alternatives, and the mitigative effects of federal, state, and local laws applicable to future nonmilitary activities. Prior to the close of the hearing, the lead agency may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact

statement. Notice of the hearing shall be given as provided in Section 21092. The hearing may be continued from time to time.

(B) Identify pertinent responsible agencies and trustee agencies and consult with those agencies prior to the public hearing as to the application of their regulatory policies and permitting standards to the proposed baseline for environmental analysis, as well as to the reuse plan and planned future nonmilitary land uses of the base. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed reuse plan and to submit their comments to the lead agency.

(C) At the close of the hearing, the lead agency shall state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process, taking into account the adopted environmental standards of the community, including, but not limited to, the applicable general plan, specific plan, and redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, integrated waste management plans, and county hazardous waste management plans.

(D) At the close of the hearing, the lead agency shall state, in writing, the specific economic or social reasons, including, but not limited to, new job creation, opportunities for employment of skilled workers, availability of low- and moderate-income housing, and economic continuity, which support the selection of the baseline.

(d)(1) Nothing in this section shall in any way limit the scope of a review or determination of significance of the presence of hazardous or toxic wastes, substances, or materials including, but not limited to, contaminated soils and groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or materials be constrained by prior levels of activity that existed at the time that the federal agency decision to close the military base became final.

(2) This section does not apply to any project undertaken pursuant to Chapter 6.5 (commencing with Section 25100) of~~, or Chapter 6.8 (commencing with Section 25300) of,~~ Division 20 of, or Part 2 (commencing with Section 78000) of Division 45 of, the Health and Safety Code, or pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(3) This section may apply to any reuse plan environmental impact report for which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued within one year from the date that the federal record of decision was rendered for the military base closure or realignment and reuse, or prior to January 1, 1997, whichever is later, if the environmental impact report is completed and certified within five years from the date that the federal record of decision was rendered.

(e) All subsequent development at the military base shall be subject to all applicable federal, state, or local laws, including, but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

Comment. Section 21083.8.1(d)(2) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to make a technical change.

Pub. Res. Code § 21098 (amended). Notices to military service

SEC. __. Section 21098 of the Public Resources Code is amended to read:

21098. (a) For the purposes of this section, the following terms have the following meanings:

(1) "Low-level flight path" includes any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency.

(2) "Military impact zone" includes any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense.

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means any branch of the United States Armed Forces.

(4) "Special use airspace" means the area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency.

(b) If the United States Department of Defense or a military service notifies a lead agency of the contact office and address for the military service and the specific boundaries of a low-level flight path, military impact zone, or special use airspace, the lead agency shall submit notices, as required pursuant to Sections 21080.4 and 21092, to the military service if the project is within those boundaries and any of the following apply:

(1) The project includes a general plan amendment.

(2) The project is of statewide, regional, or areawide significance.

(3) The project is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(c) The requirement to submit notices imposed by this section does not apply to any of the following:

(1) Response actions taken pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code.

(2) Response actions taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(3) Sites subject to corrective action orders issued pursuant to Section 25187 of the Health and Safety Code.

(d)(1) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of this division.

(2) Notwithstanding paragraph (1), a project's impact on military activities may cause, or be associated with, adverse effects on the environment that are subject to the requirements of this division, including, but not limited to, Section 21081.

Comment. Section 21098(c)(1) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Pub. Res. Code § 21151.8 (amended). Environmental review for schoolsite purchase or school construction

SEC. __. Section 21151.8 of the Public Resources Code is amended to read:

21151.8. (a) An environmental impact report shall not be certified or a negative declaration shall not be approved for a project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code for removal or remedial action pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2)(A) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the

administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(B) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to subparagraph (A) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with subparagraph (A) as to the area of responsibility of an agency that does not respond within 30 days.

(C) If the school district, as a lead agency, has carried out the consultation required by subparagraph (A), the environmental impact report or the negative declaration shall be conclusively presumed to comply with subparagraph (A), notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in subparagraph (A).

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on

appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii), or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of overriding considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(b) As used in this section, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in ~~Section 25316~~ subdivision (a) of Section 78075 of the Health and Safety Code.

(2) "Extremely hazardous substances" means an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency authorized pursuant to Section 25502 of the Health and Safety Code to implement and enforce Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

Comment. Section 21151.8(a)(1)(B) and (b)(1) are amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Pub. Res. Code § 37016 (amended). Approval of proposed property contribution

SEC. __. Section 37016 of the Public Resources Code is amended to read:

37016. (a) The board shall grant approval of a proposed contribution of property under the program only upon a determination that:

(1)(A) The donation of property satisfies the requirements for a qualified contribution pursuant to Section 170 of Title 26 of the United States Code. If only a portion (either an undivided fractional interest in the entire property or one or more discrete parcels) of a proposed conveyance of property satisfies the requirements of Section 170 of Title 26 of the United States Code, or if the property is sold for less than fair market value, only that portion, or the amount representing the difference between the amount paid by the donee and the fair market value, shall be eligible for the tax credit, to the extent permitted by Section 170(h) of Title 26 of the United States Code. The board may segregate eligible and ineligible interests in property proposed to be contributed pursuant to this division. The donor shall receive no other valuable consideration for the donation of property subject to the tax credit.

(B) For purposes of this division, if the property is proposed to be donated to satisfy a condition imposed upon the donor by any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, the mitigation of significant effects on the environment of a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), that property shall not qualify for the credit provided in Section 17053.30 or 23630 of the Revenue and Taxation Code.

(2) There has been no release or threatened release of a hazardous material on the property, unless all of the following occur:

~~(i)~~ (A) A final remedy in response to the release has been approved by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of, ~~Chapter 6.8 (commencing with Section 25300) of,~~ or Chapter 6.85 (commencing with Section 25396) of, Division 20 of, or Part 2 (commencing with Section 78000) of Division 45 of, the Health and Safety Code, or the appropriate California regional water quality control board pursuant to Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code.

~~(ii)~~ (B) The donor or donee have agreed to implement the final remedy approved pursuant to ~~clause (i).~~ subparagraph (A).

~~(iii)~~ (C) The donor or donee have agreed to fund and have made adequate funding available to pay for the response action, as defined by Section ~~25323.3~~ 78140 of the Health and Safety Code.

(b) Notwithstanding paragraph (2) of subdivision (a), a donation of property containing hazardous materials may be accepted under the program without

satisfying the requirements of paragraph (2) of subdivision (a) if the donee determines, based on written findings from the Department of Toxic Substances Control and the California regional water quality control board with jurisdiction over the property, that the hazardous materials present will pose no substantial risk to human health or the environment and no substantial risk of liability on the donee under the conditions under which the property will be used. The Department of Toxic Substances Control and the California regional water quality control board with jurisdiction over the property shall carry out their normal due diligence when developing the written findings that will be the basis for the written determination regarding the presence and risk of toxic materials on the property by the Department of Toxic Substances Control or the regional board, whichever is applicable. As used in this subdivision, "hazardous materials" has the same meaning as contained in subdivision (d) of Section 25260 of the Health and Safety Code.

Comment. Section 37016(a)(2) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section is also amended to make a technical change.

Pub. Res. Code § 47004 (amended). "Hazardous waste"

SEC. __. Section 47004 of the Public Resources Code is amended to read:

47004. For purposes of this chapter, "hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code, and "hazardous substance" has the same meaning as defined in ~~Section 25316~~ <u>subdivision (a) of Section 78075</u> of the Health and Safety Code.

Comment. Section 47004 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Pub. Res. Code § 48020 (amended). General provisions regarding codisposal site cleanup

SEC. __. Section 48020 of the Public Resources Code is amended to read:

48020. (a) For purposes of this article, the following terms have the following meaning:

(1) "Codisposal site" means a hazardous substance release site listed pursuant to ~~Section 25356~~ <u>Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45</u> of the Health and Safety Code, where the disposal of hazardous substances, hazardous waste, and solid waste has occurred.

(2) "Trust fund" means the Solid Waste Disposal Site Cleanup Trust Fund created pursuant to Section 48027.

(b) The board shall, on January 1, 1994, initiate a program for the cleanup of solid waste disposal sites and for the cleanup of solid waste at codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for timely remediation, and where cleanup is needed to protect public health and safety or the environment.

(c) The board shall not expend more than 5 percent of the funds appropriated for the purpose of the program by a statute other than the Budget Act to administer that program, unless a different amount is otherwise appropriated to administer the program in the annual Budget Act. If a different amount is appropriated to administer the program in the annual Budget Act, it shall be set forth in a separate line item. All remaining funds appropriated for the purposes of the program shall be expended on direct cleanup pursuant to subdivision (b) or emergency actions at solid waste facilities, disposal sites, sites involving solid waste handling, and for solid waste at codisposal sites.

Comment. Section 48020 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

REVENUE AND TAXATION CODE

Rev. & Tax Code § 402.3 (amended). Reassessment of land subject to land use restrictions

SEC. __. Section 402.3 of the Revenue and Taxation Code is amended to read:

402.3. An assessor shall consider any restrictive covenant, easement, restriction, or servitude adopted pursuant to Section 25202.5, 25222.1, or ~~25355.5~~ 79055 of the Health and Safety Code or any restriction, easement, covenant, or servitude imposed pursuant to Section 25230 of the Health and Safety Code as an enforceable restriction, easement, covenant, or servitude subject to Section 402.1 and shall appropriately reassess any land, the use of which has been so restricted, at the lien date following the adoption or imposition of the covenant, easement, servitude, or restriction.

Comment. Section 402.3 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Rev. & Tax Code § 43002 (amended). Governing definitions for fees and taxes imposed by Health and Safety Code provisions

SEC. __. Section 43002 of the Revenue and Taxation Code is amended to read:

43002. The collection and administration of the fees and taxes imposed by Chapter 6.5 (commencing with Section 25100) ~~and Chapter 6.8 (commencing with Section 25300), respectively,~~ of Division 20 of, and Part 2 (commencing with Section 78000) of Division 45 of, the Health and Safety Code, respectively, shall be governed by the definitions in those provisions, unless expressly superseded by the definitions contained in this part.

Comment. Section 43002 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

WATER CODE

Water Code § 13263.2 (amended). Exemption from hazardous waste facility permit for groundwater treatment

SEC. __. Section 13263.2 of the Water Code is amended to read:

13263.2. The owner or operator of a facility that treats groundwater which qualifies as a hazardous waste pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code is exempt from the requirement to obtain a hazardous waste facility permit pursuant to Section 25201 of the Health and Safety Code for the treatment of groundwater if all of the following conditions are met:

(a) The facility treats groundwater which is extracted for the purposes of complying with one or more of the following:

(1) Waste discharge requirements prescribed pursuant to Section 13263.

(2) A cleanup or abatement order issued pursuant to Section 13304.

(3) A written authorization issued by a regional board or local agency designated pursuant to Section 25283 of the Health and Safety Code.

(4) An order or approved remedial action plan issued pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code.

(b) The facility meets, at a minimum, all of the following operating standards:

(1) The treatment does not require a hazardous waste facilities permit pursuant to the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sec. 6901 et seq.).

(2) The facility operator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(3) The facility operator prepares and maintains a written inspection schedule and log of inspections conducted.

(4) The records specified in paragraphs (2) and (3) are maintained by the owner or operator of the facility for a period of three years.

(5) The owner or operator maintains adequate records to demonstrate that it is in compliance with all of the pretreatment standards and with all of the applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(6)(A) Upon terminating the operation of any treatment process or unit exempted pursuant to this section, the owner or operator that conducted the treatment removes or decontaminates all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after the treatment process ceases operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is exempted pursuant to this section shall provide written notification to the regional board or local agency upon completion of all activities required by this subdivision.

(7) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted by the Department of Toxic Substances Control pursuant to that chapter.

(c) The groundwater is treated at the site where it is extracted in compliance with one or more of paragraphs (1), (2), (3), and (4) of subdivision (a).

(d) All other regulatory requirements applicable to the facility pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code are met by the owner or operator.

(e) The treatment of the contaminated groundwater is not performed under corrective action required by Section 25200.10 of the Health and Safety Code.

Comment. Section 13263.2(a)(4) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Water Code § 13275 (amended). Rights and remedies against responsible party

SEC. __. Section 13275 of the Water Code is amended to read:

13275. (a) Notwithstanding any other law, a public water system regulated by the state board pursuant to Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code shall have the same legal rights and remedies against a responsible party, when the water supply used by that public water system is contaminated, as those of a private land owner whose groundwater has been contaminated.

(b) For purposes of this section, "responsible party" has the same meaning as defined in Section ~~25323.5~~ 78140 of the Health and Safety Code.

Comment. Section 13275 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Water Code § 13307 (amended). Policies and procedures for hazardous substance discharge investigation and cleanup or abatement

SEC. __. Section 13307 of the Water Code is amended to read:

13307. (a) The state board and the Department of Toxic Substances Control shall concurrently establish policies and procedures consistent with this division that the state board's representatives and the representatives of regional boards shall follow in overseeing and supervising the activities of persons who are carrying out the investigation of, and cleaning up or abating the effects of, a discharge of a hazardous

substance which creates, or threatens to create, a condition of contamination, pollution, or nuisance. The policies and procedures shall be consistent with the policies and procedures established pursuant to Section ~~25355.7~~ 79000 of the Health and Safety Code and shall include, but are not limited to, all of the following:

(1) The procedures the state board and the regional boards will follow in making decisions as to when a person may be required to undertake an investigation to determine if an unauthorized hazardous substance discharge has occurred.

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

(3) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination or pollution and cleaning up or abating the effects of contamination or pollution.

(4) Policies for determining reasonable schedules for investigation and cleanup, abatement, or other remedial action at a site. The policies shall recognize the dangers to public health and the waters of the state posed by an unauthorized discharge and the need to mitigate those dangers while at the same time taking into account, to the extent possible, the resources, both financial and technical, available to the person responsible for the discharge.

(b) The state board and the Department of Toxic Substances Control shall jointly review the policies and procedures that were established pursuant to this section and Section ~~25355.7~~ 79000 of the Health and Safety Code prior to the enactment of this subdivision and shall concurrently revise those policies and procedures as necessary to make them as consistent as possible. Where they cannot be made consistent because of the differing requirements of this chapter and ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code, the state board and the Department of Toxic Substances Control shall, by July 1, 1994, jointly develop, and send to the Legislature, recommendations for revising this chapter and ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code in order to make consistent the hazardous substance release cleanup policies and procedures followed by the state board, the Department of Toxic Substances Control, and the regional boards.

Comment. Section 13307 is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Water Code § 13365 (amended). Billing system and charges for cost recovery

SEC. __. Section 13365 of the Water Code is amended to read:

13365. (a)(1) For purposes of this article, unless the context otherwise requires, "agency" means the state board or a regional board.

(2) The terms used in this article shall have the same meaning as the definitions specified in the statutory authority under which the agency takes any action subject

to this article, except that, notwithstanding ~~Section 25317~~ subdivision (b) of Section 78075 of the Health and Safety Code, for purposes of this article, "hazardous substance" includes a hazardous substance specified in subdivision (h) of Section 25281 of the Health and Safety Code.

(b) On or before July 1, 1997, the agency shall adopt a billing system for the agency's cost recovery of investigation, analysis, planning, implementation, oversight, or other activity related to the removal or remedial or corrective action of a release of a hazardous substance that includes both of the following:

(1) Billing rates and overhead rates by employee job classification.

(2) Standardized description of work tasks.

(c) Notwithstanding any other provision of law, after July 1, 1997, any charge imposed upon a responsible party by the agency, to compensate the agency for some, or all, of its costs incurred in connection with the agency's investigation, analysis, planning, implementation, oversight, or other activity related to a removal or remedial action or a corrective action to a release of a hazardous substance, shall not be assessed or collected unless all of the following requirements are met:

(1) Except as provided in subdivision (f), prior to commencing the work or service for which the charge is assessed, and at least annually thereafter if the work or service is continuing, the agency shall provide all of the following information to the responsible party:

(A) A detailed estimate of the work to be performed or services to be provided, including a statement of the expected outcome of that work, based upon data available to the agency at the time.

(B) The billing rates for all individuals and classes of employees expected to engage in the work or service.

(C) An estimate of all expected charges to be billed to the responsible party by the agency, including, but not limited to, any overhead assessments that the agency may be authorized to levy.

(2)(A) Invoices shall be issued not less than semiannually with appropriate incentives for prompt payment.

(B) Invoices shall be mailed to the correct person or persons for the responsible party or parties.

(C) Invoices shall provide a daily detail of work performed and time spent by each employee and contractor employee using the billing and overhead rates and the standardized description of work tasks adopted pursuant to subdivision (b).

(D) Invoices shall include the source and amount of all other charges.

(E) Invoices shall be supplemented with statements of any changes in rates and a justification for any changes.

(F) Invoices shall be reviewed for accuracy and appropriateness.

(3) Upon request and within a reasonable time, not to exceed 30 working days from the date of receipt of a request, the agency shall provide the responsible party with copies of time records and other materials supporting the invoice described in

paragraph (2). No fees or charges may be assessed for the preparation and delivery of those copies pursuant to this section.

(4) The agency shall identify a party who is responsible for resolving disputes regarding the charges subject to this section and who is not responsible for, or performing, the work or service for which the charges are assessed.

(d) The agency may adjust the scope of the work or service, type of studies, or other tasks to be performed, based upon analyses necessary to accommodate new information regarding the extent of contamination of the site, and only after providing written notice of the change to the responsible party containing the information specified in paragraph (1) of subdivision (c).

(e) The agency may increase billing rates not more than once each calendar year, to the extent authorized by law. Any increase in billing rates or other charges, including, but not limited to, overhead charges, shall operate prospectively only, and shall take effect not sooner than 10 days from the date that written notice has been provided to the responsible party.

(f)(1) Paragraph (1) of subdivision (c) shall not apply when a situation exists that requires prompt action to protect human health or safety or the environment.

(2) Paragraph (1) of subdivision (c) does not apply with respect to those responsible parties who are not identified until after the beginning of a removal or remedial action or corrective action to a release of a hazardous substance.

Comment. Section 13365(a)(2) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Water Code § 13611.5 (amended). Information required from facilities that store perchlorate

SEC. __. Section 13611.5 of the Water Code is amended to read:

13611.5. (a) On or before January 1, 2005, and annually thereafter, unless the owner or operator has met the alternative compliance requirements of subdivision (b), an owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over 500 pounds of perchlorate shall submit to the state board, to the extent feasible, all of the following information:

(1) The volume of perchlorate stored each year.

(2) The method of storage.

(3) The location of storage. To the extent authorized by federal law, in the case of a perchlorate storage facility under the control of the Armed Forces of the United States, "location" means the name and address of the property within which the perchlorate storage facility is located.

(4) Copies of documents relating to any monitoring undertaken for potential leaks into the water bodies of the state.

(b) The owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over 500 pounds of perchlorate, is in compliance with this section if both of the following conditions are met:

(1) The owner or operator has provided substantially similar information as required pursuant to subdivision (a) to a state, local, or federal agency pursuant to any of the following:

(A) An order issued by a regional board pursuant to Chapter 5 (commencing with Section 13300) of Division 7.

(B) An order, consent order, or consent decree issued or entered into by the Department of Toxic Substances Control pursuant to ~~Chapter 6.8 (commencing with Section 25300) of Division 20~~ Part 2 (commencing with Section 78000) of Division 45 of the Health and Safety Code.

(C) An order, consent order, or consent decree issued or entered into by the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(D) The requirement under Section 25504.1 of the Health and Safety Code, as added by Assembly Bill 826 of the 2003–04 Regular Session.

(2) The owner or operator, on or before January 1, 2005, and annually thereafter, notifies the state board of the governmental entity to which the information is provided and the state board determines the information supplied is substantially similar as the information required to be reported pursuant to subdivision (a). In the case of any information submitted to a federal or local agency, the state board may require the owner or operator, in addition, to submit that information to the state board if the state board determines that the information is not otherwise reasonably available to the state board.

(c) This section shall not be administered or implemented if the state board receives notification from the Secretary for Environmental Protection pursuant to Section 13613 that the Secretary for Environmental Protection has established a database that is able to receive perchlorate inventory information.

(d) Information on perchlorate storage need only be submitted pursuant to this section one time, unless information originally submitted pursuant to this section has changed.

Comment. Section 13611.5(b)(1)(B) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

Water Code § 83002 (amended). Schedule of appropriation

SEC. __. Section 83002 of the Water Code is amended to read:

83002. The sum of eight hundred twenty million nine hundred seventy-three thousand dollars ($820,973,000) is hereby appropriated in accordance with the following schedule:

(a) Of the funds made available pursuant to Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code, the sum of two hundred eighty-five million dollars ($285,000,000) is hereby appropriated as follows:

(1) Pursuant to subdivision (c) of Section 5096.821 of the Public Resources Code, the sum of one hundred thirty-five million dollars ($135,000,000) to the department for the acquisition, design, and construction of essential emergency preparedness supplies and projects. Prior to the design or construction of any project funded pursuant to this paragraph, the California Bay-Delta Authority, or its successor, shall approve the specific project or program. Preference shall be given to projects that protect and improve Delta water quality and drinking water supplies. Of the amount made available pursuant to this paragraph, not less than thirty-five million dollars ($35,000,000) shall be expended by the department for projects to reinforce those sections of the levees that have the highest potential to suffer breaches or failure and cause harm to municipal and industrial water supply aqueducts that cross the Delta and which are vulnerable to flood damage, including the installation of scour protection on the supports of the aqueducts in those areas located adjacent to the sections of the levees that have been identified as having the highest risk for breaches or failure.

(2) Pursuant to Section 5096.827 of the Public Resources Code, the sum of one hundred fifty million dollars ($150,000,000) to the department for grants for stormwater flood management projects that reduce flood damage and provide other benefits, including groundwater recharge, water quality improvement, and ecosystem restoration. Not less than one hundred million dollars ($100,000,000) of this amount shall be available for projects that address immediate public health and safety needs or strengthen existing flood control facilities to address seismic safety issues. Twenty million dollars ($20,000,000) shall be available for local agencies to meet immediate water quality needs related to combined municipal sewer and stormwater systems to prevent sewage discharges into state waters. Twenty million dollars ($20,000,000) shall be available for urban stream stormwater flood management projects to reduce the frequency and impacts of flooding in watersheds that drain to the San Francisco Bay.

(b) Of the funds made available pursuant to Division 43 (commencing with Section 75001) of the Public Resources Code, the sum of five hundred twenty-six million four hundred ninety-one thousand dollars ($526,491,000) is hereby appropriated as follows:

(1) Pursuant to Section 75022 of the Public Resources Code, the sum of fifty million dollars ($50,000,000) to the State Department of Public Health for grants for small community drinking water system infrastructure improvements and related action to meet safe drinking water standards. First priority for these funds shall be given to disadvantaged or severely disadvantaged communities lacking resources to provide safe drinking water to residents. Small community drinking water systems that are dependent on surface water and are under orders from the State Department of Public Health to boil water from existing treatment systems for parasites, viruses, or giardia shall be eligible for grants for drinking water system infrastructure improvements.

(2) Pursuant to Section 75025 of the Public Resources Code, the sum of fifty million four hundred thousand dollars ($50,400,000) to the State Department of Public Health for grants for projects to prevent or reduce the contamination of groundwater that serves as a source of drinking water. Funds appropriated by this paragraph shall be available for immediate projects needed to protect public health by preventing or reducing the contamination of groundwater that serves as a major source of drinking water for a community.

(A) The State Department of Public Health shall prioritize project funding based on the following criteria:

(i) The threat posed by groundwater contamination to the affected community's overall drinking water supplies, including the need for the treatment or construction of alternative supplies if groundwater is not available due to contamination.

(ii) The potential for groundwater contamination to spread and reduce drinking water supply and water storage capacity for major population areas.

(iii) The potential of the project, if fully implemented, to enhance local water supply reliability.

(iv) The potential of the project to increase opportunities for groundwater recharge and optimization of groundwater supplies.

(B) The State Department of Public Health shall give additional consideration to projects that meet any of the following criteria:

(i) The project is implemented pursuant to a comprehensive basinwide groundwater quality management and remediation plan or is necessary to develop a comprehensive groundwater plan.

(ii) Affected groundwater provides a local supply that, if contaminated, will require the importation of additional water from the Sacramento-San Joaquin Delta or the Colorado River.

(iii) The project will serve an economically disadvantaged community.

(iv) Multiple contaminants affect more than one-third of the well capacity of a local water system.

(C) Of the amount made available by this paragraph, up to ten million dollars ($10,000,000) shall be allocated for projects that meet the criteria of this paragraph and both of the following criteria:

(i) The project has the potential to leverage funds.

(ii) The project addresses contamination at a site on the list maintained by the Department of Toxic Substances Control pursuant to ~~Section 25356~~ Article 5 (commencing with Section 78760) of Chapter 4 of Part 2 of Division 45 of the Health and Safety Code or a site listed on the National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(D) Of the funds made available by this paragraph, two million dollars ($2,000,000) shall be allocated to the State Department of Public Health to contract with the State Water Resources Control Board for the purposes of Section 83002.5.

(3)(A) Pursuant to Section 75026 of the Public Resources Code, the sum of one hundred eighty-one million seven hundred ninety-one thousand dollars ($181,791,000) to the department for integrated regional water management activities as follows:

(i) One hundred million dollars ($100,000,000) for implementation grants.

(ii) Thirty-nine million dollars ($39,000,000) for planning grants, local groundwater assistance grants, and CALFED scientific research grants.

(iii)(I) Twenty-two million ninety-one thousand dollars ($22,091,000) for projects with interregional or statewide benefits.

(II) Of the amount made available pursuant to this paragraph, not less than ten million dollars ($10,000,000) shall be made available for expenditure to interconnect municipal and industrial water supply aqueducts that cross the Delta and that are vulnerable to flood damage, including the design and construction of interties among aqueducts that provide at least 90 percent of a regional water supply that would be threatened in the event of levee failure or other disaster, and that support an integrated regional emergency water supply system.

(iv) Twenty million seven hundred thousand dollars ($20,700,000) for program delivery costs.

(B) An implementation grant pursuant to clause (i) of subparagraph (A) shall be available only for projects included in an integrated regional water management plan that meets one of the following conditions:

(i) The plan complies with Part 2.2 (commencing with Section 10530) of Division 6.

(ii) For a plan adopted before the date on which this section is enacted, both of the following apply:

(I) The regional water management group that prepared the plan enters into a binding agreement with the department to update the plan to comply with Part 2.2 (commencing with Section 10530) of Division 6 within two years of the date on which the agreement was entered into.

(II) The regional water management group undertakes all reasonable and feasible efforts to take into account water-related needs of disadvantaged communities in the area within the boundaries of the plan.

(C)(i) Of the funds described in clauses (i) and (ii) of subparagraph (A), the department shall allocate not less than 10 percent to facilitate and support the participation of disadvantaged communities in integrated regional water management planning and for projects that address critical water supply or water quality needs for disadvantaged communities.

(ii) Except as otherwise specified in clause (iii), the department shall achieve the allocation described in clause (i) by awarding grants for those purposes to disadvantaged communities within a hydrologic region in a total dollar amount that is not less than 10 percent of the total dollar amount of grants awarded within the region.

(iii) The department shall implement this subparagraph with due diligence, but shall implement clause (ii) only to the extent that the implementation does not affect the expeditious allocation of funds for integrated regional water management grants.

(iv) The department shall submit a report to the Legislature with regard to the implementation of this subparagraph on or before July 1, 2010.

(D) Of the funds described in clause (iii) of subparagraph (A), the department shall allocate two million dollars ($2,000,000) to Tulare County for development of an integrated water quality and wastewater treatment program plan to address the drinking water and wastewater needs of disadvantaged communities in the Tulare Lake Basin. Funds allocated pursuant to this paragraph shall be available for assessment and feasibility studies necessary to develop the plan, and the plan shall include recommendations for planning, infrastructure, and other water management actions, and shall include specific recommendations for regional drinking water treatment facilities, regional wastewater treatment facilities, conjunctive use sites and groundwater recharge, groundwater for surface water exchanges, related infrastructure, and cost-sharing mechanisms. Tulare County shall consult with appropriate stakeholders, including representatives of disadvantaged communities, when preparing the plan. The department, in consultation with the State Department of Public Health, shall submit the plan to the Legislature by January 1, 2011.

(E) Of the funds described in clause (i) of subparagraph (A), the department shall allocate not less than twenty million dollars ($20,000,000) to support urban and agricultural water conservation projects necessary to meet a 20-percent reduction in per capita water use by the year 2020.

(4) Pursuant to Section 75029 of the Public Resources Code, the sum of ninety million dollars (90,000,000) to the department for the implementation of Delta water quality improvement projects that protect drinking water supplies as follows:

(A) Pursuant to subdivision (d) of Section 75029 of the Public Resources Code, the sum of fifty million dollars ($50,000,000) for drinking water intake facility projects to improve the quality of drinking water supply from the Sacramento-San Joaquin Delta that are identified in the June 2005 Delta Region Drinking Water Quality Management Plan. Funding shall be made available for environmental review, design, and construction. Project proponents seeking funding for construction shall meet all of the following criteria:

(i) Have completed documentation required under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and a notice of determination has been filed prior to June 30, 2008.

(ii) Have demonstrated multiple benefits in conveyance and Delta operation to achieve protection or improvement to Delta pelagic fisheries, as well as drinking water quality improvement and public health protection.

(iii) Are able to complete design and commence construction before June 30, 2009.

(iv) Have local or federal cost-sharing funds immediately available.

(B) The sum of forty million dollars ($40,000,000) for projects consistent with subdivision (c) of Section 75029 of the Public Resources Code.

(5) Pursuant to Section 75033 of the Public Resources Code, the sum of one hundred million dollars ($100,000,000) to the department for the acquisition, preservation, protection, and restoration of Sacramento-San Joaquin Delta resources in accordance with Section 75033 of the Public Resources Code. The department shall expend these funds pursuant to priorities that reflect the value of the resources and land uses protected by the levees to the state as a whole, consistent with the Delta Vision Strategic Plan. Projects shall be selected to improve the stability of the Delta levee system, reduce subsidence, and assist in restoring the ecosystem of the Delta. Priority shall be given to projects that improve conditions for Delta smelt and other native fish. Up to five million dollars ($5,000,000) made available pursuant to this paragraph shall be available as grants and direct expenditures for emergency communications equipment to improve emergency response preparedness.

(6) Pursuant to Chapter 4 (commencing with Section 75041) of Division 43 of the Public Resources Code, the sum of thirty-seven million dollars ($37,000,000) to the department as follows:

(A)(i) Twelve million dollars ($12,000,000) to complete the planning and feasibility studies associated with new surface storage under the California Bay-Delta Program.

(ii) The planning and feasibility studies shall include the following information:

(I) The identification of specific construction and operation conditions proposed for each surface storage facility, including consideration of climate change, an estimated schedule for the construction and completion of each project funded under Section 75041, and the total costs of constructing each project.

(II) A description of the estimated total costs to construct each project and an allocation of the costs to public and private beneficiaries.

(iii) Any feasibility study conducted by or funded by the state for new surface storage under the California Bay-Delta Program shall evaluate funded projects consistent with all statutory and other legally established requirements for protection of environmental and natural resources, including protections for the McCloud River pursuant to Section 5093.542 of the Public Resources Code.

(iv) The feasibility studies shall be prepared and submitted to the Governor and the Legislature no later than December 31, 2009.

(B)(i) Fifteen million dollars ($15,000,000) for planning and feasibility studies to identify potential options for the reoperation of the state's flood protection and water supply systems that will optimize the use of existing facilities and groundwater storage capacity.

(ii) The studies shall incorporate appropriate climate change scenarios and be designed to determine the potential to achieve the following objectives:

(I) Integration of flood protection and water supply systems to increase water supply reliability and flood protection, improve water quality, and provide for ecosystem protection and restoration.

(II) Reoperation of existing reservoirs, flood facilities, and other water facilities in conjunction with groundwater storage to improve water supply reliability, flood control, and ecosystem protection and to reduce groundwater overdraft.

(III) Promotion of more effective groundwater management and protection and greater integration of groundwater and surface water resource uses.

(IV) Improvement of existing water conveyance systems to increase water supply reliability, improve water quality, expand flood protection, and protect and restore ecosystems.

(C) Ten million dollars ($10,000,000) to update the California Water Plan, including evaluation of climate change impacts, the development of strategies to adapt to climate change impacts, technical assistance to local agencies that incorporate climate change into their studies, reports, and plans, and the identification of strategies to reduce greenhouse gas emissions related to the storage, conveyance, and distribution of water.

(D) Of the money made available pursuant to subparagraphs (A), (B), and (C), up to two million dollars ($2,000,000) may be expended for planning and feasibility studies necessary to implement the Delta Vision Strategic Plan, developed pursuant to Executive Order No. S-17-06, dated September 28, 2006, establishing the Delta Vision process.

(7) Pursuant to Section 75050 of the Public Resources Code, the sum of seventeen million three hundred thousand dollars ($17,300,000) for the protection and restoration of rivers and streams as follows:

(A) Ten million dollars ($10,000,000) to the State Coastal Conservancy for the purposes of subdivision (i) of Section 75050 of the Public Resources Code.

(B) Seven million three hundred thousand dollars ($7,300,000) to the department for the purposes of subdivision (e) of Section 75050 of the Public Resources Code.

(c) Of the funds made available pursuant to subdivision (a) of Section 79550, the sum of three million seven hundred sixty thousand dollars ($3,760,000) is hereby appropriated to the department for planning and feasibility studies associated with surface storage under the California Bay-Delta Program.

(d)(1) Of the funds available pursuant to Section 79101, the sum of two million two hundred seventy-two thousand dollars ($2,272,000) is appropriated to the department for the Sacramento River Hamilton City Area Flood Damage Reduction Project.

(2) Of the funds available pursuant to subdivision (c) of Section 79196.5, the sum of three million four hundred fifty thousand dollars ($3,450,000) is appropriated to the department for the Franks Tract Pilot Project under the CALFED Drinking Water Quality Program.

Comment. Section 83002(b)(2)(C)(ii) is amended to update cross-references in accordance with the nonsubstantive recodification of Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

This section was also amended to insert subclause labels.

UNCODIFIED

Contingent and deferred operation

SEC. ___. This act shall only become operative if **[the Hazardous Substance Account recodification bill]** is enacted and becomes operative on January 1, 2024, and that bill would reorganize and make other nonsubstantive changes to the Carpenter-Presley-Tanner Hazardous Substance Account Act, in which case this act shall also become operative on January 1, 2024.

Subordination clause

SEC. ___. Any section of any act enacted by the Legislature during the 2022 calendar year, other than a section of the annual maintenance of the codes bill or another bill with a subordination clause, that takes effect on or before January 1, 2024, and that amends, amends and renumbers, amends and repeals, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, amended and repealed, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is chaptered before or after this act.